

Muslim Involvement: The Court Record

1. *Prisoners' Rights*

Can we rely upon the courts to protect Islam and Muslims from discriminatory treatment? Have the courts considered Islam to be a 'religion' worthy of constitutional protection? The issue of First Amendment⁹ protection of Muslim beliefs and practices has arisen most often in cases brought by African-American Muslims who are incarcerated. In fact, the area of law to which Muslims have made their most substantial contribution to date is the area of prisoners' rights litigation. African-American Muslim inmates have been responsible for establishing prisoners' constitutional rights to worship. Cases brought by Muslims have established that prisoners have the right to assemble for religious services; to consult a cleric of their faith; to possess religious publications and to subscribe to religious literature; to wear unobtrusive religious symbols such as medallions; to have prepared a special diet required by their religion; and to correspond with their spiritual leaders. The court record demonstrates that Muslim inmates' religious liberty claims, challenging prison regulations that impinge on the free exercise of the Islamic faith, have been accepted only under certain circumstances. In brief, the responsiveness of the courts to Muslim inmates' claims has turned on a number of factors including: (1) the issue of equality of treatment of all religious groups in prison; (2) the courts' reticence to reverse the decisions of prison officials; (3) the degree to which the inmates' challenges would undermine the fundamental interests of the state (e.g. in prison security and administrative efficiency); and (4) the showing that Islam is parallel in significant ways to the conventional Protestant, Catholic, and Jewish faiths.¹⁰

Constitutional protection of Islamic practices in prison and elsewhere, however, has not been automatic. Many Muslim organizations, the Nation of Islam in particular, have been treated as cults, or suspect and dangerous groups, due in part to the perception that Muslims teach racial hatred, and have not been regarded in the same respect as 'mainline' religious groups. It has been argued before the courts that Muslim doctrine contains political aspirations and economic goals as well as racial prejudice and should be suppressed in the interest of society. The gist of this argument is that certain Muslim groups are primarily political and not religious associations and thus

⁹U.S. Constitution Amendment I: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

¹⁰For a detailed discussion of Muslims in prison and their constitutional claims see Kathleen M. Moore, "Muslims in Prison: Claims to Constitutional Protection of Religious Liberty." In Yvonne Y. Haddad, ed., *The Muslims of America*. (New York: Oxford University Press), forthcoming.

do not deserve First Amendment protection. When this is added to the fact that Islam is viewed at the popular level as a foreign creed and, at least in the 1980s, has often been maligned by its association in the media with terrorist activity abroad, it becomes even more vulnerable to attack and likely to be misunderstood. More often than not, however, the courts have found that Islam is principally a religious faith and Muslims a religious community despite any political teachings and, as such, are protected by the free exercise clause of the First Amendment. This is a considerable accomplishment on the part of Muslims in prison.

While Muslim inmates have carved out significant inroads in the area of prisoners' rights, it has not been an easy task nor are the hard-won victories irreversible. Courts have often sanctioned the abridgement of the rights of Muslim inmates to the free exercise of their religion. Furthermore, decisions are often reached at the local and state level and, as a consequence, the quality of treatment of Muslims in prison across the nation is uneven. The general judicial approach has been deference to the authority and expertise of prison administrators, who are not always disinterested persons in the resolution of prison problems. While progress in prisoners' rights litigation was achieved in the 1970s,¹¹ in the 1980s there have been some important cases involving Muslim prisoners that indicate that a reversal is at hand and demonstrate the need to continue to press for the protection of prisoners' rights to religious freedom.¹²

Finally with regard to this important area of law, it is important to take special note of a 1987 Supreme Court case that rejected a challenge to New Jersey state prison regulations that interfere with Muslim inmates' attendance at Friday prayer services because it illustrates how important it is to write 'friend of the court' briefs. In *O'Lone v. Shabazz*, 107 S. Ct. 2400 (1987), Justice Brennan wrote a dissenting opinion in which he cited the 'friends of the court' brief for Imam Jamil Abdullah Al-Amin et al. (from the Atlanta

¹¹By 1979, prison officials began to notice the results of court cases brought by Muslim inmates and to make things easier for worshipers in prison. It was estimated in 1979 that about six percent of the inmate population confined in federal prisons confessed the Islamic faith and Islamic programs were offered at 24 of the 38 federal prisons. (*New York Times*, "Federal Prisons Giving Considerations to Muslims," Nov. 18, 1979)

¹²These cases include *Thompson v. Kentucky*, 712 F.2d 1078 (1983) (court of Appeals, 6th Cir.), which held that prison officials did not violate the free exercise of religion or the equal protection clauses by allocating six and one-half hours of chapel time to Muslim inmates while allocating twenty-three and one-half hours per week to Christian groups, or in failing to provide funds to hire a Muslim prison chaplain while providing for one part-time and two full-time Christian chaplains.; and *O'Lone v. Shabazz*, 107 S. Ct. 2400 (1987) (Supreme Court, Rehnquist writing for the majority, held that prison officials and regulations that precluded Muslim inmates from attending Friday prayer services did not violate the free exercise of religion clause of the First Amendment.)

Chapter of the Islamic Society of North America) in order to illustrate that attendance at Friday Muslim prayer services is obligatory. Brennan compared the situation of the Muslims who were not allowed to attend Friday services to that of a Catholic inmate denied the right to attend Mass on Sunday. Both instances of deprivation, Brennan argued, would be absolute and an impermissible violation of religious liberty. What is most significant here is that the availability of a 'friend of the court' brief gave the Supreme Court Justice the opportunity to be informed about Islamic practices and to put into the judicial record a reasoned argument for just treatment of Islam and Muslims in prison. By drawing attention to the similarity between Muslim and Catholic tenets concerning the obligatory nature of Sabbath services, Brennan fits Islam comprehensibly within the religious tradition of the larger society, and while this reasoning was not compelling enough to garner the support of the majority of the Court, it is important in that it both ascribes to Islam an air of familiarity and attempts to fashion out of the American milieu an imperative for religious accommodation.¹³

2. *Wallace v. Brewer*

The significance of the precedents set by Muslims in prisoners' rights litigation cannot be emphasized too much. Other types of litigation have brought Muslim claims to the attention of the courts and, in most of these, the decisions reached in Muslims' prisoners' rights cases are authoritative. In one case, *Wallace v. Brewer*, 315 F. Supp. 431 (1970), Muslims challenged the constitutionality of an Alabama statute that required all communists, nazis, Muslims and officers of the communist party and communist front organizations to register with the Alabama department of public safety. This litigation arose as a result of a conflict between members of the Nation of Islam who, under the corporate name Progressive Land Developers, Inc., purchased farm land in St. Clair County, Ala., and several residents of St. Clair County who tried to prevent the Muslims from developing farms through a series of legal and extralegal activities. A "Stop the Muslims" campaign was conducted and, among other things, the spokespeople for the campaign warned that Muslims "don't respect our flag and they support communist positions in many ways while they regard Christianity as the enemy." No less than Alabama Attorney General McDonald Gallion issued a statement to support the "Stop the Muslims" campaign and pledge the full support of his office to the white citizens of St. Clair County who were intent on expelling the Muslims from their midst. Attorney General Gallion warned the public not to sell land to Muslims "who engage in every type of subversive activity,"

¹³Moore, "Muslims in Prison." In Y. Haddad, ed. *The Muslims of America*, (New York: Oxford University Press), forthcoming.

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decisions affect them.¹⁷ The campaign for a balanced budget amendment, the activity of opposing camps in the battle over abortion, and state ballot initiatives are also all examples of a resurgence of 'grass roots' constitutional interpretive activity currently underway.

Muslims need to enter into this political activity. Whether Muslims are quintessentially American and therefore have earned the right to participate in constitutional politics is no longer a valid question if it ever was—that is, the 'Americanness' of Muslims should be seen as an established fact, even if the larger society remains ignorant of it. Muslims should make it clear that Islam is a part of the American fabric by informing the public of their history here. Further, Muslims need to define a sharp issue focus and bring to the fore the issue of religious liberty and its corollaries of protected free exercise and toleration. Religious liberty is a principle that is sacred in the minds of Americans. The evidence of this is clear: the 'hate violence' legislation imposing strict criminal penalties for violence inspired by hatred of religion or interference with the free exercise of religion; the outpouring of support for the Jewish community, from Jews and non-Jews alike, when synagogues and Jewish cultural center are desecrated; and the public outrage over what appeared to be a violation of the separation of church and state—and therefore an encroachment on religious liberty—when a Massachusetts agency made a 'gift' of land to a Roxbury Muslim congregation all demonstrate how strongly the average American feels about religious liberty.

It is critical that Muslims gain important allies in the activity of interpreting the Constitution. Recently the California State Democratic Party issued a statement calling for the suppression of the adjectives 'Islamic' and 'Muslim' before every reference to terrorism. This is an assertion of a 'constitutional' right to equality and freedom from discrimination on behalf of Muslims. However, also recently, the Arizona State Republican Party adopted a resolution which declared the United States a 'Christian' nation. In terms of what this means for America's non-Christian faiths, this resolution is a step backward. The juxtaposition here of state party resolutions is not meant to favor the Democratic Party or to suggest that the Democrats are more sensitive to Muslims' needs. Rather, it is meant to demonstrate that powerful actors are making decisions that affect Muslims' lives in the United States and that these actors are potential friends and comrades in the political process.

¹⁷Ibid. See also Staunton Lynd, "The Genesis of the Idea of a Community Right to Industrial Property in Youngstown and Pittsburgh, 1977-86." *Journal of American History* (Dec. 1987).