

Introduction

The Black Muslims are undoubtedly the largest and most organized group ever to reside in American prisons. Their impact upon the field of corrections, particularly on prisoners' rights litigation, has yet to be adequately addressed.

—James B. Jacobs, “Stratification and Conflict among Prison Inmates”

For most Americans, “prison jihad” may sound frightening and conjure images of religious militants, bearded, turbaned, and under the spell of foreign radical networks. After all, former US Congressman Peter King spent several years in Congress on a crusade trying to convince lawmakers and the American public that Muslims in prison had fallen under the sway of Al-Qaeda and were heading toward extremist violence. He was not the only one. Reporters, commentators, and even scholars found themselves lured by the exciting prospect of prisons becoming a new frontier of the American “war on terror.” While this may be the immediate impression, there is nothing like that happening in American prisons. However, there has been a different type of jihad taking place, one that is real and identifiable. This is not the sensational jihad of headline media; rather, this jihad is uneventful and quiet by comparison and has persisted since the 1960s with hardly any public notice.

Despite little attention and recognition, Muslims in prison occupy a unique spot in the history of prison litigation, which is partly indebted to the influence of Islamic ideology. While the role of Muslims in this history has yet to be adequately addressed in scholarship, even decades after the dearth was recognized, less is known about how religion itself influenced

the course of prison law jurisprudence. This book attempts to remove some critical gaps in our understanding by chronicling a different type of prison jihad. In this jihad, the primary weapon is the ability to tell one's story to the world beyond, to narrate the pain, suffering, and unfairness that characterizes life for some behind prison walls. By situating Muslim efforts in their rightful place in the history of American prison law, the book takes the study of law and religion in new and unexpected directions and invites consideration of Muslims, not as villains who wish to harm the country, but as upholders of the most cherished principles that undergird American law and society.

While King was correct about the reality of prison jihad, he was wrong in propagating the idea that Muslims were under the sway of foreign terrorist operatives and embracing extremist violence. In time, his two main fears failed to manifest in any meaningful way, and he abandoned his campaign to paint Muslims as a unique threat to prison and national security. As mistaken as he was, King's crusades nonetheless caused unjustified antagonism and fomented Islamophobia. His crusade translated into real suffering in communities already reeling from the social and political backlash that followed the attacks of 9/11. His efforts have contributed to making the word "jihad" a dog whistle against Muslims and he is credited with causing much harm to Muslim communities.¹ King's misunderstandings about Islam in prison, as flawed as they were, were especially unfortunate because they overshadowed the righteous struggles that were taking place in court.

To describe this legal development in terms of "jihad" is no stretch of the imagination. The word jihad may best be understood as the duty to "struggle" or "sacrifice" in the path of God, to "make Allah's cause succeed," or to "strive" for the cause of Allah.² Sometimes passages in the Quran apply the term as authorization to fight in physical combat, however in other contexts, the concept is internal, with the believer struggling to overcome desire, temptation, and other forces that sway one from submission to Allah. Muslims have endured hardship, violence, and oppression by prisons and prison staff simply due to their faith. The Muslim response has not been physical combat or clandestine violence; rather, it has been to engage in various forms of struggle, including formal complaints, protests, and protracted litigation to resist their subjugation.

From this point of view, Muslims may be seen as caught in the middle of two struggles. On one hand, there is a genuine struggle with adversaries who have abused Muslims physically and psychologically and have deprived them of freedoms and rights. On the other, it is sometimes impossible to separate such struggles from the person since the very ability to succeed in personal struggle may be compromised by repression. Whether they are deprived of religious reading materials, access to religious leaders, or fellowship with other Muslims, these hardships bear directly on one's ability to succeed with internal struggles. Hence, Muslims in prison straddle both senses of jihad, the personal struggle of self and external struggle against an adversary.

By embracing normative channels to voice their grievances, Muslims in prison may be rightly seen as freedom fighters in a world where freedoms are scarce. It is a world where they are outmatched by the state at every turn—a modern-day David and Goliath story—where the victory is simply getting one's case heard before a court. However, in the post-9/11 era, Americans have viewed Islam as a fanatical religion. Muslims continue to be vilified by mainstream media and politicians and signaled out for differential treatment by the government. In the popular American imagination, Muslims remain untrustworthy, suspect, and ultimately, the most dangerous and despised religious group in the country.

Muslim Prisoner Litigation: An Unsung American Tradition recalibrates this imbalance and addresses gaps in scholarship that have been neglected far too long. One is to understand how religion influences litigation efforts at various levels of analysis; another is to recognize how litigation efforts advance and support the rule of law. Building on the work of scholars such as Edward E. Curtis IV, whose study of the Nation of Islam (NOI) explored how the religious community rooted its identity, political analysis, and cultural expression in Islamic thought and history, this work examines how these factors played out in the prison context. Simultaneously, the work supplements Garret Felber's central claims in *Those Who Know Don't Say* (2019). In that work, Felber theorized the prison litigation efforts of NOI members as a part of a multipronged strategy to resist the carceral state. As impressive and comprehensive as this account is, it speaks little about the significance of the community's political and religious ideas on those same efforts. In the pages that follow,

Muslim Prisoner Litigation offers a comprehensive analysis of this critical part of the puzzle.

The book describes how religion has influenced, and continues to influence, the course of prison litigation. One obvious way is when the legal claim itself centers on a religious issue. In some instances, the ability to practice religion or participate in religious activities may be the issue at stake. These instances represent a purely religious type of motivation behind the litigation, which may be broadly conceived as struggling on behalf of Islam or advocating for the cause of religion. Sometimes, litigation has been influenced by religious organizations on the outside and the organization of individuals and groups inside. In such conscious attempts to work together or file cases strategically, religion exerts influence through religious organizing. Examples include when Muslims in prison create templates and other documents to help others with court filings, or when modern groups like CAIR (Council on American-Islamic Relations) or Muslim Advocates orchestrate litigation efforts and represent individuals and class action plaintiffs in civil rights cases. At other times, religion influences litigation through religious ideology that motivates and authorizes an individual to take action in court, regardless of whether the case involves a religious claim. While initiating a court action might appear to the naked eye to be a secular or mundane affair, for some, the act of litigating can express the epitome of religious conviction, particularly when litigants understand their actions as a duty and ground their efforts within fundamental Islamic concepts of justice and equality.

These religious influences, however, do not exert their will toward political or military dominance. Instead, the litigation represents a civil struggle that relies on the law and courts to challenge prison conditions and abuse by guards. Recognizing the role of religion is imperative because this history of litigation challenges the Peter King-type narratives about Islam and undermines the persistent conflation of Muslims and violence. Examination of religion in this context tells a different story. In these confines, the force of religion transforms lawbreakers into lawmakers, who have helped to shape the prisoners' rights movement and who eschew violence as a means of resolving grievances.

In detailing these monumental efforts of Muslims in prison, this book sheds light on other interconnections between Islam and American pris-

ons. Even in the shadows of scant scholarly treatment, the efforts of Muslims have been central to the prisoners' rights movement in America. People in prison of all persuasions have benefitted from cases litigated by Muslims, which, in turn, have had positive influences on prison culture and prison administration. As one scholar has noted, early cases involving Muslim litigants "began the process through which the Muslims' litigation would develop a legal legacy of enhanced, albeit limited, constitutional protections for all prisoners."³ It is equally true that prisons occupy a special space in the annals of Islamic history in America. Conversion to Islam, for example, is prevalent in prison, particularly among African American males, and prison conversions contribute to the growth of Islam in America. It is also worth noting that Muslims are disproportionately represented in prison compared to their numbers on the outside. For example, nearly 10 percent of the federal prison population is Muslim, compared to an entire adult population of about 1 percent on the outside. These figures suggest not only that prisons house a relatively dense percentage of Muslims, but also that this figure represents a significant portion of the entire American Muslim population. Even more, this disproportionate population has an even greater disproportionate impact on litigation, representing some 30 percent of statutory religious rights claims brought in federal court.⁴ This legacy distinguishes Muslims from their religious counterparts in prison, and the raw magnitude of lawsuits puts Muslims in a class all by themselves.

In addition to detailing the primary legal struggles that have produced this legacy, *Muslim Prisoner Litigation* focuses on factors that drive Muslims to turn to courts in the first place. Like Muslims outside of prison who use courts to get divorces, sue for injuries, or push for religious freedoms, those in prison have proved willing to use courts to settle their grievances with prison staff, rules, and regulations. In many cases, the turn to the law is not by accident but instead represents the fruit of strategic and conscious efforts by religious leaders to use the courts systematically. It is also significant that many of these lawsuits are initiated by individuals who convert to Islam. A convert's zeal for a newfound religion may make converts particularly sensitive to curbs and restrictions imposed on religious freedom, especially when restrictions confound one's ability to engage in traditional practices. From this perspective, the prevalence of

conversion among Muslim litigants may be more causal than coincidental regarding factors influencing litigation efforts.

In detailing the actions brought by Muslims in prison, this book concentrates on one of the most underclass demographics in society and takes an “outsider” perspective to analyze litigation efforts. This “bottom-up” approach is a way to prioritize the views of those who endure oppression and discrimination. Analyzing this legal phenomenon through outsider jurisprudence offers a useful mode of interpreting religious repression by the state, and beyond, the response of filing a legal claim. Perhaps of all groups of people, Muslims in prison represent the most fringe of outsider identities. Intersectionally, they carry the identity of being Black, poor, a prisoner, criminal, gang member, and religious subvert. *Muslim Prisoner Litigation* relies on critical outsider perspectives to develop the notion that through litigation, Muslims engage in a type of spiritual activism that offers a means for marginal, outsider populations to resist oppression.

For those interested in religion and American Islam, this book will be fascinating, but it is equally a lesson in legal history. This story conveys that even the most destitute in society can rise collectively to challenge and change the law. Beyond these natural audiences, the book speaks to those interested in achieving a better understanding of the realities inside American prisons. As court opinions, documents, and other sources detail, the grievances litigated by Muslims dive deep into the miseries that Muslims have endured in prison for decades. For the reader, this excursion into the innards of the prison experience gives a voyeuristic look at a system that has taken state power and run wild. The research presented in this work offers stark documentation of state oppression from the view of those who have suffered it the most.

Data gathering on prison-based litigation produces several dominant motifs that are useful to the reader and the analysis of cases, court opinions, and individuals featured in this study. The motifs are also key for understanding the surveys and letters from Muslims in prison who have litigated cases. For this part of the research, commentary was obtained from individuals who were actively litigating or who had litigated a civil claim within the past five years. These voices are intended to complement the sentiments of litigants in the early decades of prison litigation. The surveys inquire into the motivations for litigation and allow for open-

ended responses to questions about the influences of religion on the decision to litigate. While these themes may not be self-evident, they speak to unmistakable trends and provide important conceptual markers for this work.

NATION OF ISLAM FOLLOWERS SPARKED THE MOVEMENT

This work is consciously unbalanced when it comes to its focus. Indeed, much of the evidence and details concentrate on the NOI since the phenomenon of Muslim prison litigation is largely grounded in the efforts of NOI members. Early efforts by NOI members legitimized Islam behind bars, made the Quran standard in prison libraries, and paved the way for further litigation efforts. In the earliest lawsuits, converts from the NOI were the dominant force in creating space for Islam in prisons. Most early claims were made by adherents of this group, who, along with others, were collectively labeled “Black Muslims.” It is safe to say that followers of this denomination sacrificed and suffered the most to make Islam a legitimate religion in prison.

In these early years, the face of a Muslim in court was almost always Black. However, in the post-9/11 era, this face has been changing rapidly. Muslim litigants are more diverse in terms of both race and religious denomination, particularly as Sunni, Shia, and other adherents have increasingly brought claims in court, including from members of the American Society of Muslims, Al-Islam, local mosques, and other African American-based organizations that have continued litigation efforts. Trends in immigration contribute to the diversity and denominations of Islam in America, with influxes of Muslims coming from African, South Asian, and Middle Eastern countries. With these social developments, the assumption that a Muslim litigant is a Black NOI member is not as likely as in previous decades.

The NOI is central to the origin story of Muslim prison litigation, which sets a critical tone for litigation as a matter of religious principle in a way that would resonate with later generations. Muslims of all persuasions would look to litigation in earnest and continue the NOI’s work into the