

Katy Foley

Dr. Salucci

Hard Choices in Public Policy

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AN EXPLORATION OF LEGISLATIVE INITIATIVES TO ADDRESS THE UNETHICAL EXECUTION OF PENAL LABOR

The United States Constitution upholds the fundamental, foundational rights of people it protects, the citizens of the United States. When legislation infringes on the rights of the people it aims to protect, then those who are harmed (and their supporters) will oppose it, fighting to gain the tenets of equality and prosperity. Constitutionally, prisoners who participate in penal labor are allowed to be treated as involuntary servants and have labor rights and standards that reflect those of slavery, granted under the 13th Amendment. This injustice is reflected in the low wages of prisoners, who are paid substantially less than non-prisoners working the same jobs. This inequity is systematically harmful to prisoners and negatively affects the greater population as well. This work explores legislative solutions to the unethical issues brought to bear in the system of penal labor.

What are the possible solutions?

There are different legislative approaches to mitigate unethical practices in the system of penal labor. The policies explored in this work include a federal implementation of minimum wage standards, and the creation of a tax credit to incentivize ethical treatment of employed prisoners. Policy implementation is never simple, and these legislative proposals maintain weighted and multifaceted social, economic, and political outcomes; they are not to be dismissed

because of intricacies and complexities of the statutes but rather deserve even greater attention as their goals are working for the rights of an underrepresented group of American citizens.

Set a Federal Minimum Wage Standard for Penal Labor

An important and beneficial legislative proposal that would remedy penal labor inequity calls for setting a minimum wage standard for companies utilizing imprisoned individuals. Under the assumption that the proposed legislation would treat incarcerated persons equally under the same standards as non-incarcerated individuals, the policy standards proposed would be akin to other current federal requirements, such as those under the Fair Labor Standards Act (FLSA). According to the United States Department of Labor, “The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments.” These rights include a set minimum wage of \$7.25 per hour, overtime pay, child labor regulations and clear employer record-keeping regulations. (United States Department of Labor) This wage rate is far higher than the average hourly wage rate of incarcerated employees, who, in 2017, worked for state-owned businesses and earned anywhere from \$0.33 to \$1.41, according to the Prison Policy Initiative. Setting federal minimum wage standards for working prisoners and providing them with equal treatment, as specified in the Fair Labor Standards Act, is beneficial and ethical. Furthermore, establishing a federal minimum wage for employed prisoners would result in better work and production outcomes, as well as more training and education that would eventually help prisoners rejoin the workforce and lower recidivism rates as inmates could earn money once released from prison.

While creating a minimum wage for those participating in penal labor seems beneficial to most stakeholders, there are certainly groups that wouldn't support this legislation--including businesses that would have to pay workers an average of \$5.84 more hourly than the current average salary paid to prisoners. This--coupled with the findings of a study conducted by Peter Wagner, attorney and Executive Director of the Prison Policy Initiative, and Wendy Sawyer, Senior Policy Analyst at the Prison Policy Initiative, which stated that 2.3 million Americans were incarcerated in March 2018--would account for a huge wage increase; therefore it may be assumed that these businesses would resist. (Wagner and Sawyer) and that fewer jobs would be available under economic constraints. Promoting a fair and ethical minimum wage for incarcerated individuals upholds their status as citizens of the United States, prioritizing this population over big business; we should reflect these principles in our legislative agendas.

*Create Tax Credits for Companies that Provide Ethical Labor Practices to
Employees who Engage in Penal Work*

An effective legislative proposal to improve inherent unfair wage practices within the system of penal labor would be to incentivize businesses that use ethical labor practices through tax credits. A clear example of a successful enactment of a tax incentive and credit is proposed by the Community Tool Box, an online educational resource working in collaboration with the University of Kansas, in "Section 3: Using Tax Incentives to Support Community Health and Development", "Their--(*tax incentives*)--purpose is to encourage those businesses and individuals to engage in behavior that is socially responsible and/or benefits the community...A tax credit allows you to subtract some or all of your expenses for certain things from the amount of taxes you have to pay. Your taxes are lower because you're actually paying less, even though you're

taxed on the full amount of your income.” (Italics are mine) By looking at the legislative process through the lens of tax credit implementation, it is important to clarify which prisons this legislation would apply to--state or federal--which would have complex implications for tax structures and fiscal policy. In addition to defining which population of incarcerated individuals that this policy would apply to, the legislation would have to define what the credit would be, how it may interact with current federal tax policy, what defines the “ethical” treatment of prisoners who participate in the system of penal labor, and how to monitor this. This legislation is complex, multifaceted and would require strict monitoring of large businesses who utilize this tax credit program to account for to potential abuse of its grants.

The merits of this legislative proposal sound impactful at their core, as they propose incentives for businesses that uphold defined ethical practices towards the system of penal labor; however the nuances of its implementation aren’t as easily established and are difficult to garner support for. The benefactors of this tax credit aren’t people who generally harnesses advocacy among law-abiding citizens or policy makers: Finding political representation for convicted felons and challenging big business agendas remain challenging in a politically weighted environment. Politicians who could champion this legislation might have a hard time appealing to their voter base. However, this legislation aims to appease all parties that it effects, giving big businesses large credits for ethical treatment and empowers incarcerated individuals by granting them ethical employment. A strong piece of bipartisan legislation aims to balance the scale for both sides of the aisle, and this policy does just this, reflecting the values and priorities of everyone that it affects.

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