Penal Labour Citizenship: Prisoner-workers organize for labour rights

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Presented at CRIMT Conf, HEC, Montreal 12-14 May 2014
• Arguments:
  1. Inmates are human beings that retain rights as do Canadian citizens, including the right to vote.
  2. Penal labour citizenship is an underdeveloped concept due to the limited research work in the area of prison labour. It is, therefore, an imprecise concept.
  3. Union campaigns are largely situation specific (or models of organizing must be necessarily flexible)
• What better time than the present to organize some new members? There have been many attempts to organize the hamburger joints and the box stores, but these entities are monsters of bottomless cash resources. Why doesn’t big labour send the ‘Harper government’ a real message and send some burly Teamsters, and some militant auto workers and for good measure some hairy assed steel workers to get every prisoner in Canada signed up? What the fuck is there to lose? One last defiant act!

Posted by the Oracleofottawa at The Economy of Media: Prisoner Union of Canada? - Sign Me Up! [February 2013]
• Context:
• Convict labour: work performed by inmates inside prisons, or contracted to a private employer external to the prison
• In BC since 1859
• “contracting out convicts to labour for employers looking to hire cheap and obedient workers became big business” (Aguiar, Marten & Noiseux 2014)
• Context 2:
• Neoliberalism general: ‘crisis’
• Neoliberalism specific: ‘philosophical’
  • promised ‘correctional renewal’: from a climate of rehabilitation and integration to a climate of ‘get tough’ and remand
  • A marked departure from the commitment to human rights (Moore, Leclerc Burton & Hannah-Moffat 2003)
• Plus:
  • Reductions
  • Idleness/boredom/tensions
  • Overcrowding; double bunking
  • lock downs
• Context 3: trade unions relations with inmates
  • Unkind
  • De-meaning
  • Substandard
  • Image
  • However:
    • Protests (fitzgerald)
    • Abbatoir
Penal Citizenship:

“[t]he only thing inmates lose when coming to jail is their freedom. In fact, in Canada, the inmate is presently entitled to a government pension, voting and basically anything that the Canadian citizen is entitled to, other than their freedom” (Parent 2013).
Madame Justice Louise Arbor (1996):
“one must resist the temptation to trivialize prisoners' rights as either an insignificant infringement of rights, or as an infringement of rights of people who do not deserve better. When law grants a right, it is no less important that such a right be respected because the person entitled to it is a prisoner” (Canada, Commission of Inquiry, *supra* note 27 at 183).

• Penal labour citizenship:
  • Unfreed
  • Citizenship rights
  • Industrial rights
• “The citizenship rights of inmate workers in the penal system” and “the extension of inmate worker’s rights to industrial relations recognition and identity” (Aguiar, Marten & Noiseux 2014)
Prisoners of the world, unite!

Inmates in B.C. are working to establish Canada's first-ever prisoners' union.

VIEW IN CLEAN READING MODE »

B.C. prisoners trying to form labour union

B.C. prison inmates fighting to unionize
Issues:

Lack of proper work related equipment

Unemployment & access to vocational programs

Prison pay scale

‘Broken’ grievance system

Conditions of confinement
  Double-bunking:
  Increasing rated capacity by up to 20%

• Begins at Mountain/Kent Institutions in January of 2010
  • Join existing union? .... But which one?
  • Start own?
• “Unions have public profiles and images to protect. Hence representing or associating themselves with known convicts might not be the right image for unions, some would argue, especially at this juncture of weak unions and strong capital“ (Aguiar, Marten & Noiseux 2014)
ConFederation Canadian Prisoners’ Labour Union, Local 001
Obstacles and avenues:

- Movement and union cards
- Warden’s reply
- Canadian Industrial Relations Board (CIRB):
  “unable to process this complaint as the Board has no jurisdiction over labour relations matters at the Correctional Service of Canada” (exhibit 9)
Public Service Labour Relations Board (PSLRB), Board Chair:

“prisoners [workers] are ‘not employees of Correctional Service Canada’ because they are not appointed to a position by the Public Service Commission as defined in the Public Service Labour Relations Act (PSLRA).

An inmate ‘union’ cannot exist, since inmates on government employment programmes are not employees of the state

PSLRB Chair deems complaint “outside the jurisdiction of the PSLRB”
Ms Candice Bergen (Parliamentary Secretary to the Minister of Public Safety, PCP):
Mr. Speaker, the suggestion that prisoners should have the right to unionize is just plain wrong. Most Canadians would see it as plain wrong. We welcome the common sense decision of the Public Service Labour Relations Board that unions are indeed not necessary for convicted criminals.
• Maneuvers:
  • Court of Appeal:
  • Supreme Court
  • Back to CIRB
Final Thoughts

1. Are inmates employees before labour law? How and via which mechanisms/definitions/identities will prisoner-workers be interpreted as “employees” necessary to convince the jurisdictional tribunals of their argument? On what basis will the argument rest?

2. What is the appropriate jurisdiction to hear this case? And what will be the most compelling arguments for the Board to hear so that it could rule in favour of inmates?
3. Community unionism - ‘old-fashioned’ unionism before labour boards:
   - rights-based campaigns
   - legalisms: unionization through lawyers, not rank-and-file
   - Time
   - Mind implications: occupies the incarcerated mind
• Thank you