

## Article

# TOWARD A PINTA/O HUMAN RIGHTS? NEW/OLD STRATEGIES FOR CHICANA/O PRISONER RESEARCH AND ACTIVISM

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## Abstract

*This essay examines past and ongoing models of prisoner activism and advocacy in order to recuperate and redeploy earlier Chicana/o prisoner invocations of human rights discourses. I show how the War on Crime has converged with the War on Terror through the deliberate subversions of international treaties and protocols to which the US is a signatory. This convergence ultimately demands and enables recourse to human rights regimes. I thus propose a relocation of US prison work onto an international sphere, through the use of human rights discourses and strategies.*

## Keywords

Latino prisoners; Pintos; Chicano prisoners; human rights; prisoner rights

The production of the terrorist as a figure in the American imaginary reflects vestiges of previous moral panics as well, including those instigated by the mass fear of the criminal and the communist. Willie Horton is the most dramatic example of the former. Anti-communism successfully mobilized national – perhaps I should say nationalist – anxieties, as does the so-called war on terrorism today. None of these figures are entirely new, although the emphasis has been different at different historical conjunctures. (Angela Davis, 2005)



## **Crime, terrorism and the new war on dark brown men**

The spectacular September 11, 2001 airborne attacks are transforming US society in ways that will be fully understood only after the passage of more time. Some of the ongoing transformations, however, were foreseen by critics of the draconian 1994 Omnibus Crime Bill. They warned against the continued erosion of civil liberties – especially for minorities – under the guise of yet another War on Crime that has followed former President Reagan’s War on Drugs in the 1980s and former President Nixon’s Crusade Against Crime in the 1960s. The effects of the War on Terror were much worse than anyone imagined. In the first five years since the September 11 attacks, the 1994 Omnibus Crime Bill was complemented by even more draconian legislation: the 2002 passage of the “USA PATRIOT ACT” (the Orwellianesque acronym for “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism”), the subsequent PATRIOT ACT II, and the 2006 Military Commissions Act. These laws collectively curtail constitutional freedoms of speech, association and information; infringe constitutional rights to legal representation, a timely public trial and protection from unreasonable searches; and also allow for the use of extrajudicial imprisonment and secret military tribunals for citizens and non-citizens accused of aiding or abetting “terrorism”.

More importantly, the War on Terror has introduced the category of “enemy combatant,” a classification unique in American jurisprudence because it situates its designee in the interstices of domestic and international law. By using this category for US citizens and non-citizens alike, the US government seeks to avoid the protections afforded a “prisoner of war,” who has rights outlined by the Geneva Conventions, including access to a legal defense. Even persons charged with sedition and espionage are allowed such access to civilian legal representation. In contrast, an “enemy combatant” is denied access to US courts as well as international tribunals precisely because, according to interpretations of the category, they have no nation-state patron. They exist in a legal and thus civic limbo as prototypical “anti-citizens” of the world. Not surprisingly, by the end of 2001, over one thousand Arab, South Asian and African Muslim males studying or working in the US had been detained and held incommunicado. Most of the detainees ostensibly were arrested on visa violations but later were imprisoned under suspicion of having terrorist links. The Department of Justice and Department of Defense conduct the detentions through various subordinate agencies and military branches. Both Departments refuse to release the names of many past or current detainees or even the details surrounding their alleged offenses to the general public, prospective legal representatives or even their own families.

In the first two years of this pogrom, at least 14 US citizens were caught in the dragnet and subsequently held in civilian prisons, military brigs and once-secret

CIA-run prisons abroad, with limited or no access to legal representation. All but one of these initial detainees were racial minorities. These domestic “enemy combatants” come from vastly different ethnic backgrounds – Arab, East Asian, African, African American, (mixed-race) Latina/o and one Caucasian – and include one woman (the African American wife of one of the alleged “ringleaders”). Yet rather than diversify the image of the new 21st-century “menace to society”, the circumstances surrounding the detention and prosecution of these US citizens further reinforces the prejudicial racialization of this new/old antithetical American. The first and only “enemy combatant” to receive a civilian trial was John Walker Lindh, a White male from an upper-middle-class family in upscale Marin County north of San Francisco, whose father is a wealthy corporate attorney. Lindh was convicted and sentenced to 20 years in prison, with eligibility for early release for good behavior. In contrast, Yasser Hamdi, who was born in Louisiana to Saudi Arabian parents during his father’s employment in the oil industry, was held incommunicado for three years in a US Navy brig in Norfolk, Virginia, since his capture in the same Mazar al-Sharif Battle in which Lindh was captured. Hamdi was released and expelled from the country in 2005 only after a US Supreme Court ruled in *Hamdi v. Rumsfeld* (2005), against the government’s right to hold “enemy combatants” indefinitely and incommunicado. The Court further demanded that detainees in the US War on Terror must be treated in accordance with Article 3 of the Geneva Conventions, which prohibits “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture,” and “outrages upon personal dignity, in particular, humiliating and degrading treatment” (1949).<sup>1</sup> Similarly, six Yemeni Americans arrested in New York City in September 2002, along with four African Americans and one Saudi Arabian-American arrested in October 2002, remain in detention as late as 2006, without access to legal representation or a courtroom hearing.

These detentions suggest that not all enemy combatants are created equal, and the implications for Latinos are dire. During the first two years of the War on Terror, the classification and extended detention of the 12 racial minority males and one Black female as “enemy combatants” revealed that race – further darkened by a religion deemed by some to be “foreign” – undergirded the construction of abjection in the arming of the War on Terror. Indeed, dark brown bodies have become the nexus at which domestic law enforcement practices converge with US international political and military objectives. As Angela Davis (2005) notes in an interview excerpted in the epigraph above, in the new US government foreign policy at the turn of the 21st century, the local neighborhood dark brown American male has become a villain of global proportions.

The initial arming of this War on Terror as an extension of the five-decade-old War on Crime targeting dark males has a particular relevance to Latinos when

1 The Geneva Conventions refers to: (1) “The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field” (Geneva, 1864); (2) “The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea” (The Hague, 1907); (3) The Geneva Convention Relative to the Treatment of Prisoners of War” (Geneva, 1929); and

one considers the case Jose Padilla. A Puerto Rican born in New York City and raised in a low-income Latino barrio in Chicago, Padilla was a reputed former “gang member” and ex-convict who converted to Islam during a prison stint in Florida. He was arrested on 8 May 2002, under suspicion that he was scouting targets in the US for a uranium-loaded “dirty bomb” attack, and was held incommunicado for four years under military custody. (The US government avoided the application of *Hamdi v. Rumsfeld*, by re-charging Padilla in 2006 under domestic criminal statutes that are unrelated to previous charges of “aiding and abetting terrorism,” and scheduled a military trial in January 2007.)

Padilla’s arrest has been accompanied by an alarmist, racially coded media blitz that has raised the specter of hordes of Latino criminals who convert to Islam in prison, to become even more threatening than the old Latino menace-to-society: internationalized enemies of the US. For instance, in a 30 June 2002 syndicated story ominously titled “Prison system could be terror breeding ground,” journalist Dan Freedman reports that the recent arrest of ex-convict Padilla, “could be evidence that prison systems here and overseas have become inadvertent breeding grounds for militant Islamic terrorists.” Freedman cites Charles Colson, an aid to former President Richard Nixon, and the architect of the inaugural War on Crime in the 1960s. Colson observes that “alienated, disenfranchised people are prime targets for radical Islamists who preach a religion of violence, of overcoming oppression by Jihad” (2002, A27). After noting the growing numbers of disenfranchised racial minorities in prison, Colson adds that “it’s no accident that Islam’s influence is growing behind bars.” Coincidentally, this sensationalist report coincides with the nation-wide increase in Latina/o conversions to Islam.<sup>2</sup> Reports that a former leader (or “Godfather”) of the Chicano prison gang, the Mexican Mafia, converted to Islam while in prison, locates Chicano prisoners, or Pintos, within this neo-crusade discourse that pits the Christian west with a potentially expanding Islamic east. In the wake of the September 11 attacks, the specter of dark criminal masses reproducing their abjection in US prisons is not just a domestic crisis: it has become a matter of national security. However hyperbolic this representation of a mass uprising of prisoners-cum-Islamic terrorists may be, it nonetheless foregrounds how domestic law enforcement practices and US foreign policy have begun to converge at the site of the penitentiary.

(4) “The Geneva Convention Relative to the Protection of Civilian Persons in Time of War” (The Hague, 1949). These resulted in international treaties and were followed by three amendments, subsequently called “Protocols” (1977, 1977, 2005) governing the treatment of civilians during war.

<sup>2</sup> For a discussion of this phenomenon of Latina/o conversions to Islam, see Aidi (2002).

## Relocating the US Carceral onto the international sphere

The convergence of the War on Crime and the War on Terror demands and, ironically, enables, an alternative, if not altogether new, approach to “prison work.” US President Bush inadvertently provided an impetus for this new era of prison work on 7 September 2006, when he confirmed the existence of secret US prisons run by the CIA in foreign countries, some of which openly

permit the use of torture. This fact, and the US practice of “extraordinary rendition,” by which “suspected terrorists” are transported to these secret prisons, had been an open secret since Seymour Hersh first reported on the matter in a *New Yorker* article in May 2004. But Bush’s admission – together with the ensuing public debates about the new Army interrogation manual that still permits the use of “water boarding” (near drowning), and the formal establishment of special military tribunals to try “enemy combatants” to circumvent *Hamdi v. Rumsfeld* – have made the convergence of US foreign policy with domestic policy, and US military protocol with domestic penology, a matter of public record.

Even though the US Congress ratified the Military Commissions Act that resulted in the legal elimination of Habeas Corpus protections – a hallmark of modern jurisprudence that normally permits prisoners to challenge their imprisonment, thereby ensuring (at least theoretically) against unlawful arrest and imprisonment – the fissures of US criminality and penalty today are pregnant with possibilities and, of course, urgency for prisoner rights activists and scholars. That is, these legal stratagems, debates, compromises and more stratagems to permit torture and extrajudicial detention, in effect have linked domestic and international standards for the treatment of prisoners. As noted above, the latest US War on Crime has made international prisoners of US citizens like Puerto Rican Jose Padilla. Likewise, the US War on Terror has made domestic prisoners of international citizens (exclusively Muslim males, many of whom still remain unidentified and held incommunicado in US prisons or secret prisons in undisclosed locations).<sup>3</sup> This application of a legal limbo already had been deployed through immigration detention centers prior to the September 11, 2001 attacks and implementation of the war on crime. But now it is formal legal code.

The stripping of both US and non-US citizens of fundamental prisoner rights enshrined in the Geneva Conventions immediately introduces human rights paradigms into the equation. Indeed, even Amnesty International, whose anti-communist bias prevented any critiques of US prisons until the early 1990s when it began a campaign against the death penalty, has weighed in on the now standard violations of human rights in the new internationalized US Carceral. In its widely publicized 2005 annual report, former Amnesty International Secretary General, Irene Khan, described the US prison at Guantanamo Bay as “the gulag of our time” (2005). This preliminary intervention of human rights activists has opened a small crack in the heretofore impenetrable discourse that posits the myth that US prisons are among the world’s “best.”<sup>4</sup> In this conjunctural moment arising from profound rollbacks of prisoner treatment standards in the US, I argue that domestic US prison work must retool and readapt to deploy human rights theory and practice both for “common” prisoners as well as for those who are nationally and internationally recognized as “political prisoners.” In this new era of the US Carceral, the domestic

3 In his speech admitting the existence of secret US prisons abroad, Bush noted that some prisoners previously held at this location would be sent to Guantánamo Bay in preparation for Military Commissions trials and sentencing. He made no mention of whether or not the once-secret international prisons would be dismantled.

4 Secretary of Defense Donald Rumsfeld once described Guantanamo Bay Concentration Camp

prisoner has become internationalized, and vice versa, and therefore requires a new theory of praxis.

as a “tropical paradise.”

### Prisoner classification as new/old battleground

Prisoner classification has always been a battleground – especially regarding race – precisely because of the convoluted and irregular classification methods used by state and federal agencies. For instance, Latina/o prisoners alternately are classified as “Hispanic,” “White,” “Black,” “Hispanic: White” and “Hispanic: Non-White.” But the most vexing and politically charged category remains “political prisoner.” Officially, the US has no political prisoners. But former US President Clinton’s pardon and release of 16 Puerto Ricans who had been imprisoned for engaging in insurgent activities to end US colonial domination of the island nation of Puerto Rico, revealed the hypocrisy of such a claim. A decade before Clinton sought to free the US from international scorn for imprisoning Puerto Rican freedom fighters previously classified as “terrorists” – including those held in “preventative detention” without having actually been convicted of armed insurrection – Ronald Fernandez had succinctly argued that the classification of these prisoners as “terrorist” was a political decision that illuminated, rather than effaced, the fact that they were political prisoners (1994). The War on Terror – and its attendant legislation permitting “extrajudicial detention,” “extraordinary rendition,” “coercive interrogation” and secret trials – has exposed a fact that Puerto Rican *independentistas* and other minorities have known all along: there were and still are political prisoners in the US. According to the Jericho Movement, there were approximately 150 political prisoners and prisoners of war in US prisons as of 1 December 2006.<sup>5</sup>

The unprecedented convergence of US law with international standards, and international prisoners of war (“enemy combatants”) with US Latinos, confirms what Chicano prisoner rights activists have maintained since the 19th century: Chicano prisoners and incarceration rates must be understood and addressed within an international context. I have shown elsewhere how the incarceration of Chicana and Chicano prisoners such as Modesta Avila, Jimmy Santiago Baca, Ricardo Sánchez, Raúl Salinas, Fred Gómez Carrasco, Judy Lucero and Alvaro Hernández Luna, among others, is inextricably linked to colonial domination and the subsequent struggle for material resources in the southwestern US. Other scholars, activists and prisoners themselves, have long argued for the reclassification of Mexican expatriates (e.g., the Magón brothers), Puerto Rican *independentistas* (e.g., Rafael Cancel Miranda), Black (e.g., Mumia Abu Jamal) and internationalist white (e.g., Marilyn Buck) prisoners as “political prisoners,” due the protections and rights delineated in the Third Geneva Convention, “The Geneva Convention Relative to the Treatment of Prisoners of War” (United Nations, 1929). Many of these early campaigns to have domestic

<sup>5</sup> This number does not include prisoners who became political activists after their incarceration (such as Ruchell Magee) or those imprisoned during the War on Terror (such as Jose Padilla).

prisoners reclassified as international, or even political prisoners, failed, primarily due to persistent US government denials of the existence of US political prisoners and prisoners of war. Former US President Clinton's pardon of *independentistas* was unprecedented. But the War on Terror has sufficiently muddled the divisions between the local and the global, as well as the domestic and the political. Indeed, the use of terms like "terrorist" and "enemy combatant" in awkward US government attempts to legitimate extra-judicial detainment, torture and, possible summary execution, are pregnant with counter-hegemonic opportunities. After all, when a US-born Puerto Rican can be classified as an "enemy combatant" and held for two years incommunicado without the rights of Habeas Corpus, and the US Supreme Court can rule, as it did in *Hamdi v. Rumsfeld* (2005), that a non-US citizen held in the custody of the US military must be afforded both domestic and international rights as delineated in the Geneva Conventions, why can we not re-assess the status of all US prisoners within the *de facto* hybrid domestic/international US criminality and penalty? The US government itself inadvertently has led the way.

In calling for a broader application of the category of "political" imprisonment to enable human rights paradigms in US prison work, I am not naive about material and subjective conditions in the US. I know this strategy alone will fail, especially if we are linking prisoner rights to revolutionary critiques of capitalism and imperialist US practices. The US, after all, is the world's sole superpower, and the largest and most powerful empire in the history of the world, whose people, frankly, have been sufficiently mystified into participating in the continued preservation and extension of this regime because of the real and imagined benefits they derive from the empire. Nor am I being insensitive towards the real, day-to-day struggles of prisoners who rely on appeals to limited but nonetheless tried-and-true civil rights discourses to improve their living conditions and, in some cases, to save their very lives. The recourse to the US judicial system, however biased and imperfect it may be, is especially important in death penalty cases, when time constraints become lethal.

These caveats notwithstanding, I am calling for a return to the 1960s and 1970s era of prisoner rebellions so we can redeploy aspects of the internationalist methodologies – if not necessarily the exact language – of prisoner rights movements. I realize that this move to reclassify domestic prisoners as political prisoners already is often done, sometimes irresponsibly. Joy James presents an important qualification with her admonition that prisoner rights activists recognize that not all prisoners, especially those who continue to participate in exploitative practices, can claim to be "political prisoners" (2003: 11–14). This circumscription duly noted, Alan Eladio Gómez (2006a, b) has shown how prisoner rights movements in the 1960s and 1970s – even those that began as highly localized protests of prison-conditions by "common" prisoners

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– eventually evolved into dialectical materialist and internationalist struggles that not only aligned themselves with internationalist revolutions, but also became part of them, both inside and outside the walls of the US prison system. Gómez reveals that the US detention facility at Guantánamo Bay was not the first prison designed to facilitate the total physical and psychological breakdown of domestic and international political prisoners. It was the Marion Control Unit in Illinois, which began torturous behavior modification experiments at the behest of Bertram Brown, chairman of the National Institute of Mental Health. Brown gave direct encouragement to wardens to “undertake a little experiment of what you can do with Muslims,” and then report back for later adaptation to the general prisoner population, especially the political activists forcibly relocated to Marion (Gómez, 2006a, 63). After the implementation of brainwashing techniques – forcible administration of psychotropic drugs, isolation and sensory deprivation, arbitrary beatings and sanctions, use of rumors and prisoner snitches as well as selective reward system involving pornography – prisoner organizing coalesced around the immediate need to challenge and ultimately stop this organized use of torture. This activism over prisoner conditions segued into the actualization of broader goals being articulated during the era that saw the confluence of third world wars of national liberation and ethnic and racial minority civil rights, as well as more mature anti-colonial, struggles. After all, the Black Power Movement, American Indian Movement, and the ideologically disparate events collectively called the “Chicano Movement” were in full swing at the time. But the most important aspect of this era, Gómez notes, is the simultaneous appeal to both domestic (US Congress and various civil rights organizations like the ACLU, Center for Constitutional Rights, NAACP) and international bodies, specifically, the United Nations. Through aggressive letter campaigns, prisoners won major concessions from the US Bureau of Prisons by exposing how the Marion prison did not meet the UN Standard Minimum Rules for the Treatment of Prisoners (2006a, 71). Gómez discusses similar successes by prisoners at Leavenworth Federal Prison, where prisoners also incorporated simultaneous appeals to domestic organizations like the Black Panthers, as well as the Medical Association for Human Rights “that focused on improving medical conditions for prisoners” (Gómez, 2006b, 13).

The value of Gómez’s archaeology of this important era in the history of the US Carceral, and populist challenges to it, does not solely arise from the prisoners’ internationalist politics, but from their *international* strategy. It is important to note that the distinction between “internationalist” and “internationalizing” is deliberate, yet strategic; the call for internationalization of US prisoner rights movements today may not enable prison workers to get beyond the simplistic and, ultimately, reformist, civil rights discourses towards a truly revolutionary agenda. (This remains a necessary goal, of course.) But there is an immediate pragmatic dimension that is not inconsistent with this ultimate

goal. The appeal to international discourses such as human rights paradigms and, more importantly, the mobilization of international opinion, can again buttress, if not altogether transform, prison activism, by providing one more tool that will retain a substantial international currency precisely because of the widely exposed excesses of the War on Terror. As the aforementioned public debates on the US War on Terror reveal, even capitalists realize that the US has a human rights problem.

### **“The mobilization of shame”: US prison work and the human rights paradigm**

As Gómez’s research reveals, Chicano and broader US prisoner appeals to international bodies and human rights standards are not new. After the post WWII era when the bulk of the relevant human rights and prisoner treatment documents were revised, adopted or created, Chicano prisoners and prisoner rights activists directly and indirectly appealed to international standards for the treatment of prisoners and for the re-classification of Pintos as political prisoners held under colonial occupation. As polemical and problematic as such blanket claims of political status and the attendant use of the internal colonial model may have been, these early prisoner campaigns were significant for foregrounding a vocabulary of human rights at a time when institutions for the enforcement of human rights were not yet operationalized.<sup>6</sup> In the groundbreaking 1976 special issue of the Chicano cultural nationalist journal *De Colores* dedicated to Chicano prisoners, editors subtitled the edition “*Los Pintos de América*,” thereby relocating Pintos to a hemispheric discursive space that enabled them to internationalize Chicano incarceration. The cover design by sociolinguist Fernando Peñaloza is a red, white and blue watercolor of a perpendicular US flag with the stripes turning into prison bars behind which stands a Chicano, who exhibits a minimalist pained expression on his face, as he reaches through the bars to gaze back at the viewer. The statement by the editor, Anselmo Arellano, further elaborates on the discourse, posing the domestic sphere as a site of containment for the already internationalized Chicanos, who in fact are also *Americanos*, or Panamericans:

Although the central theme of this issue applies to Pintos behind steel bars, it symbolically refers to all Raza who are held captive by the tentacles of monopolistic corporations and other repressive institutions throughout the Americas – North, Central and South. (p. 4)

The term Pintos is thus embedded with a simultaneous critique of US imperialism and global capitalism in the Americas. For Chicanos, the domestic and local are simultaneously international and global, and vice versa.

6 International human rights covenants and institutions such as the United Nations Human Rights Committee did not come into effect until 1976.

In addition to an introduction by Ricardo Sánchez that pairs such disparate historical prisoners as Socrates, Jesus, George Jackson, and Fred Gómez Carrasco, as well as poetry, *testimonios* and sociological data on Chicano prisoners, the special issue of *Los Pintos de América* also carries a prisoner profile of Pinto Eddie Sánchez that adumbrates a potential new era for Pinta/o human rights work today. Sánchez's story is the epitome of tragedy, but it is not unique: he had been institutionalized since the age of 3, when his parents were incarcerated for drug use, placed in a juvenile detention center at age 10 after being classified as an "incurable," then subsequently incarcerated in an adult penitentiary at age 16, after being reclassified as a "sophisticated youth" – all without ever having been charged with any crime! At 17, he was sent to Vacaville Prison, the medical facility of the California Department of Corrections. Even though he repeatedly had been certified as sane by prison psychologists, Vacaville administrators ordered a lobotomy for him as retribution for his prisoner activism. To escape the lobotomy, Sánchez had to write a letter to the Secret Service threatening to kill the US President, in order to get charged with a federal crime and thus be "saved" by being sent to federal prison. But while he was incarcerated in federal prisons in Springfield, Missouri, Leavenworth, Kansas and Marion, Illinois, Sánchez was subjected to the behavior modification regimens that Gómez describes. *De Colores* reprinted part of Sánchez' complaints of "inhumane treatment" and legal "torture," including the forcible administration of the drug Anectine:

The first immediate sensation was a tingling sensation all over my body, like when your foot goes to sleep. The next feeling was a heavy feeling on my chest like somebody had dropped a heavy weight on my chest and all the air rushed out of my body. My eyes closed, but I was not asleep. I could not move any part of my body, and I could not breathe at all. I had heard of the drug before, but knew nothing of what to expect. But I did not think it could be anything like what I was experiencing.

I thought the doctor had messed up and given me the wrong thing, or maybe too much of the right thing. I thought I was dying. I want to say something, to tell him I couldn't breathe. But I could not talk or even move or even open my eyes. Then this doctor starts talking to me. He starts talking about knowing what I'm feeling and that it is not pleasant, but it was going to happen to me every time I demonstrated bad behavior in the way of violence. I just wanted some air, not no speech about my behavior. I thought, Oh God, this creep is going to kill me sitting here talking to me when he should be giving me air. Finally after what seemed hours (but was only two minutes) he starts to revive me with air from an oxygen tank. (p. 13)

Significantly, Sánchez's legal strategy involved multiple approaches that sought to expose: (1) *de facto* criminalization of minority populations; (2) extrajudicial

punishment and imprisonment of prisoners; (3) guard use of brutal prison regimens that easily qualify as unconstitutional “cruel and unusual punishment”; and (4) legally sanctioned and medically supervised uses of torture techniques deemed illegal by international standards. While the American Civil Liberties Union used Sánchez’ testimony in successful lawsuits against the government to end the START behavior modification program, they were never able to save Sánchez from a lifetime of imprisonment.<sup>7</sup> (At the time of the publication, Sánchez was facing four life sentences plus 70 additional years of imprisonment, for repeatedly assaulting abusive guards and prison officials responsible for administering his torture, and a known informer at Leavenworth prison that guards and administrators used against Sánchez as part of their coordinated behavior modification program.)

7 As Gómez notes, the START program was an acronym for “Special Training and Rehabilitation Training.” Another such program used an even more Orwellian acronym CARE.

Important for this new era of the US Carceral, the *De Colores* profile on Eddie Sánchez did *not* invoke an overt appeal to the journal’s cultural nationalist and Marxist discourse that posited all Chicanos as colonial subjects and political prisoners. Rather, the Sánchez profile simultaneously appealed to his civil and human rights, and though the Committee to Free Eddie Sánchez (1976) did not make an explicit call for intervention from international bodies like the United Nations, it deployed a nascent legal vocabulary of human rights even before it had become part of diplomatic discourse.<sup>8</sup> Concurrent with the dawn of the human rights movement, *De Colores* and the Committee to Free Eddie Sánchez presented Sánchez as the quintessential Pinto: a *de facto* political prisoner, due to the violation of national (e.g., the 1787 Eighth Amendment to the US Constitution outlawing “cruel and unusual punishment”), and international standards of prisoner treatment (e.g., 1948 *Universal Declaration of Human Rights*, 1957 *Standard Minimum Rules for the Treatment of Prisoners*, and 1969 *International Convention on the Elimination of All Forms of Racial Discrimination*), all of which prohibit torture and discrimination. Many other Chicano prisoner rights campaigns made similar discursive appeals that linked prison conditions to a political persecution that was broadened to include torture and the violation of human rights, even for those whose incarceration followed normal domestic legal processes.<sup>9</sup> Guilt was not denied, or even relativized.

8 Risse and Sikink note that human rights discourses did not become part of foreign policy until the mid-1980s.

9 For information on other prisoner rights campaigns such as *Los Tres de East L.A.*, see Chávez (2002) and García (1995), and *Los Siete de San Francisco*, see Heins (1972).

Rather, the focus was on brutal prison conditions and torture as a form of political persecution. Many other campaigns were part of multi-racial prisoner rights cases, including the rebellions that Gómez has illuminated. On the surface, these prisoner campaigns may appear to be standard grassroots declamations of prejudicial policing, prosecution and government harassment. But in addition to exposing the long history of the racially biased US justice system, their true value today arises from their implicit and overt invocation of international discourses on human rights that transformed virtually all prisoners in the pre-reform (i.e., pre-1980s) US prison system into internationalized domestic prisoners, rather than into political prisoners, *per se*.<sup>10</sup> These US

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prisoners were performing what UN and grassroots human rights activists were simultaneously theorizing, pursuant to the establishment of international norms and bodies to define and protect human rights!

The category of political prisoner in this era anticipated and, in a significant way, exceeded the possibilities of the new classification model developed in the “Special International Tribunal on the Human Rights Violations of Political Prisoners/POWs in the USA,” held in New York in December 1990. The Tribunal’s classification sought to expand the use of the term political prisoner, by arguing that a political prisoner was: (1) someone imprisoned for overtly political activities; or (2) someone, including prisoners initially convicted of common crimes, who was subsequently subjected to differential treatment while in prison due to political activism.<sup>11</sup> In Pinto activism from the 1960s and 1970s era of prison rebellions, there was an appeal to the humanity of all prisoners that simultaneously used – but did not overstate or over-invest – the claim to national minority or colonial status of Pintos. This was not an effacement of their racialized identities, especially given that many prisoners, like Black liberation fighters and their allies (e.g., Ruchell Magee and Marilyn Buck), Puerto Rican *independentistas*, and Chicano nationalists (e.g., Alvaro Hernández Luna), continue to remain in prison precisely because of their cultural nationalist and anti-colonial activities. In an era when the US President, the US military, and law enforcement agencies have claimed and freely used the term “enemy combatant” to refer to people even suspected of believing in, much less participating in, armed actions against the US government, troops or civilian population, activists must be wary of donning the cultural nationalist or internationalist mantle in prisoner solidarity cases. To call a prisoner a “revolutionary” could effectively damn them to perpetual incarceration or execution under PATRIOT ACT I and II, and related statutes that deprive them of even a minimal recourse to fair public trials. In an era when armed resisters are always already in danger of being reclassified as “enemy combatants” – witness the immediate end of the campaign to pardon Assata Shakur after the September 11, 2001 attacks – we may be able to more successfully use the international language of human rights, in tandem with ongoing prison work based on civil rights claims. (Again, party work will and must continue on its own terms, pursuant to the ultimate goal.)

While this redeployment of a vocabulary to internationalize domestic prisoners is an old strategy, it is important to emphasize that it has potential new uses now that human rights institutions are becoming more mature, strong, and bold enough to challenge even the United States of America (e.g., Amnesty International’s 2005 indictment of the US prison at Guantánamo Bay as the “gulag of our times”). Indeed, this simultaneous appeal to civil and international human rights actually has had preliminary but important successes in delaying the execution of Mumia Abu Jamal, even though it has not resulted in a retrial, a pardon or his release. This multi-pronged, national and international

10 For an illuminating case study of the pre-reform Texas prison system, see Martin and Eckland-Olson (1987).

11 Joy James (2003) has challenged this framework as too inclusive, and introduces a more detailed taxonomy of different types of political prisoners. For other explications of US political prisoners, see Deutsch and Susler (1990).

campaign approach, in fact, was the operative model in the groundbreaking *Critical Resistance* conferences in 1998 (Berkeley), 2001 (New York) and 2003 (New Orleans), that explored and advocated multiple strategies for intervening into all aspects and levels of the US Prison Industrial Complex. Prison workers really do not have a choice. US prisons, and broader domestic political conditions under the War on Terror have become so repressive that the critique of US human rights abuses is not mere political sloganeering, but a reflection of the real material conditions. Accordingly, the subjective conditions must also be changed.

The *Critical Resistance* conferences and follow-up organizing that continues to this day, can be seen as both the culmination of, and challenge to, the Human Rights Movement outlined in Paul Gordon Lauren's *The Evolution of Human Rights: Visions Seen* (2003). He traces the centuries-long efforts to establish and implement human rights protocols beginning with antiquity, extending through the eras of slavery, world wars, the Holocaust and related Nuremberg War Crimes Trials, to the establishment of the United Nations and contemporary attempts to apply the litany of standards delineated in dozens of United Nations conventions, covenants, declarations, treaties and protocols. Significantly, Lauren (2003) as well as Donnelly (2003), note that the human rights movement was consolidated in a collaborative effort between grassroots activists, non-governmental organizations (NGOs), academics, and informal groups and organizations involved in specific human rights campaigns throughout the world. This pragmatic approach distinguishes the human rights movement from the related state terror movement in political science, which is still primarily a descriptive academic enterprise by social scientists. According to Lauren, human rights theorists and workers always have had the goal of intervening in human rights abuse cases through very practical applications of theory (2003, 233).

Any attempt to deploy human rights discourse in US prison work, however, must be cognizant of the trifurcation of human rights theory and activism into isolationist, anti-communist and Marxist trajectories. With the consolidation of the Universal Declaration of Human Rights in 1948, many countries, including the US, immediately sought loopholes to subvert the strictures. Their main avenue for subverting enforcement in their own countries has been the national sovereignty clause enshrined in the United Nations Charter in Article 2 – which some countries claim protects them from international interventions into their domestic affairs, even in cases where human rights abuses are alleged. Other nations have further perverted the stated intent of promoting the rights of minorities in the Declaration of Human Rights and the UN Charter, to claim cultural exceptions. This conflict has emerged in every continent, but has been more fully explored under the rubric of the “Asian Values Debate.” The main trajectories revolve around claims that international statutes, such as the Universal Declaration of Human Rights, represent an “arrogant universalism”

that seeks to impose western values throughout the world, and equally vociferous retorts that such state resistance to the implementation of a human rights paradigm was based on a “morally vacuous relativism” designed to “justify nondemocratic practices” (Bell *et al.*, 2001, 4).

The US also has been one of the most vociferous nations in efforts to blunt enforcement of international human rights and anti-torture statutes within its borders or neo-colonial territories. All international treaties, covenants and declarations must be ratified by two-thirds of the US Congress after they are signed by the US, in order for them to become applicable domestic law. To date, the US has signed, but not ratified, the following international statutes:

- International Covenant on Economic and Social Rights (1976);
- International Covenant on Civil and Political Rights (1976);
- International Convention on the Prevention and Punishment of the Crime of Genocide (1951);
- International Convention on the Elimination of All Forms of Racial Discrimination (1969);
- International Convention on the Elimination of All Forms of Discrimination Against Women (1981); and
- International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987).

Furthermore, in May 2002 when President Bush had committed the US to invading Afghanistan and Iraq and already had begun the mass arrests and secret detentions of hundreds of Muslim males, under provisions in the first USA PATRIOT ACT, the US took the extraordinary step of removing its signature from the treaty establishing the International Criminal Court, which had been formed in 1998 to oversee the implementation of international laws enshrined in the above international treaties.<sup>12</sup> The US, in effect, had become a rogue nation. The US continues to hypocritically deploy the Geneva Conventions in its unsubstantiated critiques of supposed “human rights violations” in socialist countries, and to justify its invasions of Serbia, Somalia, Afghanistan and Iraq. These stratagems notwithstanding, human rights standards have become one of the principal operative discourses in the US and abroad since the implementation of the War on Terrorism (e.g. the war was predicated on the presumed existence of weapons of mass destruction that could target civilians.). Given that the US War on Terrorism has brought increasing international scrutiny and condemnation, even from US allies, the human rights paradigm may offer new opportunities for prison work today.<sup>13</sup>

One of the principal strategic mechanisms in the use of human rights and anti-torture statutes, is the “mobilization of shame” (Drinan, 2001), the exposure of specific violations through multimedia avenues and juridical mechanisms, that is, both the international courts and the court of public opinion, which sometimes can be even more powerful. Human rights scholars

12 Another motivation for the US withdrawal was the International Criminal Court’s preparations to levy damages against the US for having mined Nicaraguan harbors during the US-funded Contra War against the Sandinista government.

13 Cf. Risse and Sikkink (2002), who provide a history of the human rights movement, including its increasing

prominence in  
diplomacy.

and activist have achieved incredible successes since the Declaration of Human Rights in 1948, and these successes – as well as the failures – have enabled the mapping of an implementation model. Thomas Risse and Kathryn Sikkink (2002), identify the various stages that a human rights campaign is likely to follow, in what they call a “spiral model.” They observe five phases in the targeted state’s reaction:

- (1) repression;
- (2) denial;
- (3) tactical concessions (cosmetic changes);
- (4) prescriptive status (i.e., the state’s reference to human rights norms to describe its behavior); and
- (5) rule-consistent behavior.

There is a profound dissensus about the current US stage in the post-September 11 human rights campaigns targeting abuses in the War on Terror. It could safely be argued that the US could be in the midst of a combination of all stages, but definitely not the last. The ongoing efforts to enshrine torture techniques, extra-judicial imprisonment and outright mass surveillance, harassment, and selective repression within the US legal code, correspond to the definition by state terror scholar, George Lopez, of “national security ideology,” that is, “the justification for and maintenance of this patterned and persistent violence by government and against real and presumed adversaries [that] rests in the discrete, identifiable, and self-reinforcing dimensions of a shared mindset of governing elites” (1986, 75). Extending Lopez’s examination of Latin American dictatorships from the 1960s to the 1980s, I submit that the proto-fascist recourse to such an ideology to justify state terror, has transformed the US into the *de facto* “evil empire” it once ascribed to other nations, thereby making a resurgent US human rights movement even more urgently needed.

### **Towards a Pinta/o human rights praxis**

How can these past academic and activist interventions into US state terrorism and human rights violations be adapted to domestic prisoner campaigns in the era of the War on Terror? First, it must be noted that in this epoch of globalization, the first principle of counter-hegemonic organizing revolves around the axiom, “act locally, think globally.” Accordingly, Thomas Risse and Kathryn Sikkink (2002) argue that, “the diffusion of international norms in the human rights area crucially depends on the establishment and the sustainability of networks among domestic and transnational actors who manage to link up with international regimes, to alert Western public opinion and Western governments” (p. 5). They add that these “advocacy

networks,” needed to coordinate between domestic and international actors seeking to effect a sustainable domestic human rights regime, have three functions:

- (1) They put norm-violating states on the international agenda in terms of moral consciousness-raising. In doing so, they also remind liberal states of their own identity as promoters of human rights.
- (2) They empower and legitimate the claims of domestic opposition groups against norm-violating governments, and they partially protect the physical integrity of such groups from government repression. Thus, they are crucial in mobilizing domestic opposition, social movements, and NGOs in target countries.
- (3) They challenge norm-violating governments by creating a transnational structure pressuring such regimes simultaneously “from above” and “from below” (Brysk, 1993). The more these pressures can be sustained, the fewer options are available to political rulers to continue repression (p. 5).

While this formulation may appear quite obvious and necessary to many veteran activists, a global and local – or “glocal” – approach still does not inform all prisoner activism today. This is illustrated by the proliferation of legal clinics and institutes, such as the Innocence Project, a non-profit legal clinic founded in 1992 at the Benjamin N. Cardozo Law School in New York, and that seeks to uncover buried or missing evidence to prove the innocence of unjustly arrested, convicted, and imprisoned Americans, most of whom are minority males. Like other similar initiatives that have proliferated since the mid-1990s, the Innocence Project uses a campaign approach, by marshalling a network of resources and researchers to focus on select cases after their preliminary screening process. Only cases that have clear evidence of police or judicial error or misconduct, are taken. While these projects have achieved incredible and well-publicized success that has, in turn served to illuminate inherent injustices in the US criminal justice system, they nonetheless rely on appeals to domestic laws that are even more localized by their statutory contexts. No appeals are made to international bodies and the organizations take on only those cases where there is clear police or judicial misconduct or error – that is, the prisoners must be “innocent” of the specific crime for which they were incarcerated.

This does not mean that the “innocence paradigm” is useless to prisoners who do not deny their “guilt” in crimes that led to the incarceration that inevitably transformed them into victims of inhumane treatment and torture, and thus political, or rather, internationalized, domestic prisoners. This application of international standards in US prisons is especially relevant in the various “Supermax” prisons that are specifically designed for total surveillance and sensory deprivation. The legal expertise that such projects bring to bear on gross injustices are exactly the skills that need to be utilized, and expanded, towards

mastery of international statutes that, I argue, are now in play in all US prisons during the War on Terror. But we simply cannot rely on US courts as the principle venues for redress because, as the subversion of *Hamdi v. Rumsfeld* by President Bush and the US Congress reveals, even the US Supreme Court – the highest court in the land – can easily be emasculated by the coordinated efforts of the other two branches of government (with the military by their side), all of which are run by the governing elites that Risse and Sikkink (2002) identify as the agents of the national security rationale for state terror. To further illustrate the point, the Innocence Project would not have helped Eddie Sánchez, who was innocent before going to prison but who, by his own admission, was forced to commit and readily accept guilt in the crime of threatening the president, in order to escape a torturous lobotomy ordered for his previous resistance to the brutal regimes of prison.

However, if merged with a domestic version of the Amnesty International prisoner campaigns of the 1980s and 1990s, I believe the “innocence paradigm” might be effectively adapted to the War on Terror prisoners – which includes “enemy combatants” and, potentially, all prisoners in the ever-widening net of the US Carceral. It must be noted, of course, that Amnesty International “prisoner of conscience” campaigns usually functioned as thinly veiled extensions of western capitalist hegemony, by targeting prisoners in socialist states, with very little attention given to people imprisoned, tortured and disappeared by western hemisphere dictatorships supported by the US and other colonial powers. Furthermore, it was not until the late 1980s and early 1990s that Amnesty International began to address the death penalty issue in the US, and its critiques did not coalesce into charges of gross human rights abuses until the 2005 Amnesty International Annual Report identified the US military prison at Guantánamo Bay as “the gulag of our times.” This belated attention to US human rights violations notwithstanding, the Amnesty International “prisoner of conscience” model was highly successful at mobilizing multinational grassroots and institutional (e.g., university and mainstream media) support for select prisoners through its postcard campaigns and attendant teach ins and cultural programming, which highlighted the given nation’s human rights violations. That is, they effectively “mobilized shame” throughout the world to effect local change.

While, to date, Amnesty International has not embarked on a specific US prisoner of conscience campaign – which raises questions about its lingering links to western imperialist hegemony – its tactics have been utilized in important cases that illuminate the possibilities of this glocal US Carceral prisoner approach, specifically the case of imprisoned Black nationalist, Mumia Abu Jamal. The multi-media, multi-organizational, multi-national campaign to free Jamal has involved the mobilization of Hollywood actors, popular musicians, religious orders, grassroots media, French socialists, British anti-racists and a host of community activists who otherwise might never see eye-to-eye on any

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other issues. This coalescence has supplemented Jamal's own journalistic efforts to save his life, even though it has yet to result in a new trial or a pardon or even a sanction of the US, for state terror and human rights abuses directly linked to this case (e.g., the conflict of interest involving appeals judges, prejudicial trials, and hostile police-community relations, involving the Afro-centric MOVE organization of which Jamal is part).

So with these constraints in mind, what would a Pinto human rights and US Carceral human rights regimen look like? It might involve all of the above – that is, letter writing campaigns, post cards, teach ins, etc. – which continue to be staples of grassroots organizing. Of course, it also would further deploy technological innovations such as the internet and text-messaging in an international context. But in this global technologically saturated era, it must not become dependent on class-exclusive technologies that involve computers and expensive electronic equipment, but also must include spectacle. Barbara Harlow has discussed how the popular 1990 Special International Tribunal on the Human Rights Violations of Political Prisoners/POWS in the USA, held at Hunter College in New York, included lawyers, musicians, academics and activists. The Tribunal was highly successful in disseminating a broadened definition of “political prisoners,” as noted above. Part of the success was the presentation of ideological critiques in populist formats. This was done with even more wide-ranging success during the 500-year anniversary of Christopher Columbus's arrival in the Americas. The Columbus on Trial programming was a series of traveling tribunals that evolved into theatrical, cinematic, poetic and multimedia satire, farce and even scatological spectacle, all of which was used to deliver biting critiques of colonialism and its contemporary aftermath. The Chicano-Latino comedy Troupe, Culture Clash, even produced a highly popular theatrical production and related video skit, spoofing “discovery” discourses and their racist subtexts. Significantly, the idea behind the admittedly quite belated trial, was to empower a people's court to teach the public how to understand and address genocide and, more importantly, to seek redress and prevent a repeat of genocide in the future. Even though these locally produced, very loosely coordinated (and sometimes very uncoordinated) “trials” were not binding anywhere but in the court of public opinion, they both challenged hegemonic discourses, and, in many places and among many people, also supplanted them. They became part of the collective consciousness.

Such spectacles of shame and satire are not new in prisoner campaigns. And they are never enough in a world where even non-violent resistance movements inevitably rely on the violence of their enemies to succeed. We cannot afford to forget that Black South African prisoners were not released *en masse* until the South African apartheid government was soundly defeated on the battlefield by a multiracial, multinational coalition of Cuban, Angolan and Namibian troops in the battle of Cuito Canavale in 1988. The point is: the effort to

internationalize the domestic US prisoner movement also must involve a variety of alternative strategies and broader goals. A Pinto human rights regimen is just a start, and perhaps only a simple stop-gap measure. That is, even as I am calling for a hybrid Pinta/o human rights regimen, that already has proven to have some limited successes in previous incarnations, I must be guarded about suggesting a celebratory prescription for a “new” prisoner rights movement. The failure to save the life of former gang member, Tookie Williams, also serves as a sobering counterpoint to any overzealous prescription for such a glocal approach. Ramsey Muñiz, the former Texas Gubernatorial candidate for the Raza Unida Party, is now in his third decade of imprisonment on drug smuggling charges that today would not have yielded even a fraction of the sentence. That is, this internationalization project will not always work. Initially, it will rarely work.

Compounding the difficulties in this call to deploy international statutes in a domestic context, are governmental stratagem designs to divest international bodies of their jurisdiction within a given nation. As noted, the US withdrew from the treaty establishing the jurisdiction of the International Criminal Court shortly after it began its invasion of Iraq and its expansion of the US prison at Guantánamo Bay. The recent Israeli establishment of a team of international lawyers to protect its troops and government officials, in the event they are charged with war crimes for their 2006 invasion of Lebanon, or ongoing genocide against Palestinians, suggests that the glocal human rights struggle will be difficult. Indeed, both stratagems were done with the explicit intent of preventing the arrest of US and Israeli military and government officials abroad, as was done to former Chilean dictator Augusto Pinochet, who was arrested while on vacation in Spain in 1998. This danger is particularly real for American officials, given the practice of extraordinary rendition whereby citizens of other countries essentially are kidnapped by US troops and shuttled to secret prisons to be tortured. Such a scenario arose in 2007, when the Italian government indicted 26 CIA operatives – including one US Air Force Colonel – for their role in kidnapping an Egyptian national from Milan in 2003, and flying him to Egypt where he was tortured.<sup>14</sup>

<sup>14</sup> For details of this case, see Fisher (2007).

So while legal machinations and mass mobilizations may not be enough, they are necessary preconditions to renewing and remaking a domestic US Carceral prisoner rights movement. The key is to internationalize prisoner campaigns while keeping them local. We must show that the new US Carceral is in fact inhumane and in regular and deliberate violation of international treaties and norms. As the highly successful Critical Resistance activists have shown, there are simultaneous targets, from the massive prison building boom, to the torture regimens used in the supermax prisons. Another key is to pair the “political” and “politicized” prisoners with the “common” prisoners, as the conditions for both have steadily merged. The issue at hand is the treatment of

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human beings, not simply prisoners *per se*. Again, the aforementioned recent legislation and the ever-widening scope and ever-increasing draconian nature of the War on Terror are transforming the entire US Carceral, which is making all prisoners within it eligible for protections under international statutes. To be sure, it will be a big battle to seek enforcement of international statutes in the US, and one that will be punctuated by frequent and tragic defeats. The challenge, however, is to internationalize the US prisoner. Pintos and prisoners from the 1960s and 1970s have provided a useful platform for this new era of prison work.

### About the author

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