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Abstract

This article examines religious practices in the United States, which govern modesty and other dress norms for men. I focus both on the spaces within which they most collide with regulatory regimes of the state and the legal implications of these norms, particularly for observant Muslim men. Undergirding the research are those "gender equality" claims made by many religious adherents, that men are required to maintain proper modesty norms just as are women. Also undergirding the research is the extensive anti-Islam bias in American culture today. The spaces within which men's religiously proscribed dress and grooming norms are most at issue—indicated by First Amendment legal challenges to rights of religious practice—are primarily those state-controlled, total institutions Goffman describes, such as in the military and prisons. The implications of gendered modesty norms are important, as state control over religious expression in prisons, for example, is much more difficult to contest than in other spaces, although this depends entirely on who is doing the contesting and within which religious context. In American society today — and particularly within the context of growing Islamaphobia following the 9/11 attacks — the implications are greatest for those men practicing "prison Islam."

Keywords

religion, modesty, dress, men, civil rights, prison Islam

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Introduction

In recent years, we have seen heightened interest in the relative meanings, politics, and mobilities behind women's body coverings, within various spatial, historical, and religious contexts (e.g., Falah and Nagel 2005; Gokariksel 2009; Anthony 2009). Among the many topics discussed and debated by scholars as well as popular culture critics has been the question of whether body coverings such as the Muslim hijab or burka signal women's relative freedom and liberation or their opposite. Although issues surrounding modesty and traditional dress norms for Islamic women appear much more controversial and widespread than those of the other monotheistic religions (see below), such issues have relevance across a wide spectrum of religious belief systems, particularly those more fundamentalist or orthodox in orientation, such as in Hassidic Judaism and Amish Christianity (Arthur 1999).

Within such contexts, many adherents—the women who cover for religious or doctrinal reasons as well as their devout religious leaders—are oftentimes quick to point out that their religious texts and practices are "gender equal" with respect to body covering and modesty. They assert that their holy books equally recommend modesty norms—in body, dress, and behavior—of both women and men (Arthur 1999; Abdullah 2004; Al-Rashidi 2007; Anthony 2009). Such rules and admonitions for proper dress and behavior rely on particular interpretations of their respective holy books (Qur'an, Torah, and Bible), a patriarchal regime to carry them out, and religious adherents who, for their own reasons, embrace, negotiate, or in various ways challenge those interpretations.

This article examines such gender equality claims, considering their implications for men, particularly Islamic men, in contemporary American society. In the discussion that follows I examine religious practices in the United States that govern modesty and other dress norms for men; the spaces within which religiously proscribed modesty and traditional dress codes for men are most controlled, negotiated, and contested; and the discriminatory outcomes especially for men who dress modestly according to Islamic precepts. I consider the legal and constitutional aspects of state regulation of the body, alongside prevalent and powerful Western iconographies of "covered" Islamic men that undergird and inform these legal and constitutional conflicts. Stereotyped images of Arab Muslim men as sheikhs or terrorists are common in the US news media and in popular culture (film and television, political cartoons, magazines, etc.), before but sharply increasing after the 9/11 attacks on the New York World Trade Center (Shaheen 2009; Gottschalk and Greenberg 2008; Smith 2010). Such images resonate with the West's orientalist depictions of Middle Eastern Arab men outlined by Edward Said (1978, 1981, 1993) but go beyond them as well in a more particularized and concentrated "Islamaphobia" (Smith 2010; Sheehi 2011). This, in turn, strongly influences the American establishment's attitude toward Muslim believers and particularly observant Muslim men.

As will become obvious, my sympathies align with those of scholars such as Abu-Lughod who have attempted to shift the religious dress code "obsession" off

of Islamic women alone. Abu-Lughod argues that it is time to perhaps "give up the Western obsession with the veil and focus on some serious issues with which feminists and others should be concerned"—both because Muslim women should be able to dress how they want without becoming the subject of others' critical gaze, and because a fixation on Muslim women's dress has the tendency to distract or misrepresent the sources of cultural tensions in the contemporary United States (2002, 785–86). Thus, in shifting the conversation to men's religious dress and practice (Islamic and otherwise) and to the spaces within which they are most "at issue," illuminates not only the wider gender politics at work in the contemporary United States but also the ways that religious and state regimes differently "collude" or "collide" in tandem with those gender norms (Secor 2007, 151). These topics must be understood within the overarching popular culture context within which groups of people are perceived and judged, which in turn impacts religious adherents' relative civil rights to dress and move about in ways they see fit.

In the following discussion, I draw evidence from legal cases contesting civil rights violations, particularly those based on the First Amendment to the US Constitution that guarantees, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Quite obviously, some forms of religious expression are more legally protected than others and because of this, peoples' rights to spaces in the city, to citizenship, to everyday life, and ultimately to religious practice itself, are different. Women and men enter religious systems and public (and other) spaces very differently, and thus not only are there gendered ways of being in the world, but court decisions and other regulatory regimes that control space are defined and practiced in gendered ways. Below I dissect some of these gendered norms and the state's intervention in the garments and grooming practices of men, emphasizing that ideas about appropriate women's and men's modesty and/or dress are normalized and challenged in different kinds of ways, and have varying relevance within different spaces and within different religious traditions. That Muslim women showing visible signs of Islam may experience disciplinary measures "on the street" or in centers of civic activity, while Muslim men experience similar regulation while incarcerated in prisons (both discussed below) helps us to consider the complex ways in which religious and gender biases work together in informing state action.

Again, such state action must necessarily be framed within a more general consideration of the perennial American blindness to non-Christian faiths and deep-set structural racisms (Alexander 2012). Especially common and ubiquitous are stereotyped representations of Muslim and Arab men, and a corresponding extensive range of anti-Muslim discriminatory practices that have wide-ranging effects, both big and small—from impacts on American foreign policy and politics to job discrimination, housing opportunities, and airport racial profiling, among many others. My attention here, however, is focused on the detrimental effects imposed on observant Muslim men incarcerated in American prisons—who are mostly African Americans aligned with a particular antiracist Islam (Jackson 2005). My discussion highlights the ways

in which social norms regarding state-controlled spaces oftentimes conflict with the legal articulations of the same boundaries, as it is the case that differently positioned individuals have greater or lesser access to First Amendment protections. State control over religious expression in prisons, for example, might be much more difficult to contest via claims to First Amendment rights than in other spaces, although this depends entirely on who is doing the contesting, and within which religious context. In American society today, the implications are greatest for those men practicing "prison Islam."

Modesty and Dress Norms: Shifting the Discussion

It is axiomatic that both religious regimes and "the state"—governments and government agencies at a host of jurisdictional levels from the local municipality to state legislatures to the Supreme Court—regulate norms of women's modesty. Civic laws prohibiting toplessness, breast-feeding in public, proper attire for public school gym classes, and so on are familiar territory for legal debates about the discriminatory laws controlling women's modesty in public spaces and related zoning practices—men are permitted to remove their shirts in many public spaces, women are not. Legal cases have especially focused on the sexualization of women's breasts in comparison to men's, with litigants attempting to challenge discriminatory laws on the basis of equal protection by gender, but they usually fail (e.g., *Hera* 1992). In that general sense, women's bodies and norms of modesty are obviously differently regulated than men's "on the street."

Much, much more could and has been said of such regulatory regimes that govern women's bodies, dress, and modesty. Norms that are religiously proscribed and regulated may resonate with but also may come into conflict with state and other social norms and controls. To take just one example, modest coverage of women's hair is an issue that remains a highly volatile social and political flashpoint in American cultural politics (as well as in places such as France and the Netherlands) and is also one that crosses Christian/Catholic, Jewish, and Muslim traditions. Michelman (1999), for instance, describes the experiences of Roman Catholic nuns in the 1960s and 1970s when first allowed to remove the habits covering their hair. Much has been written about Orthodox Hassidic women's hair as "ervah" (or erotic stimulus) as described in the Torah, and the practice of covering it with wigs or scarves for modesty's sake (Schreiber 2003; Hartman 2007). Such norms are encouraged across religious belief systems, though Christian and Jewish practices in the United States do not receive the same attention and scrutiny as those of Islamic women. Kwan (2008, 657), for instance, shows how Muslim women have been especially vulnerable to hate crimes and discrimination since the 9/11 attacks, since those who wear distinctive attire can be easily identified in public spaces. Of course, we also need to keep in mind that ostensibly "religious" reasons to dress in certain ways do not begin to capture the wider cultural, political, and practical reasons for which women maintain certain dress and modesty norms, a subject other scholars have addressed (e.g., Entwistle 2000; Secor 2002; Gokariksel 2007, 2009; Abu-Lughod 2002).

There are hundreds of examples of US court cases to do with religious and state regimes coming into conflict over women's modesty, and these cover a wide range of sites, dress, and religious practices (Ramachandran 2006). While it is not my purpose to rehearse these here, it is safe to say that the most controversial legal cases that "make the news" are preponderantly to do with Muslim veiling practices. Court cases are piling up in which Muslim women's desire or need to be covered in public confronts taken-for-granted clothing norms of the dominant Christian American society. In Detroit, for instance, a Muslim woman's car theft case was dismissed by a district court judge for her refusal to remove the scarf covering her face when she testified (Gorchow 2006). In another case, a Muslim woman from Florida unsuccessfully went to court in an effort to overturn the state's order that she reveal her face for her driver's license photo, something that she argued went against the Qur'an mandate to cover her face as part of her religious obligation to dress modestly (Cosgrove 2005). This is a particularly noteworthy case, considering that thirteen US states do not require photos on their drivers' licenses, in deference to drivers who have religious objections to being photographed. For these states, though, this exception arose from arguments made by Amish and Mennonite Christians who hold the belief that Bible teachings prevent them from being photographed (Council on Islamic-American Relations Research Center 2005, 5).

When it comes to the parameters of men's dress and modesty norms, a different set of resonances and conflicts can occur between the state, religious, and other cultural regimes. It should be noted that some religiously proscribed clothing and "coverage" norms for men are related to modesty, like those for women, but some are not—different religious scripts and cultural norms can also be at play. Suffice it say that across the main monotheistic religions those admonitions for women to maintain modest coverage of their bodies are steeped in notions about the inherent eroticism and sensuality of women's bodies that ostensibly distract men from prayer and other religious practice. Conversely, admonitions governing men's religious dress—covering of the arms and legs, wearing yarmulkes or other head coverings, growing beards or sidelocks, and so on—some of these are aimed at maintaining modesty in dress but others originate out of a call to show, for example, reverence to religious tradition or remembrance of sacred events in the past (Carrel 1999; Al-Rashidi 2007; Vezzola 2007).

Such rules and regulations are of course highly contested and interpreted differently among various religious, ethnic, and culture groups. My purpose below is not to uncover the underlying (and competing) religious beliefs governing these practices but rather to understand the effects of such rules and regulations as "social geographies." When it comes to women's modesty, religious and state regimes "collide" over a wide spatial range, from the streets to the Driver's License Bureau, and over a wide range of practices (women are either wearing not enough or too much it would seem). When religious and state regimes collide legally or constitutionally over men's religious dress norms in the United States—and they do so often—it is most often within the context of those "total institutions" described

by Goffman (2000, 3–124). That is, those predominantly all-male spaces of the military and prisons where all aspects of life (''sleep, play, and work'') are conducted in the same space and under the same authority (2000, 6). In such spaces, men have little say over what they wear or how they wear it, and their fight to define religious freedom has confronted a wide variety of responses from administrators, the courts, and legislative bodies. These cases indicate a need to examine the larger context out of which Islamic men in particular are understood within popular American culture, and how these ''translate'' into the judicial sphere.

The next section offers a few examples of specifically religiously motivated norms regulating men's grooming patterns such as the growing of beards, and dress norms such as the wearing of yarmulkes; then examines the military and especially prison spaces within which such norms are most controlled and rights surrounding them are most contested. The subsequent section offers analyses of popular anti-Arab and anti-Muslim stereotypes and prejudices that must be understood as fueling discriminatory patterns against these religiously observant practices. I conclude with a discussion of their net effect on prison Islam and the ''hierarchy of rights'' characteristic of the US judicial system.

Men's Modesty, Religion, and the State

In 2005, the Virginia House of Representatives passed a bill imposing a fine on anyone wearing pants low enough to show their underwear; a law that seemed to be mostly directed at young males suspected of criminal or gang activity (Fischer 2005; Ramachandran 2006). All sorts of spaces are marked by such patterns of shifting legal regimes of dress—spatialized dress codes—which themselves play into individual men's and women's decisions to dress in particular kinds of ways (Secor 2002, 6; Gokariksel 2009).

As a starting point in considering men's religiously motivated grooming and dress patterns, we might question whether such norms vary or are regulated to the same extent as those of women. On first glance, it would seem that such prohibitions have much more to do with regulating women's modesty, and in fact this is a common subject of scholarly debate today. As many scholars and religious adherents have argued though, the same orthodox Christian, Muslim, and Jewish religious communities discussed above regulate norms of men's dress and coverage as well as women's (Graybill and Arthur 1999; Al-Rashidi 2007). As previously noted, some religious admonitions governing men's grooming and dress are aimed at maintaining modesty, while others are concerned with displaying reverence or remembrance toward religious tradition. In Hassidic Judaism, for example, some of the parameters of men's religiously proscribed dress norms have to do with modesty—for instance, full coverage of the body with long pants and long sleeved shirts—but others, such as side hair locks (or hair curls), do not. For some adherents, the practice of growing long hair and beards originates from language in the Bible, for instance in Leviticus 19:27—''Ye shall not round the corners of your heads,

neither shalt thou mar the corners of thy beard." The hair locks serve as "remembrances" that help the wearer "increase religious behavior" (Carrel 1999, 169–170). Wearing the Jewish yarmulke (head covering or skullcap) similarly shows respect, reverence, and honor toward God, rather than being motivated by "modesty" (Zimmer 1992; Rabinowitz 2007).

Offering a Christian example, Graybill and Arthur (1999, 9–29) argue that although women's modesty standards are considerably more scrutinized than men's in Amish and Mennonite communities, men must also adhere to strict, modest grooming and dress codes. Amish men, in the interests of humility and plainness proscribed by the religion, are to "dress simply" by wearing a collarless suit jacket known as a plain suit, when attending church. For everyday, they wear clothing featuring suspenders, heavy denim, and felt or straw hats. Adult men wear full beards and no mustache (Hamilton and Hawley 1999, 31–51). Mormon men, as well, wear "sacred dress"—special garments to church as well as special undergarments—that are similar to women's and that mark their special covenant with God (Hamilton and Hawley 1999, 45). Once they become "endowed" members of their congregations (having acquired certain spiritual gifts and powers), they are expected to wear the special garments day and night for the remainder of their lives.

The Muslim beard is a particularly contentious religious artifact. As with all such examples of hair length, facial hair, turbans, yarmulkes, hats, dreadlocks, and so on, the religious intention behind maintaining particular standards varies widely across cultural and ethnic groups worldwide. (And of course, as is the case with women, many such grooming and dress codes have nothing to do with "religion" at all, even if outsiders may read them as such; see Abu-Lughod 2002; Morin and Guelke 2007.) Generally speaking though, the Muslim beard is not meant to hide the face so as to not arouse others; it is not a counterpart to the women's veil. In Islam, the beard is part of tradition and remembrance. At the orthodox extreme Al-Rashidi (2007), for example, discusses the role of the beard under Sharia law. He quotes scholars of Islam who write that the "beard is beautiful, it distinguishes men from women [and] it is respectable . . . cutting the beard is "unlawful and unwarranted" (pp. 8–14). Al-Rashidi goes on to argue that the beard should remain "unfidgeted;" it is not to be cut, trimmed, or plucked, and should be grown all around the cheeks and chin. The man who grows the beard can lead prayers, "safeguards honor and respect in society," and above all, is guaranteed the "promise of Allah's love" (2007, 40, 46–48).

Legal Challenges: The Military and the Prison

Legal challenges to the right to adhere to religiously proscribed dress and grooming norms such as those just described manifest a unique spatiality. In court cases involving First Amendment protections, it is the military and especially prisons where those protections have been most contested. While court challenges to hair length and beard regulations in public schools and workplaces also appear with regularity, these generally rest on free speech arguments, not on those of the

establishment cause and freedom of religion (Ramachandran 2006). Searches of electronic databases of legal cases over roughly the last half century (primarily LexisNexis and FindLaw); scholarly works by and about legal experts (e.g., Moore 1995; Solove 1996; Ramachandran 2006); and from examination of government and civil libertarian documents (e.g., United States Commission on Civil Rights 2008; American Civil Liberties Union [ACLU] National Prison Project 2005); all point to prisons and militaries as those spaces within which men's religious dress norms are most controlled and contested. The cases highlighted here represent some of the main, precedent-setting lawsuits addressing men's religious right to dress and groom themselves in doctrinally defined ways, and as such, it should be noted, are suggestive of the hundreds of cases at many jurisdictional levels rather than exhaustive of them.

And of course, the military and prisons are, for the most part, not only male-dominated spaces to begin with, but especially in the case of American prisons, comprised of grossly disproportionate numbers of minority men. Seventy percent of the US inmate population are African American or Latino, and approximately two-thirds of African American men in their twenties are either incarcerated, on parole, or on probation (Peck 2003, 226; Alexander 2012). How far do these already-marginalized men's First Amendment rights go when entering such special state-controlled spaces? One basic question is whether there are distinct parallels governing men's dress and grooming practices across the main religious systems; and if so, where and to what extent do these become civil rights issues—for instance, in cases where prisoners have been forced to shave their beards or cut their hair in direct contradiction of their attempts to adhere to religious principles. And how do these then align with the gender biases of both religious and state regulatory regimes?

A landmark US Supreme Court case in which religious and state regimes collided with respect to men's religious dress was *Goldman v. Weinberger* (1986). Frequently cited in subsequent litigation, the case involved an Orthodox Jew and ordained Rabbi who was ordered not to wear his yarmulke while on duty in uniform as a commissioned officer in the Air Force. Facing a court martial, Goldman brought action against the Air Force, claiming that the regulation preventing him from wearing the yarmulke infringed upon his First Amendment freedom to exercise his religious beliefs (Sheleff 1987). The case went through several courts and appeals. The Supreme Court eventually decided against him in a 5-4 vote upholding the military provision against the wearing of religious apparel that is visible, though acknowledging that their ruling infringed upon Goldman's ability to practice his religion. The court argued that, "the first amendment does not require the military to accommodate such practices as wearing a yarmulke in the face of its view that it would detract from the uniformity sought by dress regulations."

The judges writing in favor of the military made it clear that under the circumstances, "courts must give great deference to the professional judgment of military authorities concerning the relative importance of a particular military interest." Today, this case stands for the proposition that the military may burden the constitutional rights of its members with a minimum of interference from the courts. The

First Amendment normally would require the government to give a good reason why Goldman's yarmulke interfered with military effectiveness. Instead, something called the deference doctrine allowed the military to assert, without evidence, that it was a serious problem if Air Force personnel did not all look the same—and this from a military that permits many different kinds of "uniform" headgear (Mazur 2003). Such cases not only illustrate religious and state regimes colliding but point to the potential for gender discrimination as well. In the *United States v. Lugo* (2000), a military court of appeals upheld a Marine Corps regulation that prohibited marines from wearing earrings. The court based their decision on *Goldman* (the need for uniformity in dress), but according to Vojdik (2002, 265), their reasoning was more likely based on the notion that earrings feminized men.

Though such military cases are important and contentious sites of First Amendment litigation, most such challenges have been brought against US prisons. (This is understandable, considering that military service in the United States today is on a voluntary basis.) While acknowledging the many and complex layers of jurisdictions and laws in play, a sampling of precedent setting and well-known court cases allows for an understanding of the main points upon which religion and state regulatory regimes collide in prison spaces.

Generally speaking, prisons need compelling reasons to substantially burden an inmate's religious expression and are supposed to employ "the least restrictive means" if doing so. Typically, regulations infringing upon inmates' religious freedom can be upheld if the government can provide compelling and legitimate "penological interest" by the regulation, for instance, those that are justified in the name of safety and security (Lewisburg Prison Project [LPP] 2005, 1–3; ACLU National Prison Project 2005; Moore 1995). Prisoner rights are thus always balanced against ostensible administrative interests. Moreover, the courts have determined that any religious dress or grooming code at issue must be deemed absolutely obligatory by the religion—asserting "a central tenet test" for the practice. Solove (1996, 459) argues that this restriction incorrectly views religion as a set of clear, incontestable commands that are not open (as they indeed are) to myriad interpretations. Practitioners of the same religion, even within the same place and sect, can disagree about what is central or essential.

Cases involving religious reverence for hair length and beards have been particularly at issue in the courts.[1] More often than not, prison regulations requiring an inmate to cut his hair or shave his beard have been upheld as constitutional, reasonably related to legitimate penological interests. Although *Burgin v. Henderson* (1976) set the precedent for guaranteeing the right of a prisoner to wear a beard if done so for religious reasons (Moore 1995, 93), courts at all levels have increasingly deferred to prison authorities and their assertions regarding the need to maintain security and safety. In *Pollock v. Marshall* (1988), a US district court cited the need for quick identification and search of inmates, prevention of hiding contraband, sanitation problems, and reducing the number of assaults by "predatory homosexuals" as legitimate reasons for prohibitions against long hair on the face or head (Solove 1996, 469; Rachanow 1998).

In *Green v. Polunsky* (2000), Louis Ray Green challenged the Texas Board of Criminal Justice on the basis that the prison's grooming policy infringed upon his religious freedom—that the wearing of a beard was a tenet of his Muslim faith—noting meanwhile that such exceptions are made for medical reasons. The court upheld the prison grooming policy that required inmates to keep their hair short and faces clean-shaven, arguing that the policy was constitutional since it did not prevent Green from all means of expressing his faith. The court went on to say that grooming policies are necessary for identification, as without them prisoners could change their appearance with ease and guards would have difficulty identifying them; additionally that contraband such as drugs and weapons can be hidden in long beards and hair, and guards conducting searches for such items would be put at risk. When it was noted that Mr. Green only wanted to grow a beard one-fourth inch long and that such a beard could not hold contraband, nor would it change his looks to any great extent, still the court held in accordance with several earlier Supreme Court decisions which argued that beards of any length can change one's appearance, and also that beards and hairstyle are used by inmates to signal gang affiliation (Rachanow 1998). The court further asserted that if they allowed the beard in this case, many more prisoners would assert religious reasons for the growing of beards, and the prison would then be in the untenable position of trying to determine whose professed religious beliefs were "legitimate."

There is, as it turns out, a wide range of differences on the issue of "religious beards" in prison. A survey of forty-five state prisons revealed that twenty-three allowed beards while twenty-two did not (Solove 1996, 469). Some courts have found the ostensible security issues to be exaggerated. In 2004, a California district court decided in favor of a group of male Muslim inmates (*Mayweathers v. Terhune*) who wanted to wear half-inch beards in accordance with their faith. The court noted that identification concerns in other cases were exaggerated, since half-inch beards did not pose the same identification problems as long beards. Additionally, the beards were subject to daily inspection, eliminating security concerns (LPP 2005, 4).

A number of well-known court cases have arisen over men's hair length in non-Muslim cases as well. In *Cole v. Flick* (1985), a US district court upheld a prison's hair regulation that infringed on the free exercise rights of a Cherokee Indian to grow his hair long (Solove 1996, 469). By comparison, Vezzola (2007, 196) notes that several courts found that prison bans on long hair violate the religious rights of Native American men who regard their long hair "as a sense organ, a manifestation of being, and a symbol of growth." Prison interest has not been seen as compelling in such cases, especially since prisons allow women to wear their hair long. In general, the courts at all levels have not tended to distinguish between regulations that are necessary and those that are simply convenient. For instance, in a case brought by a Rastafarian, a US circuit court in 1990 struck down the need for a prisoner to shave his dreadlocks for identification purposes, arguing that pulling his hair back rather than cutting it would be sufficient for identification (Solove 1996, 481; Rachanow 1998).

As with regulations on facial hair and hair length, regulations concerning dress, especially restrictions on headwear, are typically upheld if a prison can demonstrate "legitimate penological interest" for the regulation. In *Young vs. Lane* (1992, cited in LPP 2005, 5), a US circuit court upheld a prison regulation that prohibited Jewish inmates from wearing yarmulkes outside their cells, citing security reasons such as the hiding of contraband or signaling gang affiliation. In similar cases in Colorado in 2004 (*Benning v. Amideo*) and in Georgia in 2007 (*Boles v. Neet*), observant Jews have sued prisons for denying their requests to wear religious garments—yarmulke and/or tallit katan (a fringed garment worn under or over other clothing) —while in prison and during transport. The plaintiff eventually prevailed in the first case, and the second is awaiting a decision on an appeal filed by the state of Georgia.

Likewise, in *Aqeel v. Seiter* (1991, cited in LPP 2005, 5), the court ruled that even if the Muslim faith required men to wear a tarboosh (close-fitting hat), the mandatory removal of it in dining halls or in front of disciplinary boards was constitutional. The court further found that removal of the tarboosh was necessary to inhibit weapons transfer, for sanitation purposes, and to "show respect." However, the court had allowed the wearing of baseball caps at all times, which called into question their reasoning (Solove 1996, 459). Another US circuit court found against a Texas male inmate (*Muhammad v. Lynaugh*, 1992), upholding a regulation that restricted Muslim inmates' wearing of Kufi caps (a type of knitted skull cap), after a lengthy evidentiary hearing at which prison officials argued that weapons such as shanks and razor blades could be easily secreted inside the caps.

According to the United States Commission on Civil Rights (2008, 19–22), of the grievances filed across US federal and state prisons, grooming and head covering issues were among the top five categories of religious grievances (the others had to do with programming, dietary concerns, access to religious items, and lack of chaplains of one's own faith). All tolled, religious grievances accounted for 4 percent of all grievances filed by prisoners from 2001 to 2007; inmates prevailed in only 6 percent of those cases; and the overwhelming majority of plaintiffs were male and Muslim (2008, 80–81). Moore (1995, 83–97) provides an overview of the several issues around which First Amendment protections for Muslim prisoners specifically have been argued in the courts; in addition to grooming and dress these have included rights to special diets and religious assembly, literature, and clerics.

When a prison receives federal funding, it is subject to provisions of the amended Religious Freedom Restoration Act (RFRA) passed by Congress in 1993 (and amended in 2000 as the RLUIPA, Religious Land Use Institutionalized Persons Act) as well as the First Amendment protections for free exercise of religion. The RFRA provisions were meant to dramatically increase prisoners' religious freedom, since in the decades preceding passage of the law the courts had been faced with many constitutional challenges from Native Americans, Muslims, and Buddhists (Solove 1996, 467). But because so much prison regulation is designed around Christian traditions (Solove 1996, 459), the new RFRA regulations mainly served Roman

Catholic, Protestant, and, to an extent, Jewish prisoners, meanwhile thwarting the practice of Islam, ostensibly in favor of penological interests.

Thus, the court cases cited here involving the rights of observant incarcerated men alert us to some similarities across religious systems when they encounter state systems of regulation but also require us to examine differences among them as well. Most important perhaps is to recognize some of the crucial differences that exist between how traditional Jewish and Muslim systems are perceived and treated within American culture by white Christian authorities, and therefore the relative frequency with which they are subject to contestations in the courts. Bearded Orthodox Jewish men, wearing long sleeves and their heads covered by hair locks or yarmulkes, are not stigmatized and vilified in the ways that Orthodox Muslim men can be (Smith 2010; Bukhari et al. 2004; Kidd 2009), nor do they appear as litigants in prison court dockets to the extent that Muslim men do (United States Commission on Civil Rights 2008; Moore 1995). Men in traditional Jewish dress are arguably more often associated with the horrific, traumatic iconography of the Holocaust. A much different story emerges for observant Muslim men, a subject to which I turn in the next section.

Legal Challenges in Context: Islamaphobia as "Orientalism on Steroids"

The legal- and state-administrative aspects of men's rights to dress in religiously observant ways cannot be detached from historical and contemporary social perspectives that fuel both racial–ethnic and religious prejudices about Arab and Muslim identities and practices. The postcolonial critic Edward Said, in many of his works but especially in *Orientalism* (1978), *Covering Islam* (1981), and *Culture and Imperialism* (1993), offered ways of examining anti-Arab and anti-Muslim discourses and patterns across the eighteenth, nineteenth, and twentieth centuries in France, Britain, and the United States that subsequent authors have usefully expanded upon (below). Briefly, in these works, Said focused on the West's distorted view of the Middle East and Arab world, drawing evidence from an array of novelists, poets, journalists, politicians, historians, and travelers. His thesis of orientalism focused on the totalizing essentialism, ethnocentrism, and racism embedded in studies of the Orient, contesting, among other things, the widespread caricature of Arab people as barbarians, villains, and terrorists (Morin 2010, 338). In *Orientalism* (1978), he convincingly showed that, though a series of oppositions, the Orient/East was systematically represented in Western discourses as irrational, despotic, static, and backward, in contrast to the rational, democratic, dynamic, and progressive Occident/West. *Covering Islam* (1981) and *Culture and Imperialism* (1993), among other contributions, showed how the US media and federal government's foreign policy worked together in an orientalist fashion in the late twentieth century. Said argued that journalists' and others' uninformed reports were devoid of historical contextualization (such as US involvement in Iran prior to the hostage

takeover in 1979, including helping train Iran's secret police), and simply reinforced images of Islamic barbarism and terrorism in contrast to ostensible American innocence, heroism, and democratic ways of life.

Said's works helped spark wide-ranging and comprehensive examinations of discourses of colonialism, imperialism, and empire within many historical contexts and many disparate places. Relevant for my purposes here are the insights of scholars who have specifically advanced the study of the negative and hostile stereotyping of Arab Muslims across a broad spectrum of US news media and in popular culture today, including in film, television shows, political cartoons, magazines, YouTube videos, and advertisements. Said and his successors have shown that such stereotypes and caricatures predated the 9/11 attacks in New York by well over a century, but many have noted their sharp increase after the attacks as well (Shaheen 2009; Kidd 2009; Bukhari et al. 2004; Smith 2010; Gottschalk and Greenberg 2008; Jackson 2010). Shaheen (2009), in his comprehensive *Reel Bad Arabs: How Hollywood Vilifies a People,* identifies negative stereotypes of Arab Muslims in over 1,000 American popular American movies produced throughout the twentieth century, and Gottschalk and Greenberg (2008) and Jackson (2010) study wide-ranging sets of demonizing and demeaning political cartoons in news outlets. Arab Muslims in these and other media appear as tribal, backward, patriarchal, lecherous and untrustworthy, dangerous, and violent. Shaheen (2009, 14–43) identifies both the generalized "Arab-land" setting of American films (deserts, camels, harems, etc.) and caricatures of people who populate them—the vast proportion of whom are villains. To Shaheen (2009, 32), believing one is acquiring knowledge of people and place by watching such films would be tantamount to acquiring "accurate knowledge of Africans by watching Tarzan movies, or [of] Americans after watching films about serial killers." Smith (2010, 188–9) concurs, adding that these and other portrayals have historically evolved from "fools and knaves to oil-rich sheikhs with beards and huge bellies (and harem girls in the background), and now [to] machine-gun toting terrorists and suicide bombers."

These stereotypes not only pivot off of the uncontextualized actions of a tiny number of jihadists (Smith 2010, xiii; whose parallels, not incidentally, can be found in Christianity and Judaism) but also often rest on a systematic but misguided popular American conflation of "Muslim = Arab = Middle Easterner." Indeed, most of the world's 1.2 billion Muslims are neither Arab nor live in the Middle East (but rather in Indonesia, India, and Malaysia); only 12 percent of the world's Muslims are Arab (Shaheen 2009, 10). The 6–8 million American Muslims represent a great range of languages, cultures, movements, and ideologies. They range from foreign-born first generation immigrants, to American-born of immigrant heritage, to "indigenous" Muslim converts—approximately 40 percent are African American (Smith 2010, xiii, 51–77; Jackson 2005, 18; see below). And as Shaheen (2009, 9) reminds us, prior to World War I, nearly all Arabs immigrating to the United States were Christians, and the majority of Arab Americans today are also Christians (60 percent). All of this said, "covered" Arab men, relentlessly portrayed in the media

as either threatening or cartoonish and wearing turbans and beards, has come to represent Islam itself (Gottschalk and Greenberg 2008, 52–3). By contrast, Diouf (2004, 272–3) observes that American Muslims of West African descent do not "look" Muslim in the American popular imagination—many wearing large, embroidered flowing robes rather than veils and skullcaps—so they come to symbolize "Africa" not Islam and thus have not been associated with terrorism and religious fundamentalism.

Gottschalk and Greenberg (2008), Smith (2010), and Sheehi (2011) all identify the contemporary anti-Muslim and anti-Arab stereotyping of Islam in America as "Islamaphobia," an all-encompassing set of fear-instilling images and beliefs about Muslims that have real-world impacts. Sheehi (2011, 38–9) argues that orientalism paved the way for Islamaphobia, but that they are not the same thing: Islam was only one cultural trait of the ethnically and racially defined Arab Orient (read: Semitic and brown), whereas Islamaphobia focuses on the Islamic religion, even if the broader perception is that Arabs are Muslims: "Islamaphobia in North America is Orientalism on steroids" (Sheehi 2001, 38–9).

The effects of this "Orientalism on steroids," especially on visibly "covered" American Muslim men, are far reaching and wide ranging. Sheehi (2011, 31–2) describes the latent mainstreaming of Islamaphobia before 9/11 that allowed more vitriolic versions and actions to take hold more recently, "circulated in order to naturalize and justify U.S. global, economic and political hegemony." These include large-scale discriminatory effects such as systematic surveillance, deportations, incarcerations, torture, and executions of Arab Muslims (such as at Guantanamo; see Agamben 2005). Kidd (2009, 161–3) uncovers the deep roots of anti-Muslim bias of conservative Christian Evangelicals, which inflame justifications for war, American foreign policy alignment with Israel, and "end time" scenarios centering on a battle between Christianity and Islam. But Islamaphobia inflames everyday acts of discrimination and violence as well—common effects that are experienced everyday in the lives of American Muslims. Muqtedar Khan (2004, 100) shows how the demonization of Islam in the media makes the practice of Islam in the "public square" dangerous: historically in the United States "men [have] faced discrimination for wearing beards and caps and for wanting a longer break on Fridays to offer the congregational Friday prayers." Such discriminations have included racial profiling, harassment, hate speech, job discrimination, anti-Muslim rants on nationally syndicated television and radio shows, and crimes of violence and vandalism such as mosque bombings (Smith 2010, 188–9; Sheehi 2011, 32).

The above discussion illustrates the pressing need to come to terms with the widespread anti-Muslim bias in the contemporary United States, in general but also specifically as it relates to constitutionally guaranteed rights to the practice of one's religion. Though racial and religious bias in public has particular salience for Arab American men generally, that bias carries enormously into the more secreted spaces of the prison, with implications for men behind bars who are denied their rights to dress and groom in ways proscribed by their religious beliefs. In the next section,

I conclude with a discussion of "prison Islam" and the many ways in which the largely invisible population of African American Muslim men behind bars belies a "hierarchy of rights" in the contemporary United States.

Discussion: Prison Islam and a Hierarchy of Rights

A number of scholars writing about the current crisis in the American penal system have focused on the conditions of confinement with respect to religious freedom (Magnani and Wray 2006; Vezzola 2007; Hamm 2009). The prison takes on particularly meaningful expressions of religiosity for men who are converted within its walls and whose bodies then become sanctified through religious dress and behaviors (El Guindi 1999). But as Secor points out, while religious dress is a "discipline and a way of becoming a moral subject through practice, a way of becoming a subject" (2007, 154); such dress is not simply or only "self-expression." To reduce the conversation to religious obligation "fail[s] to capture the lived complexity of particular dressing—how it is experienced, enacted, and given meaning by those who negotiate the rules for their own ends" (Secor 2007, 154). Religious dress can also be a way of constructing group boundaries and sociocultural identities. Religious (and other) dress must be understood as an everyday spatial practice that acquires meaning within historically and socially situated conditions of its production and within wider relations of social power (Secor 2002, 6–8; Entwistle 2000, 39). With Secor, we must recognize the complexity of these and other related issues—including that the meaning of "religion" itself as an epistemological category is contested (Morin and Guelke 2007, xxii) and that a straightforward semiotic reading of any religious dress or grooming practice is highly problematic (Secor 2007, 154; i.e., the same piece of clothing could have different meanings to different wearers). Nonetheless, it is also clear that self-identified religious men, whose dress and behavior might indeed produce myriad definitions of the self and multiple ways of being within the world, are also subject to state and other regulatory regimes that can and do often collide with their rights to religious practice.

Such issues become especially relevant for incarcerated men who align with Islam and whose religious conversion while in prison takes on a particular attachment to formal outward rituals and signs of piety (as opposed to those inner spiritual beliefs and enactments of values that are also part of religious practice; see Secor 2002, 15–17). Of the 2.4 million people behind bars in American correctional facilities today, two-thirds of them claim a religious affiliation, and of the many who seek religious conversion while incarcerated, 80 percent turn to Islam (Hamm 2009, 270; also see Smith 2010, 120). Islam is the fastest growing religion among prisoners in Western nations, and roughly 35,000 inmates in the United States, mostly African American, are converts to Islam (Smith 2010, 119). The US Department of Homeland Security has argued that prisons have thus become "universities" for radical Islamic terrorist recruitment, while the Department of Justice recently warned the

Federal Bureau of Prisons that Islam poses a "radicalization" threat to national security as well as to prison security (Hamm 2009; Smith 2010, 116–9).

Such views have obviously adverse implications for inmates who attempt to secure their First Amendment rights to religious practice outlined in a previous section. Hamm argues, moreover, that research does not support the theories emerging from the Department of Justice or Homeland Security. Research has preponderantly shown that the typical US prisoner who converts to Islam is "a poor, black American, upset about racism, not Middle East politics—someone who became a Muslim to cope with imprisonment, not to fulfill a religious obligation to Osama bin Laden" (Hamm 2009, 271; also see Sheehi 2011, 38). Such prisoners may be politicized within an antiracist American Islam that carries historical ties to the Nation of Islam and Malcolm X (DeCaro 1996; Jackson 2005), but this is nonetheless a quite different scenario than that portrayed by Homeland Security.

Sherman Jackson elaborates on this relationship in his foundational book, *Islam and the Blackamerican* (2005). Jackson explains the origins of Islam as an indigenous "Blackamerican" religion that flourished well before numbers of foreign-born brought their own version of Islam following the repeal of the 1965 immigration Quota Act. (Black Muslim communities did exist earlier, including those coming with the first slave ships, but most of their descendants converted to Christianity; Smith 2010, 51–2.) Jackson notes that a significant divide exists in America between Blackamerican Muslims and the Islam of more recent first- and second-generation immigrants. This, in terms of class—most of the latter are better educated professionals; in terms of race—most of the latter are legally defined as "white," even if they have been treated as nonwhite since the 9/11 attacks; as well as in terms of theology and practice, the latter of which, to Jackson, hold a "virtual monopoly" over how the religion is defined and constituted in America (2005, 5–17). Jackson helps us understand how Blackamerican Islam holds a particular salience among predominantly African American prisoner communities, whose Muslim identities are part of a protest by people disaffected from the dominant Christian majority and who seek to combat its racism. These men, it must be underlined, are thus subject to the fallout of both anti-Islamic bias of the dominant culture—albeit one that is informed by anti-Arab xenophobia—but also the structural racism that disproportionately produces African Americans as a majority of the US inmate population in the first place.

Hamm argues that Islam can thus be understood as playing a major role in prisoner rehabilitation: "Once on the path to restructuring their lives—down to the way they eat, dress, form support systems and divide their day into study, prayer and reflection—Muslim prisoners have begun the reformation process, making them *less* of a recruiting target for terrorists than other prisoners" (2009, 669; also see Jenkins 2003, 5). Smith (2010, 119) agrees, arguing that prison guards and other personnel are aware that Muslims who observe the discipline of the faith and stand by its moral code are less likely to "cause trouble" than other inmates, and so guards have often tried to support and encourage rather than obstruct their practice of Islam. To Smith,

the attraction of prison Islam "seems to be its egalitarianism, sense of brotherhood, and emphasis on self-discipline and devotion." A convert adopts an Islamic name and begins to wear whatever form of dress is allowed in a given facility ... participation in communal prayers and other Islamic activities helps solidify the new convert's sense of identity and belonging.... Personal modesty and cleanliness become of primary importance, as does one's general appearance, with all efforts made to demonstrate that one has entered the community of Islam (Smith 2010, 120).

Smith argues further that the language of Muslims in prison has shifted away from the rhetoric of a separatist Nation of Islam to one emphasizing American citizenship. Inmates, to her, are claiming their rights as American citizens, which include the right to practice one's faith (2010, 121).

Still, as Smith and many others concede, Muslim converts incarcerated in US prisons still do not receive religious rights equal to those of other faiths, as evidenced by trends seen in the court cases discussed above. The fact that elite, white Protestant men have made most of the rules governing American society (including the First Amendment itself) explains why we do not see, for example, lines of Episcopalian men going to court to protect their religious rights to dress in particular kinds of ways, in prison or elsewhere (Mazur 1999). Indeed, because so much prison regulation was designed by white Christians and around Christian traditions (Mazur 1999), it is not surprising that Muslim men would have a difficult time both practicing their religion while incarcerated and securing their First Amendment protections to maintain religiously proscribed dress and grooming norms to do so. Courts allowing the "all-American" baseball cap in prison but not the Muslim tarboosh or Kufi cap—which cover the head in similar fashion and degree—illustrate this well.

As the suggestive (rather than exhaustive) legal cases outlined in a previous section illustrate, religious admonitions for Islamic men to dress and groom in observant ways are mostly colliding with the state's regulatory regimes in the post 9/11 United States, although adherents of other non-Christian faiths also suffer constitutional infringements. In essence the practice of Islam in prison has been thwarted, in favor of ostensible penological interests. The notion that "prison Islam" poses a particular danger to national security often serves as the unstated backdrop to prison civil rights cases involving religious practice today. And these, again, are fueled and reinforced by a host of media and other popular culture anti-Muslim biases that drift into official administrative positions and regulations.

Questions of gender and religious practice have particular salience within discussions of law and space, as the above examples illustrate—and this, regardless of whether the dress or grooming code is tied to "modesty," "remembrance," or something else. There are significant differences in the state's approach to religious women and religious men and these carry a particular "spatial logic" inscribed in gendered religious practices. Evidence from First Amendment lawsuits demonstrates that religious women and men are "disciplined" by the state in different spaces. One explanation for this lies at the intersection of sexism and racism in both American religious practice and courts of law. Both religious and state regulatory

regimes illustrate a type of "collusion" of gender bias when it comes to modesty and dress norms, as both attempt to heighten gender differences and solidify gendered identities of both women and men. Prisons allow women to wear long hair, for instance, but not men. And yet again, the example of the Muslim woman in Florida who refused to unveil for a driver's license photo (Cosgrove 2005) can be usefully juxtaposed with the question of Muslim beards in prison—both are attempts by the state to render the subject knowable for the purposes of discipline, and both are cases of anti-Muslim bias.

The above examples illustrate what we might call a "hierarchy of rights"—various degrees of success with instruments such as First Amendment lawsuits—for both religious men and religious women, based on gender as well as race, both Arab and Black. This hierarchy is formulated around a complicated orientalist and Islamaphobic cultural mechanism deeply rooted in many Americans' imaginations and their prevalent stereotyping of Muslim men and women.

Islam in particular grates against the US court system in different spaces and in gendered ways, with men disproportionately represented in the state's total institutions whose authority is especially difficult to challenge (Jackson 2005; Goffman 2000; Peck 2003). Much of the literature on spaces of political dissent deals with access to and appropriation of public space. Much more analysis is needed on dissent within institutionalized spaces. Civil rights issues surrounding them are only going to become more contentious and call for further place-based understandings of how religions discipline and regulate women and men differently, and how religious ideologies and practices resonate with or come into conflict with those of the state.

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Note

1. Myriad jurisdictions and competencies make up the US legal landscape in which the First Amendment has been contested, and decisions rendered by each apply only to their

respective areas unless the Supreme Court "generalizes" a district ruling (rather than simply upholds it). The District and Circuit court cases discussed in this section include US Second Circuit Court, *Burgin v. Henderson*, 1976; US Sixth District Court, *Pollock v. Marshall*, 1988; US Fifth District Court of Appeals, *Green v. Polunsky,* 2000; US District Court in California, *Mayweathers v. Terhune*, 2004; US Third District Court, *Cole v. Flick*, 1985; US Seventh Circuit Court, *Young v. Lane*, 1992; US Tenth Circuit Court of Appeals, *Boles v. Neet*, 2007; US Eleventh Circuit Court of Appeals, *Benning v. Amideo,* 2004; US District Court, Ohio, *Aqeel v. Seiter*, 1991; and US Fifth Circuit Court of Appeals, *Muhammad v. Lynaugh*, 1992. Texts and details of these and other court cases discussed in this article can be found online via Nexis-Lexis Academic and FindLaw.com.

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