

Case 1

“Cons and Pros”

Americans have long thought of work as a suitable punishment for criminals. The Thirteenth Amendment to the United States Constitution distinguishes between slave labor and prison labor: “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” Accordingly, into the beginning of the twentieth century, prisons continued making frequent use of convict labor.

The use of prison labor came under fire in the 1920s from companies that depended on wage labor and had a hard time competing against prison-produced goods. Not only could prisoners be compelled to work for much less than workers in the open market, but they could neither strike nor organize labor unions. States could and frequently did attempt to prohibit the sales of interstate prison-made goods. They could not, however, control imports of prison-made goods from other states or from foreign countries. In response to these concerns, Congress enacted the Hawes-Cooper Convict Labor Act (passed in 1929 and effective in 1934) that declared goods imported from out-of-state to be subject to the laws of the state where they were to be sold. The 1940 Ashurst-Sumner Act (18 U.S.C. §§1761-62), in part, prohibited interstate transportation or importation of foreign goods made by convict labor.

The constitutionality of these laws has been upheld, and they are still in effect; however, they have been considerably weakened by subsequent legislation. In 1979, as part of the Justice System Improvement Act, Congress created the Prison Industry Enhancement (PIE) Certification Program, which exempted certain prisons and correctional institutes from laws regulating interstate sales of prison-made goods. The stated purpose of the program is to provide a work environment very similar to that on the outside, a comparable (minimum) wage, and training in marketable skills. Supporters claim that inmates who participate in these programs will be more likely to function as productive members of society upon their release. Although prison workers are paid minimum wage, the prison may, and usually does, deduct up to eighty percent for taxes, room and board, family support programs, and victims' compensation. Proponents say that the PIE Program not only helps prisoners in the long term by lowering the recidivism rate, but also in the short term by alleviating the boredom of prison life. Opponents of the PIE point out that the jobs held by convicts are taken away from the most economically hard-pressed segments of society.

While the United States has improved conditions in prisons and loosened its prohibition against interstate transportation of prison-made goods, and although it never stopped US prisons from exporting such products, the importation of such products from foreign countries is still prohibited. Foreign convict labor, however, exists in many forms and produces many types of goods and services not envisioned by the framers of the US laws.

To wit, on 12 May 2010 the BBC reported that a prison in India would form an experimental partnership with an Indian company, Radiant Info Systems, which specializes in handling outsourced work from other companies. On its website, Radiant Info Systems claims several strategic partnerships with American firms, among them IBM, Microsoft, Dell, and Sun Microsystems. Radiant has agreed to hire 200 inmates from a local Indian state jail to do data entry and around-the-clock processing of banking information. In this particular prison, forty percent of the inmates are educated (high school or baccalaureate). According to TopNews.in, the eligible applicants will not have a history of theft or robbery, but will be in prison for things like harassment or dowry-murder. The prisoners will be paid approximately US\$3.30 per day, as opposed to US\$0.33 per day for other prison work, such as weaving or making steel furniture, and will leave prison with marketable technical skills. The arguments presented by Radiant spokespersons bear a strong resemblance to those presented in favor of the PIE Certification Program.