

Harvesting Injustice: Workers' Rights Abuses in American Agriculture and the Urgency for Fair Trade Solutions

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ABSTRACT: Agricultural workers are subjected to various challenges in the workplace, including inequitable employment arrangements, dangerous working conditions, and low wages. Employers abuse their authority by using coercive labor practices and taking advantage of flawed laborer protection laws to maximize profits at the expense of laborers. This paper reviews the history of agricultural labor working conditions and prison labor laws to examine potential solutions to these injustices. In addition to providing a historical context on agricultural labor, this paper offers a multi-modal review of primary material, existing U.S. laws and domestic and foreign policy, current academic research, population statistics, and organizations seeking change regarding agricultural labor violations. Ultimately, through this review, this paper concludes with suggestive Fair Trade policy augmentations that can be used to improve working conditions and reduce abuses for agricultural laborers.

KEYWORDS: Behavioral and Social Sciences; Sociology; Agricultural Labor; Labor Injustices; Fair Trade.

■ Introduction

Historically and into the present, the US agriculture sector has abused its workers' rights. Abuses include exposing agricultural laborers to harmful chemicals and failing to address unsafe working conditions. By continuing these practices, American corporations are taking advantage of their workers by profiting from their willingness to work for low wages, threatening their vulnerable legal status, and ignoring the health and safety measures meant to protect their employees. Regardless of documentation or incarceration status, agricultural laborers face varying levels of exploitation in the fields.

The American agricultural industry relies on foreign workers. It is estimated that 86% of agricultural workers in the U.S. are foreign, and 45% of those foreign workers need proper documentation.¹ Many laborers who arrive in the US on an agricultural visa through the H-2A visa program are threatened with loss of legal status by their employers if they do not comply with demands to work in conditions outside of their employment contract.² Workers need documentation to avoid more challenging circumstances. These workers face a potential language barrier and need the legal protections that a visa provides. Because the government does not sufficiently monitor whether or not these agricultural employers are following labor and employment guidelines for agricultural workers, these companies can maximize their profits by keeping wages low and the working days long. Moreover, low wages also prevent these individuals from seeking legal aid to thwart laborers' exploitation in the workplace. In addition, these workers can be exposed to dangerous environments where they are exposed to pesticides.³ Without healthcare or the income to afford treatment, these workers are left vulnerable to the life-threatening impacts of long-term pesticide exposure.

The American agriculture sector faces a labor shortage and an urgent need for domestic workers. However, due to low wages and abusive conditions, most Americans would not prefer to work in agriculture. As a result, large corporations running farms turn to prison labor to meet their production demands. In prisons, inmates can be forced to do labor. Ordinarily, American citizens cannot be forced to work based on the prohibition of involuntary servitude written into the 13th Amendment.⁴ However, this does not apply to those forced to work as punishment for a crime. As such, prisoners are forced to provide ultra-cheap labor for farms.

The U.S. needs solutions to the inequality between workers and employers. This is especially true in the agriculture sector. Without adequate legislation in place to ensure the necessary protections for these individuals regardless of their circumstances, exploitation over health concerns, immigration status, and dangerous work environments will persist. Fair Trade policy may be a viable answer. Fair Trade is a globally recognized system that validates equitable and ethical working conditions for laborers. Fair Trade has been crucial for guaranteeing rights and securing documentation for agricultural workers in other nations.

■ Discussion

Health, Safety, and Documentation in the Fields:

Today, pesticide exposure is the leading cause of chemical-related illness in the workplace throughout the United States. An estimated two million people are exposed to pesticides yearly by working or living near farmlands that use toxic chemicals. Research conducted by Farmworker Justice (FJ) highlights the damage pesticide exposure leaves on those who come into contact with the chemicals. An FJ report lists the side effects of pesticide exposure to include "stinging eyes, rashes, blisters, blindness, nausea, dizziness, headache, coma, and even death.

Long-term impacts such as infertility, neurological disorders, and cancer are also prevalent.”⁵

There is medical consensus that pesticides are harmful, yet there has been minimal action taken by corporations and the government to combat this issue. The Environmental Protection Agency (EPA), during the year 2015, addressed worker health concerns by changing the Agricultural Worker Protection Standard (WPS) to limit pesticide exposures and injuries.³ According to a Reuters report, modifications made to the WPS include “[prohibiting children under 18] from handling pesticides; [requiring annual] training on pesticide protections...instead of once every five years; [requiring] expanded postings of no-entry signs on fields treated with hazardous pesticides; and improvements in personal protection equipment.”³ These changes to the WPS benefit the well-being of all agricultural laborers by protecting their health, ensuring that teenagers are working in safe conditions, and creating buffer zones to protect the families in residential areas around the farms where chemicals are sprayed.⁵ The updates to the WPS also address an issue for migrant workers, many of whom are Spanish-speaking, by recommending Spanish translations on pesticide labels.⁵ However, while these changes may be positive, more must be done to ensure complete protection.

The health impacts of pesticide exposure are only a small part of the systemic issues that migrant workers in the agriculture sector face. Of all agricultural workers, nearly eleven percent are immigrants who arrive in the U.S. through the H-2A visa program.⁶ This visa program is designed for seasonal agriculture jobs and requires workers to refile for legal status at the end of each season. Thus, dairy and poultry production facilities run year-round and cannot legally employ workers using H-2A visas.⁷ However, the industry relies heavily on undocumented workers to remain staffed throughout the year because of the high worker demand.⁷ Undocumented status causes these workers to be susceptible to coercion by their employers, unsustainable working hours, and unsafe conditions. There needs to be more than the current legal protections for those who came to the U.S. through the H-2A visa program to entirely prevent exploitation from occurring. Without adequate legal safeguards, this power imbalance will negatively impact these workers.

According to the Polaris Project, H-2A visa-sponsoring employers routinely administer dishonest labor practices, including “illegal recruitment fees, failure to reimburse visa and travel expenses incurred by workers, false promises about employment conditions, and lack of employment contracts.”² Additionally, once workers accept an employment contract, it is nearly impossible to switch employers, as one is only allowed to work for the corporation listed on their visa; this further contributes to the imbalance of power and exploitation of workers by their employers.² If an agricultural worker on an H-2A visa quits their job, their visa is voided. They then have a short grace period to independently leave the country before becoming an undocumented immigrant who is now susceptible to deportation from the U.S.⁸ Only recently did the Biden administration implement enhancements for supporting labor enforcement investigations to make it easier for noncitizen

workers who face labor abuses to apply for deferred action.⁹ Deferred action, defined by the Department of Homeland Security, “protects noncitizen workers from threats of immigration-related retaliation from exploitative employers.”⁹ This change allows workers to participate in investigations regarding unjust labor practices without the fear of deportation.

Legislators must work to reduce exploitative practices and prevent mass deportation of these individuals to ensure the humane treatment of agricultural laborers and maintain the labor force required to sustain the American food supply. Currently, the demand for agricultural workers and the lack of Americans willing to work in this sector have led companies to seek prison labor to resolve their labor shortage.

The Thirteenth Amendment, Convict Leasing, and Forced Labor:

Prison labor has been used since the Civil War era. After the Civil War, slavery persisted in the form of convict leasing, a system in which Southern states leased prisoners to private railways, mines, and large plantations.¹⁰ Georgia, during the post-Civil War era, faced a labor shortage. In response to this, the state government created convict leasing contracts. The Georgia State Penitentiary sold 100 prisoners to a railroad company for one year to build a new railway. Convict leasing allowed Georgia to enter the industrial age, as they now had access to the workforce to work on their various infrastructure-based projects. After slavery was abolished, Southern States created Black Codes to jail Black individuals so that they could be exploited for their labor. Offenses included loitering, breaking curfew, possessing a weapon, vagrancy, and not having proof of employment.¹⁰ Inmates were subject to violence, forced labor through convict leasing contracts, and sexual abuse. Slavery never ceased to exist in the U.S.; it just took on a new form.

Exploitation of prisoners continues today. Currently, prisoners working in the agricultural labor division of the U.S. prison system routinely face exploitation and are not protected by The Fair Labor Standards Act.¹¹ Those who are currently incarcerated do not have the same protected rights under the 13th Amendment, which states, “Neither slavery nor involuntary servitude, except as a punishment for [the] crime [of which] the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”⁴ This allows for forced labor throughout the extensive U.S. prison system. Roughly 30,000 incarcerated individuals work in agriculture or field-related work, where prisoners are also forced to complete various inhumane tasks, which include slaughtering and butchering animals in unsafe conditions.¹² There are countless reports of injuries and even death due to unsupervised and unregulated conditions. While doing these jobs, incarcerated workers earn pennies for their work while the government and correctional facilities earn millions of dollars in profit.¹² Even as recently as 2010, a federal court stated, “Prisoners have no enforceable right to be paid for their work under the Constitution.”¹⁰ In addition to exploitation and unsafe working environments in the agricultural industry, prisoners are also used by corporations for cheap labor in manufacturing industries.

For years, American corporations have relied on undocumented workers as they accepted the low pay and harsh conditions. However, when the Trump administration began cracking down on the legal status of immigrants, there was a significant drop in available labor, leading to an increase in convict leasing to private corporations. On the job, inmates face excessively long hours of physical work, intense heat, exposure to chemicals, and injuries—all while making well below the federal minimum wage. In Arizona, inmates make \$3–4 per hour for their work before deductions, about one-third of the typical wage for a farm worker.¹³ In addition to an imbalance in wages, working conditions worsened during the Pandemic as inmates were refused vaccines in sixteen states.¹⁴ Inmates were forced to produce items for healthcare suppliers, transport dead bodies, and even dig graves. If they refused, they were threatened with parole date extensions and the removal of their visitation rights.¹⁴ Cases of abusive working conditions during the Pandemic led to over 3,000 deaths in prisons.¹⁴

Inmates cannot escape the repetitive and abusive cycle as “inmates are not legally considered employees, and are excluded from protection under parts of the 1964 Civil Rights Act, the Equal Pay Act, The Fair Labor Standards Act, the National Labor Relations Act, and the Federal Tort Claims Act.”¹³ Inmates also cannot legally unionize, which further prevents them from leveraging any power to improve their working status; projects like the Prison Agriculture Lab work to combat and highlight the injustices these prisoners face.

In an interview with the Innocence Project, Malcolm Alexander provides insight into the horrors he faced working in agriculture labor while incarcerated in Louisiana. In 1980, Mr. Alexander was falsely accused of rape and was wrongfully convicted.¹⁵ Mr. Alexander was sent to the fields of Angola at the Louisiana State Penitentiary, a prison notorious for its intense farm labor conditions. Each day, Mr. Alexander “marched to the cotton field in a row of other mostly Black men, bookended by armed men on horseback.”¹⁵ Today, approximately 75% of inmates at the Louisiana State Penitentiary are Black.¹⁵ A report by the Innocence Project detailed the strict expectations and daily quotas set for inmates working the fields. In one account, “prisoners had to fill a 36-by-80-inch sack that sometimes weighed as much as 70 pounds. If the sacks weren’t sufficiently full by day’s end, they would be written up, which meant losing out on weekend privileges like leisure time and access to the library, or even being sent to solitary confinement.”¹⁵ Beyond the quotas, Mr. Alexander was forced to work under all weather conditions, including rain, frost, or intense heat, routinely leading to loss of consciousness due to exhaustion from the high temperatures.¹⁵ Moreover, inmates were rarely excused from their duties for illness or injury. In the interview, Mr. Alexander recalled looking around his previous environment and comparing the forced labor practices to “modern slavery.” Each year, the Louisiana State Penitentiary harvests around four million pounds of crops, with a small portion used to feed inmates. Most of the remaining crops are sold openly for profit.¹⁵ Many individuals have pointed to the injustices these prisoners face, yet no significant federal changes are being made to prevent this exploitation.

The U.S. Government is aware of goods produced via unfair labor tactics abroad. The US has rejected imports of goods suspected to be made through convict leasing and other unjust prison labor. Hypocritically, it has done nothing to fix similar systemic issues on American soil. On October 20, 2020, the U.S. Customs and Border Patrol announced their findings of a forced labor case, the first since 1996.¹⁶ Stevia extracts were found using convict and exploitative labor in violation of “19 U.S.C. 1307. This statute prohibits the importation of merchandise mined, manufactured, or produced, wholly or in part, by forced labor, including convict labor, forced child labor, and indentured labor.”¹⁶ The finding instructs port directors to seize the merchandise in question and to commence forfeiture proceedings. The U.S. must extend protections for human rights issues at the domestic level to the same standards as they do internationally. Fair Trade is a possible solution.

Fair Trade Certification and Positive Outcomes:

Fair Trade policy addresses the ethical treatment of workers and the environment in agriculture and aims to ensure that global trade is conducted with equity in mind. It can also prevent the exploitation of laborers across various agricultural industries.

In the U.S., Green America, a Fair Trade organization, defines Fair Trade as “a system of exchange that honors producers, communities, consumers, and the environment.”¹⁷ They further state, “It is a model for the global economy rooted in people-to-people connections, justice, and sustainability.”¹⁷ FLOCERT, a leading auditor of the Fair Trade movement, is responsible for determining whether products and produce are made through socially responsible and sustainable practices globally.¹⁸ If the product meets its standards, it becomes Fair Trade certified. It receives a certification emblem to inform consumers that it met the Fair-Trade standards established by Fair Trade International, a Fair Trade advocacy group.

The efficacy of a Fair Trade policy has been seen in the Dominican Republic (D.R.), where there are thousands of undocumented individuals employed on banana plantations working under unregulated conditions for low pay.¹⁹ In 2012, it was estimated that 90% of individuals working on banana plantations in the D.R. did not have legal status in the country.²⁰ In response to this issue, the D.R. government attempted to make documentation more accessible. Still, the lengthy and expensive process to obtain a one-year visa deterred workers from seeking employment via this route.¹⁹ Even among the workers who tried to apply for visas, many workers reported it was cost-prohibitive. Despite desiring a visa, these workers were prevented from receiving the social security benefits that their Dominican counterparts enjoyed.²⁰ In response to this issue, Fair Trade-certified organizations implemented a “road-map” to help workers obtain documentation more efficiently and secure legal protections and regulated salaries for these individuals.¹⁹

Individually, American consumers can impact labor injustices by only purchasing Fair Trade-certified products. Fair Trade allows consumers to make informed decisions as they participate in the farm-to-store supply chain. By purchasing Fair Trade-certified products, consumers are helping to protect

farmworkers through their buying power. Historically, Fair Trade groups have strongly advocated for the protection of workers in agriculture on a global scale but have failed to prevent many exploitations, such as pesticide exposure, strenuous labor hours, harsh working conditions, and low wages in the United States.

For Fair Trade to be a more thorough solution for all workers in the U.S., it needs to be expanded. Fair Trade policy is an ideal that needs enhancement. Fair Trade organizations, Fair Trade certifiers, and American Fair Trade advocates must work together to ensure that agricultural workers are legislatively protected in the U.S. regardless of visa or incarceration status.

■ Conclusion

The institution of Fair Trade is a viable solution to the various injustices agricultural workers endure. However, changes to the Fair Trade policy in the United States must be made to guarantee the protection of exploited worker groups. Workers are entitled to human rights, and workers' health protection should be mandatory. In particular, a law enshrining workers' protection from pesticide exposure should be required and enforced. This will protect the workers and those who reside in surrounding farms where these chemicals are sprayed.

Fair Trade groups must also advocate for protecting workers on various agricultural visas. People employed under temporary working visas like the H-2A program face intense labor conditions and working hours due to the power imbalance between employer and employee. Thus, it is crucial that Fair Trade-certified corporations strictly adhere to the worker's employment contract and respect protections outlined by heightened labor standards.

Likewise, inmates working in agricultural labor also face difficult working conditions and long hours due to the lack of labor protections. Unlike other workers in the agriculture sector, inmates are not protected by the current Workers Protection Standard. The Fair Trade movement must address this injustice and ensure that equivalent worker protections apply to inmate laborers. This domestic inaction is in direct conflict with the U.S.'s stance against international convict leasing and the unjust use of prison labor. Those working for the American Fair Trade initiative must apply international standards domestically to limit exploitation in the U.S. prison system.

Based on the research compiled in this paper and the successes Fair Trade organizations have seen on the foreign stage, this paper recommends that the United States adopt a Fair Trade policy to alleviate the inequalities in the United States Agriculture System.

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