

Hitched to the Post

Prison Labor, Choice, and Citizenship

The gods had condemned Sisyphus to ceaselessly rolling a rock to the top of a mountain, whence the stone would fall back of its own weight. They had thought with some reason that there is no more dreadful punishment than futile and hopeless labor.

—Albert Camus, “The Myth of Sisyphus”

Systems of punishment and economics have been mutually constitutive throughout history. Colonization and penalty proved to be convenient partners for hundreds of years. It is relatively easy to understand convicts as a source of exploitable labor and hence discern a causal relationship between capitalist development and punishment in the modern era. Certainly, accumulation of wealth has driven methods of punishment repeatedly. The exceptional cases interest me, however—what can we say about prison labor in an era of unemployment? What is the logic behind prison labor if expropriation of wealth is not the primary goal? Does prison labor cease to support capitalism, or has the relationship between the two become more complex? This chapter argues the latter point, that today prison labor and ideas about punishment reveal shifts from late industrial to postindustrial economies. I also explore the ideological function prison labor serves within contemporary U.S. capitalism. By focusing on how punishment shifts along with the economic system, it becomes clear that punishment serves a crucial function in political economy in general; exploitation of labor is only one manifestation of this relationship. In the context of the United States, citizenship is one of the primary mechanisms by which punishment comes to enforce political economy.

Labor and Citizenship

The problem of how to make people embrace wage labor has been with us since industrialization. In order to produce surplus value, work must be separated from mere survival and valorized on its own terms. John Locke made an early attempt to specify how labor serves as the foundation of citizenship within the social contract in *The Second Treatise of Government*. Here he specified, "Labor put a distinction between them and common"—the act of labor takes nature's bounty, which is shared by all, and turns it into individual property. Because every man "has a property in his own person"—his labor—every man who labors is thereby eligible, and motivated, to participate in the social contract that establishes a government.¹

In a recent article, Nancy Hirschmann explored Locke's "Essay on the Poor Law" to see how his theories were developed in relation to the laboring classes of his time. He advocated cutting public relief to paupers, since it was through work that people developed reason and the capacity for liberal citizenship. Failure to work or poverty "was evidence of a failure to *use* their God-given rationality."² Thus, at the time Locke was developing his theory of the social contract he perceived that linking citizenship to labor was one way to ensure the stability of liberal forms of government. The mythical founding of the social contract on labor solves several problems. First, labor becomes a proof of a person's willingness to exercise rationality as well as self-discipline, both characteristics that are sorely needed in a liberal polity. Second, according to Locke's schema, labor creates property, which provides the impetus to consent to and uphold the social contract. This answers the question why we would ever choose to trade natural freedoms for political ones. Finally, whether intentional or not, the connection between work and citizenship also served to support industrialization in England.

In Locke's version of citizenship based upon labor, there is one exception to his rule, slaves.

But there is another sort of servants, which by a peculiar name we call slaves, who being captives taken in a just war, are by the right of nature subjected to the absolute dominion and arbitrary power of their masters. These men having, as I say, forfeited their lives, and

with it their liberties, and lost their estates; and being the state of slavery, not capable of any property, cannot in that state be considered as any part of civil society; the chief end whereof is the preservation of property.³

Here, Locke provides the philosophical basis that later helped to justify the exclusion of slaves from citizenship in the United States. Labor is the crucial step in making one fit to join the social contract—it establishes your *individual* stake in and claim upon the world that was previously held in common. Because as a slave you do not even own your own labor and cannot create property, you become ineligible for citizenship. Interestingly, Locke also explains that indigenous populations do not mix their labor with the soil in the same way as Europeans and therefore do not create private property for themselves either. Locke's social contract prefigured the racially exclusive form of American citizenship through his linkage of work, reason, and the mythological foundation of the social contract.

In her book *American Citizenship* Judith Shklar makes a convincing argument that Locke's valorization of labor was central to the founding of the United States.⁴ She points out that the work ethic was a conscious fashioning of American identity in contrast to the aristocracy of the Old World and the chattel slavery of the New World. Aristocrats were maligned for their parasitic existence, and slavery was detested as the specter of unprofitable and underpaid work. Between these two poles, a life of leisure and the horror of enslavement, Americans glorified the reward, dignity, and character-building effects of labor.

While there are no formal work requirements in the Constitution, the United States has linked the rights of citizens to wage labor in social policy. As Alice Kessler-Harris has recently explained, "Unlike many other industrialized countries, America chose to distribute what the British social theorist T. H. Marshall called the rights of 'social citizenship' on the basis of work rather than as a function of residence or citizenship."⁵ The U.S. government has developed a host of benefits that accompany wage work, including social security and unemployment insurance. Health care is linked to wage employment rather than citizenship as well. According to Kessler-Harris, wage work has also served to differentiate levels of citizenship, particularly starting in the twentieth century with New Deal programs.

Work, wage work, had long marked a distinction among kinds of citizens: intimately tied to identity, it anchored nineteenth-century claims to political participation. But when the federal government linked wage work to tangible, publicly provided rewards (i.e., social security and unemployment) employment emerged as a boundary line demarcating different kinds of citizenship.⁶

Kessler-Harris explores how women and other minorities have been and continue to be systematically denied “social citizenship” based upon their failure to participate in the formal wage market. Although originally, as Shklar points out, the ideal was to work for oneself and gain true independence, today wage labor is considered the opposite of an unhealthy “dependence.” Debates about welfare suggest that participation in the formal workforce is still considered a mark of character in the United States.⁷

Though the principle linking labor and citizenship may be traced to Locke, his original formulation is not feasible in the United States today. Shklar’s and Kessler-Harris’s works suggest that the connection between citizenship and work changes over time. Today, in practice, we have linked labor and citizenship not through the notion of property but rather *choice*. When one chooses to work, labor is a sign of maturity and a capacity to self-govern. In contrast, when one is forced to labor, labor becomes a punishment and actually makes one less fit for citizenship. Hence, examining forced labor practices in the United States allows us to consider which populations are made unfit for citizenship as well as to investigate how the relationship between work and citizenship is currently defined. Furthermore, it is crucial to remember that forced labor is a form of *labor* and as such reveals contemporary economic trends.

During eras of expanding economies and full employment, the ideological connection between work, choice, and citizenship seems perfectly reasonable. But what about times of economic stress? If it becomes clear that not everyone can choose to work, then a society needs to recognize and accommodate this fact. During the Great Depression, the U.S. federal government expanded social welfare programs in order to provide political stability by meeting the needs of its citizens. These welfare programs assumed that citizens had rights independent of their status as workers and that the government owed a basic level of support to citizens. The adoption of welfare reversed

Locke's assumption that citizens, as workers, will provide a basic level of support for government.

However, we live during an era when neoliberal theories have enjoyed renewed prominence, as evidenced in multiple arenas: the reduction of corporate regulation, reduction of tariffs, elimination or severe restriction of social programs, downsized taxation, and privatization. These transformations have reinforced, if not accelerated, the traditional American valorization of work and the understanding that employment serves as the gateway to full citizenship. This ideological connection of work, choice, and citizenship has become ever more insistent at a time of structural unemployment. How do we reconcile the opposing theory and reality?

This chapter argues that the tensions between neoliberal ideologies of work and contemporary realities of unemployment are clearly ascertained through the lens of prison labor. I also argue that prison labor itself has become a spectacular means by which this tension is "resolved." However, as I shall explain, the ideologies of free choice and work have become increasingly difficult to maintain, which has led to ever more farcical performances of penal labor.

Social theorists have frequently observed that the penal system is developed in conjunction with the needs and detritus of the economic order. Jonathan Simon, Malcolm Feeley, and David Garland have pointed out that the penal system in the United States has experienced a shift in orientation. While one aspect of the penal system is to provide a clear moral order for a society, Simon and Feeley argue that this "New Penology" notably lacks a coherent narrative or purpose. "It has not yet succeeded in producing a viable truth about crime."⁸ The result is increased anxiety about crime and a lack of confidence in the institutions that deal with it. Garland, on the other hand, argues that the welfare state created a form of penal welfarism. Both regimes "meshed effectively with the new mechanisms of social regulation, with government through experts, and with ideological stress upon universal citizenship and social integration that characterized social politics in the post-war period."⁹ It was the decline of universal citizenship and post-war prosperity that undermined the welfare state and, alongside it, penal welfarism. Garland observes a "sharp discontinuity" in penal practices that reflects the turn toward neoliberalism in both in the United States and Great Britain.

Garland offers his observations as a contrast to Simon and Feeley's.

The sudden shift in penal policies *does* make sense given the larger historical, economic context. However, both analyses can be correct. Penal policies are not coherent narratives, but that is because they reflect current ideologies and economic developments. Contemporary prison labor is an expression of deindustrialization in the United States and the loss of employment in urban and rural areas. I am not arguing that prison labor is *caused* by these shifts. Rather, this particular incarnation of forced labor practices in the United States reflects and *hides* these political, economic trends. It deliberately contests economic reality outside prison walls, and this is why it becomes incoherent and unable to produce "a viable truth about crime," as Simon and Feeley observe.

Forced Labor in Historical Perspective

In order to understand what distinguishes forced labor practices today, it is illuminating to consider how they differ from other episodes of involuntary labor in U.S. history. Because of the radically disproportionate number of minority, male inmates, prison labor today is frequently viewed as a return to slavery. This impression is reinforced by the fact that prison labor is made legal through a clause in the Thirteenth Amendment. Slavery and involuntary servitude are outlawed in the United States, "except as punishment of crime whereof the party shall have been duly convicted" (U.S. Const. Am. 13, Sec. 1). Certainly, the legality of forced labor in penal institutions has rested upon this "escape clause" in the Thirteenth Amendment. In 1871, the Supreme Court of Virginia, in *Ruffin v. The Commonwealth*, determined that a convicted felon "is for the time being a slave, in a condition of penal servitude to the state," hence "civically dead," lacking rights normally awarded to citizens.¹⁰ Joan Dayan has also pointed out in her work that the practice of chaining inmates together to work, tracking inmates with bloodhounds, and monitoring working inmates with armed guards vividly evokes the history of slavery in the United States. The visual references to the era of slavery are particularly disturbing when considering the racially disproportionate prison population.¹¹ Furthermore, the practice of many states denying convicted felons the right to vote in perpetuity does suggest the creation of a permanent caste of noncitizens and a new era of Jim Crow in the twenty-first century.¹²

Despite the ghastly family resemblance between slavery, disproportionate minority confinement, and forced labor practices today, there

are crucial differences. The *Ruffin* ruling no longer stands, and prisoners' rights are recognized (if not always maintained). More important for the purposes of this argument, slavery was an integral part of the early national economy. Low-cost labor was essential for the agriculturally dismal territory of the South. Slavery made it possible to turn a profit from a swamp. While it was without a doubt fueled by racial animus and aristocratic fantasies, slavery was an institution that served an economic purpose. Prison labor today is abysmally unproductive, a fact I shall explore later. Incarceration is not driven by the need to extract low-wage labor from inmates.

Similarly, many people would consider the convict lease system in the postbellum South an extension of slavery. However, in his study of the convict lease system, Alex Lichtenstein argues that despite appearances, the convict lease system was not a functional equivalent to slavery. On the contrary, Lichtenstein found that convict labor was used in new industrial sectors of the economy, enabling the South's rapid industrialization following the Civil War. Rather than accept being burdened with the costs of a free labor force, nascent industrialists developed infrastructure with the use of extremely cheap labor. Convicts built the roads and railroads, stoked the furnaces, and removed the coal that marked the death of the plantation economy. Agricultural exploitation remained in force through the sharecropping system, but convict labor forged the new economy that proved to be even more profitable in the long run.¹³

Immediately after emancipation, industrialists were faced with a recalcitrant labor force. Newly freed slaves were not eager to sign up for lengthy workweeks, even for wages.¹⁴ Industrialists complained that even working freed slaves chose to work only two or three days a week, preferring free time to more wages. The convict lease system solved the dilemma perfectly: industrialists were given a new captive labor force. Furthermore, Lichtenstein argues, the convict lease system provided a method of discipline for poor black families in rural areas as well. Not fulfilling sharecropping obligations led to threats of the chain gangs. "Since it reinforced, rather than disrupted, the form of social control necessary for extreme labor exploitation in the South's plantation districts, this was a form of 'modernization' acceptable to planter and industrialist alike."¹⁵

What is important to note here is that the convict lease system provided labor discipline for those outside the purview of the chain gang

as well. This fact was not lost upon workers in the industries that used convict labor. One committee issued a report to the governor of Georgia urging him to restrict the use of the convict lease system. They argued prison labor was

offensive to the just pride of that worthy and estimable portion of our community [the white working men]. They feel that the natural effect is to degrade their vocation, by turning out from the walls of the Penitentiary the worst characters as rivals and associates in their business.¹⁶

While the concern for competition from convicts whose wages were minimal is evident, workers also adopted elements of the rhetorical and ideological stance that had helped to defeat slavery: Republican free labor.

Eric Foner's book *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party* explores how the ideology of free labor was used to challenge slavery. Rather than contest slavery on purely moral grounds like the abolitionists, Republicans made the argument that it was important to banish slavery from the Union because it sullied the heart and soul of the United States: free labor. In speaking of differences between the Southern and Northern sides of the Mason-Dixon Line, Thomas Ewing observed, "Labor is held honorable by all on one side of the line because it is the vocation of freemen—degrading in the eyes of some on the other side because it is the task of slaves."¹⁷ Alexis de Tocqueville shared this concern in *Democracy in America*, making the argument that slavery was debilitating for the slave but also for the master, killing his capacity for innovation and desire to work. Clearly, forced labor was viewed in relation to free labor: its presence in the United States had consequences for all.

Reviewing this brief history of the convict lease system presents an interesting point of comparison to the economic circumstances of today's prison labor. Lichtenstein points out that the convict lease system was an integral element in the South's rapid industrialization in providing inexpensive, unskilled labor. Today, by contrast, the United States is suffering from deindustrialization. The only sector of the unskilled labor market that is experiencing growth is the service sector. For the most part, prison laborers are entirely unsuited to fill this niche. Telemarketing jobs are one large exception, but the vast majority of ser-

vice sector jobs could not practically or cost-effectively be fulfilled with prison labor. Therefore, unlike the convict lease system, contemporary prison labor serves no pressing need on the part of the market.

Furthermore, convict lease labor was extremely productive. Today, UNICOR, the Federal Bureau of Prison's work program, loses money every year. In response to labor activism in the 1930s, Congress passed the Ashworth-Summers Acts that made it a felony to transport or sell prison-made products across state lines. In 1979 the Federal Prison Industries Enhancement Act (PIE) was passed allowing private companies to enter into joint ventures with prisons. In order to be exempt from the Ashworth-Summers Act, prison workers must be paid the federal minimum wage. (It is important to note that 80 percent of wages paid to prisoners are passed on to prisons for their overhead expenses or to the justice system to meet the costs associated with conviction.) Joint ventures in prisons are now in place in thirty-six states, and 80,000 workers are engaged in commercial activity behind bars. Examples of prison industries include hotel reservations, office furniture, blue jeans, lingerie, and electrical wire.¹⁸ The largest employer is the Federal Prison Industries UNICOR program, which employs 21,000 workers, primarily making goods for the government under mandatory sourcing contracts.¹⁹

UNICOR does not have to pay prisoners a minimum wage as it is already in compliance with the Ashworth-Summers Act because it sells to the government. Even with wages as low as 21 cents an hour, UNICOR products are expensive, costing on average 13 percent more than the same goods provided by private firms.²⁰ These products are shoddy; one study found that wire supplied by UNICOR failed at twice the rate of other suppliers. Finally, UNICOR delivered its products late 42 percent of the time.²¹ Clearly, UNICOR would not be able to compete in an open market. It seems that having a captive buyer and next-to-free labor would be tremendously profitable. Why isn't prison labor more lucrative?

The difficulties with doing business in prisons are numerous. Security costs are high, much higher than the wages of the workers. For example, in 2001 in the Philadelphia Prison System 350 inmates (out of the 22,124 prisoners who were taken in) were released for work assignments. In the same year, the prison conducted 2,494 security checks on these 350 inmates!²² Machinery installed in prisons does not tend to be the most efficient or up-to-date, and productivity is interrupted by

lockdowns or security disturbances at the prison. There are difficulties in conducting manufacturing in prisons ill-designed for the purpose. For example, trucks delivering supplies could not fit between two security gates encircling the prison that were programmed to open only one at a time. Inmates are released from the prison, creating high turnover rates and a need for constant training, particularly since those employed in prison industries are most likely low-risk, nonviolent offenders. It is true that employee absenteeism is low, and companies do not have to pay payroll taxes, unemployment benefits, sick leave, or retirement, nor enforce worker safety or environmental requirements. Ultimately, the balance sheet seems to come up even: employers would be just as well-off looking for nonincarcerated workers.

This is not to say that there have not been attempts to make prison labor more market savvy. Two institutions in Texas have taken the lead in trying to reform the current prison labor system, the Enterprise Prison Institute and the Criminal Justice Center at the National Center for Policy Analysis. Morgan Reynolds and Knut Rostad have testified before congressional hearings and produced studies arguing that prison labor might be used with greater profit in the United States. Both men testified at a hearing for HR 4100 entitled "Free Market Prison Industries Reform Act of 1998," which proposed ending mandatory sourcing regulations, lifting interstate restrictions on products made in prisons, and privatizing Federal Prison Industries, making it possible to sell products on the open market.

Proposals to privatize and expand prison labor profited from the labor shortage of the late 1990s. A brief entitled "Creating Factories behind Bars" points to the "93% unemployment rate behind the gates of American prisons" as a solution to "a workforce shortage that threatens American competitiveness."²³ The benefit of prison labor extends beyond private manufacturers to taxpayers and prisoners as well. They argue that 80 percent of income earned by prisoners currently is returned to the criminal justice system or helps pay compensation to victims. Expanding prison labor would be one way to manage the costs of the policy of mass incarceration. Finally, prisoners who work in prisons are 24 percent less likely to return to prison after release. While Reynolds and Rostad imply that this is due to the training and discipline provided by work experience, this may also be attributed to the fact that only the best behaved prisoners are allowed to work.

Reynolds and Rostad cite gross public mismanagement for the underutilization of the workforce behind bars in the United States.

However, since prison industry is usually state run rather than privately run, the output is often shoddy, overpriced merchandise that other state agencies must buy from the prison industry monopoly. The largest prison supplier was the Federal Bureau of Prisons with \$433 million in output for federal agencies, yet the system employed only 16,000 inmates out of 61,000 inmates eligible to work (i.e., those not in solitary confinement, considered dangerous, or being transferred) from its total of 85,000 inmates.²⁴

Today, the number of inmates has risen dramatically, but UNICOR still employs only a fraction of potential workers. The globalization of manufacturing has played a key role in hearings about prison labor; as Senator Mitch McConnell asked, "How about the apparel makers who use offshore labor? A lot of apparel is produced overseas now. Do you think we could find a way to entice them back, with some of them using prison labor?"²⁵ Despite some support, the proposed reforms have not thus far been approved.

The failure to push prison labor into the free market does not seem to be due to a reluctance to privatize government functions on the part of the current administration. Nor can the strength of unions take credit in this regard. I believe prison labor is unattractive to most investors because they do not need the kind of labor that prisoners can supply. McConnell may have fantasies about recapturing a manufacturing sector in the U.S. economy through the competitive deployment of prison labor, but even at slave wages, American workers cannot compete in the global marketplace anymore. And this may be the primary reason that so many potential workers are behind bars in the first place.

Troy Duster argues that the "darkening" of U.S. prisons can be directly linked to deindustrialization in American cities. In 1933 black people were incarcerated at approximately three times the rate of white Americans; in 1990, the rate was eight times that of white persons.²⁶ This shift in the pattern of incarceration can be compared to the loss of jobs in manufacturing in large cities and the concurrent rise of service sector employment. Because service sector jobs rely much more on fronting the image of the company, minority youths are far less likely

to be able to land these jobs that now dominate the entry level employment market. For instance, racial differences in language patterns are particularly sharp in the United States. Duster cites an experiment conducted by William Labov, a linguist at the University of Pennsylvania. Labov tape-recorded the voices of children at playgrounds in London and in Philadelphia. Neither he nor his English colleagues were unable to identify the race of the children recorded in London. In Philadelphia, however, they could four times out of five. Because service sector jobs hire on the basis of employee presentation and the image of the store, Duster argues that significant differences in language have meant that African American youths have been displaced out of the labor market in the transition to a service sector economy.²⁷

Continuing to look at Philadelphia as an example, the city has suffered from high structural unemployment, has abysmal public schools that are primarily attended by African Americans and other minorities, and has surprisingly low property values. Philadelphia also has an incarceration rate that is 148 percent of the national average and a significantly younger (35 percent of inmates are 24 or under) and disproportionately African American (72 percent) inmate population. Sixty-eight percent of inmates in the Philadelphia prison system are there for dealing drugs or theft of some kind.²⁸

Two sociologists, Bruce Western and Katherine Beckett, have argued that the extraordinary incarceration rate in the United States in the 1980s and 1990s has seriously distorted typical measurements of unemployment. Taking the tremendous incarcerated population into account (2 million people according to the *New York Times* on May 19, 2003) raises the overall unemployment rate for men by 1 percentage point. This would make the current unemployment rate closer to 7 percent. However, because of disproportionate minority confinement, taking incarcerated populations into account creates a 5-percentage-point rise in African-American male unemployment. Including frustrated job seekers and prisoners into their calculations, Western and Beckett place African American male unemployment at 38 percent, even during the "recovery" of the 1990s! Western and Beckett argue that penal institutions need to be understood as a labor market institution with two general effects: first, to hide massive structural unemployment; second, to create decreased job performance on the job market for those exiting them.²⁹

A point of historical contrast makes this second effect all the more

salient. In his book on the parole system, *Poor Discipline*, Jonathon Simon points out that during the era of indeterminate sentencing in 1960, in order to be released on parole, prisoners in thirty states had to show that they had been offered gainful employment.³⁰ Such job offers did not always materialize, nor was the system any guarantee that ex-offenders seamlessly melded back into society. But such a provision is unthinkable today, not only as a condition of release, but also in comparison to the employment restrictions that are placed upon ex-offenders upon their release. Both federal and state governments bar ex-offenders from holding jobs that require federal or state licenses. These occupations include working airport security, as aids in nursing homes, or as a social worker. Those with drug convictions cannot obtain student loans.

Prisons work more to remove large numbers of the unemployed from public view and to further stigmatize them. Especially in perpetuating the population's unemployment status after release, prisons play in a key role in the hardening of poverty in U.S. cities. Simon argues that work provides the main method of achieving "normalization" in American society, and so unemployed persons on parole are not likely to be reintegrated into communities. He argues that given the structural unemployment in cities, to break the cycle of incarceration we will have to develop "an understanding of the normal distinct from the discipline of the labor market."³¹ While I absolutely agree with him, I believe that contemporary prison labor practices suggest exactly why this is not likely to be the case. After all, if prisons are helping to mask what are extraordinarily bad economic prospects for minority youths in the country, then why have them labor in prison at all?

The Moral Economy of Work or Work as Punishment?

Two different traditions intersect in prison labor. One is the tradition of work as rehabilitation; the other is work as punishment or discipline. The residue of both traditions can be found in debates about prison labor today. The tradition of work as penance and rehabilitation has been with the institution of the prison since its inception. In Eastern State Penitentiary in Philadelphia, Tocqueville and Beaumont described prisoners who were kept in their cells in solitary confinement for the entire length of their sentence, in order to prevent criminals from further contaminating one another. The original penal institution,

the Walnut Street Jail, discovered that individuals kept in solitary confinement without activities went insane. At Eastern State Penitentiary, the Quakers improved upon the model of solitary confinement by adding handicraft activities for each prisoner to accomplish in his cell.

It is highly remarkable, that these men, the greater part of whom have been led to crime by indolence and idleness, should be constrained by the torments of solitude, to find in labor their only comfort. By detesting idleness, they accustom themselves to hate the primary cause of their misfortune; and labor, by comforting them, makes them love the only means, which again free, will enable them to gain honestly their livelihood.³²

Work becomes the welcome respite from idleness, and prisoners view work as a form of redemption, a proclivity that reformers hoped would continue after release as well. The Auburn penitentiary model also placed a great deal of emphasis upon the rehabilitative aspects of labor in prisons. By having prisoners work collectively but in absolute silence, they learned the self-discipline and obedience needed for collective production. Interestingly, as Thomas Dumm points out, the system of rehabilitation through work was developed in the United States during a time of an acute labor shortage, so released prisoners were likely to be able to ply their trade after release.³³ According to Tocqueville's interviews, the work of prisoners was also used to defray the costs of confinement, an advantage that is also frequently mentioned today.

Today some prison reformers advocate increasing work release programs, allowing prisoners to gain work experience, earn some money, and enjoy more humane conditions of confinement through a variation of their everyday activities. As I already mentioned, one rationale for expanding prison labor is decreased recidivism. Most prisoners today would prefer to work. Days are monotonous, and even dreary tasks are more welcome than solitary confinement. Supermax prisons that place prisoners in cells for twenty-three hours a day are finding that solitary confinement causes insanity just as it did two hundred years ago. Dealing with overcrowded prisons, wardens and guards welcome prison work. It provides occupation for the prisoners and wears them out, making them a more tractable population. Within the institution, prison work provides the sole occupation for prisoners now that educational and recreational budgets have been slashed.³⁴

But I believe that prison labor serves a different function outside the prison walls. David Goldberg has observed that the labor discipline provided for minority men in prisons and the workfare assignments created largely for minority women outside of prison enforce capitalist moral economy. "In the moral economy, then, prisons are supposed ideologically to represent law and order, work in the face of welfare, discipline rather than delinquency, social control over anarchy."³⁵ Foucault also observed the intricate way that the penitentiary is closely calibrated to the economy outside of it.

How is power to be strengthened in such a way that, far from impeding progress, far from weighing upon it with its rules and regulations, it actually facilitates such progress? What intensifier of power will be able at the same time to be a multiplier of production?³⁶

Viewed in this light, prison labor takes on a special significance considering that it is becoming more popular just at the time that structural unemployment in urban areas has emerged as a permanent reality. Today prison labor affirms that our old assumptions are still valid: those who do not labor are criminals. What more efficient way to insist upon participation in the workforce, even at a time when such participation becomes more difficult?

Examining the debate over the State of Oregon's Measure 17, which was passed in 1994 requiring all prisoners to work forty hours a week, we can see the interlacing of different, often contradictory arguments about the nature of work, choice, and citizenship. Because the debate happened during a period of economic prosperity, a common argument was that requiring prisoners to work was a form of rehabilitation and would reduce recidivism. Interestingly, there was also resentment on the part of taxpayers that they were paying for prisoners to remain idle while *they themselves* were required to work forty hours a week or more.³⁷ Prefiguring the Personal Responsibility and Work Opportunity Act of 1996, the popularity of Measure 17 in Oregon (it passed with 71 percent of the vote) suggests that voters will not endorse exemption from work. The ideological linkage between work and moral character that I began this essay by describing still remains very strong.

The problem with this logic is that the incarcerated population comes from the population least likely to find work in the first place,

and it is even more disadvantaged on the job market after serving time in prison. The ideology of work and citizenship in the United States dictates that all rational and disciplined people can and will choose to work. Not being able to work is a reality that our understanding of citizenship, virtue, choice, and freedom simply cannot accommodate, particularly in an era of increased market discipline. To acknowledge that some people cannot work would require a fundamental shift away from neoliberalism. Yet such a dramatic shift seems unlikely, even in the face of growing structural unemployment. The incarceration boom hides some unemployment, and prison labor maintains the fiction that unemployment is a character, not an economic, issue. This is the logic by which we pursue prison labor practices of another era, sometimes with absurd results. It is this collision of ideology and a changing economic reality that has led to some of the incoherence that Simon has noted in contemporary penal practices.

Prison Labor as Farce

In *State of North Carolina v. Clifton Frazier* (COA00-122, 6 February 2001), the State Supreme Court ruled that Clifton Frazier could not be convicted of larceny for stealing from the prison canteen where he was assigned to work. Frazier was paid one dollar a day for his labor. Over the course of three months, \$665.75 worth of goods and money disappeared from the canteen. The initial conviction found Frazier guilty of larceny, but the Supreme Court overturned this conviction, arguing that he was not an employee, by definition. "Defendant did not make a wage that would have been lawful outside of prison, he could not lawfully refuse a work assignment, and he had no bargaining power or any of the other ingredients of a traditional employment relationship." Some prisoners are paid the minimum wage but still by law are not employees. The key distinctions here seem to be the ability to choose whether or not to work, and the sense that work is a reciprocal relationship between worker and employer.

But establishing these two precepts as the basis of free labor may be problematic, and become even more so. If one cannot find a job, is employment still a choice in any regard? If there is a shortage of jobs, do employees still enjoy a reciprocal relationship with their employers? Economic anxieties are making these questions more pressing. The case of *Larry Hope v. Pelzer* illuminates how the connection between work and choice is maintained, even in absurd circumstances.

In Alabama, prisoners who disrupt work on the chain gangs or who refuse to work on the chain gang are disciplined by being chained to a hitching post, outside, with their arms high above them. There are regulations of this practice: prisoners are to be offered bathroom breaks and water, and prisoners are to be released once they state that they are ready and willing to work in the chain gang. In 1994, the Department of Justice conducted a study of the Alabama Department of Corrections' use of the hitching post and found that these regulations were only sporadically followed. The DOJ advised Alabama to desist in its disciplinary use of the hitching post—particularly because, they argued, not all prisoners were released when they said they would return to work. In short, it was acceptable for the hitching post to be used to enforce participation in prison labor, other than that it was considered inappropriate. Remarkably, the Alabama Department of Corrections replied that they would continue to use the hitching post “to preserve prison security and discipline” (*Hope v. Pelzer*).

A case decided by the Supreme Court in summer 2002 provides a vivid picture of the use of the hitching post in Alabama. Larry Hope, a prisoner, was affixed to the hitching post twice. The first time was due to a disturbance between himself and two other inmates on the chain gang working together. He was removed and attached to the metal apparatus for two hours. The incident was well documented in the prison records, including the times that he was offered bathroom breaks and given water. When he agreed to resume his work, he was released from the hitching post and returned to the chain gang. The second time Hope was punished with the hitching post followed an altercation with the guards of the chain gang. His shirt was removed, and he was held in the hot June sun without water or bathroom breaks for seven hours. Guards offered him water, then poured it on the ground in front of him, taunting him about his thirst. Hope brought a civil case against the guards who were ruled to be immune from prosecution. The Supreme Court overturned this decision, ruling that reasonable persons should have known that such activities constituted cruel and unusual punishment, and that the guards were thereby liable for their actions.

The scene is striking, a man, attached to a metal bar, hands in shackles above him. He is dehumanized thoroughly, and in order to regain his “freedom,” he must emphatically state that he will choose to go work on the chain gang. Why go to such perverse lengths to make the prisoner “choose” work? On one hand, the insistence that the prisoner

choose reaffirms the ideological connection between labor and citizenship. Prisoners will be punished until they are willing to use their reason, their "free will," as society would dictate. On the other hand, to enact choice in such a fashion is actually quite dangerous. It is just as easy to say that such an exercise reveals Hope's "choice" as entirely fabricated. Perhaps, after all, work is not really a choice.

Prison labor becomes a painful enactment of social normalcy in one other way as well. Now that tougher economic times have hit the state, Oregon voters do not like the idea that convicts are able to secure employment when those on the outside are finding it increasingly difficult.³⁸ Voters overwhelmingly amended Measure 17 in 1998, restricting the use of prison labor, and even further restrictions were demanded by the AFL-CIO and ultimately delivered by the state in 2002. There is little talk anymore about the rehabilitative purpose of prison labor. We want prisoners to labor, but we don't want them to compete. Hence, we have the development of spectacularly unproductive labor.

In Alabama and Arizona, for example, wardens have decided to pay for large boulders to be brought to prisons. Convicts break these boulders into gravel with hammers. The gravel, of no practical use, is deposited into pits next to the prison.³⁹ The prison pays to bring in more boulders to be smashed. This is not work as rehabilitation or training, this is not work that is generating profit. This is work as punishment. In Oregon, where the most public debate about the relationship between free and forced labor has occurred, some have even suggested that convicts should be employed in pushing boulders back and forth over highways. The ultimate punishment devised by the gods for the man, Sisyphus, who dared to scorn their rules migrates out of the underworld onto the earth's surface.

But Camus reminds us that the primary distinction between Sisyphus and other workers is the hero's consciousness of the futility of his labor. In chapter 2, I looked at what this passage says about consciousness and the limits of human rationality. Here I want to highlight the element of labor in the myth.

If this myth is tragic, that is because its hero is conscious. Where would his torture be, indeed, if at every step the hope of succeeding upheld him? The workman of today works every day in his life at

the same tasks, and this fate is no less absurd. But it is tragic only at the rare moments when it becomes conscious.⁴⁰

To say that prison labor, particularly in this guise, is absurd is not to dismiss the pain, both physical and mental, that such labor inflicts upon those forced to engage in it. Unlike Camus, I cannot imagine prisoners smashing boulders as happy. But in the sense that recognition of the absurd provides for an elevated level of consciousness, I present these final manifestations of prison labor as the absurd in precisely that spirit. The myopic view that all rational people will choose to labor at a time when structural unemployment is becoming a permanent reality is creating the need for farce. An insistence that participation in the labor force is always a matter of rational choice, not social opportunity, becomes increasingly difficult to maintain.

The U.S. political and economic systems have been sustained by the ideology linking citizenship and labor. But maintaining this construction is requiring that a significant proportion of our population, particularly black men, be sacrificed. The unemployed are branded as criminals, removed from public view, and permanently crippled in their attempts to participate in the workforce. Releasing prisoners from the burden of maintaining this fiction for the rest of us should be enough provocation to dismantle the links between choice, labor, and citizenship. In case it is not, we would do well to remember the origins of the treadmill. Tocqueville points out that treadmills, "machines that work without producing," were developed in English prisons in 1822 to provide constant activity for prisoners without undue competition for other workers.⁴¹ At the time, it was inconceivable that such a machine would find its way out of the prison. How curious, almost two hundred years later, it has become a common metaphor for understanding the experience of work and leisure, the rhythms of modern life, even outside the walls of the prison. Endorsing rock crushing, boulder pushing, or any other form of labor, purely for the sake of laboring, shows how far we have traveled from Locke's initial calculation that labor is fundamentally a matter of rationality.

