“Shades of Mississippi”: The Nation of Islam’s Prison Organizing, the Carceral State, and the Black Freedom Struggle

Garrett Felber

In October 1962 the New York Amsterdam News ran a shocking photograph of a black man, with his arms and legs in shackles, carrying a stack of books into a courtroom. The headline read “Shades of Mississippi!” A press release with a similar title excoriated the hypocrisy of Nelson Rockefeller and other northern white liberals for publicly criticizing Mississippi governor Ross Barnett while silently condoning the chaining of prisoners in New York: “Sir, do you really think that other Negroes in this state are dumb enough to believe that you and these other white so-called liberals are really for the civil rights of Negroes in the South, while the HUMAN RIGHTS of Negroes here in YOUR state are being trampled underfoot?” If “Ross Barnett is to be blamed for civil rights violations in Mississippi, Nelson Rockefeller must take the blame for human rights violations in New York!”

The man in chains was a plaintiff in SamMeron v. McGinnis, a case filed by five Muslim prisoners at Attica Prison. The choice of Mississippi for this southern analogy was deliberate. The previous year, Mississippi State Penitentiary, better known as Parchman Farm, had imprisoned black and white freedom riders, making them “national heroes, bold survivors of the prison in America’s most repressive state.” As David Oshinsky argues, this “suffering was not in vain. It focused attention on Parchman as a civil rights problem and made it part of the larger black struggle.” Robert Chase makes a similar claim: “When forty-five freedom riders, including James Farmer, Stokely Carmichael (Kwame Ture), and John Lewis, spent thirty-nine days incarcerated at Mississippi’s Parchman Prison Farm, the link between civil rights and prisoners’ rights was forged.” This conventional wisdom is pushed furthest by Malcolm Feeley and Edwin Rubin, who write that “the basic relationship between the civil rights movement and prison reform is causal.” While civil rights organizations such as the National Association for the Advancement of Colored People (NAACP) and the Lawyers’ Committee for Civil Rights under Law were spurred to action by the reports of freedom riders at Parchman Farm, this was certainly

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not the first link between civil rights organizations and prisons. Instead, it marked a return to a relationship in existence since the trial of the Scottsboro boys in the 1930s, as the Nation of Islam (not) came to the forefront of a nascent prisoners’ rights movement during the late 1950s and early 1960s.\(^2\)

This narrative of civil rights to prisoners’ rights reinscribes several troubling assumptions yet to be fully interrogated by historians of the carceral state and the black freedom movement. First, positioning the prisoners’ rights movement as a teleological development that arose from the confrontation between civil rights activists and the southern criminal legal system reanimates a South-to-North narrative that scholars of the “long civil rights movement” have importantly complicated over the last decade. It also partitions black nationalism and prison organizing as developments of the black power era, severing figures such as George Jackson, Assata Shakur, and Eldridge Cleaver from a rich intellectual tradition within prisons. Lastly, while we should heed the caution of Robert Self, who notes that it is not “historically sound to frame all forms of black struggle in terms of their relationship to the southern variant,” we should also not ignore how northern activists mobilized these comparisons. The South was deployed not as a physical place but as a set of power relations and oppressive practices with regional characteristics but national and global scope. The tactical use of analogies such as “shades of Mississippi” by northern activists reveals how these struggles were often in dialogue through tactics, aims, and rhetoric.\(^3\)

This essay makes several interrelated claims about the periodization and role of prison organizing and black nationalism in the black freedom movement, about how we theorize the relationship between activism and the rise of the carceral state, and about the methodological and political significance of foregrounding prisoners’ voices in narratives of state formation. First, the Nation of Islam’s prison organizing—and black nationalism more broadly (exemplified most prominently during these years by the NOI)—should be seen as a central current of the postwar struggle for black freedom. Its political strategies and conceptual legacies expand our understandings of the midcentury black freedom struggle, the prisoners’ rights movement, and the development of the punitive state. Sec-


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Secondly, prison organizing should not be narrated as a post–civil rights struggle but rather as one born out of, and alongside, the movement. Lastly, the carceral state was not simply a counterrevolutionary reaction to the gains of social movements through top-down policy changes and electoral shifts but was produced through daily, on-the-ground interplay with prisoners’ activism.

The dialectical relationship between prisoners’ radicalism and prison repression—what I term the “dialectics of discipline”—paradoxically helped develop the protest strategies and legal framework for the prisoners’ rights movement while fortifying and accelerating the expansion of the carceral state through new modes of punishment and surveillance. These dialectics took two major forms during this period in New York prisons. First was the relationship between state methods of control such as prison transfers, confiscation of religious literature, solitary confinement, and loss of “good time” (sentence time reduction for good conduct) and the responses by Muslim prisoners through hunger strikes, writ writing, and take-overs of solitary confinement. The second was the interaction between Muslim religious practices and prison surveillance. An emerging web of state surveillance monitored Muslim rituals and attempted to construct a religioracial formation to justify the suppression of Islam in prisons. Because grassroots organizing by prisoners and the production of state knowledge and discipline grew alongside one another, historians of the carceral state cannot supply one-sided histories relying on state-produced narratives while burying the physical and theoretical labor of those who opposed such systems. Rather than seeing the development of mass incarceration and carceral apparatuses in the tectonic shifts of electoral realignment and other federal policy measures, this essay points to the local and daily exchanges between prisoners and prison officials as ground zero for the rise of the prisoners’ rights movement and the extension of the carceral state.

A recent flurry of literature on the rise of the carceral state is quickly remaking our understandings of the braided histories of the struggles inside and outside prisons. Earlier writings on the prisoners’ rights movement reproduced broader declension narratives of a moralistic civil rights movement that gave way to nihilistic black power. According to these narratives, a backlash of white conservative “law-and-order” politics responded to the excesses of the movement. Race eclipsed class as the primary marker of political order and allowed for the ascendency of the Right. The war on drugs and “get-tough-on-crime” rhetoric thus created a new system of racial segregation in the form of the prison-industrial complex. However, recent scholarship has pushed against this backlash thesis. Rather than seeing the carceral state as the singular result of the rise of the Right, scholars have pointed to a consensus between liberals and conservatives around a shared “tough-on-crime” political discourse through which they waged war on the poor and on communities of color. As Marie Gottschalk argues, just as often, “liberal Republicans and Democrats have been key architects of the penal state.” President Lyndon B. Johnson’s Great Society programs were inextricably tangled with his war on crime. “Far from being ambivalent about crime control as a major aim of domestic policy,” Elizabeth Hinton writes, “Johnson and his radical domestic programs laid the foundation of the carceral state.” The Rockefeller Drug Laws (1973) were also among the most draconian in the

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4 A similar dynamic between prison repression and prisoner resistance is explored by Alan Eladio Gómez, who "examines the origins of behavior modification and the Control Unit (cu) in the United States, as well as the cu’s relationship to radical political struggles, by focusing on the contradictions inherent in the dialectic of prison rebellions and repression.” See Alan Eladio Gómez, “Resisting Living Death at Marion Federal Penitentiary, 1972,” Radical History Review, 96 (Fall 2006), 58–86, esp. 60.
nation, marking a turn toward a punitive war on drugs rather than a community model emphasizing rehabilitation. Naomi Murakawa suggests that histories of conservative backlash are not wrong but that they “eclipse the specificity of racial liberalism against which they respond.” Indeed, the New York State commissioner of correction Paul McGinnis, named as the defendant in SaMarion v. McGinnis, was appointed by the liberal Republican Rockefeller. These northern liberals were decried by the Nation of Islam and other northern black activists as nothing more than “shades of Mississippi.”

While studies of federal policy have demonstrated the convergence of liberals and conservatives in constructing the carceral state, other scholars have pointed toward the grassroots organizing of prisoners against penal regimes. They focus on prisoners’ demands, placing “the prisoners and their grassroots social movement at the center of the struggle for prisoners’ rights” by chronicling labor struggles, rebellions and revolutionary organizing, intellectual production, subversive dress, self-mutilation, and other forms of formal and informal politics. Histories of the Nation of Islam in prisons, more specifically, have come from a variety of perspectives. Gottschalk, Berger, and Zoe Colley have all gestured toward the foundational role of the NOI as the first organized prison litigation effort while citing its role in politicizing prisoners but have confined their studies of the NOI to the national level. The work of Eric Cummins, Toussaint Losier, and Malachi Crawford has focused more specifically on legal cases arising out of activism in California, Illinois, and New York, respectively. Crawford and Sarah Barringer Gordon have also used the tools of legal history to study the significance of legislation resulting from Muslim prison litigation. But just as most policy histories do not account for the ways prisoners resisted state repression, many social movement histories do not adequately explain the interrelationship of the prisoners’ rights movement and the rise of the carceral state. This essay uses a variety of sources, including courtroom testimonies, letters from prisoners, and state police surveillance records and correspondence to document the mechanisms of prison activism and prison discipline uncaptured by legal decisions or federal policy alone.6


Historians have had difficulty reconciling the NOI’s seemingly incongruous black nationalist ideas of a separate state, flag (with a crescent and star), and ethnorracial identity (“Asiatic”), with its use of courts, litigation, and a rights-based framework to secure civil rights protections and constitutional guarantees. Berger argues that the prisoners’ rights movement “was less a claim to expand rights than it was a critique of rights-based frameworks.” But this is truer for a later period in the prisoners’ rights movement, following the important constitutional gains won through Muslim litigation in cases such as Cooper v. Pate. In the early 1960s, Muslim prisoners drew on section 1983 of the 1871 Civil Rights Act, which protected citizens against violations of constitutional rights by persons acting under state authority. They also frequently cited the equal protection clause of the Fourteenth Amendment. In Cooper v. Pate, for example, Thomas X Cooper referenced the Illinois Bill of Rights as well as the First, Fifth, and Fourteenth Amendments. Muslim prisoners not only cited constitutional protections but also used direct-action strategies such as sit-ins, hunger strikes, and occupations of solitary confinement, that anticipated the “Jail, no bail” efforts of southern civil rights activists. Rather than see claims to constitutionalism and direct-action protest as irreconcilable with black nationalism, we might consider these as effective, if entangled, strategies to win protections for prisoners under the law while challenging white supremacy and incarceration more broadly. As C. Eric Lincoln noted: “the Muslims appear to believe in the efficacy of the white man’s law without believing in its justice.”

Despite focusing on Muslim prison organizing and litigation in New York, I draw national conclusions about the prisoner’s rights movement and the growth of the carceral state. While New York state prisons were unique, the demands by Muslim prisoners and forms of state repression echoed across the country. For example, the use of transfers to isolate and separate politicized prisoners has been documented in states ranging from New York to Texas and California. As the birthplace of the state prison system, New York also became a model for northern prisons from 1820 until 1940. While its prisons were among the first wave of Muslim litigation that drew the attention of the judicial branch to prison conditions, cases soon came from federal and state prisons across the North, South, and West throughout the 1960s (specifically, from Lorton Reformatory in Virginia and Folsom Prison in California). Finally, New York was a crucial nexus for an emerging web of surveillance by prison officials, extending outward to the national level. Thus, the story of Muslims in New York prisons stands as the origin for one of the richest and most comprehensive prison organizing campaigns in the early prisoners’ rights movement and is part of a larger mosaic of activism that would ultimately inflect and inform iconic struggles such as the Attica Prison uprising one decade later.8

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8 Robert Chase, “Civil Rights on the Cell Block: Race, Reform, and Violence in Texas Prisons and the Nation” (Ph.D. diss., University of Maryland, 2009), cited in Colley, “All America is a Prison,” 13. In 1967 Eldridge...
The first section of this essay briefly lays out the origins of the Nation of Islam’s legal challenges to New York state prisons at the moment that the organization emerged at the forefront of national discussions about race relations and the civil rights movement through the 1959 wnta-tv documentary *The Hate That Hate Produced* and the first book-length study of the group, *The Black Muslims in America*, by C. Eric Lincoln. These lawsuits, *Pierce v. LaVallee* and *SaMarion v. McGinnis*, prompted Commissioner of Correction McGinnis to begin an intensive surveillance campaign and carceral buildup through the state police, which developed in dialogue with the NOI’s activism. I then focus on the methods of prison discipline aimed at suppressing Islam in New York prisons. Wardens transferred key organizers between institutions in an attempt to diffuse the movement but relied on the combination of solitary confinement and good-time practices as the principal form of repression. The two were used in tandem as physical, psychological, and institutional punishments to isolate prisoners while simultaneously extending their sentences. The third section demonstrates the responses of Muslim prisoners to these disciplinary measures through writ writing, hunger strikes, sit-ins, and take-overs of solitary confinement. The take-overs, in particular, gesture toward the similarities between tactics used by Muslim prisoners and law enforcement in New York and the developing civil rights movement in the South. These continuities do not demonstrate causality but instead raise larger questions about which struggles are remembered and which are forgotten. Finally, while Muslim prisoners were the first to use organized writ-writing strategies to hamstring the courts and bring greater public visibility to prison conditions, the confluence of prison discipline and prisoners’ resistance resulted in the rise of a more institutionalized surveillance network extending from prison officers to the state capital and forming a national web of information sharing among law enforcement officials. I end by considering how these dialectics of discipline paradoxically helped buttress and expand the carceral state alongside the development of a national prisoners’ rights movement.9

**Clinton Prison**

*Pierce v. LaVallee* and *SaMarion v. McGinnis* both featured a set of complaints similar to other previous NOI cases: access to the Qur’an, correspondence with religious counsel, separate religious services, and an end to religious persecution through solitary confinement and good-time practices. Fundamentally different about *SaMarion* in 1962, however, was that McGinnis was now named as a defendant. This strategy may have been prompted by the judge who had heard *Pierce*. Judge Stephen Brennan had emphasized that naming

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the Clinton Prison warden J. E. LaVallee did little to affect prisoners as he “is not free to run his prison as he likes.” “It seems to me that if you wanted something, to get a decision that would bind them” he noted at trial, “you would have to bring in the Department of Correction.” Thus, Deputy Attorney General William Bresnihan captured the magnitude of SaMarion: “the whole prison system of the State of New York is on trial here.”

On Christmas Day 1959 at Clinton Prison in Dannemora, New York, a small group of Muslims had gathered in the recreation yard. As one prisoner remembered, it “was snowing and it was very cold, but as usual, on Friday we would meet to [have] a short prayer regardless of inclement weather or anything else.” The men, numbering from ten to seventy prisoners, had routinely met in this area for almost a year. The group had grown over the years, and their physical space expanded as well, encompassing a fifteen-yard-long-by-seventy-yard-wide area paved with stones the men had collected from the yard. A stove was used for cooking and an oven for baking since the mess halls did not offer halal preparations. A blackboard contained illustrations and notes on current events and readings from the Qur’an. As was common, a prison officer monitored the congregation from ten feet away. Joseph X Magette reflected, we “were tolerated. I wouldn’t say we were admitted, but we weren’t denied the right to meet.”

The men gathered at Clinton Prison had arrived from a variety of different backgrounds during the mid-1950s. None were Muslim when sentenced, and unlike members of the Nation of Islam incarcerated in federal prisons during World War II for refusing to register with the selective service alongside six thousand other conscientious objectors, they did not have political backgrounds or political charges that brought them to prison. William X SaMarion was born in Elizabeth City, North Carolina, and raised as Protestant Episcopalian before converting in prison under the teachings of Teddy Anderson, a Muslim associated with the Ahmadiyya Movement in Islam (AMI). SaMarion was incarcerated for stealing two pounds of pork chops, a slab of bacon, and 172 packs of cigarettes before later denouncing such items after converting. James X Walker and Magette both made their profession of faith at Clinton Prison in early 1959. Magette had experienced run-ins with the law since his early teens, having fled the scene of a burglary in Harlem before being shot twice by a police officer when he was fifteen. Martin X Sostre had the most political upbringing of the four. He was born to Puerto Rican and Haitian parents in 1923; his father was a Communist merchant seaman, and his mother was a cap maker. They settled in Harlem, where he was influenced by Lewis Michaux’s African National Memorial Bookstore and the stepladder orators on 125th Street. He dropped out of school in the tenth grade and was drafted in 1942. After serving a brief stint in the Korean War, he was arrested in 1952 for heroin possession. When asked if he used the drug, he responded: “I’m too smart for that. Only suckers use that stuff.”


The men at Clinton Prison were part of a rich Muslim community, consisting, according to Sostre, of thirty believers belonging to “at least four different sects of Islam, both of orthodox and non-orthodox, namely Afamdiya [Ahmadiyya], Moorish, Science [Moorish Science Temple], Muahhad [most likely Nation of Islam] and non-denomination.” Many of the men associated with the NOI credited their conversion to Anderson, who maintained the only copy of the Qur’an at the prison. “We would have to consult with him and borrow it from him,” Sostre remembered. “He was reluctant to lend it out, naturally, but usually he would loan it out to ones that wanted to peruse it.” Thomas X Bratcher later described a similar community at Auburn Prison: “some were Ahmadiyya, some were Moorish Science Isams, some were Sunni Muslims, some were Wahapi [Wahhabi]. . . . We had a non-sectarian class. That means that we did not lean to the teachings of any so-called sect in Islam.” Although many of the men were introduced to Islam through the AMI and other groups, they formed a small but growing community that gravitated toward the teachings of the NOI.\(^\text{13}\)

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What separated the Nation of Islam from other Muslim sects also prompted concern from prison officials: its black nationalist politics and critique of global white supremacy. One of the principal activities of the brotherhood in prison was teaching a robust array of classes in the yard. SaMarion, along with Magette and Walker, was in charge of organizing these lessons; the group covered a diverse set of teachings, including business, Islam, Arabic, black history, and law. The “Mufti is known as the one that keeps the peace within the group, discipline,” SaMarion explained.

The treasurer is one that holds the finances, sees that—if we are short of toothpaste or tooth powder, or the brother has no money and is trying to buy some books, that he has the toothpaste or the tooth powder. The librarian is the one that has the control of all the literature that we were able to fill our lockers with; literature pertaining to our own kind, Black Man’s literature, Black Man’s history, mathematics, Arabic, anything we thought would help us in our educational field. . . . The secretary is the one that would record the day’s activities, would record the statements of some of the brothers.14

The Muslim Brotherhood (as the organization was known inside prisons) even had its own constitution and subscribed to a shared economic system that used tithing and organizational dues for “supplementing the diet of the members and further[ing] the cause of the Brotherhood.”15

While the fundamental crux of prisoners’ legal cases against the state appeared to be religious rather than political, it is important to recognize how the Nation of Islam’s religious views were racialized by prison and state officials. For example, New York State prison inspector Richard Woodward described Demir Asan as “a Moslem but it must be assumed that he is of the legitimate religion as he is white and has a name that might be assumed to be from the Far East.” In the SaMarion trial, the prosecuting attorney Richard Griffin attempted to illustrate the way that “Muslim” was used by prison officials to connote blackness, while whiteness was often decoupled from reference to religious beliefs. Prisons even allowed access to The Glorious Koran, translated by the white English convert Marmaduke Pickthall in 1930 but refused copies of the Arabic translation with English commentary by the Indian-born Maulana Muhammad Ali. In these ways the prison system’s distinction between legitimate (seemingly color-blind) and illegitimate (race-conscious) expressions of Islam underscored how the NOI’s religious beliefs were, in the state’s eyes, inextricable from racial militancy.16

Despite prison officials’ efforts to divert Muslim converts toward the Ahmadiyya Movement in Islam’s ostensibly apolitical teachings, the NOI continued to thrive in New York throughout the late 1950s. Because the Muslim prisoners were not given a formal space to hold services within the prison, informal prayers such as those described at Clinton Prison often took place in the prison yard. Prisoners relied on memorized prayer, passing surahs to one another through oral tradition. These prayers, SaMarion recalled, were “learned by heart, to be able to speak about.” The basis for many of these lessons were editorials by Elijah Muhammad and Malcolm X, published in black newspapers in the late 1950s. “Most of us have never seen the inside of a Temple,” Thomas X Bratcher

15 Muslim Brotherhood constitution, n.d., p. 31A, folder 19, box 11, Malcolm X Collection.
wrote to Malcolm X, “we have had to make up our own lesson from articles appearing in the Los Angeles Herald-Dispatch.” While the censorship of black newspapers by prison officials was never as thorough as their ban of Muhammad Speaks beginning in the 1960s, prisons nevertheless monitored and confiscated newspapers carrying editorials by the Nation of Islam; these included the Pittsburgh Courier, the New York Amsterdam News, and the Los Angeles Herald-Dispatch.\(^{17}\)

The stark contrast between the “tolerance” that Magette described at Clinton Prison prior to Christmas Day 1959 and the various punishments levied against Muslim prisoners after it reveals the strategies developed by the state to suppress political agitation and the spread of Islam in New York prisons over the following decade. “All of the sudden the situation changed completely,” he testified. “Thereafter we were in complete segregation” (solitary confinement). The officer monitoring the congregation that day had reported hearing one of the prisoners say that the group was going to take over solitary confinement. He then issued a disciplinary report charging them with hosting an “unauthorized meeting under the guise of an assembly for religious purposes.” The prisoner who made the remark was locked up immediately, and the other men were soon taken to disciplinary court and moved to a minimum-privilege area. Some even remained in solitary confinement until June of the following year.\(^{18}\)

The timing of the response by prison officials was not accidental. An entire apparatus of state control emerged in the months following the airing of The Hate That Hate Produced in the summer of 1959. The serial documentary was almost singularly responsible for introducing the Nation of Islam to the broader public, and, as its name implied, it portrayed black nationalism as the by-product of white racism—a specter of “black hate” causing hysteria among white viewers while suturing their guilt by suggesting that racism was not racially distinct. The documentary positioned the NOI as a “hate group” not unlike George Lincoln Rockwell’s American Nazi party and the Ku Klux Klan, often referring to them as “black racists” and “black supremacists.” As the historian Claude Clegg notes, the documentary marked a departure in media coverage of the NOI from the “othering” Orientalist tropes of “voodoo cults” and rumors of human sacrifice toward a discourse of “reverse racism.” In fact, the phrase “black racism” did not exist prior to the documentary, and within one month of its airing the NAACP’s Roy Wilkins had issued a public statement denouncing the group as teaching “black supremacy.”\(^{19}\)

The Hate That Hate Produced also played a crucial role in pushing the doctoral student C. Eric Lincoln decisively toward publication of The Black Muslims in America. The phrase “Black Muslims” was Lincoln’s creation and was later rejected by the Nation of Islam in part because it severed the NOI from a global Muslim community. Malcolm X recalled the years he spent trying to refute the label: “Every newspaper and magazine writer and microphone I got close to: ‘No! We are black people here in America. Our religion is

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\(^{17}\) Steven P. Frankino, “The Manacles and the Messenger: A Short Study in Religious Freedom in the Prison Community,” Catholic University Law Review 14 (no. 1, 1965), 38, 50; SaMarion v. McGinnis trial transcript, 376; Thomas X Bratcher to Malcolm X, n.d., folder 9, box 4, Malcolm X Collection. Thomas X Bratcher’s letter is likely written in late 1961. He mentions being 29 years old (born October 4, 1932) and an October 11, 1961, court decision to hear the trial, writing that they expected a trial date during “the first part of 1962.” Thus, the letter was most likely written between mid-October and December 1961.

\(^{18}\) SaMarion v. McGinnis trial transcript, 708, 712–13, 721, 1157.

Islam. We are properly called ‘Muslims!’” The combination of Mike Wallace’s documentary and Lincoln’s book provided a framework for carceral actors, ranging from police to prison officials, criminologists, and even federal judges, to understand the Nation of Islam as a hate group masquerading under the auspices of religion. The phrase “Black Muslims” became linguistic shorthand for this argument by the state.20

This understanding set the stage for a struggle between Muslim prisoners needing to legitimize their religious beliefs before the courts and prison officials fathering evidence to demonstrate that the group was, in fact, using religion to cover its subversive political aims. Bratcher astutely anticipated the attorney general’s defense in his letter to Malcolm X prior to SaMarion: “I can see that his main argument is going to be in the presenting of certain publications out of books, magazines, and papers about the Muslims. . . . He is going to try and justify the warden’s violation of our constitutional rights by submitting these published reports to the court saying that we are preaching ‘hate’ and we are a fanatical group not recognized by the rest of Muslim World.”21

Carceral authorities had an insatiable appetite for Lincoln’s book, positioned as an “objective” and nuanced portrait of the organization due to Lincoln’s identity as a black Christian scholar. As the NOI became a greater topic of conversation in race relations and as its presence in prisons grew, the state attempted to develop a consistent logic to justify suppression of Islam among prisoners. Lincoln’s book was widely read and distributed among criminologists and prison officials as the organization gained a stronger footing in America’s prison system. Soon after the book’s release, the Los Angeles Police Department (LAPD) mailed Lincoln a copy of its review in the LAPD newsletter with a personal note: “We thought you might like to see our Trainee’s review of your book.” Upon request, Lincoln had a copy of his book delivered to the Georgia Bureau of Investigation and ensured his full cooperation. Reuben Horlick of the American Association of Correctional Psychologists invited Lincoln to participate in a panel discussion on the “Black Muslims” at the 1963 convention of the American Correctional Association (ACA). Bernard F. Robinson, a sociologist in the Illinois prison system, wrote Lincoln that not “only did I benefit by your very instructive statements regarding the Black Muslim Movement, but my fellow staff members also considered themselves well edified as a result of your correspondence.” And in May 1961 Richard Woodward reviewed what he called a “fine book by Eric Lincoln” for a new monthly memo on the Nation of Islam that would be distributed throughout the state prison system in New York.22

These new highly confidential memos were instituted just after a meeting between Commissioner McGinnis and representatives from the offices of Gov. Nelson Rockefeller and Attorney General Louis Lefkowitz in January 1960. McGinnis called the meeting after having been named in a number of writs from Muslims at Clinton Prison. He reported that the Nation of Islam was “spreading like a cancerous growth and was becoming a

22 In 1961 a California law officer estimated that half of NOI membership came from prison recruitment. The Maryland superintendent of prisons noted that the movement in prisons had become “steadily stronger and more troublesome.” See “Races. Recruits behind Bars,” Time, March 31, 1961, p. 14. C. Eric Lincoln added that “the prisons are made to order for Muhammad.” See Monthly Bulletin of the Association for Professional Law Enforcement, April 1961, pp. 8, 10, folder 1, box 175, C. Eric Lincoln Collection (Robert W. Woodruff Library, Atlanta University Center, Atlanta, Ga.); Reuben Horlick to C. Eric Lincoln, May 23, 1963, folder 12, box 70, ibid.; and Bernard F. Robinson to Lincoln, Sept. 5, 1962, folder 10, ibid.
most serious problem." Since “it was going to be a continuing thing; and because of the racial feature, [McGinnis] felt that some policy should be formulated.” The Division of State Police then contacted what were known as “subversive units” in major cities across the country to cull information and form a special file on the Nation of Islam. Woodward would serve as a liaison officer between the Department of Correction and the New York State Police. More accurately than he could have known, Malcolm X noted in his autobiography that the NOI’s presence in prisons was “as big a single worry as the American prison system has today.” “I’m sure,” he added, that “they monitored what I wrote to add to the files which every state and federal prison keeps on the conversion of Negro prisoners by the teachings of Mr. Elijah Muhammad.” Indeed, in addition to these monthly memos, Woodward reported acting “in accordance with plans set up by the Commissioner of Correction” to turn over “arrest records and photographs of the following convicts who are confined in State Prisons throughout the State of New York.”

As part of this new programmatic suppression of Islam in state prisons, McGinnis promised those at the January meeting that he would “identify ring leaders and, upon

identification, transfer them to other prisons, pointing out to the receiving warden what to expect. In this way, he hoped to curb their activities in the Cult.” In June 1960, with many of the men at Clinton Prison still held in solitary confinement, the warden followed through on the commissioner’s promise, transferring four of the key organizers—Magette, SaMarion, Sostre, and Walker—to Attica Prison. There, they continued to grow through religious conversions and prison transfers until the group included almost sixty members and became one of the most active Muslim communities in American prisons.24

Attica

The transfer to Attica in 1960 was an explicit attempt at curbing Muslim activism in New York prisons and represented the first of a variety of methods of prison discipline by the state. The practice of transferring prisoners to “break up gangs, separate associates in crime, and prevent disorder” was decades old. Sostre later referred to it as “bus therapy.”

It was not unique to New York, however. Chase notes that the Texas Department of Correction distributed Muslims throughout state prisons to limit their influence in any one location. These institutional transfers (referred to as “drafts”) and solitary confinement represented the two largest threats to the stability of Muslim communities in prison. The group was persistently under threat due to this constantly fluctuating base. Short sentences often meant the release of members, and several assistants were appointed for each officer position to assure continuity and sustainability. These multiple appointments were primarily meant to combat the “further reduction of our ranks by the implacable enemy through persecutions (solitary confinement).”25

Solitary confinement—sometimes referred to as “the box” or “segregation”—was the prison’s primary tool of security and discipline. The practice of solitary confinement was honed over a century earlier at New York’s Auburn Prison, with a trademark system of strict discipline, labor for prison profit, and solitude. This drew on nineteenth-century penal thought based on the belief that collective work and isolated living would reform prisoners. By the 1960s, at Attica Prison, solitary confinement had shed all pretenses of rehabilitation and was used strictly as a disciplinary measure. The section consisted of fifty individual cells on the third floor of the reception building with each single cell containing only a bed, toilet, wash basin with running water, and a light. When assigned to segregation, prisoners often were required to stay for days or weeks in “keep-lock” or a strip cell before moving to the gallery. “Keep-lock” was a single solitary cell with doors that “do not open up any more.” The strip cell was bare, with only a bucket and blanket. As SaMarion testified, prisoners “do an initial twenty days on a concrete floor with only a pair of winter underwear, pair of socks, no sanitary facilities whatever. The only thing you...
use for calls of nature is a bucket, a defication bucket.” Rations in keep-lock were reduced to half of normal mess-hall food: water and two slices of bread. Magette described keep-lock at Clinton Prison as even more medieval. The “Dark Cell” was completely empty, without even a blanket. He was put there naked with a half a cup of water and one slice of bread three times a day.26

But solitary confinement was used by prison officials as more than a physical deterrent. It was coupled with the loss of good time as a way to isolate prisoners while simultaneously extending their sentences. Good time, sometimes referred to as good behavior (and now called “earned time”), was purportedly meant to reward well-behaved prisoners with a shortened sentence through their good conduct. However, like solitary confinement, it was used as a punitive measure. For example, in the first year the men spent at Attica Prison, thirty-three prisoners were sent to solitary confinement and four hundred cases of discipline led to 8,525 total days of good time lost over a nine-month period. The loss of good time and the use of solitary confinement also punished prisoners in two directions at once. First, prisoners lost an initial amount of time for the disciplinary matter. For instance, SaMarion lost sixty days for joining a hunger strike in protest of the solitary confinement of another Muslim prisoner. The second loss of time occurred during solitary confinement, as each day in solitary earned three lost days. Finally, regardless of prisoners’ behavior in solitary confinement, good time could not begin to be reaccumulated until a prisoner had been readmitted to the prison’s general population. These good-time practices illustrate the vast discretionary powers wielded by prison officials. As SaMarion bleakly noted at trial, “it is taken at will, you have it one minute, then you don’t have it.”27

A year after the four men had been transferred from Clinton Prison, Attica Prison officials reported that a sit-down strike was being planned in protest of Sostre’s solitary confinement. They responded by putting the prisoners in keep-lock with a loss of ninety days of good time. The group was then divided and transferred to different blocks with the hope that “after a thirty-day cooling-off period and the dispersion of the members of this click[,] activity will abate.” This incident reveals the ongoing struggle between strategies employed by prison officials to suppress Muslim activism and prisoners’ resistance to such practices. The state used transfers and the combination of solitary confinement and good-time practices to slow the spread of Islam in New York prisons. But prisoners continued to bring their plight before the courts, ending the unspoken “hands-off” policy that had previously sheltered prisons from oversight by the judicial branch.28

Prisoner Radicalism

As the five men waited for the SaMarion case to reach trial in the summer of 1962, they planned a hunger strike protesting solitary confinement. The prisoners claimed that Bratcher’s segregation was “an excuse by the warden . . . to make him seem that he was crazy concerning this trial that was coming up.” Writ writing had exacerbated fears among prison officials and became one of the most successful strategies for Muslim prisoners. The 501 successfully flooded the courts with writs across the country. Between

26 Oshinsky, Worse than Slavery, 6; SaMarion v. McGinnis trial transcript, 364–66, 613, 718.
28 SaMarion v. McGinnis trial transcript, 1203.
1961 and 1978, sixty-six reported federal court decisions were made on suits filed by prisoners affiliated with the Nation of Islam. In California the number of habeas corpus petitions rose from a mere 814 in 1957 to nearly five thousand by 1965. At San Quentin in 1965, prisoners were churning out almost three hundred petitions per month. As Judge Brennan noted at one trial, these were not “cases where uneducated, inexperienced and helpless plaintiffs are involved. . . . these applications are part of a movement.” Prison litigation became the “peaceful equivalent of a riot” by catalyzing public support and bringing national attention to the otherwise-hidden struggles of prisoners.

One of the largest structural challenges to prison organizing was physical isolation from the outside world. Activists relied on what Berger has called “a strategy of visibility” to make their struggles known. Testifying has its political roots in slavery and has been carried forward through the black feminist tradition. As Danielle McGuire points out in her work on the role of the struggle against sexual violence in the civil rights movement, “testimony must be seen as a form of direct action and radical protest.” Black prisoners saw the courts as political pulpits, a breach in the walls allowing them to take their claims before the world outside. As James Jacobs wrote, “it is as if the courts had become a battlefield where prisoners and prison administrators, led by their respective legal champions, engage in mortal combat.” Sostre later wrote that the “court is an arena. It is a battlefield—one of the best. We will use these same torture chambers, these same kangaroo courts, to expose them.”

Nowhere was this more evident than during Malcolm X’s testimony during the Sa-Marion trial. Bratcher realized that the state would be mobilizing witnesses to testify against the Nation of Islam’s standing in the Muslim world and wrote to the minister that the “‘Key’ witness I am depending on to ‘seal’ our victory is ‘You’ Minister Malcolm X.” This set the stage for a four-day showdown between Malcolm X and the state’s witness, the Columbia University professor Joseph Franz Schacht. While Malcolm X admitted openly in court that he had an eighth-grade education, no formal theological training, and could not speak Arabic, Schacht had a “masterly knowledge” of the language, and his book Origins of Muhammadan Jurisprudence, which argued for the historical development and sociological implications of Islamic law, was considered a seminal text in the Western study of Islam. Yet Malcolm X weaved around the meritocratic probing of the state. When asked if he had a degree in theology, he noted that if “my understanding of the word ‘theological’ is correct, the study of God, the science that deals with religion and the study of God, I studied theology in that sense under the Honorable Elijah Muhammad about our God.” When pressed on the length of his education, he replied: “I am still studying.” When interrogated on whether or not he was ordained or had a written certificate that permitted him to proselytize, he reminded the court that “Jesus sent his disciples forth with no written certificate or anything but his approval.” Malcolm X’s


30 Berger, Captive Nation, 6; Danielle L. McGuire, At the Dark End of the Street: Black Women, Rape, and Resistance—A New History of the Civil Rights Movement from Rosa Parks to the Rise of Black Power (New York, 2010), 228, quoted in McCubbin, ed., Martin Sostre in Court, Labadie Collection.
testimony was so convincing that when Schacht took the stand and listed his membership in the Royal Netherlands Academy, the Arabic Academy in Damascus, and an honorary degree in Law from University of Algiers, the judge responded: “I don’t think it is quite thoroughly clear at this time to qualify him as an expert.”

But Malcolm X did more than establish his religious credentials before the judge. He also used the courtroom as a stage to launch into his many political riffs. Almost a year before delivering his most-remembered speech, “Message to the Grassroots,” Malcolm X explained the difference between a “House Negro” and a “Field Negro” to a federal judge. The former, he emphasized, had no support from the black community. “He is a leader in public relations, but when it comes to actual following among Negroes, he has no following. . . . That is how you can tell him.” When asked about the Nation of Islam’s opposition to integration, Malcolm X pivoted to the difference between racial separation and racial segregation. “Segregation means to regulate or control,” he explained. “A segregated community is that forced upon inferiors by superiors. A separate community is done voluntarily by two equals.” Deputy Attorney General Bresnihan tried to return to the point that the NOI’s teachings were violent and fomented an unsafe environment in prisons, bringing forth confiscated material that said: “To combat the Negro, convert him or annihilate him is the holiest task of the faithful.” Here, Bresnihan reasoned, was clear evidence of the violent aims of the Nation of Islam. Yet, again, Malcolm X thwarted the cross-examiner. To destroy the “Negro,” he explained, meant to “destroy the stigma that makes this Negro a Negro. By converting him you annihilate, annihilate the ignorance and lethargy and immorality and things of that sort.” As Malcolm X noted, “no black person calls himself a Negro except those in America . . . The white man respects the black man, he disrespects the Negro.” Malcolm X and the Nation of Islam sought to destroy a denigrated notion of blackness defined by white society as “Negro” and replace it with an exalted self-determining one defined as “black.” Malcolm X’s rhetorical sleight of hands were not evasive, but didactic. Judge John Henderson addressed him specifically at one point, noting his changed understanding of the term “Negro”:

I was taught in my early life that the word ‘Negro’ is a mark of respect to the black man. I learned yesterday for the first time that there is a preferred name, the black man, I take it. I am not used to that and when I refer to the Negro in my discussions to you, I am not doing it with a mark of any disrespect. I was always taught, and I thought of it as a mark of respect. I want you to understand that.

While Henderson had, in effect, apologized for and excused his racism in the same remark, his open respect for Malcolm X’s opinion shifted the tenor of the case. As Griffin recalled, Henderson was “impressed by Malcolm and his testimony . . . [and] respected Malcolm for his clear statements and responses.” Bresnihan, likely attempting to curry favor with the judge, then began adopting the phrase the “American Black Man” in his questioning. Malcolm X’s use of the courtroom as a political stage reveals the importance of testimony as a form of nonviolent resistance. His testimony lasted three days, and was over 20 percent of the two-week trial transcript, successfully compelling the judge to rule that the Nation of Islam was a religious organization. But more importantly, Malcolm X’s

political views took center stage and fundamentally altered the rhetoric and discourse of
the case.33

The case at Attica Prison also underscores the important role that the jailhouse lawyer
played in organizing legal challenges from prison. Knowing that most prisoners were not
qualified to draw up their own legal challenges, prisons such as Attica maintained rules
prohibiting legal assistance. For example, “rule 21” at Attica stated: “Prisoners are prohib-
ited except upon approval of the warden to assist other prisoners in preparation of legal
papers.” This strategy was reproduced nationally as a means of combatting prison litigation
efforts. In Texas, administrators employed a similar strategy, forbidding writ writers
from possessing the legal materials of a fellow prisoner. In California this was known as
Rule D-2602. Even if a prisoner wanted to use another’s paperwork as a template, officials
concluded that any legal material in a cell not pertaining to that prisoner was evidence of
prison lawyering. Just as grandfather clauses and poll taxes worked as state mechanisms
to disfranchise southern black voters, rules governing legal access and jailhouse lawyering
sought to curb legal literacy and prisoners’ access to the judicial system. Thus, when Sos-
itre wrote to Walker, he urged him to copy the writ into his notebook, then flush it down
the toilet, but not to “let this lay around. This is dynamite.” He then listed the “most es-
sential weapons in fighting Shaitan” (Arabic transliteration of “the devil”): legal paper, an
ink eraser, one dollar of postage stamps, a loose-leaf binder, and a ball-point pen.34

Through cases such as Pierce v. LaVallee, SaMarion v. McGinnis, and later, Cooper v. Pate, the no
it brought about judicial oversight such that, by 1974, the Supreme Court declared that no longer was an “iron curtain drawn between the Constitution and the
prisons of this country.” Yet, while the Supreme Court strictly forbade any “direct or indi-
rect interference by prisons or state authorities” in prisoners’ access to the courts, prisons
obstructed court access through measures such as rule 21. They also limited legal advice,
imimidated writ writers, and disrupted the legal process through solitary confinement.
Despite these attempts, Muslim prisoners were more organized than the often-uncoordi-
nated strategies of local prison officials and state policy makers. In one example in Cali-
ifornia, San Quentin Prison officials set up a small office where three prisoners transcribed
writs onto standardized forms and processed them on a duplicating machine. Meanwhile,
the California Department of Corrections attempted to clamp down on writ writers by
prohibiting access to law literature and court decisions.35

But Sostre’s letter to Walker in solitary confinement also revealed another strategy
pointing toward the concurrent tactics of prison organizing and the broader black free-
dom struggle. Prisoners appropriated the principal mechanism of prison repression—
solitary confinement—as a tool of organized protest. Recognizing that most of Attica
Prison’s Muslims were already in solitary confinement, Sostre urged Walker to not be

33 Richard Griffin to Garrett Felber, July 21, 2014, letter (in Garrett Felber’s possession). Richard Griffin repre-
     sented only William SaMarion and Thomas Bratcher. Clark Zimmerman represented Joseph Magette, Arthur
     Johnson, and James Walker. Jacob Hyman and Wade Newhouse of the University of Buffalo Law School were also
     appointed by the court. See SaMarion v. McGinnis trial transcript, 28; and “Muslims Battle State,” New York Am-
34 SaMarion v. McGinnis trial transcript, 1237; Chase, “We Are Not Slaves,” 73; Charles Larsen, “A Prisoner
     Looks at Writ Writing,” California Law Review, 56 (April 1968), 343–64, esp. 356; SaMarion v. McGinnis trial
     1966); Cooper v. Pate, 387 U.S. 546 (1964). Gottschalk, Prison and the Gallows, 175; Richard Woodward to Richard
     Sampson, May 20, 1964, memo, items 850–859, box 24, Non-criminal Investigation Case Files, series A0795, New
     York State Division of State Police Records; Cummins, Rise and Fall of California’s Radical Prison Movement, 80–81.
sent back to general population. According to Sostre, they “made a pact not to go down until the religious persecution of the Muslims cease[s].” If Walker was sent back, he was told to threaten to bring contraband literature out of his cell and be sent back to solitary. They reasoned that each time the warden “snatch[ed] an aggressive Muslim out of population, he would send one down from the box and send another one up from population. In other words, he kept manipulating the brothers like monkeys on a string.” Yet Sostre astutely noted that when “the box ceases to work, the entire disciplinary and security system breaks down.” The take-over of solitary confinement was an example of prisoners creatively adapting the methods of prison control as resistance. NOI members filled solitary confinement until the box no longer was an effective form of punishment. Wardens were then faced with the decision of creating hotbeds of activism in segregation or undermining the arbitrary rules they had worked so hard to justify and enforce.  

The prisoners’ strategy of filling solitary confinement mirrored, and in fact predated, the developing civil rights strategy of “Jail, no bail” in the South. In January 1961 a group of college students who had been staging sit-ins at department stores in South Carolina for a year refused to accept a bond and be released from jail. Instead, the nine students from Friendship Junior College served thirty-day sentences on a chain gang. The strategy soon inspired the Student Nonviolent Coordinating Committee (SNCC) workers Diane Nash, Ruby Doris Robinson, and Charles Sherrod to travel to South Carolina and refuse bail. The experience of imprisonment had a tremendous impact on the young organizers. Sherrod noted that you “get ideas in jail. You talk with other young people you’ve never seen . . . You learn the truth in prison, you learn wholeness.” SNCC, the Southern Christian Leadership Conference, and the NAACP soon joined a local desegregation effort to target transportation, libraries, and lunch counters in Albany, Georgia.

One of the defining characteristics of the Albany movement was its strategy of filling the jails. Even Martin Luther King Jr. and Ralph Abernathy came to Albany and spent Christmas in a cell. However, the Albany police chief Laurie Pritchett had studied the strategies of nonviolent resistance and avoided national outcry by making mass arrests without the violent reprisals of police dogs and water hoses that would eventually etch Birmingham, Alabama, into national memory several years later. He also deflated attempts to fill his city’s jails by arranging for protestors to be sent to county jails throughout southwest Georgia. As the SNCC worker Bill Hansen noted, “we were naive enough to think we could fill up the jails. . . . We ran out of people before [Chief Pritchett] ran out of jails.”

The prisoners’ strategy of taking over solitary can be traced back to Clinton Prison when the men were reported by the prison officer as discussing the tactics (over a year before the Friendship Nine employed this strategy). While civil rights organizers in the South and prisoners at Attica appropriated forms of state control, Chief Pritchett in Albany was able to mobilize a larger network of police and jails just as wardens at Clinton and Attica Prisons were able to transfer prisoners to other state prisons when their much smaller segregation units became filled with politicized prisoners. Both movements also attempted to garner national attention and press for federal intervention. As Len Holt

of the Congress of Racial Equality explained, “if we go to jail by the hundreds and thousands, the hearts of those who would maintain the old order will be inundated with the guilt necessary to bring about change.” For prisoners at Attica, solitary confinement and the loss of good time were crucial to their claims in state and federal courts. As Sostre wrote: “We have taken over the box and he is anxious to get us out of the box, especially with the big trial coming soon. So don’t let him clean up, for we are living proof of the religious oppression complained of in our writs.” Filling solitary confinement not only
undermined prison security but also built a case for trial and dramatized prisoners’ struggles before the courts and the nation.\(^{39}\)

But in both cases, appropriation of state repression had unintended consequences. As Berger argues, “mass arrests of political activists provided a dry run for mass incarceration, especially when joined with the economic transformations wrought by mechanization and migration. The civil rights movement gave states an early taste of what it would mean to arrest, prosecute, and imprison large groups of people.” In the case of Muslims at Attica Prison, it coincided with intensified surveillance and monthly reports on the group. Despite their similarities, the “Jail, no bail” strategy has its place in the annals of civil rights history as a heroic confrontation with southern Jim Crow through nonviolent direct action; meanwhile, the take-over of solitary confinement by Muslims at Attica Prison has gone unremarked. At best, the Nation of Islam has been depicted as a reluctant political participant, pulled toward the struggle by Malcolm X. At worst, it is portrayed as an apolitical religious sect that was marginal, or even antithetical, to such movements. Such disparate historical treatments raise important questions about what are seen as legitimate politics, legible activists, and visible sites of resistance in histories of the black freedom movement.\(^{40}\)

### Expanding the Carceral State

While the federal government was no more willing to step into state prisons on behalf of Muslim prisoners than it was in Albany, Georgia, on behalf of nonviolent protestors, the activism of the Muslim Brotherhood continued to receive attention from the state capital in Albany, New York. The writ-writing campaigns of prisoners had helped prompt a national response and the attention of the courts, but it also caused an arm of the state to reach deep into incarcerated communities. Wardens and state corrections officers authorized prison surveillance and, in some cases, even dedicated a staff member to internal supervision of the NOI. This surveillance was meant not only to absorb and report but also to disrupt and subvert. It also provided the raw material for state knowledge production that could quell prison activism. Prison officials soon emerged as arbiters of religious orthodoxy, determining who and what constituted legitimate Muslim practice. As they looked to Muslim religious practices such as eating, prayer, and use of Arabic for markers of identity and political agitation, prisoners turned to informal strategies of daily resistance to combat state intrusions. Through its intervention, the state also assigned political meaning to religious practice, further politicizing incarceration and the practice of Islam within prison walls.\(^{41}\)

State surveillance began with prison officers, who had the most daily contact with prisoners. One institution devoted an officer to keeping a list of all active members, searching their cells, and confiscating any literature relating to the Nation of Islam. Seizing materials slowed the spread of conversions and were a source for state intelligence. An area of concern was prisoners’ use of Arabic. The language not only served a cultural and religious function but also flummoxed prison security. For example, Bratcher gave specific instructions in his letter to Malcolm X: his mother would write him of the minister’s reply in red


\(^{40}\) Berger, *Captive Nation*, 44. Dan Berger writes that Malcolm X “broadened the NOI’s message with a radical anti-imperialism that took the NOI’s claustrophobic nationalism in explicitly political directions.” *Ibid.*, 59.

\(^{41}\) Richard E. Woodward, bulletin to all institutions, Sept. 1961, items 487–505, box 22, Non-criminal Investigation Case Files, series A0795, New York State Division of State Police Records.
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ink with “three lines of Al-Fatihab” (referring to Al-Fatiha, the first surah in the Qur’an). One state report noted that it “would seem doubtful if the majority of the prisoners can read and write Arabic but if notes are picked up that seem to contain no meaning maybe they would bear investigating.” Several months later, six pages of Arabic to English and English to Arabic translation were confiscated. 

Another surveillance strategy that relied heavily on prison officers was the scrutiny of Muslim eating habits. The refusal to eat pork in prisons recalls Malcolm X’s own imprisonment in the late 1940s when he and other prisoners protested its prevalence in prison diets. At Attica Prison, Bratcher wrote to Warden Walter Wilkins asking for permission to carry food from the mess hall to his cell so he and other Muslim prisoners could eat after sundown during Ramadan. One prisoner was even charged with wasting state food for throwing away his bacon and refusing to eat it. Daily political acts such as throwing away bacon even escalated to more formal strikes. In Milan, Michigan, where Elijah Muhammad had once been incarcerated for draft resistance, prisoners took part in a three-day hunger strike against pork, which eventually resulted in Muslim-prepared food and a separate dining section.

These actions were challenged by prison officials who quickly seized on dietary restrictions as a way to monitor and challenge the legitimacy of a prisoner’s religious beliefs. “In order to check the authenticity of the Muslims,” Woodward’s memo noted, “each officer has been required to submit to the principal keeper’s office a report on whether or not the particular prisoner in question is eating pork. The members who are eating pork will be . . . included in next month’s report.” Another institution itemized prisoners’ eating when pork was served in the mess hall: “Of the above total [of 70], 30 prisoners either refused their ration or gave it to another prisoner, and additional 16 prisoners took their ration to their cells and only two were actually observed fasting.” By monitoring prisoners’ eating, writings, and literature, prison officers acted as foot soldiers in the state’s surveillance of the Nation of Islam.

From this narrow base of day-to-day surveillance, reports on Muslims in prison also radiated outward to the state and federal levels. The success of the NOI’s organized prison litigation continued to trouble prison officials. The first to present on the NOI at the ACA’s annual conference was the noted penologist Donald Clemmer, who authored his foundational study *The Prison Community* in 1940. By 1963, topics such as “The Black Muslims and Religious Freedom in Prison” and “The Black Muslim in Prison: A Personality Study” surfaced at the conference. The academic communities of penology and criminology emerged as part of the state’s developing knowledge production about the NOI.

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42 Ibid. Some of these officers may have even been undercover. As the report noted: “a member of the guard force was placed in a cell adjacent to a Muslim and recorded information of a subversive nature resulting in the prisoner’s being placed in segregation.” Bratcher to Malcolm X, n.d., folder 9, box 4, Malcolm X Collection. Richard E. Woodward, bulletin, April 1961, items 340–49, box 21, Non-criminal Investigation Case Files, series A0795, New York State Division of State Police Records; Richard E. Woodward, bulletin, June 1961, items 381–90, box 22, *ibid.*


45 As Richard E. Woodward’s monthly bulletins to New York prison wardens indicate, this information also flowed in the other direction, back to prisons and their officers. Donald Clemmer and John M. Wilson, “The Mus-
The 1960s also marked a shift from rehabilitative strategies to psychological warfare and new technologies of violence, and Muslim prisoners were often the first subjected to these new experimental practices. As Alan Gómez notes, bibliotherapy was replaced with isolation, sensory deprivation, and brainwashing; Muslim prison litigation helped “propel this shift.” Edgar Schein, a professor of psychology at the Massachusetts Institute of Technology, presented a paper in 1961 to the U.S. Bureau of Prisons entitled “Man against Man: Brainwashing.” Bertra S. Brown of the National Institute of Mental Health responded by contacting prison administrators and suggesting that they “do things perhaps on your own—undertake a little experiment of what you can do with Muslims.” As Gómez persuasively argues, the ascension of Control Units, Special Housing Units, and Adjustment Centers, were all outgrowths of the experimental use of excessive solitary confinement by prison officials during the late 1950s and early 1960s. These punishments and techniques, he concluded, were “initially experimented with on Muslim inmates [but] later used en masse on political activists [and] became the model for the entire prison regime.”

While neither Pierce v. LaVallee nor SaMarion v. McGinnis won the full rights hoped for by Muslim plaintiffs, prison litigants finally experienced a breakthrough when Thomas Cooper, a Muslim at Stateville Prison in Illinois, brought forth the “Supreme Court’s first modern prisoners’ rights case.” The 1964 verdict in Cooper v. Pate issued the resolute “determination that prisoners have constitutional rights,” which Jacobs compared to the role of Brown v. Board of Education in the civil rights movement. Many scholars have repeated this analogy. And while there is no denying the case’s impact on the prisoners’ rights movement, the peril of beginning the history of a movement with its most prominent legal victory remains as problematic for Cooper as it does for Brown. As Losier points out, the reversal of the court’s original decision in Pierce v. LaVallee enabled the victory in Cooper v. Pate. Moreover, the eventual intervention of the courts into the administration of prison discipline was a product of years of political strategies, including writ writing, hunger strikes, sit-ins, and take-overs of solitary confinement. The Nation of Islam’s litigation was part of a broader legal and direct-action protest strategy that was as national as the carceral web that opposed it.

Conclusion

When over one thousand prisoners took over D-yard at Attica Prison on September 9, 1971, the prisoners’ rights movement and the carceral state both decisively entered a new...
phase. Heather Ann Thompson’s meticulous account of the uprising demonstrates the profound impact the rebellion had for all the people and issues involved: lawyers, liberal prison reformers, black power activists, state troopers, prison officers, elected officials, and, most of all, the future scope and depth of incarceration in the United States. While her book briefly explores the impact of prison strikes and manifestos such as those at Auburn and Folsom Prisons the year before, Thompson focuses more closely on the uprising itself and its legacies. One of these, she points out, was a 1971 report by the American Correctional Association called “The New Prisoner.”

In August 1972, at the first ACA convention since Attica’s prisoners rebelled, an audience of penologists, criminologists, wardens, and chaplains packed into a capacity room in Pittsburgh to hear a panel on a “topic which causes deep concern and alarm.” This new prisoner—the “political prisoner”—the group concluded, was not true in the classical sense of the term. Instead of being imprisoned for his political beliefs, this new prisoner identified structural oppression as the source of incarceration and saw the prison as a microcosm of this larger system. One panelist suggested that prisoners were too flippant with the phrase. Another cautioned that it was up to prison authorities to avoid the necessary conditions in which this new prisoner had emerged. Yet, all agreed that dramatic changes had taken place in prison demographics over the last decade, and they readily cited names such as Angela Davis and Eldridge Cleaver, who, along with “too many other unknown John Browns and Jane Does” had ushered in this new radicalism. But with the long shadow of Attica Prison’s uprising cast over the proceedings, they seemed to agree with the New York City commissioner that the “emergence of this phenomena is of rather recent vintage.”

While those at the ACA contemplated the emergence of the political prisoner, one of the “John Browns” not named by the panel was also considering the character of this new phase of struggle. Sostre was again incarcerated after being released in 1964. Held in keep-lock at Auburn Prison for refusing to shave his beard and submit to rectal examinations, he was serving a thirty-year to forty-year sentence for trumped-up heroin charges after being framed by police during the Buffalo rebellion of 1967. In Sostre’s essay, “The New Prisoner,” he described this “new prisoner” as a militant vanguard formed in the crucible of New York’s prisons. Instead of politicized prisoners who seem to have emerged fully formed from urban uprisings and calls for black power during the late 1960s, Sostre offered a narrative with much deeper roots than described by the panelists at the ACA. He argued that these “political prisoners” emerged from a generation of “politicized prisoners.” By the late 1960s, Sostre was, in fact, a political prisoner in the classical sense. According to Justice Constance Motley, Sostre was punished “not because of any serious infraction of the rules of prison discipline” but for legal and political activities and beliefs. In 1973 he was added to Amnesty International’s “prisoner of conscience” list. But, as Sostre pointed out, the emergence of this “new prisoner” had begun with the political work of Muslim prison organizers a decade earlier in the very same spaces: the “struggle...”

48 Thompson, Blood in the Water, 44.
to exercise a First Amendment ‘preferred’ right (freedom of religion) took from 1958 till 1971, thirteen years of torture, suffering and death at the hands of racist outlaw savages who recognize no law except that of force, violence and murder.”

When the Attica Liberation Faction issued the document “manifesto of demands” during the uprising in 1971, it reflected this decade of prison organizing by the Muslim Brotherhood. Demand 4 called for the end of the use of solitary confinement to punish prisoners for their political beliefs. Prisoners also insisted that they be given access to political literature and that there be an end to racial persecution. And demand 25 suggested that prisoners “wishing a pork-free diet should have one, since 85% of our diet is pork meat or pork-saturated food.” Other legal victories from the prisoners’ rights movement also gestured to the foundational struggles of Muslim prisoners. In 1969 Johnson v. Avery determined that prisoners could no longer be punished for providing legal assistance, challenging measures such as Attica’s rule 21. Wolff v. McDonnell (1974) enabled the jailhouse lawyer to try civil suits against prison conditions and policies, and Bounds v. Smith (1977) required that prisons provide adequate law libraries and offer legal assistance to prisoners from trained professionals.

The Nation of Islam’s prison activism also suggests an alternative intellectual genealogy to the writing, theorizing, and activism of the prisoners’ rights movement in the late 1960s and early 1970s, which drew on the energy of the black power movement outside prisons and from its ideas percolating inside prison walls for over a decade. Just as Berger points to the continuities between Fannie Lou Hamer and Angela Davis, or Martin Luther King Jr. and George Jackson, we must also recognize how prison intellectuals and theorists of the black power era also drew from deep wells of black nationalist and radical thought that grew out of decades of inside organizing by groups such as the Nation of Islam’s black history study groups.

As the U.S. criminal legal system has become a litmus test for American democracy and the central human rights struggle of our time, it is important to recall how it was also crucial to the midcentury black freedom movement. Although southern civil rights activists focused on imprisonment following their experiences with incarceration, this was not the first connection between the two movements. The recession of prisoners’ rights from the agenda of what are regarded as traditional civil rights strategies and organizations should not be mistaken for the absence of the movement itself. The prison organizing of Muslims in New York launched the project of prison litigation and eventually won oversight from the courts. As the legal scholar Margo Schlanger reminds us, the “civil rights movement as a whole both depended on and spurred the project of litigation as an engine of social change, and prison litigation was a small piece of this larger project.”

We should also be attentive to how the state responded to prisoners’ demands with increased surveillance and an expansion of carceral machinery. The dialectics of discipline

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52 Berger, Captive Nation.

that made up the daily interplay between prisoner activism and prison punishment demonstrate the entangled relationship between resistance to the state and its expansion and re-entrenchment. Reformist calls for uniformity, equality, and professionalization have often simply contributed to an expanding carceral apparatus, which today costs $70 billion annually and keeps one in thirty-one U.S. adults under criminal legal supervision. As Thompson notes, the 1995 Prison Litigation Reform Act was another “deadly blow to American prisoners.” Its distinction between “frivolous” and meritorious claims is reminiscent of a much longer lineage of state delegitimation of prisoners’ human rights in prisons. And, in a post–September 11, 2001, world, Muslim prisoners remain particularly susceptible to state surveillance and constitutional infringements. In 2004 the Justice Department warned about “Prison Islam” and the rise of radicalization among black prisoners.54

In the summer of 2015, President Barack Obama finally broke the executive silence on the use of solitary confinement, calling for a review by the Department of Justice on isolation and its effects. The following year, he banned solitary confinement in federal juvenile prisons. Angela Davis notes that “not even the most ardent defenders of the supermax—would try to argue today that absolute segregation, including sensory deprivation, is restorative and healing.” As our current movements embark on a struggle to decarcerate and abolish prisons and policing, we would benefit from remembering the ways challenges to the criminal legal system were a crucial stream of the longer legacy of black struggle it now joins. A system in crisis, no matter how embedded it is in our political and social landscape, is a vulnerable one. In another moment of uncertainty, Sostre wrote: “If Attica fell to us in a matter of hours despite it being your most secure maximum security prison-fortress equipped with your latest repressive technology, so shall fall all your fortresses, inside and out. Revolutionary spirit conquers all obstacles.”55