COERCED PRISON LABOR WITHOUT UNION PROTECTION: THE EXPLOITATION OF THE PRISON INDUSTRIAL COMPLEX

Following through on the compulsion to investigate prisoner's union organization rights in the wake of the 2010 Georgia Prison Strikes, delving into the Supreme Court's decision in Jones v. North Carolina Prisoners, investigating the prohibition on union membership among prison inmates forced to engage in brutal manual labor, and questioning support from mainstream unions for unionized prisoners

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Enshrined in the 13th Amendment to the Constitution of the United States is the perpetuation of slavery "as a punishment for crime whereof the party shall have been duly convicted." Convict slave labor is that in which a prisoner does not receive a wage for his work but can be extrapolated to those that receive less than an appropriate wage for their labor. This slavery, however, is only one of the myriad of injustices and abridgment of rights that prisoners face on a daily basis. In most industries, a labor union exists to combat workplace injustice; however, the labor movement in the United States maintains an increasingly ambiguous relationship with prison labor. Without the ability to organize, prisoners are left with little recourse to file their grievances, culminating in events such as the Georgia Prison Strike of 2010.

Foremost, labor unions maintain an ambivalent relationship with prisoners because, due to the decision of *Jones v. North Carolina Prisoners' Labor Union (1977)*, confinement removes the 1st Amendment right to freedom of assembly, the right which labor unions utilize to ensure their protection. Decided during a conservative era of the Supreme Court, the 9-1 decision overturned that of the District Court, finding that a prison union "will increase the burdens of administration [in the prison] and constitute a threat of essential discipline and control" as a Union could become "a power bloc within the inmate population…utilized to cause work slowdowns or stoppages or other undesirable concerted activity." It also solidified the "hands off" policy regarding prisons, deferring jurisdiction regarding matters within prisons to "appropriate prison authorities" instead of to the courts for the primary avenue to voice grievances. In his dissenting opinion, Justice Thurgood Marshall agreed with the District Court's decision stating that "there was 'not one scintilla of evidence to suggest that the Union had been utilized to disrupt the operation of the penal institutions.'" He also continued by warning that this decision could lead to prisoners eventually being "stripped of all constitutional rights, and would only retain privileges that prison

officials, in their 'informed discretion,' deigned to recognize." Thus, the framework was built for prisoners unions to exist in name only, without the capacity to voice displeasure with their conditions as is the case with current prisoners unions in Texas and Missouri.

Prior to the *Jones* decision, there was one effort made by major labor unions to organize prisons. Although it proved to bear no fruit, the American Federation of Labor (AFL) was recruited to undertake organizing efforts at Sing Sing Penitentiary in order to quell labor's discontent with the prison labor system since "organized labor was more likely to support the programs if prisoners were able to join trade unions either while incarcerated or upon release" (McLennan 388). Any "properly trained" prisoners could join the AFL while incarcerated, with the AFL working out a method for the prisoners to pay membership dues; however, the qualification of "proper training" was rarely achieved in Sing Sing (McLennan 389). As a result, only a handful of prisoners, limited to musicians, were able to attain "union-listed employment after their release from prison" (McLennan 393).

After *Jones*, only one union, the International Workers of the World (IWW) attempted to organize prisoners. In 1987, 400 prisoners in the Lucasville Penitentiary in Ohio attempted to organize a branch of the IWW within their prison in order to demand a minimum wage for their labor but had the courts reject their demand (Lynd 15). This was one of the many factors that led to the Lucasville Prison Riots of 1993, one of the deadliest riots in prison history. Today, any attempt at organizing labor within prisons is met with "immediate and harsh state repression" (Wright 114) yet retains little, if any, negative publicity.

There are two primary reasons that keep labor unions in conflict with prison labor: prison labor's competition with free labor and the focus on the condition of prison guards rather than prisoners. Corporations began to implement prison labor on a large scale after the advent of unions.

In the late 1800s, prison contractors looked to prison labor as a way to avoid dealing with the demands of free workers, especially their efforts to organize and collectively bargain (McLennan 113); without these rights, companies could employ a self-replenishing labor force to continually reap massive profits. Free labor was in perpetual conflict with prison labor. Employers threatened their employees with taking their business to prisons if performance did not increase (McLennan 113); in the South, this fear became so palpable that free workers feared striking over any grievance (McLennan 157).

This trend continues today; companies like the Boeing Corporation utilize prison and Chinese labor in order to "search for workers who are unable to unionize or demand a decent wage" (Wright 113). Companies in industries dominated by union labor can escape the costs of paying minimum wage with prison labor. In a recession, this is a helpful mechanism to maintain profits as the legal requirement of prison labor exists regardless of economic growth or shrinkage; there may be no jobs for the free worker but "prison law essentially mandates a policy of full employment for prisoners" (Wright 124). Thus, instead of attempting to improve conditions for prisoners, labor unions work only to eradicate the expansion of prison labor; paradoxically, they do not want to undo mandatory sentencing laws which sustain the growth of the prison population as that would result in the loss of jobs for unionized prison guards.

In an interview, Paul Wright of *Prison Legal News*, a monthly magazine dedicated to prisoners' rights, explained the decision of unions to focus on prison guards rather than prisoners: "they [unions] want to organize the prison employees so you can get their money for dues…the prisoners are just the unpaid slaves here…except for the Industrial Workers of the World, I'm not aware of a single American union in the last 50 or 60 years…that has considered, contemplated, or even mumbled something about viewing prisoners as workers." On November 2, 2000, a group

of seven prison guards at a maximum security prison in Colorado called “The Cowboys” were indicted by a federal grand jury and “charged with 52 specific acts of misconduct against some 20 named prisoners from 1995 to 1997” (Wright 228) after the president of the American Federation of Government Employees (AFGE) local president reported violations and abuses of prisoners to prison officials. This resulted in the local president, as well as other union leaders, being “tossed out in an election dominated by candidates who denied that anything wrong had happened” with the new local president, Steve Browning, stating, “These are good officers” that had merely been falsely accused (Wright 230). Many of the guards remain at that prison today.

In another effort to protect the prison guards and union members occurred in California. The California Correctional Peace Officers’ Association (CCPOA) were a prominent political force in their state (Shelden 274) when accusations arose that, in Corcoran State Prison, four guards arranged for the “Booty Bandit” to rape a young prisoner. During the ensuing trial, the union used its publication, the *Peace Keeper*, to urge its members “not to trust or speak with the FBI and state investigators” (Wright 253). Moreover, union members and their supporters filled the court room in order to enforce a “code of silence” among those set to testify. The result was a resounding victory for the unions and an acquittal for the guards.

Labor unions are far more concerned with the conversion of government-run prisons to private prisons as organizing is curtailed within the private institutions. Lobbying and pressure from AFSCME members caused the state of Minnesota to “[place] more offenders in state-run facilities” and to avoid shutting down another state-run prison (AFLCIO 29). In order to keep receiving dues from and to retain employment for their members, labor unions must ensure that laws are such that a steady supply of prisoners is maintained.

Despite their distaste for prison labor, an act signed by Franklin D. Roosevelt in 1934 with support from the AFL and other unions formulated a prison industry that would be a "separate corporate entity, with its own board and its own capitalization, to operate the industries… creating the Federal Prison Industries, Inc." (Keve 166), mandating that prison industries "be broadly diversified, with no one product so extensively produced that it offered serious competition for private industry" (Keve 167) and had no products sold to the general public. Coupled with the passage of AFL-lobbied Hawes-Cooper Act (1934; limiting interstate commerce of prison-made goods) and the Ashurst-Summers Act (1935; criminalizing knowingly transporting convict-made goods into states which prohibited such goods), prison labor contracting had been effectively squashed (McLennan 465). This resulted in an even lesser incentive for labor unions to organize prisoners as the competition between the two forms of labor diminished.

By 1979, the passage of the Prison Industry Enhancement Certification Program by Congress "authorized states to once again use prisoners in for-profit ventures and sell the products of their labor in interstate commerce" (Wright 121), reinvigorating the need to organize prisoners to mitigate impending competition; however, due to the *Jones* decision, organization could never come to fruition. Ergo, the stage was set for organized labor to engage in their conflicting war against prison labor: the war to quell the market presence of prison-made goods, reducing the revenue that helps keeps prisons operating and paying for prison employees while simultaneously bargaining for the wages of prison employees and thus the dues that keep labor unions operating. A massive, wide-scale labor mobilization cannot occur under these conflicting conditions.

Labor unions may not be able to bargain on behalf of prisoners; however, some unions are able to work around the restrictions on organizing to improve abject prison conditions. Prisoners have the right to receive medical care but cannot sue for this care unless the prisoner can show that

his 8th Amendment right to avoid "cruel and unusual punishment" has violated by "deliberate indifference to serious medical needs" on the part of a prison official, as according to *Estelle v. Gamble (1976)*. Over time, the "deliberate indifference" standard has proven difficult to meet (Wright, et al. 286), and cannot be applied in the case of medical malpractice. Accordingly, prisoners frequently receive less than adequate medical assistance because of the aforementioned stipulation. Thus it becomes the duty of the outsiders, like the United Auto Workers Local 6000 of Michigan, to file suit on their behalf. When an attempt was made to replace 70 prison health care workers with Correctional Medical Services (CMS) employees, the Local filed a suit on May 25, 2000, exposing CMS's poor health track record (including involuntary manslaughter charges) and stating that CMS's care "would expose state prisoners to 'the so-called care of a company whose track record shows a profound and continuing defiance of constitutional standards of care'" (Wright, et al. 192) due to their pursuit of limiting off-site visits and decreasing overall costs. Similar events transpired when, in 1999, the University of Massachusetts and Local 285 of the Service Employees International Union (SEIU) reported that CMS attempted to improve their services temporarily to pass state audits (Wright, et al. 194).

Still, though, labor unions do not have the best record regarding prisoners' rights. During the Georgia Prison Strike, an organization called Frontlines of Revolutionary Struggle mused that "the greatest danger right now is that the protest strike be cut off from unions and other progressive forces in Georgia and the rest of the country" (FRS 6). Conversely, most unions cut themselves off from the striking workers with a resounding non-response to the issue. Were major unions to attempt to organize prisoners like those involved in the prison strike, not only could there be a possibility of judicial review of the *Jones* decision but also, the desperation of prisoners and their stagnant conditions would combine to create a new, mobilized constituency that could perhaps

mitigate labor unions' struggles with declining numbers and, thereby, power, especially since many states are eradicating felon disenfranchisement.

The largest labor organization in the United States, the AFL-CIO, neglected to show solidarity with the strikers, contradicting their fundamental. Their mission statement reads, "We will build a broad progressive coalition that speaks out for social and economic justice…We will speak out in effective and creative ways on behalf of all working Americans," but, apparently, prisoners deprived of and, thus, demanding a living wage for work, educational opportunities, decent health care, an end to cruel and unusual punishments, decent living conditions, nutritional meals, vocational and self-improvement opportunities, access to their families, and just parole decisions (Pris demands) do not fall within that umbrella. Still, the prisoners organized a non-violent strike, calling for a very union-like "sit down at the table" to talk about their demands and have their grievances addressed (21).

Alternatively, a few unions recognized the plight of the prisoners. The IWW featured a story about the prison strike on the front page of its bi-monthly newspaper, and the Richmond IWW started a petition, concluding that, as fellow workers, it is their responsibility "to show solidarity with our brothers and sisters in the Georgia state prison system, and echo their demands to retain their dignity and status as human beings" (IWW 27). The Berkeley UAW Local 2865 wrote an open letter to the strikers, emphasizing the need for prisoner education, and showed their solidarity by holding a rally and March in support of the prisoners (UAW 28).

The impact of the neglect of labor unions is overshadowed only by the neglect conferred by the mainstream media as media shapes public opinion, leading to mass action and, resultantly, change. Public opinion currently leans toward the mantra that inmates lose their rights by violating

the laws and morals followed by the rest of society, an opinion first voiced by the Virginia Supreme Court in *Ruffin v. Commonwealth of Virginia* (1876): "[the prisoner] is for the time being a slave of the State." Activists hypothesize that the strike has been "completely ignored by the mainstream media…in a blackout aimed at curtailing this from spreading to…detention facilities or prisons in other states" (19). As a result, it is imperative that organizations outside of the prison bring light to this issue.

Paul Wright stated that it is "too soon to tell" if something will come of the strikes. Currently, many organizations have called for action yet the results of these actions are pending. The biggest result of the prison strikes was the creation of the Concerned Coalition to Respect Prisoners' Rights, a joint effort by the NAACP, Nation of Islam, ACLU of Georgia, Human Rights Network, All of Us or None, and the Ordinary People Society to be the outside voice of the strike. Their first mission was to call the Governor of Georgia and the Department of Corrections Commissioner to "halt the violent tactics being employed by guards against thousands of striking prisoners" (22). The Coalition then embarked on a "fact-finding delegation" as a follow-up investigation to the accusations of violence against the strikers, culminating in the interviewing of prison staff and inmates. Their insistence forced the Department of Corrections to request an inquiry into the alleged assaults to be performed by the Georgia Bureau of Investigations, resulting in seven prison guards being "charged with aggravated battery and violation of oath of office" on February 21, 2011(4).

Overall, however, the action front has been relatively tame. The American Civil Liberties Union (ACLU) stated that "in the aftermath of the strike, the ACLU will advocate for comprehensive reform to criminal justice policies in Georgia, including a close examination of the policies that created the conditions that led to the strike" (ACLU 11). Paradoxically, the ACLU

has not taken up any litigation regarding the prison strike according to its National Prison Project Litigation Docket, released April 2011. Their prison reform agenda has remained wholly unchanged since the strike.

The Georgia NAACP (National Association for the Advancement of Colored Persons) wrote to Georgia state officials "demanding the state address reports of retaliatory abuse" and "reinforcing the demands of the prisoners for their basic human rights and other issues" such as prisoner education and egregious fines for subjective prison misconduct (CL 9). The organization said that they would release a report on their findings from conducted interviews with affected prisoners and would send them to the Georgia's judiciary committee in calls for further investigation. On the national level, the NAACP stated that they would file a lawsuit or complaint with the federal government on behalf of the prisoners (NYT 13). To date, despite their claims, no reports have been released and no lawsuits filed.

Both the NAACP and ACLU have publicly supported a piece of legislation introduced on February 8, 2011by Sen. Jim Webb (D-VA) called the National Criminal Justice Commission Act (S. 306), which could create a "blue-ribbon commission" to examine the current state of the criminal justice system and make recommendations for reform. The Commission created by the act "shall make findings regarding such review and recommendations for changes in oversight, policies, practices, and laws designed to prevent, deter, and reduce crime and violence, reduce recidivism, improve cost-effectiveness, and ensure the interests of justice at every step of the criminal justice system" (Act). Although no explicit mentions of the Georgia Prison Strikes were made in this legislation, it is possible that the re-introduction of this bill was necessitated by the conditions surrounding the prison strikes and calls for reform. This, however, seems unlikely.

No members of the Georgia delegation to Congress mentioned the prison strikes in a public forum. Rep John Lewis (D-GA), a member of the Congressional Black Caucus and representing almost all of Atlanta, and other Black elected officials were accused of a failure to "do their duty to these men and address this question" of changes to be made to prisons (SF 8). A response to the deficit of attention given by the Governor of Georgia, Nathan Deal, was a call to bombard his office with calls to shut down his phone lines (7). Perhaps the fact that Georgia inmates work for "Prison Industries," a subsidiary owned by and creating profits for the Georgia Department of Corrections facilitates the need for nonresponse. Rising costs of confinement, coupled by Georgia's rampant proclivity to incarcerate, compels the need to sustain the prison industry or face massive deficits – an outcome that, especially in the current political climate, could be detrimental to the prolonging of a political career.

Without the urging of powerful political figures or the public, it seems unlikely that substantial reform will occur. Paul Wright, on the reluctance of politicians to advocate on behalf of prisoners, proclaimed, "I would wager that you cannot find a single politician in America, elected to statewide office that would say, 'I think prisoners should be paid a fair wage for their work.'" At the start of the strike, the Georgia Department of Corrections denied the existence of a prison strike and responded that prisons were merely locked down for "security reasons" (AJC 25). As time passed, they began to admit more details of the strike but denied allegations of abuse. The fact that the strike was organized through phones purchased illegally through the help of prison guards should have been enough to incite an investigation itself; moreover, it wasn't until the aforementioned report by the Concerned Coalition caused the Georgia Bureau of Investigations to probe the Department of Corrections and find truth in the allegations that any oversight was exercised. Illustrating the problem with the current grievance system, an organization that has the

ability to monitor itself and defer to its own wisdom will perpetuate maliciousness until stopped by an outside source. The prisoners recognized the need for an outside source to terminate the persistent violations and ended the strike in order to, as stated by an inmate involved in the strike, "go to the law library and start…the paperwork for a [prison conditions] lawsuit" (Af 17).

The system did not appease the prisoners, so they reached outside of the prison for assistance. Were labor unions willing and able to organize prisoners, perhaps their grievance system could have worked to mitigate the conflict before its escalation, saving the state of Georgia countless dollars that it will now have to spend on oversight, investigations, and lawsuits and unquantifiable embarrassment. Already, even without the assistance and support of major labor unions and civil rights organizations, lawsuits are being brought on behalf of the prisoners. Hopefully, the outcome of these strikes will be substantial prison reform and the resurgence and committal to protecting and perpetuating the rights that prisoners have as human being and people of the United States.

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