



“TWEAKING ARMAGEDDON”

THE POTENTIAL AND LIMITS OF CONDITIONS OF CONFINEMENT CAMPAIGNS

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CASE CITATIONS FROM INSIDE FRONT COVER

The First Amendment to the U.S. Constitution protects free speech. Regulations that permit the government or its employees to discriminate on the basis of the content of the message cannot be tolerated under the First Amendmentⁱ

Further, prisoners retain free speech rights. Thought control, by means of prohibiting beliefs, would not only be undesirable but impossibleⁱⁱ. Fact of confinement and needs of the penal institution impose rational limitations on prisoner free speech rightsⁱⁱⁱ, but those restrictions must have a "valid, rational connection" to "legitimate penological interests" not related to the content of ideas^{iv}. Regulations and practices can only be justified when the practice "furthers an important or substantial government interest unrelated to the suppression of expression,"^v.

This means you cannot legally suppress the expression of ideas. Prison walls do not serve to form a barrier separating prisoners from the protections of the constitution^{vi}. Core political speech is most-zealously guarded and there is a public interest "in having free and unhindered debate on matters of public importance--the core value of the Free Speech Clause of the First Amendment."^{vii}

Thus, exclusion of printed material on the basis of its political perspective amounts to free speech retaliation and discrimination, which is illegal^{viii}.

If you exclude printed material for an unlawful basis, or if you simply conjure up a false pretext for its exclusion, you have broken the law. The prisoner recipient of this mail has cause for bringing a civil rights action against you and has cause for gaining punitive damages-- which means money. You and everyone who permits this action, from your supervisor to the director of the prison system, may be named in those civil actions, and you may also be subject to termination from your employment. Because this primer is included in this mailing, you will not be able to claim you did not know your actions were illegal.

For these reasons, we ask that you conform to federal law and refrain from unlawful discrimination against the enclosed materials, permitting mail service of this literature that objectively meets all legitimate criteria set forth in prison regulations.

***See inside of back cover for citations of cases referenced here.**

i, Reagan v. Time, Inc., 468 U.S. 641, 648-49, 104 Sct 3262 (1984). "[T]he fact that society may find speech offensive is not sufficient reason for suppressing it. indeed, if it is the speakers' opinion that gives offense, that consequence is a reason for according it constitutional protection." Hustler Magazine, Inc v. Falwell, 495 US 45, 46, 108 Sct 876, 882. The government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable, U.S. v. Eichman, 496 US 310, 319, 110 Sct 2404 (1990). "[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." Police Dept. of Chicago v. Mosley, 408 US 92, 95, 92 Sct 2286, 2290 (1972).

ii, Jones v. North Carolina Prisoners Labor Union, 433 US 119, 97 Sct 2532 (1977)

iii, Pell v. Procunier, 417 US 817, 822, 94 Sct 2800, 2804 (1974)

iv, Turner v. Safely, 482 US 78, 107 Sct 2245 (1987)

v, Turner, supra

vi, Turner, supra

vii, Pickering v. Board of Education, 391 US 563, 573, 88 Sct 1731 (1968).

viii, Abu-Jamal v. Price, 154 F3d 128 (3rd Cir., 1998); X v. Blatter, 175 F3d 378 (6th Cir. 1999)

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The Potential and Limits of
Conditions of Confinement Campaigns

By
Rachel Herzing

EASTERN STATE PENITENTIARY WAS THE FIRST PRISON BUILT IN THE UNITED STATES. Opened in 1829, it was born from the work of reformers including Benjamin Rush, a Quaker who campaigned tirelessly against corporal and capital punishments, the standard of the day. Rush particularly opposed public punishments and believed that only through reflection and tarrying with one’s own conscience could a person be rehabilitated. Based in part on monastic practices and Quaker principles that emphasized anonymity, silence, and solitude to reflect on one’s crimes and repent, the penitentiary was constructed to hold prisoners in solitary confinement. Prisoners were confined to their cells with only a brief period each day during which they could exercise in an individual pen adjacent to the cell. To maintain the principle of anonymity, prisoners were assigned numbers to replace names, and wore hoods to hide their faces on the few occasions they were allowed to leave their cells. In fostering reflection and repentance, prisoners were permitted to labor or read The Bible. They were denied visitors or contact with the outside world. Constructed as a reform initiative within the punishment system, already its first year of operation the Eastern State Penitentiary’s regime was challenged by advocates and observers concerned about the long-term effects of solitary confinement on prisoners’ mental and physical health.

In July 2011, 182 years after Eastern State Penitentiary opened its doors, prisoners in the Security Housing Unit (SHU) of Pelican Bay State Prison in California initiated a hunger strike. Pelican Bay State Prison was opened in 1989 with over 1,000 cells specifically designed to imprison people in long-term solitary confinement. Pelican Bay was one

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of the first “supermax” prisons in the United States, and its arrival initiated a trend in constructing prisons explicitly for long-term solitary confinement. SHU cells are built for sensory deprivation. They have no windows. Fluorescent lights burn 24 hours a day. The 2011 hunger strike escalated throughout prisons across the state as a protest against the policies that determined allocation to the SHU, the length of detention, the terms under which prisoners would exit, and the conditions of their confinement.

The conditions against which the prisoners were protesting are remarkably similar to those found in Eastern State Penitentiary nearly two centuries earlier. The architecture of SHU cells is based on the same blueprint—halls of eight-by-ten-foot cells radiating from a central surveillance spine. Imprisoned people continue to be referred to by numbers rather than names. This is not to maintain anonymity, since online locator services allow access to a broad range of information about individual prisoners. Those imprisoned in the SHU are passed food through slots in otherwise solid cell doors. They are prohibited contact visits, and most prisoners in Pelican Bay are held a considerable distance from their loved ones in Southern California—a 12-to-13 hour drive—which results in infrequent visits. Imprisoned people in the SHU endure 22 and one-half hours per day in solitary confinement, with 90 minutes for exercise undertaken in isolation in a pen adjoining their cells.

There is one significant difference between administrative segregation in California State Prison’s SHUs and Eastern State Penitentiary. The average period of solitary confinement in the latter was two to four years, whereas today, in state and federal prisons, the period is significantly longer, with many held indefinitely. According to the California Department of Corrections and Rehabilitation’s (CDCR) statistics, the average SHU sentence is six years. Pelican Bay imprisons 3,500 people, 1,500 of whom are locked in solitary confinement. Of people imprisoned in the SHU, 544 have served between five and 10 years in solitary; an additional 513 have served more than 10 years, with 78 confined in the SHU for 20 or more years (Small 2011).

Over 2.3 million people are imprisoned in the United States, of whom approximately 80,000 are held in isolation units— with over 12,000 in California alone. As observers of those imprisoned in Eastern State Penitentiary noted two centuries ago, isolation has a negative

inherently inhumane system with the clear long-term objective of its elimination.

In part, the 2011 prisoner hunger strike solidarity campaigns succeeded because of the skillful combination of concrete demands made by SHU prisoners and a broader questioning of the rationale for imprisonment. The strikes provided a springboard to challenge the legitimacy of imprisonment used by the state as a weapon to respond to crises of poverty, racism, homelessness, and similar social inequities. They raised public debate in the media and in communities across the state and framed the inhumane conditions of confinement as an issue of wider social responsibility. The strikes and their attendant solidarity campaigns serve as examples of how abolitionists and reformers can join forces rather than operate at cross purposes.

The last two centuries of imprisonment provide clear evidence that claims for a “healthy prison” are untenable. No change to the discrete workings of the system can create health and well-being for those in its cross hairs. The means that make it increasingly possible for imprisoned people to be sufficiently strong must be supported to enable their resistance within prison walls, while simultaneously campaigning to erode the assumption that prisons are necessary institutions. Only by investing in meaningful education and employment, in programs that address interpersonal harm, substance abuse, and social conflict, and by promoting healthy, stable living environments will a world without imprisonment become a reality.

appropriate healthcare—and also because they illuminate the inhumane, deleterious environments in which prisoners are warehoused. Improved conditions allow imprisoned people to resist that inhumanity more effectively and vigorously, challenging the systems and regimes in which they are confined. They also make it possible to stay alive while living in a cage. These are significant, life-or-death advances.

A focus on conditions of confinement, however, also has the potential to limit possibilities for change. It can further entrench the popularly held assumption that imprisonment is a necessary evil. Inevitably, it can lend support to a liberal-reformist agenda proposing that if specific violations or abuses are addressed, prisons have the potential to function as positive, useful institutions. Consequently, reformers regularly describe the prison-industrial complex as a broken system. Far from being broken, however, the prison-industrial complex is actually efficient at fulfilling its designed objectives—to control, cage, and disappear specific segments of the population. Making small corrections to the system, in a phrase used by Ruth Wilson Gilmore, is akin to “tweaking Armageddon” (Gilmore 2004). Efforts to reform or improve the destructive, often fatal machine that is the prison-industrial complex may run the risk of exceptionalizing or isolating negative elements of the system, while normalizing its overall operation and underwriting its future. Focusing solely on the policing practice of racial profiling, for example, deflects attention from the actual function of policing in the maintenance of racial hierarchies. Similarly, granting winter caps (headgear) to SHU prisoners obscures the destructive force of imprisonment and its contribution to the social, and occasionally physical, death of those from the most racially, socially, and economically marginalized communities within US society.

For activists and organizers, campaigns focusing on conditions of confinement give momentum to the push for changes to the system while amplifying the humanity of imprisoned people. Giving names and faces to the harsh treatment and inhumane conditions in which prisoners are confined, these campaigns chip away at the system yet fall short of fundamentally questioning its legitimacy. Alternatively, campaigns to eliminate the system as a whole are often represented and criticized as idealistic and inconsiderate of the environments imprisoned people endure every day. What prison abolition campaigns generate, however, is the ability to make demands based on what is necessary rather than what is presented as possible. They develop the political space to confront an

impact on prisoners’ psychological and physical health. Considerable mental health research and evidence from human rights organizations demonstrate that sustained and long-term imprisonment in isolation units is torturous (see, for example, Haney 2003; Kupers 2006). Extended sentences in SHUs have been associated with increased rates of suicide and self-mutilation, visual and auditory hallucinations, insomnia, paranoia, and a host of other symptoms (Haney 2008). Rather than realizing reformers’ desires for nurturing an individual’s “inner light,” as the Quakers historically referred to it, solitary confinement is used systemically as additional punishment for those whom prison officials label “the worst of the worst” within an already brutalizing system.

People are sent to solitary for a range of reasons, including prison staff profiling them as gang members (such identification can be simply a result of the reading materials in a person’s cell or who they greet in the prison yard); resisting prison guards’ instructions; and attempting to teach or organize fellow prisoners. For those imprisoned people who continue to push boundaries, even within isolation units, many prisons have a punishment unit within their isolation units. Often referred to as “the hole,” punishment units are comprised of cells with no light, no beds, no toilets, and no access to personal belongings.

Ultimately, the 2011 California prisoners’ hunger strike spread to 13 prisons across the state and was supported by thousands of allies inside and outside prison walls, including international support. In July 2011, at the conclusion of the first round of strikes, over 6,600 prisoners had participated. They resumed the strike in October 2011, with over 12,000 prisoners participating across the state. Some prisoners remained on strike for months afterward. Their core demands have remained consistent throughout: an end to group punishment; abolition of the gang debriefing policy¹ and modification of gang status criteria; an end to long-term solitary confinement; adequate food; and expanded programming and privileges for indefinite SHU-status prisoners, including access to a weekly telephone call. On February 2,

1 Prisoners who have been “validated” as gang members by prison officials may be released from the SHU into the general prison population only if they “debrief”—renouncing their gang membership and providing information on other prisoners, especially information linking them to gang activity.

2012, Christian Gomez, in administrative segregation in Corcoran State Prison, became the first prisoner to die on hunger strike.

Widespread participation in the strike, together with strong organizing by advocates, prisoners' loved ones, and community organizations, has amplified the strikers' voices. Media coverage in newspapers, radio, and television as well as a dynamic, frequently updated campaign online has drawn international attention to the prisoners' circumstances and demands. Rallies, demonstrations, and weekly vigils have drawn supporters together. The energy generated by the strike has sparked new life in the US anti-prison movement, bringing movement elders and newcomers together. It has established an informed critique of police anti-gang profiling with sustained efforts to halt the impact of such profiling on imprisoned people. Additionally, despite continued efforts by the CDCR to pit prisoners against each other, the strike has forged solidarity across prisons throughout the system.

In October 2012, the Short Corridor Collective, the multiracial group of strike leaders imprisoned in Pelican Bay that initiated the 2011 hunger strikes, authored an agreement to end hostilities between racial groups in California prisons and jails. The agreement was circulated widely inside and outside prison walls and was understood as an extension of the campaign initiated through the hunger strike. The statement further called on imprisoned people throughout the prison and jail systems to set aside their differences and to use diplomatic means to settle disputes.

Although the primary focus of the strike has been on isolation units, the breadth of prisoner participation has served as a reminder of the poor conditions in which all prisoners are held. This was consistent with the recent US Supreme Court ruling that compelled the CDCR to reduce the state prison population by at least 33,000 prisoners due to lawsuits regarding unconstitutionally poor physical and mental health care for prisoners². This came after years in which the system languished under federal receivership for the same reasons³. The ruling was a

2 The California adult prison system, which was designed to hold about 80,000 prisoners, currently holds about 156,000 people. The court required the CDCR to reduce its population to 137.5% of design capacity.

3 *Brown v. Plata Opinion of the Court* (p. 11); text of the decision can be found online through a

decisive victory for lawyers and advocates who had supported lawsuits against the prison system, in some cases for over 20 years. News of the ruling was quickly transmitted throughout California's prisons, igniting false hope for many prisoners that they might be released.

The 2011 California prisoner hunger strikes were the largest US prisoner strikes in a generation. They breathed new life into a movement weary from the steady onslaught of killings, disappearances, and humiliations directed at imprisoned people in prisons, jails, detention centers, and locked psychiatric facilities. They forged solidarity across prisons, races, and similar divides constructed and exploited by prison officials. They compelled the CDCR to draft revised policies regarding gang identification and management and prompted state congressional hearings on solitary confinement. These are substantial victories in an era in which little headway has been made in challenging and dismantling the prison-industrial complex. This focus on the conditions of imprisonment brought hunger strikers into close resonance with a diversity of people internationally. Even for those who maintain that prisons are essential and that punishment within prisons should be harsh, revelations that prisoners have been denied human contact, access to mental and physical health care, and a decent, nutritious diet have had a significant impact. The realization that prisoners were being imprisoned for decades in a space no larger than an average parking space, with rare glimpses of sunlight, generated substantial support for the strikers.

Since the 2011 strike, conditions have not improved significantly for the people imprisoned in solitary confinement in the California prison system. Despite claims that it would revisit its policies on gang validation and placement in the SHU, the CDCR expanded its gang categories and made no meaningful changes to its SHU policies. Because of the CDCR's lack of progress in addressing concerns about the conditions of long-term solitary confinement, California prisoners initiated a new round of hunger strikes and work stoppages on July 8, 2013.

Campaigns aimed at improving conditions of confinement have been a mainstay in prison reform throughout the contemporary history of imprisonment. These campaigns are important because of the reforms they achieve—visitation rights, dietary changes, access to education, and

Google search.