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Islam and the Carceral State

MASTERS THESIS

submitted in partial satisfaction of the requirements
for the degree of

MASTER OF ARTS

in Social Ecology

by

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Thesis Committee:
Associate Professor Sora Han, Chair
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2022

TABLE OF CONTENTS

	Page
ACKNOWLEDGEMENTS	iii
ABSTRACT OF THE THESIS	iv
INTRODUCTION	1
SECTION 1: Religion and Authority: Sharia and Legal Pluralism	3
Islamic Jurisprudence: Sharia & Western Governance	3
Complicating Legal Pluralism Through Sharia	10
SECTION 2: Incarcerated Muslims: Litigation, Surveillance, and Moderation	13
Litigation	13
Surveillance	20
Moderation	24
CONCLUSION AND FURTHER RESEARCH	27
REFERENCES	31

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ABSTRACT OF THE THESIS

Islam and the Carceral State

by

Khirad Zahra Siddiqui

Master of Arts in Social Ecology

University of California, Irvine, 2022

Associate Professor Sora Han, Irvine, Chair

This paper will offer a theoretical framework to understand why Islam, as it currently exists within the US prison system, is associated with radicalism and treated with surveillance and suppression. By exploring the history of sharia and complicating existing ideas of legal pluralism and religious tolerance, this paper argues that the position of sharia is one that is incommensurable with Western governance. Thus, as early incarcerated Muslim activists in the 1950s and 60s used sharia in their fight against prison conditions, they cemented an antagonism between Islam and carceral authority that still lives on in the treatment of incarcerated Muslims today. This tension manifests itself in the religious surveillance and suppression incarcerated Muslims face today, and also helps account for the trouble Islamic advocacy groups have as they attempt to reframe Islam as a moderating religious force within the prison. These tensions lead to a framework and a set of guiding questions for interviews with Islamic advocacy groups, prison chaplains, and incarcerated Muslims themselves, in order to better understand the status of Islam within prisons.

INTRODUCTION

Though Muslims currently make up less than 1% of the total US population, they have had a significant and growing presence within the prison system since the early 20th century, currently accounting for 9% of the overall prison population, and closer to 20% in states such as New York and Pennsylvania (Muslim Advocates, 2019). Despite their large presence within the prison system and the crucial role they have played in the prisoner rights movement, misinformation and fears about the potential for incarcerated Muslims to become radicalized within the prison are still relatively common. Incarcerated Muslims face constant surveillance and suppression, filing the highest percentage of religious discrimination claims of any religious group within the prison, with common reports of halal food being withheld and the denial of religious materials (Muslim Advocates, 2019). Reports include not only the denial of religious materials, but often the refusal to allow incarcerated Muslims to gather for joint religious services, to pray together, or to observe fasts during the holy month of Ramadan (Marcus, 2009). Much of this suppression comes from the associations between Islam and radicalism within the prison — a narrative that has become exacerbated in the post 9/11 War on Terror, but has existed within the American carceral state for far longer (Silverberg, 2006).

In order to offer a comprehensive framework that can account for the current suppression of Islam within prisons today, and then guide future ethnographic work with incarcerated Muslims and advocacy groups, this project will compile several different fields of literature and previously disconnected histories. While the literature on incarcerated Muslims either focuses on their status in the post 9/11 War on Terror or on their historical

position as prisoner organizers, a history of incarcerated Muslims spanning their earliest entry to the prison, and ending with their current status is still missing from academic literature. Literature on incarcerated Muslims also excludes Islamic jurisprudence, or *sharia*, from the retelling of incarcerated Muslim organizing against carceral authority, a critical component for understanding Islam's associations with radicalism within the prison and the suppression of the faith today. Sharia, through its role within global decolonization movements, is considered incommensurable with Western governance. It is this incommensurability that incarcerated Muslims utilized while invoking sharia in their own organizing, as a means of undermining the authority of the legal system that was subjugating them. Thus, this paper will bridge the existing literature on sharia and its status in the colonial world with the history of incarcerated Muslim organizing, to offer a more complete understanding of incarcerated Muslim history.

Utilizing a range of prison archives and secondary sources, this paper will offer a more comprehensive understanding of incarcerated Muslims and their history to argue that the status of incarcerated Muslims today and their association with radicalism is based upon this position of sharia as incommensurable with Western governance. To make this argument on incommensurability, this paper will begin by exploring the history needed to contextualize Islam within the prison, by exploring the historical role of sharia in the colonial world, and how the status of sharia as a religious, legal, and ethical system complicates the kind of legal pluralism colonial governments hoped to impose upon their citizens. This will then lead into the second section of the paper, which will explore incarcerated Muslims and their history, beginning with their prison litigation and how it led

to the development of surveillance structures focused on their activities during the civil rights era. Then, moving to the post 9/11 moment, the section will explore the expansion of these surveillance structures during the War on Terror, and end with an exploration of how Islamic advocacy groups attempt to bridge the incommensurability of Islam with Western governance. Finally, this project concludes with the potential uses for this framework for future research directly with various actors within the religious landscape of prisons today, including chaplains, Islamic advocacy groups, and incarcerated Muslims themselves.

Religion and Authority: Sharia and Legal Pluralism

Islamic Jurisprudence: Sharia & Western Governance

Today, religion is largely understood in prisons to be a private matter, separate from the domain of the law and prison authority (Sullivan, 2009). Conversely, the American carceral state was founded on Christian understandings of punishment and thus still recognizes the utility of religion, often depending upon faith-based volunteer organizations to provide services, and ideally, help prisoners internalize their punishment (Morris & Rothman, 1995). However, historically Islamic traditions, especially those of *sharia*, have conflicted with Western, secular understandings of law, including the carceral state. While secular societies might understand religious identities as those that can be managed and expressed in appropriate, private settings under a secular state, Islam is often understood as a religion fundamentally incompatible with the values of secularism, and thus as something that cannot be managed in the same ways (Sayyid, 2015). The status of Muslims

in Europe can serve as a meaningful case study here, wherein the construction of Europe as a secular project has been dependent on the historical exclusion of Muslims (Asad, 2003). Talal Asad argues in his book *Formations of the Secular: Christianity, Islam, Modernity*, that the liberal value of religious “tolerance,” is dependent on this very exclusion of Muslims. The belief is that Muslims can fundamentally never assimilate into a secular society because their relationship to faith, and sharia, can never distinguish between personal and private authority in the way that a secular state necessitates for its citizens. Because of this, Islam occupies a “quasi-civilizational” role, in which its followers cannot formally assimilate into what is understood to be a group of advanced, secular societies, because of the inability of Muslims to form this distinction (Asad, 2003).

Much of this historical tension and understanding of Islam as incompatible with secular societies and law is related specifically to the role of sharia. Because Islam has its own system of jurisprudence, with specified religious jurists, it has often historically conflicted with colonial systems of governance, both Christian and secular (Asad, 2003). The role of sharia in decolonial and liberation movements, as well as the historical inability of many colonial states to manage Islam specifically because sharia concerns itself with both worldly and religious matters, making no distinction between public and private domains, means that sharia complicates Western understandings of legal pluralism and secular governance (An-Na'im, 2009).

Sharia has existed and continues to exist in much of the world as either a semi-autonomous system of governance alongside state legal systems, or in many societies, as the legal system of the state itself (Lange, 2008). In many colonized countries throughout

the Middle East, South Asia, the Caucasus, North Africa, and East Africa, sharia was either replaced entirely by colonial law or relegated to some kind of alternate space (Sparr, 2014). These alternate spaces were sometimes entirely non-legal, and in other cases had limited legal domain that dealt exclusively with domestic or private issues through an alternative court system, as was the case in colonial Sudan, for example (Massoud, 2013). Knowing that sharia concerns itself with legal and non-legal, domestic and collective, and private and public matters, however, one can see why the colonial logics surrounding religious management and legal pluralism were historically unsuccessful regarding sharia.

Sharia was often constructed by colonizing powers as either a nonlegal system, an alternate legal system at best, and in most cases, as a primitive and undefined set of rules that could not constitute a truly legitimate legal authority (Sparr, 2014). Colonial governments often attempted to categorize sharia through an imposed legal pluralism, where it was assumed that different legal systems could overlap with each other, and traditional legal systems were often either supplanted by colonial law, or relegated to some kind of alternative legal or non-legal setting. However, Islam and sharia disrupt this framework in the same way that they disrupt conceptions of secularism, through the inability to be contained within Western understandings of legality and religious identity. In the same way that Muslims need to be excluded from secular societies because their religious identities are not limited to private, discrete practices, sharia cannot fit into a framework like legal pluralism, which would necessitate its categorization as a solely legal system. Though sharia can comprise a formal legal system, it exists as an informal legal system at other times, and many prefer to understand it as an ethical or philosophical

worldview (Sparr, 2014). In fact, scholars of sharia must contend with the ways in which interpretations of it are constantly changing, especially since there is no centralized authority that doles out final judgment (Agrama, 2010).

Therefore, for countries in which colonial governments attempted to place sharia within a kind of legal pluralist understanding of the law, there was widespread resentment amongst sharia scholars in the *ulama* and Muslim communities, who understood sharia to be opposed to this understanding of legal and religious pluralism. This resentment had the effect of fueling both religious scholars and broader decolonization movements to root their refutation of colonial power in the language of sharia itself (Sayyid, 2015). Using sharia to decolonize allowed for a language through which people in the colonized world could assert the illegitimacy of their occupying colonial power, by signaling to another kind of system and authority altogether. By gesturing to sharia as an ultimate authority, a claim that was easy for freedom fighters and religious scholars alike to make because of the relative finality of using religious doctrine as law, they thus had a framework through which they could assert the ethical illegitimacy of colonial law. For this reason, in many parts of the colonized world, whether or not sharia was the legal state apparatus pre-colonization, decolonial efforts were often grounded in the language of sharia.

The use of sharia in decolonization movements was wide-ranging, and depending on the region and population, served a variety of purposes. For example, in the 1979 Islamic revolution in Iran, the revolution itself was led and started by religious jurists in the *ulama* (Zaman, 2010). The revolution, which fought against Western intervention from the US and England, was also grounded in the language of sharia to both assert the illegitimacy of the

non-Muslim occupying forces in Iran, as well as the right of the Iranian people to an Islamic state — one which was conceived as the antithesis to the secular, Western-backed government that the CIA had helped install at the time (Sayyid, 2015). By building on this existing colonial construction of sharia as antithetical to the supposed civilized nature of colonial law, anti-imperialists then couched their arguments in their support of sharia, thus rejecting notions of modernity and civilization in favor of tradition and morality, to fight colonialism by supporting its perceived opposing counterpart (Kohn & McBride, 2011).

Another example of the emerging antagonism between sharia and colonial power is the formation of the Pakistani state in 1947, in response to British colonialism in the Indian subcontinent. The school of thought that advocated for the creation of the Pakistani state was associated mostly with the political work of Muhammad Ali Jinnah, who had argued for the creation of a separate Islamic state for the Muslim minority in British India (Kudaisya & Yong, 2004). Abul A'la Maududi, a prominent member of the ulama also argued for the decolonization of thought and legality within the Indian subcontinent, stating himself he wished to move beyond the “intellectual slavery” of colonialism and move towards a political state ruled entirely through sharia instead (Iqtidar, 2020). This was a specific response aimed at rejecting the British colonial project’s attempt to manage religious identity in one of the most religiously diverse states in the world, a colonial endeavor that isolated both the Hindu majority, as well as the Muslim, Sikh, Jain, Buddhist, and other religious minorities in the region (Kudaisya & Yong, 2004).

The movement for the creation of Pakistan, a state entirely separated from colonial India, was thus a response not just to growing inter-religious fighting in the region, but

specifically to the colonial state's attempt to manage religious identity and expression, define its boundaries, and categorize religions. Thus, the movement for the creation of Pakistan was rooted in sharia, as a refutation of the power of the colonial state to define religious identity and to unify colonized subjects under its categorizations.

A final example of the antagonism between sharia and Western, colonial power, as well as the emerging idea of Islam not only as a threat to secular authority but as a violent force, is that of Algeria. The Algerian revolution against French colonial authority was rooted heavily in the Islamic revivalist movement that swept across Algeria in the 1930s and 40s, asserted the need for an Islamic state in Algeria based in sharia, and opposed the colonial and secular forces of French control (Hargreaves, 2005). In colonial Algeria, the practice of sharia was almost completely banned in favor of secular colonial law, the ulama were removed from the high-status they had enjoyed in a pre-colonial Algeria, and Islamic institutions were largely banned or run down in favor of the French project of *mission civilisatrice*, or the civilizing of Algerian people through French systems of law and education (Duffy, 2018).

It was members of the Algerian ulama, such as Ibn Badis and Al-Ibrahimi, who formulated responses to the degradation of colonization through Islamic revivalism, and a call for adherence to sharia to resist French colonial authority (Alghailaini, 2002). During the long fight for independence from French colonial rule, it was through sharia that many Algerian people opposed the principles of French colonization and imagined a postcolonial future. This, like in Iran and Pakistan, was an anti-imperialist strategy, led by the religious jurists of the ulama. The assertion of sharia specifically as an anti-secular and thus

anti-imperialist and anti-colonial framework, though it was present in the Iranian and Pakistani cases as well, was far more pronounced in the Algerian decolonial movement, due to the secularizing nature of French colonialism (Duffy, 2018). This movement helped solidify the role of sharia as standing not only in opposition to the colonial power of the West, and to modernity, imperialism, and civility, but fundamentally to the concept of secular law, and the imposed legal pluralism of the colonial state.

All of these examples showcase the ways that different movements to overthrow colonial powers utilized and selectively deployed the language of sharia, especially through the intellectual, legal, and religious writings of the ulama. Importantly, these movements also cemented the antagonism that different colonial authorities had begun to set up between what colonial states considered the uncivilized system of sharia versus its civilized counterpart of colonial, secular law. Thus in a postcolonial world following these revolutions, the position of sharia quickly became solidified as not only fundamentally opposed to the modernity, civilization, and secularism of the West, it also became intractably associated with violence. While not all Muslims considered sharia through this lens of incommensurability with Western governance, the success of anti-Western decolonization movements came from the Muslim scholars and organizers who understood sharia this way and argued that the world should as well. As Western societies continued to secularize, sharia was now, as a result of colonization and the armed resistance to it, understood to be incommensurable with this kind of secular, liberal society and Western governance (Asad, 2003).

Complicating Legal Pluralism Through Sharia

The tension between sharia and colonial governance, which culminated in the association between Islam and violent anti-Western sentiments, is also rooted in the inability of Islam, sharia, and Muslims to fit into prescribed Western frameworks. Just as secular states struggled to manage Islamic religious identities and ended up stoking resentment amongst the ulama, many colonial powers similarly struggled with creating a legally plural society that included sharia, where they could contain expressions of it or relegate it to some kind of contained space (Alghailaini, 2002). While the colonial endeavor to enact legally plural states was sometimes intended to showcase religious tolerance, and in other cases, an outright dismissal of sharia itself, in almost all the cases described above, the project failed because sharia could not fit neatly into a designation as a solely legal or solely religious system. As the ulama themselves noted in their writings across these decolonization movements, it would be a misrepresentation of sharia, and Islam as a whole, to categorize it as a solely legal or religious system (Zaman, 2010).

Sharia itself also continues to evolve, and debates amongst scholars of it have still not settled onto concrete answers on how to navigate secular states, issues of jurisprudence, and doling out judgments for complex cases (An-Na'im, 2009). Many Western societies still understand sharia through an incredibly narrow lens, yet the interpretations of sharia range widely from court to court, society to society, dependent on sect, historical tradition, school of thought, and scholarly sources (Agrama, 2010). It is not uncommon for these sources to conflict with each other, and a sharia ruling from a member

of the ulama, a fatwa from a court, and a traditional understanding of *adat*- or the customary law, can all say vastly different things about a given topic.

In essence, sharia is a system with legal, political, religious, and ethical dimensions that cannot fit into the necessary Western categorizations of legality that would allow for a legally plural society with some pre-designated space for sharia. Thus, colonial governments, by failing to fit sharia into a legally plural society, ended up inadvertently motivating decolonial activists to root their movements within the language of sharia. This cemented the status of sharia as it exists within the West today: a violent ideology that cannot fit into a secular or legally plural state. In this context, a Muslim invoking sharia is, in essence, a refutation of Western governance, instead signaling towards what they consider a more total authority.

This context is a key part of understanding why the Western state, which includes the American carceral states, believes Islam to be incommensurable with its ideal form of secular governance. Since sharia has been such a key part of fighting against imposed law and secularism, the status of Islam within the West has become one which is inherently incommensurable with secular institutions, especially those that dole out punishment. For this reason, incarcerated Muslims cannot fit into the religious or legal categorizations of a secular prison landscape, and practices of Islam within the prison are often utilized to refute carceral authority. While not all Muslims within American prisons understand Islam and sharia as incommensurable with Western governance (in fact, many Muslim advocacy groups attempt to dispel this very notion to gain acceptance and legal recognitions for Islam within the prison), prison authorities commonly understand it this way (Spalek &

El-Hassan, 2007). For this reason, Muslims within American prisons, whether they are explicitly renouncing the authority of the carceral state or not, are constructed as radical, prone to terrorism, and the practices of their faith and sharia are suppressed.

While examples of decolonization movements provide meaningful context for the ways that sharia and Islam can be used to refute Western authority and fight against an imposed legal pluralism, the case of incarcerated Muslims within the US provides further insight into the specific ways that sharia can challenge authority, power, and the framework of legal pluralism itself. A traditional understanding of legal pluralism might look at how competing or alternative legal systems manifest within prison systems in calls for freedom, legal claims, litigation, and so forth, but in the case of incarcerated Muslims, sharia is used in a different way entirely. Instead, sharia has been understood by incarcerated Muslims as a worldview that allows them to refuse submission to the carceral state, or to challenge the legitimacy of the legal system that is designating them as prisoners. Thus, the practices of incarcerated Muslims can help complicate the framework of legal pluralism. Incarcerated Muslims invoke sharia to link their own illegitimate legal oppression with decolonization movements in the Muslim world, all while utilizing a system that does not neatly fit into the kind of legal categorization that traditional legal pluralism might necessitate or the religious categorizations of secularism. Thus, exploring the different ways that incarcerated Muslims have invoked Islam and sharia can not only highlight the incommensurable status of sharia with Western governance, but also serve as a meaningful case study for how sharia can expand the framework of legal pluralism itself.

Incarcerated Muslims: Litigation, Surveillance, and Moderation

Though the following section is far from a comprehensive overview of the history of incarcerated Muslims, it does mark three critical dimensions of their history that cumulatively help to account for their religious suppression today. Beginning with the prisoner litigation of the 1950s and 60s, this subsection explores incarcerated Muslim organizing within the prison and its relationship to sharia and legal pluralism. This will then lead into the surveillance structures that the prison instituted as a direct result of the success of incarcerated Muslim litigation, and how these structures and civil-rights era collaborations between prison systems and the federal government became a key part of the surveillance of Muslims in the post 9/11 War on Terror. Finally, this leads into the post 9/11 moment, wherein Islamic advocacy groups attempt to reframe Islam within the prison through the lens of religious moderation and rehabilitation, and the reasons they are met with resistance from the prison in these efforts.

Litigation

With this newfound knowledge of sharia, and its status through global decolonization movements as incommensurable with Western governance, the history of incarcerated Muslims can be more accurately understood. Additionally, to contextualize incarcerated Muslim history, it is important to note that from their very initial entry into the prison system up until today, followers of Islam in prison have been mostly Black, beginning with Black Muslim movements like the Ahmadiyya, the Nation of Islam, or the Moorish Temple, and eventually giving way to a contemporary landscape where most

incarcerated Muslims today identify as Muslim without any other kind of denomination (Bowen, 2013). For this reason, the practice of Islam within prisons has deep historical ties to the civil rights movement and Black nationalism, and the suppression of it in prisons has been rooted not only in the status of Islam itself, but also in the ways that the faith has been used to form a political Black identity that refuses submission to the American state (Smith, 1993). Thus, the first Muslims to enter prisons in sizable numbers did so during the Second World War, as Black Muslims from the Nation of Islam were sent to prison as conscientious objectors to the war (Bowen, 2013). From the earliest moments of their entrance into prisons, incarcerated Muslims were signaling towards global, decolonial solidarity that would characterize the rest of their history, especially in their refusal to submit to the state. The timing of this initial entry of Islam within the prison system mirrors the status of the faith today in many ways, in the context of the War on Terror, as a fundamentally anti-American, anti-secular threat to the power of the state.

Shortly after the initial entry of Black Muslims into the American prison system during the war, the Nation of Islam began to expand their prison ministry and established a more deeply-rooted presence within the prison system. One of the most powerful tools the earliest incarcerated Muslims in the Nation of Islam had at their disposal was their ability to file writs and bring forward cases in courts to argue for the rights of their fellow prisoners (Marcus, 2009). In fact, through their legal activism, incarcerated Muslims organized in large numbers to resist prison authority, and were a massive part of the prisoner rights movement in America. They were instrumental in shifting some of the conditions of incarceration and ultimately succeeded in making prison conditions visible to

the public, rather than leaving these matters to the private discretion of prison authority (Smith, 1993). Incarcerated Muslims, especially at this pivotal time in the prisoner rights movement, had one of the largest legal writ writing campaigns of any group within prisons and had a remarkable ability to bring together previously disconnected groups to work towards these goals (SpearIt, 2013).

Incarcerated Muslims employed “jailhouse lawyers” within their ranks, who were known for filing these legal writs and coordinating multiple legal writs from different incarcerated people to strengthen their cases. Many incarcerated Muslims were able to garner support for their cause within prisons as a result of their own biased treatment by prison authorities, who not only routinely denied them the religious accommodations they asked for, but also notoriously sent many of them to solitary confinement to crack down on their organizing successes within the prison (Smith, 1993). However, crackdowns on Muslims within the prison had the effect of garnering more support for their cause from others, especially as incarcerated Muslims wrote these writs to change the conditions of incarceration for everyone, not solely themselves.

The specific means through which incarcerated Muslims utilized the law to challenge prison authority was not solely through legal strategies invoking penal or Western law, however. Though many of the organizers amongst them became fluent in legal writing, carceral systems, and how to navigate them in the courts, one of the most fascinating parts of the legal and social writings of incarcerated Muslims was their invocation of sharia, even in the writs and court settings they were fighting in. In Garrett Felber’s (2019) book *Those Who Know Don't Say: The Nation of Islam, the Black Freedom*

Movement, and the Carceral State, he compiles much of the writing from this crucial period for incarcerated Muslims and the prisoner rights movement. While the book provides a comprehensive look at this important historical moment for incarcerated Muslims, it is fascinating that there is no mention of how these writings invoke sharia as a political, legal, and ethical strategy. Much of the compiled writing of incarcerated Muslims from this book, whether personal, political, or legal, invokes sharia as a way of fighting against the authority of the system incarcerated Muslims were arguing within. This dimension is critical to fully contextualize precisely what incarcerated Muslims were doing in their legal battles and writing, and the kinds of solidarities they were invoking while refuting the authority of the carceral state.

Critically, these references to sharia showcase not only the incommensurable nature of Islam with Western governance and the carceral state, but also highlight the complex status of sharia itself. Even though it was often being invoked within legal settings, incarcerated Muslims referenced sharia mostly through ethical, religious, or moral dimensions, once again highlighting the status of sharia as a worldview that wasn't solely legal. For example, in Attica, where incarcerated Muslims had been organizing, Thomas Bratcher, one of the incarcerated Muslims who had been placed in solitary confinement the earliest, wrote a letter to Malcolm X urging him to join their case and become the key witness in the trial they were fighting against prison authorities. In this letter from 1961, Bratcher wrote,

“The Grace of Allah has also been upon we Muslims in The New York State Correction System. He has given us several openings in the

Federal Courts across the country so that we may seek redress from those in State and Federal authority who seek to regress our Freedom of Religious Worship, rights guaranteed us in the U.S. Constitution. We have been persecuted, beaten, marred both mentally and physically, put in “Isolation- Segregation- Protection and Solitary confinement for the past 5 years. But, now, by the Will of Allah, our fight has almost come to an end. Victory is now in sight!”

Here, Bratcher is positioning their legal case as a religious fight, referencing Federal Courts, the U.S. constitution, and the idea of freedom for religious worship while simultaneously arguing that they are engaged in a holy struggle and that their legal victories are guided by some kind of religious authority (Bratcher, 1961, as cited in Felber, 2019). His submission is not to legal power here, but Western state legal power is instead conceived of, in Bratcher’s writing, as simply an arena where this larger fight regarding religion and oppression is taking place. Sharia is referenced within what might appear to be a solely legal context here but is also being used to signal towards a larger struggle and more powerful form of authority, similar to the ways that the ulama referenced sharia in their own decolonization movements.

In the writing of Martin Sostre, another key Muslim figure in prison, and one of the most proficient lawyers within the organizing group of incarcerated Muslims, he refers to the pens and paper that other incarcerated Muslims had access to as “the most essential weapons in fighting Shaitan” or the Arabic transliteration of the devil (Sostre, 1970, as cited in Felber, 2019). In this case, Sostre was referring to the crackdown on legal writing within

the prison, and specifically to the rule that many prisons had adopted, banning people from sharing their writs with one another, which was a clear attempt at suppressing the growing success of their litigation efforts. Yet, once again in Sostre's writing, one can see the positioning of carceral systems through the lens of Islam and sharia, and more importantly, the positioning of state legal codes as a means of fighting towards a broader kind of religious struggle rooted in the principles of sharia. Framing legal wins as coming through the will of religious authority, or the central antagonist of the prison authorities as directly related to shaitan, mirrors the kind of anti-colonial writing that scholars of the ulama made in their decolonial struggles. In many of these cases of decolonization, it was common for the ulama to conflate the occupying, imperial, or colonial force with shaitan (Iqtidar, 2020). In fact, Ayatollah Khomeini famously referred to the United States in one of his speeches at the end of this decade as *shaitan-e-bozorog*, literally translating to the Great Satan, cementing the phrase into the lexicon of Iranian politics (Rezaei, 2019). Well before Khomeini's speech, comparisons between shaitan and Western governance were common in decolonization movements, and provided a direct way to ground legal or colonial battles in religious language. Sostre's reference to shaitan is thus a skillful deployment of sharia, and a global connection that helped frame the fight incarcerated Muslims were in as one directly related to those of Muslims in the colonial world (Kohn & McBride, 2011).

Finally, one of the letters of Malcolm X himself, written while he was incarcerated to the prison commissioner, makes perhaps the clearest reference to sharia as incommensurable with the law of the carceral state, saying,

“Can the ‘laws of this state’ deprive one from one’s God-given Rights? Can it deprive one from the Right to exercise in one’s Speech, Thought, and Practise, one’s conscientious views concerning one’s people, one’s God, and one’s conception of what constitutes ‘a devil,’ simply because one is an inmate in a penal institution, and because one’s skin is Black? Can it deprive one from discussion, in letters to one’s people, the history and religion of one’s people . . . Is there a monopoly on Truth?”

Here, Malcolm X dictates this incommensurability of sharia and Western law that was being articulated at the same time in the decolonial movements across the globe. He asks whether the laws of the state can deprive from god-given rights, their conception of a devil, history, and religion (Malcolm X, 1950, as cited in Felber, 2019). This reference to the values of sharia was a means through which Malcolm X was able to unsettle the very system that had designated him as a prisoner. Additionally, Malcolm X’s use of sharia allowed him to make a global reference to history and religion, and engage in the kind of practice that early incarcerated Muslim activists made frequently in their campaigns, which was a connection between Black subjugation at the hands of the American and carceral state, and the colonial state’s subjugation of Muslims across of the globe.

Thus, in referencing sharia, incarcerated Muslims built a global connection between the deployment of sharia internationally to challenge a perceived illegitimate legal system abroad, and challenging a perceived illegitimate legal system domestically. This allowed incarcerated Muslims to make the same kind of move that the ulama made in their decolonization movements, which is to refer to another kind of system entirely, one whose

authority they proclaimed as whole and legitimate, thus rendering the oppressive system of law controlling them (whether that was colonial, imperial, carceral, or Western) as illegitimate. To challenge the carceral state, incarcerated Muslims used similar rhetoric as those challenging colonial power across the globe, specifically by refusing to submit to a system that attempted to stake legal claims over them. The tension between sharia and Western governance which was globally established by the time that incarcerated Muslims were engaged in their legal battles, was thus used by incarcerated Muslim activists to refute the carceral state's legitimacy, refuse ties to the American state, and join in tacit solidarity with the postcolonial Muslim world.

Surveillance

Through their use of sharia and litigation efforts, incarcerated Muslims were successful in making the conditions of their confinement public, and forcing the legal system to more closely examine the treatment of prisoners. However, inviting the gaze of the legal system and outsiders also had the effect of increasing their own surveillance. As a result of their organizing, and their ability to undermine the authority of the prison system, coordinated surveillance efforts began to be targeted towards them within the prison (Bowen, 2013). It is important to note that while the current literature on incarcerated Muslims focuses on the emergence of surveillance apparatuses post 9/11, the earliest coordinated surveillance of Muslims within the prison dates back to these early Muslim organizers within the late 1950s and early 1960s, were characterized by a deep mistrust of Black Muslims, and would eventually form the kinds of surveillance structures that would

then become strengthened by the fear of Islamic homegrown terrorism in prisons after 9/11 (Marcus, 2009).

Prison authorities would routinely confiscate the writings of incarcerated Muslims in an attempt to suppress their legal battles, often arguing that they did so to distinguish between the real and fake Muslims — a particularly bizarre endeavor that persists in many prisons today, wherein states like North Dakota require that Muslims pass a 60-day “sincerity test” before obtaining a halal diet, and Florida requires that they pass an oral sincerity assessment with a chaplain (Muslim Advocates, 2019). The prison authorities’ belief that incarcerated Muslims were somehow illegitimate Muslims, or that there were “fake” Muslims within their group was often used to justify their surveillance, in order to weed out the real Muslims from the fake ones, a justification that specifically relied on anti-Black tropes about the legitimacy of Islam within the prison (Smith, 1993). Though this is one example, these religious sincerity tests began during the early prisoner rights organizing of incarcerated Muslims in the 1950s, and eventually became a part of the surveillance apparatus that continues to surveil and suppress incarcerated Muslims in a post 9/11 era.

Prison authorities not only adopted these sincerity tests during the civil rights movement, but also surveilled the practices of incarcerated Muslims and began reporting these practices back to the federal government, marking the beginning of a long-standing practice of coordinating between prisons and the federal government to surveil incarcerated Muslims (Van Duyn, 2006). This collaboration between federal and carceral authorities would become a hallmark of the surveillance of Islam during the post 9/11 era

as well. In more recent efforts to expand existing surveillance structures within the prison from their civil-rights era inception, federal authorities have engaged in alarmist discourse in the aftermath of the War on Terror about the possibility for incarcerated Muslims to become radicalized through international Islamist militant organizations (Hamm, 2009). In the years following 9/11, the federal government released numerous reports about the possibility of incarcerated Muslims becoming radicalized, arguing that prisons were “breeding grounds” for Islamic radicalism (SpearIt, 2003).

Attorney General Alberto Gonzalez argued that homegrown terrorists who were radicalized “in prisons and in other groups of socially isolated souls” were “as dangerous as groups like al Qaeda,” and presented “new challenges in detection” (Gonzalez, 2006). To combat these issues of “detection” the FBI and Bureau of Prisons created the Correctional Intelligence Initiative in 2003, to “detect, deter, and disrupt efforts by extremist groups to radicalize and recruit in U.S prisons” (Van Duyn, 2006). Thus, the collaboration between the federal government and the prison system was not a new effort that emerged solely because of 9/11 and the resurgence in anti-Muslim sentiment, but rather the continuation of a long practice of federal surveillance of incarcerated Muslim organizing characterized by a fundamental distrust of Muslims within the prison system. As incarcerated Muslims used the incommensurable nature of Islam and Western governance to challenge the authority of the carceral state, prison authorities used it to justify the creation of these surveillance apparatuses during the civil rights era, and later to expand them during the War on Terror.

This leads to the current landscape of Islam in prisons, where there are common complaints regarding the continued surveillance and suppression of incarcerated Muslims

(Marcus, 2009). For example, in Arizona, state correctional policy stipulates that Jumma prayers (i.e., Islamic congregations on the holy day of Friday) must have a member of correctional staff to oversee them, and in South Carolina, anybody who wishes to convert to Islam in restricted housing must pass additional verifications, with neither of these policies specifying any similar rules for other religious groups (Muslim Advocates, 2019). In this context, the claims prison authorities and the federal government alike have made about the potential for Wahhabism (a particular kind of Islamic fundamentalism common in the Middle East) to reach “vulnerable” Muslims within the prison takes on new meaning (Silverberg, 2006). The potential for linkages between violent anti-Western ideologies within the Middle East and incarcerated Muslims is thus, not a threat that prison authorities simply imagined in the aftermath of 9/11, but rather a direct response to the history of incarcerated Muslims using sharia to refute Western governance and build solidarities between their cause and the postcolonial Muslim world. For example, prison authorities have made the claim after 9/11 that Saudi Arabia could make concerted efforts to convert large numbers of Black American prisoners to Islam, radicalize them, and get them to support plans that involve “murdering their own countrymen in a kind of ‘payback’ for perceived injustices done to them by white America” (Silverberg, 2006). This imagined threat of incarcerated Muslims becoming radicalized by their associations with global Muslim networks, signals an enduring memory within the prison about the status of Islam, dating further back than the War on Terror itself.

Moderation

As the previous sections have highlighted, the litigation efforts of incarcerated Muslims would later be used by prison authorities to justify the creation of surveillance systems and collaborations with the federal government during the civil rights movement, which would then be expanded during the post 9/11 era. These are important dimensions to explore within the history of incarcerated Muslims, and lead into another major aspect of the current status of incarcerated Muslims: the involvement of Islamic advocacy groups within the prison, and specifically, their efforts to bridge the incommensurability between Islam and Western governance by positioning Islam as a moderating force within the prison. Some work on Islam in prisons attempts to combat the narrative of prison radicalization by positioning Islam as a religion like any other, which can act as a rehabilitative force in prison, and thus should be treated equally by prison officials (Spalek & El-Hassan, 2007). A particularly interesting phenomenon occurs with this work wherein authors, nonprofits, and different Islamic advocacy groups acting on behalf of incarcerated Muslims attempt to articulate the practice of Islam in prison as a means of benefitting the carceral state. In other words, instead of embracing the incommensurability of Islam with the Western state, or acknowledging the historical success of incarcerated Muslims in challenging carceral authority, these Islamic advocacy groups attempt to build bridges between Islam, Western governance, and the carceral state.

These narratives lead many Islamic advocacy groups to take on the unusual role of proving the loyalty of incarcerated Muslims to the carceral state and arguing that Islam can have the same rehabilitative effects as any other faith. This literature focuses on the ways

that Islam allows for moral development for a prisoner who converts to the faith, a means of coping with the reality of incarceration, and a way of reducing the potential for aggression or violence (Marcus, 2009). Islamic advocacy groups argue that the prison should provide the religious accommodations it so often denies incarcerated Muslims because this group can serve the prison's goals of reforming the morality of prisoners, and reducing violence and crime within the prison overall (Muslim Advocates, 2019).

Paradoxically, many have even argued that religious equality and accommodations are necessary for incarcerated Muslims in order to avoid Islamic radicalization, arguing that disgruntled Muslims within the prison who feel they are being discriminated against might be more likely to follow radical, incorrect versions of Islam (SpearIt, 2013). This worry about the possibility for prisoners to believe incorrect versions of Islam not only mirrors the kind of carceral logic that justified weeding out real Muslims from fake Muslims, but also has become a central concern for many of these Islamic advocacy organizations. These nonprofits often explicitly list their goals as including the reeducation of Islam from "jailhouse Islam" or "prislam" to the kind of moderating force that is, in their eyes, the correct interpretation of religious doctrine (Marcus, 2009). Thus, to distance incarcerated Muslims from their association with sharia and their strategic use of the incommensurability of Islam with the carceral state, these groups attempt to instead reframe Islam within the prison, characterizing the historical organizing as an illegitimate form of Islam and arguing instead for a moderating Islam in the hopes that this will win them religious legitimacy within the carceral state.

While Islamic advocacy organizations make these claims to win equal accommodations and treatment for incarcerated Muslims, this is still a peculiar position for these groups to argue. Attempting to frame Islam as a moderating influence on prisoners is an ahistorical position that ignores the emergence of Islam within the prison system as a force that challenged Western governance and carceral authority from its very inception. Islam's historical position within the prison as a marker of Black radicalism, and solidarity with often violent anti-Western organizing means that the current status of the faith as a perceived enemy during the War on Terror is not a new one that can be countered by proving that Islam has the potential to moderate criminal behaviors like any other religion within the prison, as these groups might believe.

Though Islamic advocacy groups hope to alleviate the religious suppression of incarcerated Muslims by positioning Islam as a moderating and rehabilitative force that can be used and managed by the prison system as any other faith, in doing so they may inadvertently disregard the unique potential of Islam to challenge carceral authority. Even as they are aiming to help incarcerated Muslims in very difficult conditions practice their faith without constant suppression and surveillance, their attempts can often end up failing because of their lack of connection with this very history. This can help clarify why these groups themselves often have a difficult time achieving full success in their efforts, as they often complain about the tensions between their groups and prison officials who stop them from completing the work they aim to do (Personal communication, 2019). Thus, the status of these advocacy groups and the ways that they understand their own role within the landscape of the prison holds potential for further study, as no systematic exploration of

their role exists, especially as they attempt to reframe Islam within the prison and come up against a carceral state that is largely unsympathetic to their cause.

Conclusion and Future Research

The current suppression of Islam in prisons has a long and complicated history, and through a deeper understanding of the components explored in this paper, the ways that the incarcerated Muslims have negotiated different roles within the prison, from their litigation, to their religious suppression and surveillance, to the emergence of Islamic advocacy groups that have, mostly unsuccessfully, attempted to position them as forces for ethical and religious moderation can be more accurately understood. The secular model of the prison, which focuses on exerting absolute power but also on managing religious identity, can be more clearly juxtaposed with the global status of Islam, and more specifically sharia, as incommensurable with Western governance. All of this history then helps to explain why efforts to assimilate Muslims into the landscape of the prison have failed, and why the carceral state has responded to incarcerated Muslims with surveillance, suppression, and the imagined potential of terrorist threats.

Future research utilizing this framework can delve into the perspectives of different actors, such as prison chaplains, Islamic prison advocacy groups, and incarcerated Muslims themselves, to better understand how these actors navigate the status of Islam within the prison and the relationship between sharia and Western governance. Initial interviews with Muslim prison chaplains, for example, have revealed a similar desire as Islamic advocacy groups, to re-educate incarcerated Muslims on the principles of Islam (Personal interview,

2018). In an interview with the founder of the largest Islamic education group for incarcerated Muslims within the US, he refers to incarcerated Muslims taking “*jahiliyyah* practices and slapping an Islamic name on them,” with *jahiliyyah* translating to “ignorance,” and referenced in the Quran as the pre-Islamic, “barbaric” practices of nomadic Arabs before the revelation of Islam (Personal communication, 2019). Thus, these kinds of beliefs can be explored through this framework, with the understanding that Islamic advocacy groups see moderation as an attempt to reconfigure the role of Islam within the prison and build a bridge between Islam and Western governance. Additionally, these kinds of beliefs about incorrect versions of Islam within the prison filter into the literature these advocacy groups provide to incarcerated Muslims, which must be approved by the prison system, and thus includes texts on recognizing terrorism in their introductory textbooks to Islam.

Finally, the voices of incarcerated Muslims are of critical importance, and are still largely missing from the literature on Islam within American prisons. Speaking to formerly incarcerated Muslims directly can help illuminate the conditions of their religious practice, as well as clarify how much incarcerated Muslims feel their experiences relate to or depart from the history of incarcerated Muslim organizing that the prison still associates them with. Their perspectives, especially alongside the perspectives of Islamic advocacy groups and prison chaplains, can highlight how incarcerated Muslims today make sense of the history of Islam, sharia, and Western governance. Do incarcerated Muslims still relate to the organizing principles of incarcerated Muslims during the civil rights movement? Do they feel that Islam allows them to refute carceral authority? Or, would they like to be aligned with these advocacy organizations, and understand their faith through the lens of personal

rehabilitation and moderation? If so, how do they make sense of their religious surveillance and suppression, if they think about it at all? Do incarcerated Muslims think of their identities as solely religious or of sharia as a solely legal or religious system? Would their perspectives of legal issues or the use of sharia be neatly categorized within existing frameworks of legal pluralism and religious tolerance, or would they be necessarily complicated? All of these questions are critical to understanding how this history and this fundamental tension manifests itself within the prison today.

Through continued ethnographic observation, these questions and topics can be addressed. First, by following multiple Islamic advocacy groups working with incarcerated Muslims in Southern California and Chicago, the work these groups engage in and how they may or may not align with incarcerated Muslims can be better understood. Additionally, both of these organizations are based within cities with great historical significance for incarcerated Muslims, and the ways they make sense of these histories can be more accurately captured through their perspectives. Additionally, continued interviews with Muslim prison chaplains within the state of Texas, which has the second-highest population of incarcerated Muslims in the nation and the most incarcerated Muslim women, can also address how they understand their role, as people who are not affiliated with Islamic advocacy groups and occupy a unique space within the prison system itself. Finally, by speaking to Muslims who have been incarcerated in both Texas and California, the rest of these questions on sharia, carceral authorities, and the practice of Islam in prison can be explored. The ways these three groups coexist with each other, and the potential differences in the ways they think about Islam's role within the prison system can illuminate critical

information about how the legacies of incarcerated Muslim activism live on within the prison today, as well as the tensions between Islam and Western governance. This research will be able to fill in crucial gaps in our understanding of incarcerated Muslim experiences, especially as they relate to the history of punishment, sharia, and organizing within the carceral state.

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