

Reflections on Prison Labor

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I. LABOR

The bed frame that embraced you as you studied, as you slept, as you dreamt about worlds newly discovered in rambles across the college quad. The tomatoes simmering on the stove as you try to decipher your nana's handwriting to recreate a pale shadow of a beloved stew. The sanitizer that protected your hands, your body, your health, your life. The fires that never reach your home. The voice that answers when you call the DMV, soothing in their reassurances. The uniform that carries your name. The roads now running with slick currents, their wrinkles and scars rolled away with steady hands. All these things and more bridge the chasm between the prison and a freer domain.¹ Incarcerated people build, cultivate, create, protect, speak, stitch, improve—their labor reshapes the world around us without recognition or compensation.²

It is a labor sometimes offered and often stolen. But does the cruelty of captivity afford a true freedom to give?³

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¹ See ACLU & UNIV. OF CHICAGO LAW SCHOOL GLOBAL HUMAN RIGHTS CLINIC, CAPTIVE LABOR: EXPLOITATION OF INCARCERATED WORKERS 9-11 (2022) [hereinafter CAPTIVE LABOR], [https://perma.cc/94ZP-5EYQ] (providing an overview of the diversity of prison labor, which includes making uniforms and dorm furniture that the state then sells to public institutions, growing livestock and crops, mass producing hand sanitizer during the COVID-19 pandemic, serving as firefighters, staffing DMV hotlines, and maintaining public roads).

² For example, the average maximum daily wage for incarcerated workers is less than \$2. Wendy Sawyer, *How much do incarcerated people earn in each state?*, PRISON POL'Y INITIATIVE (Apr. 10, 2017), [https://www.prisonpolicy.org/blog/2017/04/10/wages/] [https://perma.cc/9P4B-C8LG]. In multiple states (including Alabama, Arkansas, Florida, Georgia, and Texas), incarcerated workers are unpaid. *Id.*

³ The Thirteenth Amendment prohibits slavery and involuntary servitude from the United States “except as punishment” for a conviction of a criminal offense. U.S. CONST. amend. XIII, § 1. This empowers many carceral systems to demand labor as a condition of incarceration. *See, e.g.*, 28 C.F.R. § 545.20(a)(2) (2020) (requiring all able-bodied people to “participate in the work program” while confined in federal custody); ARIZ. REV. STAT. ANN. § 31-251(A) (requiring “each able-bodied prisoner under commitment to the state department of corrections [to] engage in hard labor for not less than forty hours per week”). Accordingly, the refusal to work can carry devastating costs. *See, e.g.*, Andrea C. Armstrong, *Racial Origins of Doctrines Limiting Prisoner Protest Speech*, 60 HOWARD L.J. 221, 222-23 (2016) (explaining that when

II. UNIONS

Prison is exile. Its geography is a brutal landscape traversing leagues and astronomies to reach the front gate. Its presence looms with borders of cement blocks, barbed wire, locked doors. Its symphony is the vacuum of silence interrupted by metal and violence. Time magnifies its oppression, measured not by seconds or minutes but by decades and lives.

Prison life, too, is exile. Even in harsh conditions, seeds can grow—but prisons consume the soil and air and water needed to nourish community. Fear drives the prison's hunger. Fear that people will speak to each other.⁴ That they will write to each other.⁵ That they will educate each other.⁶ That they will recognize the humanity in each other, and through such sustenance will see the humanity in themselves. It is afraid of the audacity of human connection, the precursor to collective liberation. And so the prison eats, and eats, and when the seeds cannot and therefore do not rise, the prison points to the empty land and says, "See, look at this wasteland, where nothing grows."

III. WINDFALLS

Finally, the mountain budged. The horrific jaws of the prison's appetite became impossible to ignore. The abuse of prison labor demands intervention, our institutions decried—but the dawn of this realization settled quickly to dusk. We intercede only when the prison shares its harvest with private profiteers, only when public takings become private "windfalls."⁷

incarcerated welders refused to build a lethal injection gurney for people sentenced to death, their punishments included solitary confinement as well as hundreds of disciplinary reports).

⁴ See *Jones v. N.C. Prisoners' Lab. Union, Inc.*, 433 U.S. 119, 123, 132 (1977) (upholding prison regulations that prohibited bulk mailings and individual solicitations to join a labor union because collective associations purportedly "possess the likelihood of disruption to prison order or stability," despite the fact that the lower court found "not one scintilla of evidence to suggest that the Union has been utilized to disrupt the operation of the penal institutions" (quoting *N.C. Prisoners' Lab. Union, Inc. v. Jones*, 409 F. Supp. 937, 944 (E.D.N.C. 1976))).

⁵ See *Turner v. Safley*, 482 U.S. 78, 92 (1987) (upholding a prison regulation that banned incarcerated people's correspondence between prison institutions because it would "facilitate[] the development of informal organizations," which allegedly threaten prison "safety and internal security").

⁶ See *Thornburgh v. Abbott*, 490 U.S. 401, 412-13, 416, 420 (1989) (upholding as "facially valid" a prison regulation that censored a broad range of publications, including those about discriminatory and negligent deaths in confinement, as "detrimental to the security, good order, or discipline of the institution").

⁷ See, e.g., *Carter v. Dutchess Community College*, 735 F.2d 8, 15 (2d Cir. 1984) (recognizing that the incarcerated plaintiff, who worked as a teaching assistant at a local community college, may qualify as an "employee" under the Fair Labor Standards Act); *Watson v. Graves*, 909 F.2d 1549, 1554-56 (5th Cir. 1990) (holding that the incarcerated plaintiffs, who worked for a private construction company through a work release program, constituted "employees" of the program); *Vanskike v. Peters*, 974 F.2d 806, 808, 811-12 (7th Cir. 1992) (declining to apply *Carter* or *Watson* because the incarcerated plaintiff labored for the prison itself rather than for "private, outside employers"; while the latter "amounts to an unfair windfall," the former "may

But to condemn profit is to condemn everything that feeds from the sweat and toil of captive bodies. How can a prison run without its janitors, its cafeteria workers, its launderers, its plumbers? How can a state balance its books without the ripened fruit of exploited labor? How can we survive crisis after crisis without the people chained to the frontlines of disaster?⁸

To recognize the rights of incarcerated workers would disturb the very bones and musculature of the carceral state. Excising 3% of a tumor is a biopsy, not salvation.⁹ But when incarcerated people held a mirror to this logic, when they explained the rational end to a justified indignation, the courts rejected this reflection. Let's instead draw an imaginary line through the tragedy of gluttony. Let's celebrate public greed as a "public good[]." ¹⁰

A magic trick, an illusion manipulated by a sleight of hand. Look here, ignore that—and we did.

IV. COST

An echoed refrain answers every proposed reform: What is the cost?

Abolish prison slavery.¹¹ The courts respond: What is the cost? And in designing a means of measurement, they confess their predisposition. What is the cost of rewarding rights for labor, they ask.¹² What is the burden to an

be seen as simply paying the costs of public goods"). This focus on private profit is not limited to the courts or to labor issues within prisons. For example, in 2021, President Biden issued an executive order prohibiting the renewal of Department of Justice contracts with privately operated criminal detention facilities. Exec. Order No. 14006, 86 Fed. Reg. 7483 (2021). But even with such incremental reforms, backlash can return us to the status quo. See Shannon Heffernan, *What Will Trump's Executive Order on Private Prisons Really Do?*, THE MARSHALL PROJECT (Jan. 22, 2025), <https://www.themarshallproject.org/2025/01/22/trump-private-prisons-executive-order> (noting that President Trump reversed this executive order).

⁸ See Tiffany Yang, *Public Profiteering of Prison Labor*, 101 N.C. L. REV. 313, 337-43 (2023) (describing two overarching categories of prison labor from which the state benefits: "prison industries," which are "prison labor programs that produce goods or services sold to other government agencies," and what I call "carceral public works," which includes prison maintenance, everyday municipal maintenance, and disaster relief).

⁹ The prison and its operating governments are the beneficiaries of over 96% of prison labor. See CAPTIVE LABOR, *supra* note 1, at 9-11, 27 (explaining that the Prison Industry Enhancement Certification Program, work release programs and agricultural labor programs, which permit private companies or employers to use prison labor to produce goods and services, collectively employ less than 3.5% percent of incarcerated workers nationwide). See also Heffernan, *supra* note 7 (explaining that President Biden's executive order on private prisons impacted only a small fraction of the people held in federal custody).

¹⁰ See Vanskike, 974 F.2d at 811-12 (declining to recognize the incarcerated plaintiff as an "employee" because "[a] governmental advantage from the use of prisoner labor . . . may be seen as simply paying the costs of public goods—including the costs of incarceration . . .").

¹¹ See, e.g., *IWOC Endorses National Prison Strike and Pledges Support*, INDUSTRIAL WORKERS OF THE WORLD (June 20, 2018), <https://archive.iwwo.org/node/9097/> [<https://perma.cc/G9U2-SJH2>] (sharing the demands of the 2018 nationwide prison strike, which included "[a]n immediate end to prison slavery. All persons imprisoned in any place of detention under United States jurisdiction must be paid the prevailing wage in their state or territory for their labor").

¹² For example, federal courts have been resistant to recognize incarcerated workers as employees, which would guarantee them certain workplace protections (including minimum wage guarantees). See, e.g., Vanskike, 974 F.2d at 811 (declining to recognize incarcerated

eager prison, to a reliant state budget, to a dependent government? Courts, too, labor to sustain our carceral systems.¹³

Abolish prison slavery. Consider instead: What is the cost of *refusing* rights?¹⁴ How do we weigh damage and havoc not to profit, but to people?

We would need different tools of measurement. Tools that could hold the destructive abyss of solitary confinement. Carry the bruises and blood of retaliatory blows. Weigh the saddled weeks, months, years in a cage. Spool the severed lifelines.¹⁵ Count the lives dragged back from an opening door because the state coveted their hands, their production, the ease of their disappearances.¹⁶

Abolish prison slavery because it costs too much.

V. HOPE

The gravity of despair creates a tempting orbit that can be difficult to escape. You go ‘round and ‘round—even when moving forward, every step circles back to where you started, and the cycle begins again.

What does it mean to hope, in the storms of such despair?¹⁷ Hope does not arrive fully formed. It must be built, piece by piece, to transform ephemeral and vulnerable optimism into enduring and resilient conviction.

workers as “employees” under the FLSA in part because doing so would mean that “prisoners must be paid minimum wage for anything they do in prison that can be considered ‘work’”; *Hale v. State of Ariz.*, 993 F.2d 1387, 1398 (9th Cir. 1993) (en banc) (arguing that imposing a minimum wage obligation under the FLSA “would jeopardize prison industries programs”).

¹³ In both civil and criminal law spaces, federal courts have expressed “a fear of too much justice” and have prioritized safeguarding rather than destabilizing the status quo. *See, e.g.*, *McCleskey v. Kemp*, 481 U.S. 279, 339 (1987) (Brennan, J., dissenting) (observing that the majority declined to recognize a claim that the death penalty is racially discriminatory because doing so “would open the door to widespread challenges to all aspects of criminal sentencing”); *Washington v. Davis*, 426 U.S. 229, 248 (1976) (declining to recognize disparate impact claims under the Fourteenth Amendment because such claims “would be far reaching and would raise serious questions about, and perhaps invalidate, a whole range of tax, welfare, public service, regulatory, and licensing statutes that may be more burdensome to the poor and to the average black than to the more affluent white”).

¹⁴ We must consider as well—what is the cost of *reifying* rights? There is often a tension between rights rhetoric and more transformative frameworks for understanding and subverting subordination. My discussion of rights in this piece is intended to critique the courts’ refusal to recognize the personhood of incarcerated people, but it is important to acknowledge the potential harms that can stem from rights discourse, including the reification of existing hierarchies and power structures. *See, e.g.*, Omavi Shukur, *(Un)American Revolutionaries in the Courtroom: A Critical Race Paradigm*, 115 GEO. L.J. (forthcoming) (on file with author).

¹⁵ *See, e.g.*, Whitney Bennis, *American Slavery, Reinvented*, ATLANTIC (Sept. 21, 2015), <https://www.theatlantic.com/business/archive/2015/09/prison-labor-in-america/406177/> [<https://perma.cc/2CKR-F7CY>] (identifying penalties like solitary confinement, loss of “good time” credits, and revocation of family visitation).

¹⁶ State actors have used a reliance on prison labor to justify their resistance to decarceral reforms. *See, e.g.*, Yang, *supra* note 8, at 346–49 (outlining examples in California, Louisiana, and Arizona).

¹⁷ *See* EMILY DICKINSON, “*Hope*” is the thing with feathers, from THE COMPLETE POEMS OF EMILY DICKINSON (1951) (observing that hope can falter in difficult circumstances, despite its resilience).

So then, what does it mean to build? Here in the free world, the capitalism of fast commerce has led to complacency. When many of us build, we open a box to find a self-contained promise. Peer inside to see elegantly deconstructed fragments that reunite without friction. Step by step, illustrations reach out to hold our hands. We roll up our sleeves and move with the certainty of seers, confident of the end, focused on the boundaries of an enterprise's imaginings.

But look instead to another vision. When incarcerated people build, there is no plastic pocket of uniform tools. No five-page manual showing where and how to go. No guarantees of reaching a horizon. And yet, even under the daily oppression of displacement and brutality, they build.¹⁸ They build communities of solidarity.¹⁹ They build resistance.²⁰ They build transformative visions of liberated worlds that demand recognition.²¹

To build is to join, to assemble together. It requires us, those who live beyond the prison, to reach past the borders of the free world and forge partnerships with incarcerated people. Let's "ignite and invest in their visions."²² Nourish outside support for inside actions.²³ Transform solidarity

¹⁸ See Jamelia Morgan, *Responding to Abolition Anxieties: A Roadmap for Legal Analysis*, 120 MICH. L. REV. 1199, 1202 (2022) (citing Mariame Kaba to explain that the "act of 'building' is a foundational, though often overlooked, aspect of abolitionist thinking and organizing"). In the footnotes that follow, I offer illustrative examples of the prison and movement organizing referenced above the line.

¹⁹ Incarcerated people's unions provide a compelling illustration of solidarity within prisons. For more information about the history of these associations, see DONALD F. TIBBS, FROM BLACK POWER TO PRISON POWER: THE MAKING OF JONES V. NORTH CAROLINA PRISONERS' LABOR UNION (2012); Tiffany Yang, *Prison Grievance Creep*, 78 STAN. L. REV. 835 (2026).

²⁰ In the 2016 nationwide prison strike, approximately 24,000 people across as many as fifty prisons came together to "demand the end to prison slavery." *Announcement of Nationally Coordinated Prisoner Workstoppage for Sept. 9, 2016*, IWW INCARCERATED WORKERS ORG. COMM. BLOG (Apr. 1, 2016), <https://iwoc.noblogs.org/post/2016/04/01/announcement-of-nationally-coordinated-prisoner-workstoppage-for-sept-9-2016/> [<https://perma.cc/N4FB-4SMH>]; Nick Tabor, *The Improbable Story of How the National Prisoner Strike Came Together*, N.Y. MAG. (Aug. 23, 2018), <https://nymag.com/intelligencer/2018/08/how-the-national-prisoner-strike-came-together.html> [<https://perma.cc/24Y6-R7FB>].

²¹ In 1970, people incarcerated in California's Folsom State Prison developed a "Manifesto of Demands and Anti-Oppression Platform" that "s[ought] an end to the injustice suffered by all prisoners." ANGELA Y. DAVIS, *Prisoners in Rebellion: The Folsom Prisoners Manifesto*, IF THEY COME IN THE MORNING: VOICES OF RESISTANCE 67 (2016). The manifesto included twenty-nine demands that would transform the criminal punishment system, including freedom for political prisoners, the eradication of racism, the protected right to form labor unions, and the freedom to peacefully "assemble in dissent." *Id.* at 67-68 (reproducing the Manifesto). The nineteen-day Folsom prison strike inspired the creation of the first incarcerated people's union in the United States. See TIBBS, *supra* note 19, at 112-13.

²² Seema Saifee, *Decarceration's Inside Partners*, 91 FORDHAM L. REV. 53, 62 (2022) (urging scholars to look to incarcerated people as true partners and thought leaders in the pursuit of a decarceral future) (emphasis omitted).

²³ In 2013, tens of thousands of people incarcerated in California state prison systems engaged in a hunger strike to protest the state's practice of indefinite solitary confinement. See Christie Thompson & Brian L. Frank, *Echoes of Isolation*, MARSHALL PROJECT (Jan. 28, 2026), <https://www.themarshallproject.org/2026/01/28/california-los-angeles-prison-solitary> [<https://perma.cc/3JAF-Q23J>]. After sixty days of refusing food and a concurrent civil rights lawsuit, the strikers won "major policy changes" from California's prison system, including the end to

into movement.²⁴ Resurrect living documents and construct monuments to dignity, not cruelty.²⁵ Let's turn away from the page and look instead to the freedom dreaming²⁶ of incarcerated defiance. We can, and we have, and we shall.

indefinite isolation and transfers for many back to the general population, where they would have a renewed chance of release through parole. *Id.* Outside support took on a variety of shapes. For example, free world allies worked to amplify the strikers' message and frequently held rallies outside participating state prisons. *See id.* And litigators with the Center for Constitutional Rights engaged in movement-oriented participatory litigation to ensure that the strikers led and shaped the litigation to support their demands. *See generally* Jules Lobel, *Participatory Litigation: A New Framework for Impact Lawyering*, 74 STAN. L. REV. 87 (2022) (explaining how the California hunger strike lawsuit reflected a theory of participatory litigation that infuses political and legal representation with grassroots leadership).

²⁴ When incarcerated people coordinated the 2016 prison strike, many people in the free world organized solidarity actions nationwide. *See Spreading the Strike: Solidarity Actions Across North America for September 9th*, IT'S GOING DOWN (Aug. 16, 2016), <https://itsgoing-down.org/spreading-strike-solidarity-actions-across-north-america-september-9th/> [<https://perma.cc/7SRE-2BFC>] (collecting and reporting a "list of [outside] events and mobilizations leading up to and around [the prison strike] . . .").

²⁵ While efforts to abolish the Thirteenth Amendment's criminal exception clause continue, nine states have ratified state constitutional amendments that ban slavery and involuntary servitude within carceral institutions. *See* Adam A. Davidson, *No Exceptions: The New Movement to Abolish Slavery and Involuntary Servitude*, 92 U. CHI. L. REV. 2105, 2139 (2025). Although we should celebrate these victories, there is still more work to be done. *See id.* at 2146-60 (explaining some of the potential roadblocks that have appeared).

²⁶ *See* Robin D. G. Kelley, *FREEDOM DREAMS: THE BLACK RADICAL IMAGINATION* 10 (2003) ("In the poetics of struggle and lived experience, in the utterances of ordinary folk, in the cultural products of social movements, in the reflections of activists, we discover the many different cognitive maps of the future, of the world not yet born.").