

Tattoo Prohibition Behind Bars, The Case for Repeal

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Abstract

Performing or receiving tattoos while in prison is typically forbidden in American jails. What is the intention of this prohibition? How well does the prohibition of jail house tattooing meet it's own stated intentions? How well does it promote the broader ends of prison institutions; to protect justice, encourage social order, promote the general welfare, deter crime, rehabilitate criminals, etc? I argue that repealing prohibitions of inmate tattooing would achieve outcomes more inline with the stated intentions of prison management than does the current prohibition policy.

1 Introduction

Correctional departments in the United States prohibit giving and receiving tattoos amongst inmates.¹ Tattooing is formally a minor violation of inmate disciplinary codes. When inmates violate these rules they are subject to a wide variety of informal punishments; they lose recreation time, visitation privileges, and at minimum, the tattoo equipment is confiscated and destroyed. De facto punishment for tattooing can be more severe, specifically when the tattooing is considered gang related. Punishments for gang related behavior are more severe. If authorities judge an inmate to be a gang member, the inmate's sentence can be indefinitely served in a solitary housing facility.² In effect, this makes tattooing more strictly prohibited than the formal and explicit regulations would lead a casual observer to assume.

What are the intentions behind the prohibition of tattooing and its enforcement? The mission statements and inmate codes of conduct for state correction departments describe several different but related purposes for prohibiting prison tattooing. They are (listed in order of emphasis): (1) Tattooing carries a risk of transmitting infectious diseases. Inmates are not responsible for their own medical costs, therefore tattooing in prisons is a financial burden on taxpayers. (2) Prisons function because their operators and staffs maintain a strict level of control and authority over inmates. Tattoos are a communication tool used by inmates and gangs, therefore they threaten the control of prison management. (3) In-

¹I found no evidence that prisoners or legitimate tattoo artists have tried to coordinate outside-artists to visit and perform tattoos on inmates. This practice does not appear to be explicitly forbidden in visitation policy codes (like inmate tattooing explicitly is), but the materials and procedures required for tattooing are in violation of visitation policies. The equipment and disposal procedures necessary to perform tattoos during visitation would not be allowed because they are potentially dangerous weapons and hazardous medical waste. In other words, tattooing is effectively prohibited by outside tattoo artists on current inmates, and explicitly prohibited by inmates on inmates.

²Security Housing Units (SHUs) are a new technique to combat prison gangs. A panel of investigators reviews a case file of an inmate much like a parole board does. If they deem the member to be a prison gang member then he has an opportunity to inform the board of any other gang members and activities that he is aware of. If he reports, then he can be sent back to his traditional facility. Gangs self-enforce against these defections with death penalties. The rational choice for the suspected gang member is to take indefinite lengths of sentences solitarily confined in SHUs. These sentences can carry irreversible psychological damage as a result of complete isolation (Tachiki, 1995).

mates deserve to be restricted from all free activities as an appropriate condition of their punishment. Tattooing happens to be popular amongst criminal culture, but like any other freedom, it is reserved for people who have not violated the law. If the penalties of crime are not costly then there will be more crime. Restrictions act as a deterrent to criminal behavior. (4) Tattooing is a vestige of criminal culture. Its permanent and distinctive quality³ inhibits released inmates from successfully rehabilitating and reentering traditional society.

Is tattoo prohibition in line with the stated intentions of prison management to avoid the spread of infectious diseases; maintain authority inside of prisons; deter crime; and promote rehabilitation of criminal inmates? The economics of prohibition and signaling explain how tattoo prohibition may actually work against these intentions. Therefore a repeal of tattoo prohibition would help bring penal institutions closer to achieving their stated ends.

The remainder of this paper is organized as follows. First, the economics of prohibition is explained. A repeal of tattoo prohibition could help avoid rather than spread infectious diseases. In fact, the negative health effects of current prison tattooing are an unintended consequence of prohibition policies rather than inherent of the practice of tattooing. In section 3, tattoos are described as a signal device. The economics of signaling explains that tattoos communicate reputations amongst inmates. When signals are clear and strong they help to avoid violent conflict. Less violence indirectly lowers the transmission of infectious diseases. Less violence and crime make preserving authority and peace inside prisons a more manageable task. Lastly, additional benefits of inmate tattooing are explained. Repealing tattoo prohibition in prisons could help facilitate a transition towards a restitution-based system of justice. Finally, conclusions are presented.

³Prison tattoos are distinguishable from professional tattoos. they are performed from makeshift tools that are less precise than the professional counterparts. Prison tattoo lines are thick and blotted, they often fade and blur more than professional tattoos. Images of prison and prison gang tattoos are also distinctive compared to traditional tattoo images. Symbols like spider webs, tear drops, prison bars and gang emblems are all common jail house icons.

2 Allowing inmate tattoos would lower the spread of infectious diseases.

Health conditions and costs are major concerns for managing prisons efficiently, effectively and humanely. There is little to no statistical information that isolates the effects of inmate tattooing on the spread of diseases or general health conditions in prisons, but there are some facts in the existing research that are related to tattoo prohibition. The tattooing process (inside or outside of prison) consists of a vibrating or hand held needle injecting ink under the top layer of skin. The ink forms permanent markings on the skin. Because tattooing involves puncturing the skin with needles, handling exposed blood, and treating scar tissue, it carries a risk of spreading infectious and blood born diseases.

The Bureau of Justice Statistics tracks the top 23 medical causes of death amongst inmates. Six of these causes (AIDS, Septicemia, Influenza, Homicide, Viral Hepatitis, and Anemias) are relevant to the practice of tattooing because they can be caught or transmitted through tattooing directly or influenced indirectly from the practice of tattooing.⁴ Summed together these causes make up 13.8 percent of the deaths inside prisons between 2001 and 2004 (Mumola, 2007).

Inmate health conditions and their related costs are not completely captured in the death rate statistics. The consequences of an ineffective policy can be felt long before any changes in death rates are observed. AIDS and HIV are the biggest tattoo related causes of death, but their frequency among inmates have been falling in recent years. As of 2004, over 23,000 inmates were infected with HIV and comprised almost 2 percent of the prison population mostly concentrated in the Northeast states (Maruschak, 2006). If this figure is to be kept low, prison management policies concerning inmate tattoos must be effective. “Spending on medical care for State prisoners totaled 3.3 billion dollars, or 12 percent of operating expenditures in 2001 (Stephan, 2004).” Potential deaths, quality of health care,

⁴It will be argued that homicides can be avoided through better signaling communicated through tattoos.

and financial operating costs are all influenced by the practice of tattooing in prisons. Prison tattoo policy carries with it serious consequences and or benefits.

Repealing tattoo prohibition in prisons can have both a direct and indirect reduction on the spread of infectious diseases in American prisons. Directly, we would expect quality standards in a market for inmate tattoos to rise as inmates compete with one another for tattoo customers. Indirectly, tattoos used as a signaling device amongst inmates threaten retaliation against violent aggression. These signals help to avoid violent conflict amongst inmates, especially rape. Less violence and rape means less spreading of infectious diseases.

How can allowing tattooing amongst inmates improve the health standards used by inmate tattoo artists? The economics of prohibition explains that the low quality / high health risk conditions of prison tattoo practices are a result of the prohibition rather than an inherent quality of tattooing. A prohibition and enforcement against tattooing in prisons means that inmates face higher costs when performing and receiving tattoos. So long as the benefits of tattoos still outweigh the costs, inmates are willing to perform and receive tattoos even though it is officially illegal. In other words, tattoo prohibition like all prohibition policies is a supply side control (Thornton, 1991, p. 73 - 77).

Inmates gain utility from having tattoos. Tattoos are significantly more popular among criminals compared to free citizens (Scutt and Gotch, 1974). In many times and places tattoos and criminality have gone hand and hand as cultural images. Gangs use tattoos to identify their members. Inmates spend high prices to get tattoos. They risk being caught and punished; they even accept poor quality tattoo images and procedures in order to receive tattoos in prison. Warden James H. Bruton of Oak Park Heights, Minnesota Correctional Facility reports. "Tattoo artists usually learn their trade outside. Inside, they are highly sought after by inmate customers. *Tats* are hot items in prison. They can be status symbols or simply inmate art (Bruton, 2004, p. 71)."

The high demand is responded to by inmate tattoo artists who offer their services for cash and trade. Prison is an environment plagued by extreme scarcity, yet the luxury of

tattoos are still performed and paid for. A tattoo artist ensures himself a level of material profit and protection from violent aggression. Injuring or killing a talented tattooist or any productive person in prison can be costly because it cuts off the entire market from the fruits of his labor. Chances are that one inmate or another is eager to protect the productive resource.

High demand for tattoos coupled with supply side prohibitions induce technical changes in the physical process of jail house tattooing. Inmates are willing to expend costs and forgo quality by taking evasive actions to avoid being detected or caught in the act of tattooing. Thornton (1991) describes the predictable magnitude of this influence: “[t]he amount of resources devoted to the enforcement of prohibition will (with a given penalty structure) determine the degree of risk placed on market participants and therefore the effects prohibition will have on production and consumption...The consumers lose utility because of the higher price and the substitution of goods of lower value (ibid., pp. 73 and 74).”

Prohibition has induced consumers to substitute for low quality and even dangerous alternative goods and production processes in several historical cases. For example, the phrase “back-alley abortion” refers to the unsanitary and dangerous techniques used by black market doctors who performed abortions despite criminal consequences.⁵ During the 1920’s America experimented with alcohol prohibition, consumption of beer and wine (tastier and convenient products) fell, but the consumption of more pungent, potent and easier to smuggle hard spirits such as gin and moonshine increased.⁶ Similar arguments could be applied to the current black market for drugs. Potent and dangerous products like crack and heroin have arisen after political efforts launched the war on drugs.⁷

The same effects of prohibition can be seen in the market for jail house tattoos. Rather than using traditional tattooing equipment, inks, and sterilization procedures inmates im-

⁵See Joffe (1991) and Kissling (1993).

⁶See Thornton (1991, pp. 100 - 105), Warburton (1932), and Fisher (1927, p. 29).

⁷Thornton (1991, pp. 89 - 110) argues this point explicitly and surveys: Rottenberg’s (1968) original work on heroin; Crawford et al. (1988), Reuter, Crawford, and Cave (1988), and Ostrowski (1989) who all make more contemporary arguments concerning the potency of current black market drug trades.

provised makeshift tools out of sharpened wire, sewing needles, parts from electronic devices, and skip over sterilization precautions entirely. These techniques are specialized to help the buyers and sellers of tattoos avoid capture and punishment but they come at the cost of low and static levels of quality.

Bruton reports again:

The inside [of prison] is filled with unusual activity, from running inmate 'stores' to clandestine tattoo 'parlors'... These entrepreneurs make tattoo guns in all sorts of creative fashion. A gun can be built using a thin guitar string as the needle that is mounted in a plastic ballpoint pen shaft with a rubber band or Pink Pearl eraser, masking tape, and a toothbrush to link the needle to a motor. These motors are taken from electric razors, cassette-tape recorders, or CD players. Power comes from either batteries or an AC/DC adaptor plugged into a socket. When using an audio component, the volume control dictates the speed of the needle's vibration. Tattoo artists sometimes obtain supplies by stealing permanent ink from hobby craft class or the education area. Whatever it takes.

Guards generally know which inmates are the tattooers, making these artists' work tedious and time consuming as they require equally creative methods to keep staff from interfering. A lookout is essential to operating a parlor. An inmate skilled as an observer and detractor watches for any corrections officers. A signal - whether it's noise or movement - alerts the cell serving as the parlor to stop the artwork and hide all tools.

To keep their businesses alive, tattoo artists must also be artists at ingeniously hiding their equipment from the watchful eyes of suspecting corrections officers. They break down their guns back into innocent-looking pens and audio players or stash the components inside shampoo bottles, stuff them deep within bars of soap or items of food, or temporarily hide them in their clothing (Bruton, 2004, pp. 64 and 72).

The primitive equipment and stealth techniques of prison tattooing are the trend in several countries. Kaminski's (2004) report of Polish inmates during the 1980s describes the prohibition of tattooing (*ibid.*, pp. 28 and 30) and the responsive ingenuity of inmates.

Tattoos are rarely drawn freehand on a body. A picture or a calligraphic inscription is first sketched with a special pencil, imprinted on a moist cloth, and imprinted again on the skin. A set of three or more needles is bound together with thin thread. The best black pigment is usually made from the burned sole of a shoe, while the lower quality black, blue, or red one is made from the ink

of a ballpoint pen. The thread binding the needles together also holds pigment. The motif is generated by pricking the skin with the needle set and inserts the pigment under the skin (ibid., p. 118).

With many black market behaviors such as drugs, loan sharking, and prostitution there are large amounts of fraud. Prostitutes rob their johns, drug dealers dilute their product with talcum powder, and loan sharks change the terms of their agreements at the last minute. All of these are the result of ineffective contracting. Without a rule of law and administration of justice, actors in illicit trades have no recourse to hold fraudulent traders accountable. The markets for prison tattoos are in a similar but not identical predicament.

Reputations and trust are important foundations that functional markets and profitable exchanges rest upon. Without them, individuals are plagued by uncertainty and averse to potential losses so much as to not engage in trade. The output of the economy under consideration and the general quality of life for the people within it are stagnant. When formal enforcement mechanisms are absent, economists have witnessed reputational mechanisms emerge and develop to help coordinate people's interests into profitable exchange.⁸ But in black markets with one-time trades, reputations may never get the opportunity of developing. Such is the case in: prostitution, drug dealing, and loan sharking. Prison tattooing on the other hand is a closed environment. By the nature of their confinement, inmates are forced to repeatedly deal with one another and build relationships of trust, reciprocity, and quality reputations. Kaminski (2004) described how thick tattoo markets lead to quality competition among Polish inmates.

The best illustrators offered catalogs of pictures and bon mots, as well as multiple colors. A customary limited warranty against suppuration [puss] that could convert a lovely picture into a monstrous daub gave clients the right to a free correction.... Prison [inmate] professionals claim an ability to tattoo any living or inanimate pattern. One of the masters challenged by Student⁹ offered him for

⁸Stringham (2003) has explained how individuals without a centrally provided state enforcement agency were capable of relying upon strong reputations to choose sound contracts and safe investments. Leeson (forthcoming) has provided the inverse discussion. He describes the process by which outside agents are allowed entrance into trading groups. Both are surveyed in Boettke (2005).

⁹The wording *student* refers to Kaminski's methodology as an observing participant. He explains:

free a natural size portrait of Jacek Kuron, a famously bald *Solidarity* activist. After careful consideration, the offer was politely declined (ibid., pp. 118 and 119).

If competition can emerge on margins of quality and durability in the crude prison environment of makeshift tools and equipment, imagine what other margins of competitive differentiation could develop in an open and legitimate market.

The negative health effects associated with the practice of prison tattooing are a result of the prohibition itself rather than an inherent characteristic of tattooing. The repeal of tattoo prohibition would reverse incentive structures and encourage quality as a means of product differentiation amongst competing inmate tattoo artists. Increases in health quality competition amongst tattoo providers would reduce the spread of infectious diseases to the degree that it is currently caused by tattooing and more.

3 Allowing tattoos would reduce violence.

Tattoos are used as signaling devices inside and outside of prison. They are used to communicate amongst friends and foes. A tattooed person can signal to people outside of his community rejection, rebellion, autonomy, or individuality. “Neo-primitives define their movement in opposition to modern society and view body modification as a way of reconnecting to primal experiences (Kang and Jones, 2007, p. 45).” Amongst individuals within the same cultural community, tattoos can signal membership, solidarity, and commitment. “Some individuals may not identify themselves as modern primitives yet still consider themselves part of a tattoo community. Often referred to as ‘tattoo enthusiasts,’ they not only

The main broadly defined source of data was, naturally, my own experience as an *observing participant* (OP). I define this particular research role, in contrast to *participant observation*, with two conditions: (a) OP enters a community through a similar social process as its other members and is subject to similar rules; (b) OP undertakes field research *as if* he or she was a researcher. An ideal OP lives through his/her social role, impassively registers randomly generated personal experience, and applies available data gathering techniques (Kaminski, 2004, p. 7).

have lots of tattoos but also share a commitment to associating with others who have tattoos and to a lifestyle in which tattoos are central (ibid.).”

Similar to their signaling function outside of prison, inmate tattoos send signals across several margins simultaneously. A recognizable tattoo on an inmate can communicate to his friends and allies a signal of dedication, commitment, and reputation. Gang membership is formally celebrated by the new member receiving a brand or tattoo.

The type of imagery that a convict will choose for a tattoo is based both on where the convict came from and on his present situation in prison. One of the most popular tattoos in prison is the *loca*, which gives the name of the convict’s neighborhood of origin, or else his gang affiliation. These tattoos are extremely important in prison, as they serve as a reminder of the community to which the displaced convict belongs. They also identify him as a member of a certain group which has important social ramifications when he encounters members of rival groups. Likewise, having an ethnic affiliation (‘White Power’, etc.) tattooed on one’s body is another means of identifying with a particular community as well as differentiating oneself from other groups in prison (Demello, 1993, p. 11).

To an opposing gang or individual, a tattoo serves as a warning label. It signals the high costs of fighting the tattooed inmate. In other words, a conflict with a tattooed gang member is in effect a conflict with an entire gang. If a challenger sees a tattoo and interprets the signal as a higher cost to fighting the tattooed inmate, then the challenger is less likely to fight. In economic terms, tattoos provide a form of “cheap talk.”

Inmates face uncertainty in their dealings with other inmates. A new inmate could be anything from a weak exploitable resource, a productive contributor to the closed prison-economy, or a loose cannon that puts the entire social order in jeopardy. By displaying tattoos that signify gang membership or histories in prison, inmates have a way to communicate what their behavior will be in a litany of strategic situations. “If you mess with me, you mess with my whole gang... I’ve killed before, and I’ll do it again.” Cheap talk has been observed to significantly effect the outcomes of several strategic game scenarios.¹⁰ Likewise, allowing

¹⁰Roderik (1989) describes how the private sector must be convinced that policy makers will actually follow through on their promises. Gibbons (1992, pp. 210 - 211) surveys several case studies:

inmates to signal through tattooing can lead to equilibrium results of peace and stability rather than continual violence and retaliation.

Kaminski (2004) describes his experience in the Polish prison hierarchy as a constant trial of physical control, mental ingenuity, and creative humor. To preserve peace and order in the harsh environment of uncertainty and resource scarcity, inmates challenge newcomers and quickly assign them positions within the cell's social structure. More easily read and interpreted signals make this process faster, better, more reliable, and less violent.

Tattoos achieve a signaling function for individuals as well as gang members. By viewing the content of images and the amount of tattoos on an inmate, other inmates can determine how long he has been in jail, where he is from on the outside, and even the content of his crimes.

Jailhouse iconography is also popular among convicts, and includes bars, the scales of justice, barbed wire, and other themes which echo the prisoner's own experiences behind bars. Perhaps the most powerful prison tattoo is the tear, tattooed just below the outside corner of the eye. The tear immediately identifies an individual as a convict or ex-convict (each tear signifies a prison term served, or a man may wear a tear for each person he killed), and thus serves as a kind of self-inflicted brand, not unlike the marks which were forcibly tattooed on prisoners at one time in Japan, England, and Germany (Demello, 1993, p. 11).

The more intricate the tattoo process is, the higher the level of details and sophisticated designs that can be applied. The effective prohibition of tattooing forces the production process to be crude and haphazard rather than sterile and precise. Not only are prison tattoos a greater health risk than legitimate tattoos on the outside (thanks to prohibition), they also have thicker lines from less reliable needles and lower quality inks that blur and

Stein(1989) shows that policy announcements by the Federal Reserve can be informative but cannot be too precise, and Mathews (1989) studies how a veto threat by the president can influence which bill gets through Congress. In addition to analyzing the effect of cheap talk in a fixed environment, one also can ask how to design environments to take advantage of cheap talk. In this vein, Austen-Smith (1990) shows that in some settings debate among self-interested legislators improves the social value of the eventual legislation, and Farrell and Gibbons (1991) show that in some settings unionization improves social welfare because it facilitates communication from the work force to management.

fade over time. Prison tattoos are clearly distinguishable from outside tattoos. Given, the reported high level of demand, the tattooing process would be more capital intensive without prohibition. The extent that the production process would adopt more sophisticated techniques is proportional to the extent of additional information, threats, reputations, and general signals that could be communicated through tattoo art that are currently being suppressed.

Finally, the extent that violence would decline is proportional to the degree that current signals are being disrupted and suppressed. Evidence suggests that violence rises and falls in tandem with the existence of prohibition policies. Thornton (1991, pp. 122 - 123) points out Fisher (1928) who “notes that crime declined by 37.7 percent during” prohibition, but this was due to a decline in less serious crime, where as “violence or theft of property increased by 13.2 percent. Homicide increased by 16.1 percent and robbery by 83.3 percent over the period.” Thornton (1991, pp. 123) continues to survey evidence of violence stemming from prohibitions:

Warburton (1932) provides evidence which indicates that homicide rates (in large cities) increased significantly from 1920 to 1933; this period the third wave of state prohibitions (1910 - 19), the Harrison Narcotics Act (1914), wartime restrictions on alcohol (1918 - 19), and Prohibition (1920 - 33). The greater number of federal prisoners provides further evidence of more serious crime during Prohibition. The number of prisoners in federal prisons, reformatories, and camps grew from 3,889 in 1920 to 13,698 in 1932 (Woody, 1934, pp. 90 - 99).

Whether it be because criminalizing a given behavior lowers the marginal costs of committing the next crime or because physical force carries an explicitly useful function in black markets. Violent crime seems to go hand in hand with all sorts of different prohibited practices.

A small but direct effect on violence from tattoo prohibition comes from inmates engaged in the tattoo trade trying to enforce their contracts. Assume that an inmate is not receiving a tattoo as part of a gang or signal device but simply wants to pay another inmate to give him a tattoo. Even though this trade has the benefit of solid reputations and de facto enforcement, both parties still lack formal and explicit recourse if the trade goes sour. Say

the artist jacks up his price at the last minute, or the receiver refuses to pay for the service. In black markets violence is often the only way to enforce contracts. Though the number of tattoo transactions that go afoul is likely low, the potential for violent contract enforcement is more present than it would be without prohibition.¹¹

In the resource scarce environment inside of prison walls, assets are power. With high demands for drugs, violent enforcement, and sexual favors the inmates who control these markets are the most powerful and influential. When new channels of production, distribution and demand satisfaction enter the prison walls, these positions of authority are challenged. Tattooing is a knowledge and human capital intensive trade. Market presence is earned through investment and effort rather than monopolistic force. In other words, having larger proportions of the internal prison market devoted to tattoos rather than other goods and services reduces the power and authority of those traditional production lines. A market based on skill and productivity rather than violence and dependency would reduce violence and retaliation amongst inmates.

With less violence in prisons, infectious diseases are indirectly reduced. Lower rates of violence within prison facilities means a more manageable and controllable correctional environment for officers and prison wardens. More easily controlled prison conditions means a lower general operating cost for correctional facilities and possibly a freeing up of resources to better provide the other aspects of law enforcement (police, courts, judges, etc.), and a potentially safer civil society.

An immediate concern arises; will not inmates steal the pieces of tattooing equipment

¹¹Most recently Levitt and Venkatesh (2000) have pointed out the strong correlation between new illicit substance trades on the one hand, and violent property enforcement over the trade channel territories on the other hand. Thornton (1991) similarly notes:

Violence is used in black markets and criminal organizations to enforce contracts, maintain market share, and defend sales territory. The crime and violence that occurred during the late 1920s and early 1930s was a major reason for the repeal of Prohibition (Kyvig, 1979, pp. 123 and 167). The nondrug criminal activity of heroin addicts has been associated with the economic effects of prohibition laws and is viewed by Erickson (1969) and others as a major cost of heroin prohibition.

and use them as weapons against inmates and officers? Allowing inmate tattoos aligns the incentives of tattoo artists and inmate tattoo customers to protect tattoo equipment against theft. Inmate tattoo artists would make profits off of their equipment and would be inclined to protect their equipment from theft to a proportional amount of those profits. Secondly, there are make-shift tattoo guns in prisons now that do not get used as weapons, partly because they are protected and concealed by their owners but also because the market for weapons in prison is similarly diverse as is the black market for tattoos. Inmates use a variety of makeshift weaponry to accomplish a wide range of ends. Some weapons are used to incapacitate their victims, others are specialized to ensure death quickly, slowly, painfully, etc. The bottom line is that tattoo needles and equipment are expensive things to use as poor weapons compared to the current alternatives.

4 Other benefits

There are three additional benefits to repealing tattoo prohibition that deserve mention. These final effects fit broadly within the general purposes of correctional institutions – to promote peace, justice, lower crime, etc. First, repealing tattoo prohibition could help detect crimes and lower the costs of law enforcement. Repealing tattoo prohibition in jails would lower the costs to inmates receiving tattoos. Presumably the amount of inmates with tattoos would increase. Having more inmates with more distinguishable features and markings makes committing crime more difficult for criminals, and catching criminals easier for cops. Second, repealing tattoo prohibition can reduce the rate of recidivism.¹² Tattooing is a human capital intensive skill. Inmates who excel at prison tattooing can transform their skill into a legitimate trade once they are released from jail. The opportunity costs of committing crime is higher with the new skill. Finally, allowing a market for tattoos and other goods and services inside of prisons could be a step towards a restitution-based system of justice.

¹²*Recidivism* is the rate at which released criminals commit additional crimes and return to prison.

4.1 Prison tattoos can be used to detect and prevent crime.

Criminals are an entrepreneurial bunch. No sooner do police investigators develop a new strategy or technique to detect and catch criminals than do criminal actors respond through innovative ways to evade the police's efforts. One of the key areas that police focus on to catch criminals is communication. Many criminal cases critically rely on telephone wire taps as a source of evidence. The extent that tattoos are used as a communication device amongst criminals is just a fraction of the potential that recording and remembering tattoos can yield for police investigation.

Tattoos on inmates can be remembered and recorded by correctional staff to build evidence because they are memorable and distinguishable marks that help witnesses and victims describe their aggressors. Tattoos are permanent, unlike telephone conversations, or the fleeting written word. They can be used to trace a lineage of authority amongst secretive gangs, and inmate hierarchies. If there are gangs and formal criminal organizations, would not a roster of their members and chief officers help police to monitor and arrest them?

In 2004 Ed Ricord, a Florida correctional officer took it upon himself to construct a searchable database to keep track of tattoos on Florida inmates. The database recorded 372,644 tattoos on current and former state prisoners along with height, hair color, eye color, and age. With a few keystrokes, investigators could narrow down individual suspects from a witness's description of their tattoos. The database was successful in tracking a murder suspect the same year it was produced and Ricord was awarded a state cost savers award by the state of Florida for his self-motivated work effort (Bennet, 2004 and Ulferts, 2004).

Using inmate's tattoos against them may sound Draconian at first. Nazi Germany and other totalitarian regimes used tattoos to track criminals but also aggressed against innocent people with the same tactics. Violations of human rights are a major concern in designing all prison policies, but there is solace for these concerns. This proposal in no way encourages, subsidizes or supports the practice of inmates tattooing themselves, nor does it impose a

rule that they must receive tattoos. Instead, it merely takes note of the existing preference amongst inmates to get tattoos and harnesses that market force to promote peace and justice. If inmates were to smarten up to the relationship between being tattooed and getting caught as a criminal, then they would rationally abstain from the practice. If criminals did stop getting tattoos altogether then there would presumably be less spread of infectious diseases behind bars. Win, win.

4.2 Learning tattooing as a trade can reduce an inmate's willingness to commit crime again.

Recidivism is a major concern of correctional policy. In recent years empirical research has exposed several counteracting influences that prison policy has on criminal behavior. When the rewards of criminal behavior outweigh the costs of being captured and the rewards from other legitimate behavior an individual commits crime (Becker, 1976). After a stay in prison this cost benefit calculation changes. An experienced criminal knows first hand the costs of crime, he now has had the opportunity to learn new criminal skills from veteran criminals, and he has access to an entire network of criminals that he has met inside. Avio (2003) surveys these effects:

The rehabilitation effect acknowledges that a convicted offender's proclivity for crime may decrease as a result of the incarceration experience, as well as by virtue of the fact that age has an independent impact on criminality. The school-for-crime syndrome, criminal stigmatization, and the natural depreciation of human capital while offenders are incarcerated – all pull in the opposite direction. Thus, the rehabilitation effect may more properly be labeled a “training” effect, which from a social standpoint may be either positive or negative. Insofar as potential offenders forecast this effect, the actual discounted expected costs of engaging in current crime may increase or decrease (ibid., p. 12).

On the outside, tattoo artists participate in years of apprenticeship before obtaining a certified position as a tattoo artist. Inmates have a unique comparative advantage at fulfilling this requirement. Once they learn the trade, they have access to a large inmate demand for

their services. Tattoo artists build their skills and abilities over lifetimes of practice. They compile long and varied portfolios to demonstrate the quality of their work. With a high demand inside of prison compared to outside, inmate artists can build reputations for quality and uniqueness that carry over to the legitimate tattoo trade.¹³

Having a legitimate trade on the outside is a major influence on whether that inmate will commit crime again.¹⁴ The higher the potential rewards are for the legitimate occupation the less likely it becomes for the criminal to be attracted by the rewards of criminal behavior. Tattooing uniquely fits the incentive structure of criminals to build a base of human capital within prison that can easily be carried with them once outside.

4.3 Allowing markets in tattoos can make restitution-based justice possible.

In the prison privatization debate, several articles point out the apparent efficiency and cost-saving results of contracting out prison services.¹⁵ This literature fails to respond to the libertarian critique that the justice system ignores victim's rights to lost property and the rights of individuals against a state that criminalizes otherwise legitimate behavior (drug use, prostitution, etc.). On this topic Benson (2003) has posed the query, "do we really

¹³Similar incentive structures have surrounded gangster rap and hip hop in the past. Having stayed in prison, gave certain artists a credibility of experience that resonated with audiences and translated into high record sales and profits for the convict artist.

¹⁴Bushway (2003) writes,

Wilson et al. (2001) recently completed an excellent comprehensive meta-analysis of 53 experimental or quasi-experimental treatment-control comparisons based on 33 evaluations of prison education, vocation and work programs. This list includes 19 studies conducted during the 1990's and includes all of the evaluations included in a broader review of labor market programs (Bushway and Reuter, 2002). Based on their meta-analysis, Wilson and colleagues find that participants in the work programs are less likely to recidivate than those who do not participate in a treatment program (Bushway, 2003, p. 2).

¹⁵Avio (2003) provides an extensive survey of the current prison economics literature. On the margins of escape rates, physical health, counseling, recreation facilities, recidivism and other proxies for quality Hatry, et al (1993) have found that private facilities had at least a small advantage. Lanza-Kaduce, et al. (1999) find support that private institutions reduce recidivism better than public. Despite incentive arrangements that would encourage private firms to cut quality and save on costs, the literature shows a potential to better monitor quality standards amongst private firms compared to public through contract design.

want the production of prison services to be more ‘efficient?’” More technologically efficient incarceration in the hands of the state poses a threat to individual freedom and liberty.

Several libertarian scholars support a restitution-based system of justice. Where laws would reflect the property rights of citizens. They would be enforced to return stolen or damaged property to their original owners. Since private law systems rely on individuals to report and enforce against criminal behavior, the content of the law is radically different from our current system. For example, non-violent or victimless crimes such as drug use or prostitution would not likely be illegal under a restitution based system.¹⁶ Even violent crimes get converted into restitution payment schemes in these hypothetical and historical justice scenarios.¹⁷

A crucial step to making a restitution-based system of justice feasible would be to create correctional institutions that managed to coordinate inmates into productive and profitable activities at a low cost.¹⁸ While the system may be susceptible to harsh punishment tactics,¹⁹ it would not necessarily be likely. The incentive to care for inmates and ensure their productive output could guide incarceration practices to high levels of competitive quality. A warden in a restitution-based system earns higher profits the faster his criminals fulfill their financial sentences. Healthier and well-cared for inmates produce faster and better stocks of wealth to repay their debts. Essentially a warden seeks to allow inmates the autonomy

¹⁶For a thorough survey of the theoretical and practical content of a restitution based system of justice see Barnett (1985, 1986, 1977), Barnett and Hagel (1977), Benson (1996), Gallaway (1977), and Long (1933).

¹⁷Schafer (1960, 1965, and 1970) surveys several historical cases where restitution based justice systems functioned.

¹⁸Getting inmates to voluntarily participate in productive labor programs is the central question to free market prison management because it is assumed that the inmate population pool would be significantly different from today. Labor programs today are primarily geared at providing for the needs of the correctional institution itself. These needs being greater than they would be under a restitution-based system. Imagine the smaller prison population without drug criminals, without inmates who could make restitution from their stocks of wealth or unique productivities. The inmate population under a restitution-based criminal law would be violent and dangerous criminals, a small but unruly lot. Also there would be extremely talented thieves, people with extremely high opportunity costs of legitimate productivity. Harnessing their own preferences towards the alleviation of the wrongs they committed seems less costly than forcibly extracting menial labor hours.

¹⁹Anti-privatization activists often make reference to southern American prison work camps of the early 1900s. As slavery was de jure eliminated, the criminal justice system was de facto racially biased. Prison work camps in practice looked remarkably similar to slave plantations (reference).

to earn the highest degree of profits at the lowest possible cost of enforcement and observation. When inmates willfully opt to participate in work programs enforcement costs are lower and coercive work programs are unnecessary. The potential for lasting and sustainable institutions that make restitution possible without violating human rights is a matter of entrepreneurial discovery.²⁰

Several examples come to mind where innovative and creative wardens have applied market incentives to govern conduct inside prison. First, Benson (1990) surveyed Maine State Prison that attracted attention from Reason magazine in 1982 (Shedd, 1982).

[I]nmates were given access to the prison's shop equipment to produce novelties. Other prisons have done the same thing, but Maine's program differed from others in some significant ways. First, there is a strong market for novelties because the prison is located on a major tourist route. Second, inmates were allowed to hire one another, thus allowing for specialization and the division of labor. The prisoners could not use dollars for these transactions so the currency used was canteen coupons, which could be spent in the prison's canteen or banked in the prison's business office.

After Warden Richard Oliver was appointed in 1976, prisoners were allowed to "patent" their novelty designs so they had incentives to innovate and expand their production. More significantly, Oliver lifted the limit on inmates' economic activity, and by 1978, the cap of 5,000 dollars and 5 novelty patterns that existed in 1976 was tripled. A "miniature economy" developed inside the prison, with two-thirds of the inmates participating as employers, employees, or both. Some entrepreneurs were extremely successful. One took over the prison's canteen and turned it into a profit-making operation. This prisoner also had 30 to 50 employees in novelty production, and had diversified into other areas (e.g., he owned and rented about 100 TV sets to inmates). One prison administrator considered him to be the "most brilliant businessman I've ever seen." He is now out of prison running a novelty firm that employs former prisoners. As Shedd concluded, "It wasn't called that, but Maine State Prison had a rehabilitation program that was *working* (Benson, 1991, p. 337)."

German correctional institutions have recently been experimenting in the production of high-end fashion apparel. The clothing line, Haeftling, German for "inmate," uses prison

²⁰There are several creative market provisions to traditional state goods such as roads, education, health care etc. On prison management the field has only been briefly addressed by Barnett (1986, pp. 34 - 36), Benson (1990 pp. 368 - 370), Rothbard (1977, pp. 259 - 270), and Tannehill and Tannehill (1970, pp. 101 - 108).

labor to make shirts, pants, shoes, and clothing accessories traditionally worn by inmates. Haefling has brought these styles to European fashion markets. It was successful as a prison reform program and a profitable fashion enterprise immediately after its debut. “With 40 per cent of Tegel’s prisoners unemployed, the internet project has come as a welcome boost to the jail. The prisoners get an allowance of EUR26 a month, but ones working on the clothing line can earn up to EUR12.50 a day. The cash from the sales is divided among the bankrupt city of Berlin, the prison and the inmates (Paterson, 2003).”

Bohle [the marketing head] and his team applied market psychology to market the Haefling range in such a way as to snare the fashionistas: “It’s about unusual labels; it’s about telling a story, delivering an authentic message and conveying credibility.” By being up front about the origins of the clothing, Bohle believes it will only be a matter of time before the Haefling (prisoner) line takes on a cult following. Indeed, the initial reception indicates that his instincts are spot on (Amies, 2003).

The Financial Times listed Haefling among many prison labor initiatives that have lowered the tax burden of prison operations, provided inmates with labor opportunities, and served as an alternative to sending labor overseas (Rigby, 2005).

Louisiana’s Angola prison hosts an annual rodeo where inmates ride and compete with one another in front of paying audiences. Inmates sell handmade crafts and souvenirs to over 5000 attendees during full-day craft festivals several times throughout the spring and fall seasons.²¹ The rodeo has grown and been successful for over 40 years and has improved conditions and won awards for the once controversial Angola prison facility.

Finally and most pertinent to the topic at hand, Canadian prisons have opened legitimate state-sponsored tattoo parlors for inmates (Grinberg 2007, Weeks 2005). Tattoo parlors in five state prisons were an explicit response to rising trends of HIV and Hepatitis C outbreaks among Canadian prisons. Before the program opened, state-research reported “45 percent of Canadian inmates acquire a tattoo while in prison (Krauss, 2005).” Coupled with a needle

²¹For more information on the Angola Prison Rodeo its charter and history can be read on its homepage at: <http://www.angolarodeo.com/>

sharing program and high levels of inmate autonomy over their living space, the tattoo initiative was meant to alleviate the spread of infectious diseases and the high tax cost of treating afflicted inmates. Because of the intangible nature of the program's benefits it, like Maine State microcosm is in jeopardy of being eliminated (CanWest, 2006).

Real systemic change is needed to effect the content of laws on the one hand and law enforcement tactics on the other. Imprisonment institutions would need to self-operate and earn financial resources to facilitate restitution to the victims of crimes. Allowing markets in prison tattoos would be a step in this direction.

5 Conclusions

The harmful effects of inmate tattooing in American jails are predominantly caused by the prohibition rather than the practice in general. By repealing this prohibition there stand to be improvements in health conditions, rates of violence, and general operating procedures for American prison institutions. There are even more general benefits to allowing inmate tattooing including, decreased crime rates, lower recidivism, and the potential for a functioning system of restitution based justice. In closing, it is clear that the benefits of repealing tattoo prohibition outweigh the alleged benefits of persisting with tattoo prohibition.

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