

Muslim Commitment in North America: Assimilation or Transformation?

Kathleen M. Moore

The purpose of this paper is to examine the current debates within the American Muslim community regarding the expression of Muslim religious commitment in American life. The size of the community is now estimated to exceed four million (Stone 1991), and the number of Muslim immigrants entering the United States has more than doubled since 1960. During the same period, the number of American converts to Islam has also risen. Both the growth of the Muslim community in recent years, in the United States and worldwide, and the increasing number of Muslims in "diaspora" as Muslim labor migration continues, which has resulted in a heightened sense of "minority" status among Muslims (Haddad 1991), have raised many crucial questions concerning religious expression: Should Muslims remain marginal to secular power relations in accordance with the teachings of classical Islam or adopt a strategy of assimilation which, in the American context, includes the pursuit of claims to equal protection under civil law? What happens to a religious community, such as the Muslim community, as it develops the institutional organization it needs to preserve its identity in a non-Islamic society? Can it still remain open to the source of inspiration and spiritual guidance located in the fold of the Islamic world? Or does the locus of authority shift? Changing circumstances require adaptation, and yet that adaptation involves the risk of losing the connection to the heart of the original insight and culture.

Conflicting responses to these and related questions raise issues of self-representation and lifestyle. The resulting theological and ideological debates within the Muslim community itself provide and refine various models for Muslim minority life in a non-Islamic environment. They also illustrate the tension between alienation and integration.

This paper proceeds in three parts. The first provides a description of the American Muslim population. This is followed by an examination of the influences of American legal institutions on Muslim corporate life. The third part presents research in progress on the contemporary discussion of models for Muslim minority life and draws upon Muslim periodical literature and books devoted to this topic.

A growing body of literature has been developing over the past two decades, one that challenges the "Anglo-conformity" of American culture manifested in its official literary traditions and cultural symbols (i.e., Takaki 1979, 1987). Recently, there has been a concerted effort to re-configure the teaching of American social history to include a broader range of materials reflecting diverse cultural perspectives and individual points of view. The thrust has been to expand the focus beyond our European heritage in order to comprehend our Native American, African, Asian, and Hispanic antecedents as well. This results, in part, from a fundamental shift in our views of race, class, and gender, the impetus of which was apparent in the social movements of the 1960s and 1970s. These changing social values have had a dramatic impact not only on our understanding of who we are, but also on our expectations about rights and entitlement. A heightened consciousness about racial reality and, perhaps less centrally, religious freedom, as well as expectations about the utility and protection of the law, have influenced the ongoing debates about civil liberties, tolerance, and law in a manner that both suggests and inhibits behavior (Scheingold 1974; Merry 1986; Macaulay 1987). They have, in no small part, also affected the emergence of a contemporary minority consciousness among Muslims in the United States and a transformation of their self-identification.

The first part of this paper will extend the discussion of American "multiculturalism" by providing a general historical account of the Muslim presence in the United States. From its earliest beginnings, North America has been multiethnic and multiracial, yet we are only beginning to explore the extent to which we are culturally plural. Articulating the Muslim experience helps to show not only the cultural but also the legal complexity of American society, and the salience of legal pluralism, by pointing to the interactions between a significant religious minority—having its own normative code (Islamic law) as a potential alternative to the American juristic model—and the legal institutions of the state. The fact that this alternative normative order is itself rich in historical, cultural, and linguistic variations and has been shaped by centuries of conquests and migration adds to the complex texture of this experience as Muslims seek to live out their faith in the American context.

By looking at the interactions between the Muslims and the legal institutions of the state, we can begin to see the multiple layers of legal

organization, or multiple legal spheres (a concept discussed in Merry 1988), operative in American society. In short, this paper draws upon the experience of a particular liminal group to illustrate the interplay of local, national, and international factors in constituting a pluralistic national identity that is both internally and externally differentiated.

American Muslims' decisions whether and how to maintain a corporate life in a non-Muslim society have been viewed differently by Muslims over time and through different types of contacts with American institutions. The second part of the paper deals with the influence of the dominant culture's institutions in constituting the claims of Muslims. The focus is on the gradual transformation of American Muslims' perceptions and self-identification coaxed by the ways civil law has penetrated and come to dominate their daily lives. In taking a historical perspective, this section relates, through specific examples, how lives are reinterpreted in the language of the courts. It illustrates the "culturally productive role" (Merry 1991) of law by showing how the normative ordering of Muslim life in the United States has replicated certain aspects of the dominant legal order and where legal mechanisms have been subverted by those at the margins who wish to maximize their religious freedom.

In recent years, events in the Middle East have piqued the interest of people in the United States about Islam, its teachings, and the international phenomenon called the "resurgence" or "revival" of Islam. It has also generated a renewed interest among Muslims living in the West, including the United States, in deepening their own faith, a development which has led to an increasing participation in religious activities in mosques, Islamic centers, and other types of Muslim associations. Where before many immigrants and their descendants identified themselves primarily on the basis of their occupations, national origins, or other variables, now an Islamic identity is becoming increasingly salient.

The third section of this paper will set the framework for the future investigation of Muslim interpretations of Islam to address the conditions facing Muslims living in dispersed communities and as minorities. The objective is to show that what Muslims are writing about on the issues of identity, tolerance, pluralism, and rights in contexts that may seem remote to American society, does offer a basis for a dialectic and resistance within the American Muslim community.

Muslims in the United States

A diverse assortment of faiths now claims a sizable number of American religious adherents. One source estimates conservatively that the "non-conventional" faiths (i.e., Muslims as well as Orthodox Christians, Buddhists, and Hindus) comprise 4 percent of the total American

population, an increase from 1 percent in the 1950s (Roof and McKinney 1987). Among these, the Muslim community is growing the fastest, at a rate that is expected to make it the second largest aggregate religious community in the United States by the twenty-first century, when it will have nearly doubled its estimated 1980 size (Haddad 1986¹). The rate of growth, combined with the recent wave of religious resurgence in the Muslim world and the popular association in the United States of Islamic revival with international terrorism, presents a challenge to the shape of American society and its commitment to the principle of tolerance.

A prevailing misconception held by many in the West and sustained in the western media is that Muslims and Arabs are synonymous. However, American Muslims are not restricted to a particular national origin, for they represent a microcosm of the varied and multinational global community of Islam. An accurate portrait would show that the Muslims in North America come from diverse national origins and cultural backgrounds representing the Arab world as well as South Asia (i.e., Afghanistan, Pakistan, India, Bangladesh, the Maldives, and Sri Lanka), Southeast Asia (i.e., the Philippines, Indonesia, and Malaysia), as well as Europe, Africa, China, Iran, and Turkey. In 1980, moreover, indigenous African American Muslims were estimated to comprise roughly 30 percent of the total Muslim population in the United States (Stone 1991).²

Various scholars have shown that the first Muslims in the United States were brought from Africa to serve as slave labor. After their arrival, many were forced to renounce their African/Islamic beliefs and names on pain of death (Kly 1989; Turner 1986; Austin 1984; Lincoln 1973; Essien-Udom 1962; Davidson 1961). An estimated 30 percent of Africans enslaved in the United States were Muslim. A small number of enslaved Muslim Africans were taken to Canada (Kly 1989). Severed from their religious and cultural origins, African Americans gradually lost their Islamic heritage, which would be "reconstituted" only in the 1930s as a result of developments in Black nationalist thought. The appeal of Islam in the African American community continued to grow and was strengthened during the 1960s, a time that witnessed the flourishing of Black nationalism.

The institution of slavery destroyed almost all vestiges of indigenous culture, including Islamic culture, among enslaved Africans in the United States. As Haddad (1986b) notes, this meant that it was primarily the task

¹According to Haddad (1986a), if the American Muslim community continues to grow at its present rate, it will exceed six million and become the second largest religion—smaller than Christianity but larger than Judaism—by the year 2015.

²Stone (1991) states that "the total number of Muslims living in the United States in 1980 was estimated at 3.3 million, or roughly 1.5% of the 1980 U.S. population."

of early immigrants from the Muslim world, who began arriving in small but growing numbers by the late nineteenth century, to establish firmly the faith as an American phenomenon.

The pattern of Muslim immigration consists of five periods. From 1875 to 1912, most Muslim immigrants came from the Arabic-speaking provinces of the Ottoman Empire: Syria, Jordan, Lebanon, and Palestine (Haddad and Lummis 1987; Karpat 1985). For the most part, those who stayed in the United States settled in urban communities, even though their backgrounds were primarily rural. The second and third periods, from 1918 to 1922 and 1930 to 1938, respectively, consisted mainly of relatives, friends, and acquaintances of earlier arrivals. It also included a very small number of immigrants from other parts of the Middle East and Eastern Europe (Haddad and Lummis 1987). Many who came from 1918 to 1922 had experienced the disruptive effects of World War I. Some were enticed to immigrate to the United States by reports of opportunities from returning immigrants, letters from immigrants, or Americans (including missionaries) visiting the Middle East and the Balkans.³

The fourth period, from 1947 to 1960, was more diverse as regards national origins. It consisted of immigrants from the Middle East plus South Asia, Eastern Europe, Central Asia, and other parts of the Muslim world. Displaced by the upheavals of the post-World War II postcolonial era, many arrivals differed from their predecessors when it came to social class: they were less likely to be unskilled or rural, for they were the children of the indigenous ruling elites and had been westernized before they arrived in the United States (*ibid.*). Some came as refugees, to pursue graduate study or advanced technical training, or for specialized work opportunities (*ibid.*; Askari and Cummings 1977).

The fifth, and quantitatively the largest, period of immigration began in 1967 and continues until the present. Its volume has been affected by the relaxation of immigration quotas and the demands of the labor market. According to Carol Stone's (1991) study of immigration and census statistics, the number of Muslim immigrants has more than doubled in an eighteen-year period, "increasing from 4 percent of all immigrants in 1968 to 10.5 percent in 1986." Most of these arrivals share the socio-economic background (i.e. middle class, highly educated) of the fourth period. Many come from Pakistan and Iran. An increase in the number of Afghans, due to the recent war in their homeland, was also noted. Very few Muslims are immigrating to the United States from sub-Saharan Africa and Europe (*ibid.*).

³For details on the causes of chain migration of the Arabic-speaking community, see Hooglund (1987) and Tumeah (1965).

Efforts to preserve the faith and pass it along to their children led Muslim immigrants to create institutions as early as the turn of the century. Collectively, Muslims began to create their own linguistic and social organizations and places of worship primarily for the purpose of educating the second generation, the children of immigrants, in the languages and customs of the "old world." Small Muslim groups were founded to maintain social and cultural ties within the fledgling Muslim community: in Ross, North Dakota, as early as 1900 and in Cedar Rapids, Iowa, in the early 1920s. Islamic associations were established in Highland Park, Michigan, in 1919, and in Detroit in 1922. A Young Men's Islamic Association was founded in Brooklyn in 1923. Mosques were built for communal prayer in Highland Park, Michigan, in 1919 (dismantled within five years); in Ross, North Dakota, in 1920; in Michigan City, Indiana, in 1924; and in Cedar Rapids, Iowa, in 1934. However, many of these organs of collective life vanished as individuals involved were integrated into the dominant society or returned home. Eventually, these early Muslim communities dissipated (Karpat 1985).

Interest in corporate life was revived among Muslims in the United States by the dramatic growth in Muslim immigration following World War II. The majority of arrivals in recent years have university degrees and were attracted to the United States by professional career opportunities. While economically integrated into the middle class, many have shown a different orientation toward Islam than their predecessors and have sought more active religious leadership and guidance on how to maintain an Islamic lifestyle in a non-Islamic society (Haddad and Lummis 1987). In addition, a growing number of foreign students have come to American universities and, in the course of their education, have established Islamic student organizations that help to renew the discussion among Muslims—both visitors and those who stay permanently—about developments in the Islamic world and contemporary trends in Islamic thought.

The perception shared by many recent immigrants is that Islam is a comprehensive ideology as well as a complete way of life with legal norms on a variety of issues including dress, diet, hygiene, sex, marriage, family, worship, work, and wealth and charity. The function of the mosque and Muslim associations, then, is seen as not being limited to meeting the needs of the Muslim community only, but as a means of outreach to create an ideal community. Spiritual growth, rather than cultural preservation, has become a high priority, and Islamic organizations have come to stress the responsibility of each individual to be involved in *da'wah*, defined as providing an Islamic witness or engaging in missionary activity to the non-Muslim community for the purpose of converting individuals to Islam.

A comparison of the credo of the first umbrella national Muslim association, formed in 1953, the Federation of Islamic Associations of the United States and Canada—the Qur'anic injunction to "hold fast to the rope of God all together and do not disperse"—to that of the current umbrella organization, the Islamic Society of North America—the Qur'anic injunction that "You are the best community raised up for humanity, enjoining what is right and forbidding what is wrong"—illustrates the changing perception of the appropriate role of Muslims and their institutions in North American society. While the former reflects a concern for cultural survival, the latter prescribes an active role, promoting the Muslim community as an exemplar that takes seriously the Islamic "mission" to offer the cure for the ills besetting American society.

Parallel to the developments in the immigrant community, and for many years isolated from it, one portion of the African American community constructed a particularistic Muslim identity. Conversion to Islam, especially within the African American community, has been primarily a twentieth-century phenomenon and is an important factor in the history of Black nationalism. During the postcolonial period, when several African nation-states achieved independence (including seventeen in 1960 alone), the popularity of indigenous American Black nationalism was invigorated. Africa became the symbol for liberation, a model for Black Americans' efforts to deal with their own problems of daily existence in America. Islam, similarly, stood for African heritage. The possibility existed for every African American that he or she descended from Muslim roots truncated by slavery, and Islam thus became a source of Black pride and self-knowledge.

Moreover, as it was taken up by such leaders as Noble Drew Ali, founder of the Moorish Science Temple in 1913, and Elijah Muhammad, founder of the Nation of Islam during the 1930s, Islam was a means of rejecting Christianity, which was perceived as a racist religion belonging to white people and "as the root of their oppression in its glorification of suffering and promise of redemption in the hereafter" (McCloud 1991). Both of these movements constructed what many immigrant Muslims have judged to be a "deviant" or nominal variety of Islamic faith based more on their leaders' understandings of social justice than on an orthodox interpretation of Islam. What is important, however, is not their failure to conform to the basic doctrines of Islam, but the function Islam served as the negation of Christianity and the focal point for the development of a new identity.

In essence, the Moorish Science Temple movement of Noble Drew Ali was a religious nationalism that stressed the "oriental" identity of Black Americans, calling them "Asiatic" or "Moorish," and claimed that

Islam, the dominant religion in Morocco, is the original religion of the Black "race." The main objective of the Moorish movement was to provide a source of racial pride by destroying the dominant culture's claims about Black inferiority while emphasizing obedience to, and membership in, the United States. The Moorish movement spread to several northern cities and survives today in such places as Philadelphia and Detroit.

The Nation of Islam, the largest organization to generate mass appeal based on its identification with Islam and Black nationalism, emerged out of the Depression of the 1930s as "a protest directed at the whole value-construct of the white Christian society—a society in which the Black Muslims feel themselves (as Blacks) an isolated and unappreciated appendage" (Lincoln 1973). Its founder and spiritual leader, Elijah Muhammad, born Elijah Poole in Georgia in 1876, was influenced by the current of Black nationalism represented by Garveyism. A follower of a mysterious figure in Detroit called variously W. D. Fard, Wali Fard, Wallace Fard, W. F. Muhammad, and Fard Muhammad, by 1934 Elijah Muhammad had emerged as the leader of "The Lost-Found Nation of Islam in the Wilderness of North America" (a.k.a. the Nation of Islam). He expounded the unique body of doctrines and practices associated with the movement until his death in 1975. Under his leadership, Fard was deified and became identified as "Allah," and Elijah Muhammad became his Prophet or "the Messenger of Allah" (Lincoln 1973). Islam was declared the natural religion of the Black man. Muhammad's mission was to reveal the truth about white men, called "blue-eyed devils," to expose the "tricknology" by which the Black man continues to be subjugated, and to reconstitute the Black nation. The Nation's official newspaper, *Muhammad Speaks*, spread the leader's teachings to an expanding audience.

While the Nation of Islam was never a "back to Africa" movement, Elijah Muhammad preached that "the white man's home is in Europe" and that "there will be no peace until every man is in his own country" (ibid.). Under his leadership the Nation sought self-determination in North America, not Africa. A sense of entitlement to a "nation within a nation" ceded from white America and the authority of the white man, earned through slavery, is evident. Blackness became the ideal, and self-respect, economic independence, and ethical integrity were vaunted as essential goals and necessary preconditions for freedom.

Elijah Muhammad was successful in creating a tightly-knit organization with established rituals and worship. The ritual requirements were defined as five daily prayers, proper ablutions before prayer, total abstinence from pork, tobacco, and alcohol, and attendance at the temple twice a week (ibid.). Over the next few decades, the Nation of Islam spread to all major American cities and found its greatest numbers in

urban Black ghettos. Its growth coincided with the enhanced popularity of Black nationalism as a whole in an era of African independence and civil rights struggles at home. Its success has been attributed to its promise of "a new identity, a feeling of 'somebodiness' denied by the dominant culture" (McCloud 1991). In Lincoln's words, "the ultimate appeal of the movement . . . is in the chance to become identified with a power strong enough to overcome the domination of the white man—and perhaps even subordinate him in return" (Lincoln 1973).

Distinguished from the "orthodox" Islam of Muslim immigrants by their beliefs (i.e., that a Black man named Fard was God in the flesh, that Elijah Muhammad was His prophet, and that the white man is Satan), members of the Nation of Islam adhered to doctrines about Black supremacy and suspicions of white America and its institutions at least until the death of their charismatic leader in 1975. Following Elijah Muhammad's death, however, the Nation's Black nationalist ideology was eclipsed partly as a result of long-standing divisive internal disputes. Malcolm X, once a protégé of Elijah's and a vocal minister in the Nation of Islam until his expulsion in 1963, stood at the center of these disputes. First he revealed Elijah Muhammad's marital infidelity. Then shortly after his expulsion, ostensibly for saying about the John Kennedy assassination that "the chickens have come home to roost," Malcolm X traveled to Makkah to perform the pilgrimage and was confronted with an interpretation of Islam dramatically different from the one preached by Elijah. Reflecting on what he learned in Makkah and on a subsequent trip to Cairo, Malcolm X ultimately eschewed the Nation's Black nationalist doctrines in favor of the ideas he had discovered through his exposure to a transnational, multiracial, and polyglot community of worshipers. He contested Elijah's teachings in public and introduced an alternative understanding of Islam to the Black American community, one that paid greater attention to the canons, jurists, and theologians of the Muslim world. The effect was to challenge the highly personalistic authority of the Nation's leader by gravitating toward others whose authority claims rested on their knowledge of the orthodoxy of the religion and connection to the focal point of Islam.

In 1965 Malcolm X was assassinated, allegedly by members of the Nation of Islam, for his transformed religious beliefs. This event had serious repercussions within the movement, and some members broke away. When Elijah Muhammad died ten years later one of his sons, Warith Deen Muhammad, who had been a close friend of Malcolm X and who also had been expelled from the movement but "rehabilitated" by his father, assumed the leadership of the Nation. He changed its name, first to the American Bilalian Community, then to the World Community of Islam in the West (1976), and, finally, to the American Muslim Mission

(1980) (Marsh 1984). He introduced several changes to the rituals and doctrines in order to bring the movement in line with the "mainstream of Islam" (Haddad 1986a). Racist doctrines were eschewed in favor of orthodox Islamic teachings. In 1985, the American Muslim Mission was absorbed into the general Muslim community in the United States (ibid.), the formal structure was decentralized, and its members were no longer known as Black Muslims, but as Muslims.

Warith Deen Muhammad, who had studied Arabic, the Qur'an, and Islamic law, sought to "renew" the faith in the United States. In accordance with the practices of the Muslim world, he adopted Arabic terms for Islamic institutions: ministers became imams and temples became *masjids* or mosques. He transformed the movement into something "acceptable to the Muslim world" (Ahmed 1991), and international recognition of the movement as a *bona fide* Muslim organization, as well as relations with American Muslim immigrant groups, soon followed. The history of the Nation of Islam was revised so that the period of Elijah Muhammad's leadership, characterized by doctrines of separatism and Black supremacy, became known as a necessary transitional stage, the crucial period of the Nation's establishment and growth at a time when the African American was liberated from the mentality of subjugation (Muhammad 1982). Under Warith Deen's leadership, closure was brought to this period and a moderate accommodationist stance was developed. Less stress was placed on the movement's separatist aspects, and greater emphasis was placed on patriotism, including military service (Jones 1983; see also *Muslim Journal*, formerly *American Muslim Journal*).

However, not all members of the movement agreed with the changes introduced after Elijah's death. A schism developed, and approximately ten thousand members left to follow Minister Louis Farrakhan, who continues to preach Elijah Muhammad's doctrines and maintains an organization called the Nation of Islam. But the popularity of Black separatism declined during the 1970s, when ideas about integration, promises of greater opportunities in education and employment, and the power of state law as a potential tool for creating social justice gained currency and decreased the Nation's appeal. The constituencies and approaches of Farrakhan and Warith Deen Muhammad differ, and a significant schism continues to exist.

The dynamics of the African American Muslim community's ideological and philosophical conversion, resulting in its conformity to more "orthodox" beliefs and practices after the death of its charismatic leader, are complex. While much of the immigrant Muslim community is middle class, many Nation members are from the lower socioeconomic bracket. The "orthodox" Muslim groups in the United States, composed of immigrants and their descendants, by and large ignored Black Muslims

prior to 1975. This rift has been mended, and beginning in 1985, immigrant organizations have made greater efforts to embrace African American Muslims. The Nation's acceptance as part of the global Muslim community, rather than as strictly a Black nationalist movement, was demonstrated in a dinner hosted by the Islamic Society of North America at the Muslim American Political Awareness Conference (Washington DC, 5 August 1989), which was held to honor the memory of Hajj Malik al Shabazz (a.k.a. Malcolm X).

While such mainstream Muslim organizations as the Islamic Society of North America have been instrumental in helping African American Muslims "integrate," by providing guidance and Islamic educational materials in English, the African American community has offered the immigrant community its own experience with American legal institutions. Based on their encounters with state law, which will be described in part below, the African American Muslim community became familiar with the intricacies of law and forms of power (Jacobs 1983; Irwin 1980). What the African American Muslims bring to the general Muslim community in the United States is a particular knowledge of, and dialectic with, the American legal system characterized by their racial, as well as religious, minority status. Thus, while we can trace the transition of the Nation of Islam from "a revolutionary-oriented movement" (Jones, 1983) to one seeking greater connectedness with the global community of Muslim believers, called the *ummah*,⁴ we can also see in the same process the introduction of a peculiarly American legal consciousness into the broader Muslim community through the incorporation of what is sometimes called the "indigenous" Black Muslim experience. We shall examine the consequences of this development below, paying particular attention to the law's ideological role and its power to construct ways of thinking about rights.

Muslims and American Law

In 1984, a Philadelphia substitute teacher by the name of Alma Delores Reardon filed a discrimination suit against the city's public school system because three school principals, on separate occasions, had told her she could not teach while wearing Islamic attire. A devout Muslim, Reardon held the religious conviction that Muslim women should wear a concealing head scarf and a long, loose dress in public. She viewed keeping her body covered as a vital aspect of her religious observance. After a bench trial, U.S. District Court Judge James Kelly ruled

⁴"Ummah" is the Arabic word for "community," but it has distinct religious connotations and typically refers to the universal or global Muslim community.

in her favor and against the school board and awarded her five thousand dollars in back pay. Six years later, in August 1990, the 3rd U.S. Circuit Court of Appeals in Philadelphia overturned that decision based on an 1895 Pennsylvania law banning the wearing of religious clothing by teachers (the Pennsylvania Garb Statute). Judge Walter Stapleton ruled subsequently that a Muslim teacher cannot wear religious attire to school since it poses "a significant threat to the maintenance of religious neutrality in the public school system" (*U.S. v. Bd. of Educ. of School District of Philadelphia*, 911 F.2d 822 [3rd Cir. 1990] at 894). Since it might expose school administrators to the risk of criminal prosecution under the state's Garb Statute, "accommodating Ms. Reardon's desire to express her religious commitment through her attire would have imposed undue hardship on the School Board" (*ibid.* at 891).

While this might appear to be a free exercise case, the legal issues were framed in terms of statutory, rather than constitutional, law. Legal action was brought under Title VII of the Civil Rights Act of 1964, which protects employees from dismissal based on religion (*ibid.* at 886). The appellate court's analysis of Title VII's definition of religion, though, points out that there is an explicit exception, which states, in effect, that if an employer can prove his/her inability to accommodate a religious observance or practice without undue hardship, then the observance or practice at issue is not "religion" within the meaning of Title VII (*ibid.*). In light of this, as a Title VII case, the dispute between Reardon and the school board turned on the question of whether the school board could show its inability to accommodate Reardon's religious attire without "undue hardship." This was decided in favor of the school board. In effect, then, Reardon's expression of her conviction through her attire was not protected by law as religious in nature.

Why wasn't this a constitutional issue? Again, in its legal analysis, the court opinion cites a similar case arising from an Oregon state law prohibiting public school teachers from wearing religious attire in the classroom, *Cooper v. Eugene School District*,⁵ which was based on a free exercise clause challenge. In the *Cooper* case, the teacher was a Sikh rather than a Muslim. *Cooper* appealed to the Supreme Court, but the Court dismissed her appeal "for want of a substantial federal question" (*ibid.* at 888). Based on this summary disposition of *Cooper's* first amendment claim by the Supreme Court, the appeal court in *Reardon's* case concludes that the Court "could not have decided to dismiss for want of a substantial federal question without concluding that *Cooper's* free exercise claim was without merit" (*ibid.* at 889). Since the *Cooper* case

⁵301 Or. 358, 723 P.2d 298 (1986), *appeal dismissed*, 480 U.S. 942 (1987).

is "factually indistinguishable" (ibid. at 887) from Reardon's, what applies to Cooper is true also for Reardon.

This explains, in Judge Stapleton's opinion, why the issues were not framed as a First Amendment challenge. However, there is a substantial body of case law, arising from the prisoners' rights movement of the early 1960s to the mid-1970s, that treats specifically the issue of accommodating Muslim practices and observances in public institutions, state and federal prisons. It is this law that set precedents for the free exercise rights of Muslims and helped to create certain expectations within the Muslim community about what is permissible and fair. Such expectations surface from time to time in comments in the Muslim press in the United States. For instance, commenting on the appellate court decision to overturn the lower court ruling in Reardon's case, the *Muslim Media Watch* wrote: "Free country, isn't it?"

The emergence of an African American Muslim population in prison first raised the question, during the 1960s, of whether Islam is a religion worthy of constitutional protection in the federal courts. The responsiveness of the courts, as well as the Muslims' use of the law, were shaped by a variety of factors that impinged not only on the changing role of the courts but also on the developing Muslim identity in North America. Specifically, the multiple historical contexts of the prisoners' and civil rights movements, evolving race relations, and the rise in Black nationalism had a bearing on the legal status of Islam and Muslims.

I have examined the court record of the First Amendment cases launched by imprisoned Muslims to challenge prison policies elsewhere (Moore 1991) and therefore will provide only a brief summary here as a basis for discussion of the influence of social trends and ideas about "rights" on the litigants themselves; specifically, on the ways in which thinking about law and the language of the courts penetrates and restructures strategies of resistance.

The 1960s are recognized as a watershed decade in the development of prisoners' rights, which was "part of a larger mosaic of social change" (Jacobs 1983). The issues raised by prisoners coincided with significant intervention by the federal judiciary in policy matters and the extension of rights to an increasing number of marginal groups. Treatment of prisoners as legal subjects jettisoned the conventional "hands off" doctrine maintained by the judiciary in matters of prison administration and brought the prisoners' rights movement into the courts, leading key actors to concentrate their efforts on affecting change through legal remedies. Conversely, it brought the federal courts into the prisons, where court officials became involved in defining and applying certain standards in disputes over prison practices, policies, and conditions. The consequences of this were "perhaps second in breadth and detail only to the courts'

earlier role in dismantling segregation in the nation's public schools following the 1954 ruling in *Brown v. Board of Education* (Feeley and Hanson 1990).

The Supreme Court's first "modern" prisoners' rights case, *Cooper v. Pate*,⁶ involved Muslim inmates. In this case, a Black Muslim prisoner in an Illinois state prison brought federal charges against his prison warden, alleging discrimination because he was not allowed to obtain religious literature from the Nation of Islam, consult with ministers of his faith, attend Muslim religious services and, further, was being punished because of the warden's hostility toward the Black Muslim movement. The Court recognized that prisoners have constitutional rights that prison officials cannot violate and that the federal courts are obligated to hear prisoners' allegations of religious discrimination. As Jacobs (1983) observes, "many legal victories followed after *Cooper v. Pate* . . . [and] each contributed to the strength, self-confidence, and momentum of the prisoners' rights movement." The opportunity to pursue grievances in court, and the encouragement of success, influenced the ideas of the prisoners who litigated.

Although judicial treatment of Muslim prisoners' claims under the free exercise clause has been far from consistent, a general trend toward recognition of these claims, when framed in the context of discrimination, emerged during the 1960s and early 1970s. The courts were asked to address allegations of discriminatory treatment by Muslim inmates, for Islamic practices were prohibited in prison settings while the practices of other religious denominations were not. When Muslim inmates were able to demonstrate that they had not received the same treatment as other religious groups in prison, the courts were generally, during this period, inclined to protect the prisoners' constitutional claims. The responsiveness of the courts to Muslim inmates' claims for religious liberty turned on a number of factors: the issue of equality of treatment of religious groups in prisons, the degree to which the inmates' challenges would undermine the state's fundamental interests (for example, prison security and administrative costs are often cited), and showing that Islam is similar to the Catholic, Protestant, and Jewish faiths.

But in more recent years, it has become clear that the judiciary has returned to the "hands off" doctrine by refusing to substitute judicial supervision for the expert judgement of prison officials in matters of prison management, even when violations of constitutional rights are at issue. Some rulings indicate that freedom of religion may be curtailed by

⁶378 U.S. 546 (1964). The Cooper case held that Muslim prisoners have standing to challenge religious discrimination in prisons under Section 1983 of the Civil Rights Act of 1871.

prison officials and that charges of discriminatory treatment, where restrictions fall more harshly on Muslim inmates, were not overriding. As the Court of Appeals for the Sixth Circuit held in *Thompson v. Kentucky*⁷ (1983): "The free exercise clause guarantees a liberty interest, a substantive right; that clause does not insure that all sects will be treated alike in all respects" (712 F.2d at 1081).

In a 1987 U.S. Supreme Court case, *O'Lone v. Shabazz*,⁸ where Muslim inmates challenged New Jersey prison policies that prevented them from attending Friday services, the Rehnquist Court held that "prison officials had acted in a reasonable manner by precluding Islamic inmates from attending weekly Friday religious services and prison regulations to that effect thus did not violate the free exercise of religion clause of the First Amendment" (107 S.Ct. at 2401-2042). The Court found that the reasonableness of the policies in question was supported by the fact that, while some Muslims are prevented from attending Friday services due to prison work assignments, they do not deprive Muslim inmates of all forms of religious exercise. All Muslims who wish to may, at one time or another, participate in a number of Muslim religious ceremonies.

Despite the fact that Friday prayer services are of paramount importance to the Islamic faith, which the Court acknowledged, it was still determined that "the very stringent requirements as to the time at which [Friday services] may be held may make it extraordinarily difficult for prison officials to assure that every Muslim prisoner is able to attend that service" (ibid. at 2406). However, in a dissenting opinion, Justice Brennan argued that the Friday services "cannot be regarded as one of several essentially fungible religious practices" (ibid. at 2410). The opportunity to participate in other religious activities in prison does not compensate for the Muslims' forced absence at the central service in Islam. Brennan compared the situation of Muslims who were not allowed to attend the Friday services to that of a Catholic prisoner denied the right to attend Mass on Sunday: "Few would regard [the latter] deprivation as anything but absolute, even if the prisoner were afforded other opportunities to pray, to discuss the Catholic faith with others, and even to avoid eating meat on Friday if that were a preference" (ibid.). The fact that other types of religious worship are available in prison does not warrant the deprivation of the opportunity to participate in the central religious ritual of one's faith at a time when adherents "assert their identity as a community covenanted to God" (ibid., citing Brief for Imam Jamil Abdullah et al., as *amici curiae*, at 32).

⁷712 F.2d 1078 (1983).

⁸107 S.Ct. 2400 (1987).

What has been the outcome of Muslim prisoners' litigation? In short, perhaps the most interesting effect is the adoption of constitutional norms and language by Muslim inmates to change their environment and, ultimately, how this contributed to an overall transformation of their self-identification. The court record demonstrates that, through their use of the law to claim particular rights and asking the courts to intervene to resolve disputes with prison officials, Muslim inmates became engaged with a political system that they had condemned previously as a matter of dogma. Essentially, the pre-1975 separatist doctrines of the Nation of Islam eschewed integration and political participation, because such involvement was a validation of the racially biased power structure of American society. Yet, as a means to an end, Black Muslims in prison aspired to official recognition as a religious group, with the attendant rights and privileges in captive society, so as to further their objectives in recruitment and liberating the Black nation. Key concepts of religious liberty, free exercise of religion, and minority group rights initially enticed Muslim inmates to build a legal strategy to gain legitimacy as a religious entity, an already established status within the prison system. The awareness of the availability of the courts as a legal forum through which inmates could challenge prison administration encouraged Muslim prisoners to reconceptualize themselves and their situation. It created the expectation that their grievances would be redressed by the legal system, and led many to take legal action.

The result of moderate successes in litigation is that the prisoners became attentive to the courts as institutions that legitimately define and protect their rights in prison, in organizing important relationships within the captive community with such representatives of outside organizations as clerics, and with their keepers. The Muslims moved from total disengagement from the political system as an ideal to calling upon the law as a basis for their corporate rights. Moderate success in the courts also conditioned the way that Muslims outside prisons came to accept the law as a legitimate social control mechanism and its utility in creating "order" in everyday existence on both sides of the prison walls.

As the Nation of Islam embarked on a course of reform after 1975, parallel changes were happening within the prison Muslim community. By 1979, a survey conducted by the Federal Bureau of Prisons indicated that while membership in Islamic groups was growing in prisons at the end of the 1970s, the tenor of the movement had changed. Norman A. Carlson, Director of the Federal Bureau of Prisons, said that Muslims were "no longer considered a threat to prison discipline," because they no longer taught racial hatred ("Federal Prisons" 1979). Moreover, he admitted that "the image of the Black Muslims as a source of disruption was blown out of proportion" (*ibid.*). Although the members of the

Nation of Islam before 1975 preached a hostile rhetoric that vilified white America, they actually precipitated little violence.

The purpose here has been to provide a view of how Muslims, as religious individuals, seek to construct meaningful lives through a commitment to regulative ends that, in effect, transform the very individuality of the Muslim participants involved. The language of legal practice has conditioned the complexity of negotiations currently underway.

Expectations of equal treatment infused the out-of-prison Muslim population as well. This is apparent in a dispute in Dearborn, Michigan, home to the largest concentration of Middle Easterners in North America. In September 1979, neighbors of a mosque in the city's heavily Arab blue-collar southeastern section asked the courts to stop the mosque from broadcasting the Islamic call to prayer over outdoor speakers, on the grounds that it violated the city's noise ordinance. The mosque officials saw the complaint as an infringement of their constitutional guarantee to the free exercise of religion, citing the Constitution to protect a practice they consider "inviolable." The court decided to impose the same restrictions on the mosque that were imposed on churches, requiring that prayer calls and church bells alike not exceed a certain decibel level. The result, then, of what seemed like a liberating paradigm—absolute freedom of worship—turned out to be parity.

As an outcome of imprisoned Muslims' litigation, and in response to a surge in interest in Islam among African American inmates, federal prisons began hiring Muslim prison chaplains in 1984. To date, there are eight full-time Muslim chaplains in the federal prison system. Such representation, though exceedingly small, provides an opening for the transmission of the Islamic message, reflecting an Islamic normative ordering and set of values, to a wider spectrum of the prison population. It presents an opportunity for greater contact between differing "legal sensibilities" and for providing an interpretation of Islam relevant to life in American society as well as to the modern world, one fashioned from the dynamic relations between the American Muslim experience and the sources of authority and interpretation of the Islamic heritage located overseas. The dynamics of this intersection in the construction of a peculiarly American identity and distinctively American institutions of the faith community will be examined below.

Models of Minority Life: Directions for Future Research

We have focused on the Muslims' recognition and adoption of law as a legitimate means of social control. However, there has been an underlying effort to temper an increasing attentiveness to North American

legal institutions by strengthening a sense of cultural and religious "outsiderhood." The dynamics of this interplay represent an area of future research.

The global spread of Islam, represented by over nine hundred million adherents in regions as far flung as Eastern Europe and the Central Asian republics of the former Soviet Union (combined population estimated at over eighty-one million) to the Americas, results in a cultural, ethnic, and linguistic diversity that challenges the cohesion of the faith community, which is based on a commonly shared and actively expressed set of norms and values. The influences of varied environments present pressures that, in effect, mitigate Islamic identity and practices, especially in areas far from the fold of the Islamic world. An investigation of Muslim literature on this topic shows a continuing effort to articulate options for maintaining Muslim life within the framework of diversity.

In the American context, this raises interesting questions: Can a Muslim minority live as an integrated part of a pluralistic society or must it insist on exclusivity? Can the community maintain its difference while, at the same time, demanding that it be treated equally and be given equal access to resources? Interest in the condition of Muslim minorities has been growing in the last two decades. Two international Muslim organizations, the Muslim World League and the Organization of the Islamic Conference, have expressed concern for the plight of these Muslims. Recently the Muslim World League established a *Fiqh* (Jurisprudence) Council, consisting of representatives from all Islamic legal schools of jurisprudence, to serve as a tribunal for addressing a variety of issues facing the Muslim community, including those living in a non-Islamic environment. The council has advocated the development of what is being called *fiqh al darūrah* (jurisprudence of necessity) and *fiqh al aqallīyah* (jurisprudence of minority) to address issues related to Muslim minority life (Haddad 1991).

Individual Muslim writers have also addressed the conditions and problems of dispersed Muslim communities. Much of what has been written is from the view of the "majoritarian" Muslim, or one who is living in a predominantly Muslim society, and is addressed to Muslim minority communities. Very little has been written by Muslims who have settled permanently in a non-Muslim setting. However, an increase in such literature has been noticeable. Writings of both perspectives are found in the journals of such institutes as the Institute of Muslim Minority Affairs (*Journal of the Institute of Muslim Minority Affairs*) and the International Institute of Islamic Thought (*American Journal of Islamic Social Sciences*), as well as in books published by these institutes.

The enduring debates within the global Muslim community about minority status and the appropriate model for living in a non-Muslim

society continue to move between accommodationism (i.e., seeking religious equality and equal access to society's resources) and isolationism (i.e., stressing the distinctiveness of Islam and seeking to preserve Islamic cultural modes of representation). Those who approximate the isolationism paradigm have advocated maintaining a separate existence as a discrete, insular entity that can serve as an Islamic witness in the midst of an unenlightened society until a return to the Islamic world is possible. This model allows no cultural adaptations in a non-Islamic setting, as Islam alone, in its unadulterated form, stands as the governing norm for the religiously observant Muslim. Islam is seen as a comprehensive and inherently superior and self-sufficient mode of existence that has been set forth for the global community of believers living within the "domain of Islam" and beyond. In the extreme, this position maintains that to give up the claim to exclusivity would guarantee the demise of the Muslim community. For instance, the Moroccan Islamist Ali Kettani (1986) argues for maintaining Islam's exclusive claim to truth: "Believing that all religions are equally valid is the first sign of religious assimilation."

However, the majority of Muslims in the United States have adopted the accommodationist model. Earlier generations of Muslim minorities have affirmed the Qur'anic injunction that "there is no compulsion in religion" as a foundation for a pluralistic society. This model is one in which relocation and settlement is permanent. What is required of the religiously observant Muslim is to "Islamize" the society in which he or she lives. It draws support from Qur'anic reference to illustrate that it is the obligation of Muslims in diaspora to create a just society wherever they live.

The tension between these two interpretations characterizes the debates within the Muslim community as it defines its identity and discusses future directions for corporate life in the United States. Ideas advocated by visitors and scholars from overseas have a profound impact on the ideological formation of the American Muslim community. However, the experiences of Muslims in the United States are slowly emerging as a powerful source of authority on what strategies, rights, and expectations are possible.

The flow of human migration has been a constant and recurrent feature in history. The result has been a cross-fertilization of ideas, cultures, and races. In sum, the study of the phenomenon of "crossing boundaries" has opened up questions of pluralism and the multiple levels at which norms—sometimes overlapping, other times contradictory—operate. The specificity of the Muslim experiences and ideologies presented here is meant to serve as the basis for future research on the complexity presented by plural legal orders.

References

- Abilla, Walter D. *The Black Muslims in America: An Introduction to the Theory of Commitment*. Kampala, Nairobi, and Dar es Salaam: East African Literature Bureau, 1977.
- Ahmed, Gutbi Mehdi. "Muslim Organizations in the United States." In *Muslims of America*, edited by Yvonne Y. Haddad. New York and Oxford: Oxford University Press, 1991.
- Askari, Hossein G. and John T. Cummings. "The Middle East and the United States: A Problem of 'Brain Drain.'" *International Journal of Middle East Studies*, no. 8 (1977):65-90.
- Austin, Allan D. *African Muslims Antebellum America: A Sourcebook*. New York: Garland Publishing, 1984.
- Caldwell, Wallace F. "A Surey of Attitudes toward Black Muslims in Prison." *Journal of Human Relations*, no. 16 (1968): 220-38.
- Davidson, Basil. *The African Slave Trade: Pre-Colonial History 1450-1850*. Boston: Little Brown & Co., 1961.
- Essien-Udom, E. U. *Black Nationalism: A Search for Identity in America*. New York: Dell, 1962.
- "Federal Prisons Giving Considerations to Muslims," *New York Times*, 18 November 1979, 57.
- Feeley, Malcolm and Roger A. Hanson. "The Impact of Judicial Intervention on Prisons and Jails: A Framework for Analysis and a Review of the Literature." In *Courts, Corrections, and the Constitution*, edited by John J. DiIulio, Jr. New York and Oxford: Oxford University Press, 1990.
- "Freedom of the Press." *Muslim Media Watch Newsletter* (September-October 1990).
- Haddad, Yvonne Y. "Century of Islam in America" [The Muslim World Today Occasional Paper No. 4]. Washington, D.C.: The Washington Institute for Islamic Affairs, 1986a
- "Muslims in America: A Select Bibliography." *The Muslim World*, no. 76 (1986b):93-122.
- "The Challenge of Muslim Minorityness: The American Experience." In *Integration of Islam and Hinduism in Western Europe*, edited by W. A. R. Shadid and P. S. van Koingsveld. Kok Pharos Publishing House, 1991.
- and Adair T. Lummis. *Islamic Values in the United States: A Comparative Study*. New York: Oxford University Press, 1987.
- Hooglund, Eric J., ed. *Crossing the Waters: Arabic-Speaking Immigrants to the United States before 1940*. Washington, DC: Smithsonian Institution Press, 1987.
- Irwin, John. *Prisons in Turmoil*. Boston: Little Brown, 1980.

- Jacobs, James B. *New Perspectives on Prisons and Imprisonment*. Ithaca and London: Cornell University Press, 1983.
- Jones, Oliver, Jr. "The Black Muslim Movement and the American Constitutional System." *Journal of Black Studies*, no. 13 (1983): 417-37.
- Karpat, Kemal. "The Ottoman Emigration to America: 1860-1914." *International Journal of Middle East Studies*, no. 17 (1985): 175-209.
- Kettani, M. Ali. *Muslim Minorities in the World Today*. London: Mansell, 1986.
- Kly, Y. N. "The African-American Muslim Minority: 1776-1900." *Journal of the Institute of Muslim Minority Affairs*, no. 10 (1989): 152-60.
- Lincoln, Charles E. *The Black Muslims in America*. rev. ed. Boston: Beacon Press, 1973.
- Little, Malcolm and Alex Haley. *Autobiography of Malcolm X*. New York: Ballantine Books, 1964.
- Macaulay, Stewart. "Images of Law in Everyday Life: The Lessons of School, Entertainment, and Spectator Sports." *Law & Society Review*, no. 21 (1987).
- McCloud, Beverly T. "African-American Muslim Women." In *Muslims of America*, edited by Yvonne Y. Haddad. New York and Oxford: Oxford University Press, 1991.
- Marsh, Clifton E. *From Black Muslims to Muslims: The Transition from Separatism to Islam, 1930-1980*. Metuchen, NJ: Scarecrow Press, 1984.
- Merry, Sally E. "Everyday Understandings of the Law in Working Class America." *American Ethnologist*, no. 13 (1986).
- "Legal Pluralism: Review Essay." *Law & Society Review*, no. 22 (1988):869-96.
- "Law and Colonialism: Review Essay." *Law & Society Review*, no. 25 (1991):889-922.
- Moore, Kathleen. "Muslims in Prison: Claims to Constitutional Protection of Religious Liberty." In *Muslims of America*, edited by Yvonne Y. Haddad. New York and Oxford: Oxford University Press, 1991.
- Muhammad, Warith D. *An African American Genesis*. Chicago: Progressive Publishing Co., 1982.
- Roof, Wade C. and William McKinney. *American Mainline Religion: Its Changing Shape and Future*. New Brunswick, NJ: Rutgers University Press, 1987.
- Scheingold, Stuart A. *The Politics of Rights*. New Haven, CT: Yale University Press, 1974.
- Stone, Carol L. "Estimate of Muslims Living in America." In *Muslims of America*, edited by Yvonne Y. Haddad. New York: Oxford University Press, 1991.

- Takaki, Ronald. *Iron Cages: Race and Culture in Nineteenth-Century America*. New York: Alfred Knopf, 1979.
- , ed. *From Different Shores: Perspectives on Race and Ethnicity in America*. New York: Oxford University Press, 1987.
- Tumeh, George. *Al Mughtaribūn al 'Arab fī Amrikā al Shamaliyah*. Damascus: Wizārat al Thaqāfah wa al Irshād al Qawmī, 1965.
- Turner, Richard B. *Islam in the United States in the 1920s: The Question for a New Vision in Afro-American Religion*. Ph.D. diss., Princeton University, 1986.

Cases Cited:

- Cooper v. Eugene School District*, 301 Or. 358, 723 P.2d 298 (1986), appeal dismissed, 480 U.S. 942 (1987).
- Cooper v. Pate*, 378 U.S. 54 (1964).
- O'Lone v. Shabazz*, 107 S. Ct. 2400 (1987).
- Thompson v. Kentucky*, 712 F.2d 1078 (1983).
- U.S. v. Bd. of Educ. of School District of Philadelphia*, 911 F.2d 822 [3rd Cir. 1990] at 894.

The contents appearing in
this publication are indexed by



For further information, please contact:
Dr. Munawar A. Anees, Editor-in-Chief, Periodica Islamica



BERITA PUBLISHING

22 Jalan Liku, 59100 Kuala Lumpur, Malaysia
Tel (+60-3)282-5286 Fax (+60-3)282-1605