

The Baldy Center for Law & Social Policy  
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Podcast transcript begins

[Azalia]: Hi everyone this is the podcast of the Baldy Center for Law & Social Policy produced at the University at Buffalo. I am your host and producer Azalia Muchransyah. This episode I have Amanda Hughett on the phone with me. Amanda is an assistant professor of legal studies at the University of Illinois, Springfield and an affiliated researcher at the Baldy Center for Law & Social Policy. Amanda, can you please tell us about your book project?

[Amanda]: My book project examines how efforts to litigate around prison conditions in the 1970s unintentionally cut against imprisoned people's efforts to mobilize at the grassroots level. So I trace primarily prisoners' efforts to unionize in the 1970s which was a movement that was surprisingly successful and I show how that movement ended up running against efforts primarily led by folks who were working with the ACLU to create new procedural mechanisms within in the prison designed to protect imprisoned people's rights. So during the early 1970s imprisoned people in many states across the nation worked to form labor unions of their own and they drew inspiration from a number of different places. In part they were tapping into this broader discussion that was taking place within the United States about participatory democracy. And about in particular the needs to make American institutions more democratic. We can see that in efforts coming out of great society programs from the Johnson administration that were attempting to make poverty programs more participatory by including the poor people who they served and some of that trickled into corrections practices too. Where even some of the leading correctional experts thought that in order to make prisons safer and less violent you need to give imprisoned people some degree of say in the policies that shaped their lives. Relatedly they were also drawing inspiration from this broader upsurge of labor organizing that was happening beyond the prison gates in the early 1970s. particularly in the nation's public sector, so workers who labored for the state, who labored for their cities, who labored for the federal government, public sector unionism was on the rise at the very moment that labor organizing in the private sector was starting to decline. The imprisoned people who I write about understood themselves like public sector workers as laboring for the state, so they attempted to leverage that labor to bargain collectively with prison administrators and again to gain a seat at that policy making table to shape the procedures and practices that impacted their everyday lives. You know part of the story that I tell has to do with how much the prison was on people's minds in the early 1970s. It was on their minds for a couple of reasons. In part because imprisoned people demanded that people on the outside pay attention. In 1971 not far from Buffalo in Attica, New York there was the largest prison protest in American history, one that left 43 people dead. The nation watched that take place on national TV. But at the same time the other thing that was happening in the early 1970s is essentially that the state and the federal government was really cracking

down on radical activism. So part of the story that I tell is about how activists on the outside ended up, rounded up as a result of their activism, put in prison, but the joke was on the state because they kept organizing and so they served often as the bridges between activists on the outside and those inside the prison. So it ended up being this sort of broader movement that bridged those walls in the 70s.

[Azalia]: Why do you specifically tell the history of the North Carolina Prisoners' Labor Union in your book?

[Amanda]: So, the NCPLU, the North Carolina Prisoners' Labor Union is a great story to tell in part because their case in 1977 landed in the Supreme Court, but the outcome was not good for them. In *Jones v. North Carolina Prisoners' Labor Union*, the court ruled essentially that federal courts should defer to prison administrators on issues regarding imprisoned people's First Amendment rights. That's a long way of saying that *Jones v. North Carolina Prisoners' Labor Union* allowed prison administrators to curtail imprisoned people's First Amendment rights whenever they thought their speech threatened prison security. So, in the wake of *Jones* then, prison administrators across the United States erected new barriers that made it really difficult for imprisoned people to organize in the same ways they did in the early 1970s. So, following the Prisoners' Labor Union in North Carolina allows me to trace that huge arc to really dig into the details of what this union was doing but also to tell a broader national story about how doors closed for imprisoned activists during the late 1970s. There are lots of activists that are still mobilizing inside prisons. In 2016 and 2018 there were major protests across the United States but there're not prisoners' unions anymore and there's not prisoners' unions for a couple of reasons and the first one stems from *Jones* right, that the sort of broad widespread cross-prison activism that was happening in the 70s got crushed in the wake of *Jones*. But the other thing that happened has to do with shifts in prison labor. So for the most part imprisoned people in the early 1970s worked, they worked in a wide array of jobs. In North Carolina and other places across the south they still worked in jobs that were largely an outgrowth of big prison plantations that operated after the Civil War. But beginning in the 1970s or even beginning a little bit earlier but definitely coming into play in the 1970s, fewer and fewer imprisoned people labored behind bars. Today around 50% of imprisoned people have jobs but a lot of people find prison actually really boring, a lot of people sit around in prison. So in the early 1970s it made a lot of sense for imprisoned people to sort of see themselves as laborers but today I argue in my book and I would say that this is probably a more contentious claim, but I would say that labor is not as much of a sort of identifier among imprisoned people as perhaps it was in the early 1970s.

[Azalia]: Are prisoners not allowed to unionize because they are not laborers despite doing work in the prison?

[Amanda]: So I think yes, not necessarily in *Jones* but before *Jones* there were a number of sort of cases where imprisoned people brought their efforts to unionize to state labor relations boards. At first in the early 1970s and like '72, some labor relations boards thought maybe that you know, there were definitely elements of the relationship that between imprisoned people and the state that resembled how public sector workers

operate. But then in the years that followed they sort of closed that door and decided that no, prison labor does not resemble labor beyond the prison. That instead, and in fact it's really interesting that part of the argument about why prisoners are not laborers in the same way that outside workers are, is that the states argue that labor is for rehabilitation purposes, that it's not about wages. It's part of the services the prison provides, which is very, you know just filled with irony right? But now in *Jones* it wasn't that it wasn't necessarily the sort of constitutionality of unionization for prisoners that was on trial. Instead it was for speech rights, that's what was the heart of that case. The question wasn't, you know can prisoners unionize, the question was when can prison officials curtail imprisoned people's speech. And it was through deciding that speech could be curtailed that the prisoners' unions were crushed. So, in theory prisoners could still form unions. Unionism in and of itself is not illegal. But prison administrators wouldn't have to allow them meetings, they didn't, you know, wouldn't need to allow them to recruit others. They could crush it pretty easily. Ironic stories sit at the center of the story that I tell in my book. That yes sort of what you're seeing in the *Jones* case is the court saying, yeah you guys have First Amendment rights but prison administrators get to decide when you can exercise them. The same thing to some extent happens with access to courts, that the courts say, yeah you have access to the courts, but we're going to put all of these procedural hurdles in the way to make it really difficult for you to reach the courts. There's irony in the story about imprisoned people's labor too. That during the early 1970s, imprisoned people's labor, which we think largely about as bad, as exploitative, actually gave imprisoned people leverage to demand changes to the prison system. And as fewer and fewer imprisoned people came to work, as prisons depended less and less on imprisoned people's labor for support, imprisoned people to some extent lost power. In theory imprisoned people have more, sort of positive economic rights than you and me. That imprisoned people actually have a right to health care, they have a right to you know safe shelter and decent food. But because those rights are filtered through prison administrators in the way that we discussed, that prison administrators to such an extent get to decide how rights are enforced, that those rights are often meaningless in practice. And it was actually sort of this irony that the prisoners' labor union recognized, that rights didn't mean much to imprisoned people unless sort of, prisons were more democratic. Unless imprisoned people had a seat at the table, unless they had some power to be able to make sure their rights were enforced and that's what they were fighting for that rights were meaningless without enforcement and they wanted the power to help enforce those rights.

[Azalia]: So, given that prisoners cannot unionize, does this mean that companies can tap into this potential source of labor and exploit them?

[Amanda]: I think there's a lot of misconceptions about prison labor. First of all, I think people think that prison labor is very profitable, that people end up behind bars and it's a way for corporations to make money off of imprisoned people's labor. But actually less than one percent of imprisoned people work for companies that operate beyond the prison. The majority of people who work behind bars and again only about 50 percent of people work behind bars. They work jobs that help the prison function, so they work in the cafeteria, they perform administrative tasks, they perform janitorial duties. A smaller percentage of imprisoned people labor in prison industries, so they produce

goods and perform services directly for the government, so usually for their state and then again that small less than one percent of imprisoned people are laboring for private companies. So I think that it's dangerous to think about the problem of mass incarceration as one just about the exploitation of prison labor. It's a much bigger right, it's a question about how states decide to spend their money, it's a question about race too, right? If prison is less about exploiting imprisoned people's labor then what is it about? It's about constructing a racial hierarchy, it's doing sort of other sort of work. But to be clear that's not to say that people don't profit from mass incarceration. They do in myriad ways, largely by selling stuff to prisons. There's a ton of contractors that make money off of selling prisoners mattresses, by jacking up the prices of phone calls, by the high cost of commissary items, right, but I would argue that it's not necessarily prison labor where people are making bank, that it's actually much less sort of profitable than people think.

[Azalia]: To summarize, what do you think is the biggest takeaway from your research?

[Amanda]: Yeah, I think if there's one lesson that my research has taught me, it's that prisons are fundamentally inhumane places. That there's nothing that you can do to really make them humane. And so I think that so much of my book project is about efforts, big and small to sort of tinker with how prisons worked, right? That these imprisoned people wanted to make prisons more democratic, that the lawyers who I write about wanted to make the prison more procedurally fair. But none of it really worked and in fact a lot of the efforts to make prisons more procedurally fair and more bureaucratic actually sort of made them harder to dismantle in part because they made them appear as if they sort of followed the rule of law. And so I think that the solution then is decarceration. That the best way to deal with the inhumanity of prison is to get people out of prison and to invest in other things. To invest in education, to invest in health care, to invest in all the social programs beyond the prison that help people lead successful lives. I think that you know again if we think about imprisonment as sort of less about profiting off of incarcerated people's labor but instead about how states are actively sort of paying to imprison people many of whom don't have much to do throughout the day, then we think about prisons as a waste right? And so let's use that money to do other things. I see especially the lawyers who I write about as often really torn between efforts to you know push toward decarceration and abolition and efforts to help the people who are very much suffering at this moment, right? And I think we have to do both but with an eye always toward decarceration and getting people out.

[Azalia]: That was Amanda Hughett and this has been the Baldy Center for Law & Social Policy podcast, produced at the University at Buffalo. Please visit our website [buffalo.edu/baldycenter](http://buffalo.edu/baldycenter) for more episodes and follow our social media on Facebook and Twitter @baldycenter. Until next time I am your host and producer Azalia Muchransyah.