

Islam in American Prisons

Black Muslims' Challenge to American Penology

HAMID REZA KUSHA
East Carolina University, USA

ASHGATE

Contents

<i>List of Tables</i>	<i>vii</i>
<i>Preface</i>	<i>ix</i>
<i>Acknowledgments</i>	<i>xi</i>
1 Introduction	1
2 Judeo-Christian Foundations of American Penology	13
3 American Penal Philosophy: An Overview	49
4 Black Incarceration: A Historical Analysis, 1960–2007	65
5 Adverse Impacts of Incarceration	99
6 Islam in American Prisons	135
7 Islam’s Challenge to American Penology	173
8 Conclusions	199
<i>Index</i>	<i>213</i>

Preface

Islam is one of the fastest growing monotheistic faiths in the world, including in the United States of America. This growth is especially notable among African-American inmates incarcerated in both state and federal penitentiaries. The epistemological thrust of this book is that this growth poses a powerful challenge to American penal philosophy, which theoretically is structured on the ideal of rehabilitating offenders through penance and appropriate penal measures. From colonial times to present, American penal philosophy has been adamant that a just regime of punishment is one that applies penal measures that perform their designated penal functions. However, following its Judeo-Christian base and notion of penal fairness, this regime must allow for rehabilitation so as to give the convicts a second chance for redemption. American penologists have utilized institutional incarceration as the main vehicle for achieving this ideal. However, the general history of incarceration in both state and federal penal institutions hardly resonates harmoniously with the American penal philosophy's rehabilitative ideals. The nature of life in penal institutions is a dehumanizing experience marred with violence and exploitation. In addition, racial and ethnic minorities are being incarcerated disproportionately to their general crime and demographic rates in this country.

Thus, one argument of this book is that prison-bound conversion to Islam is an alternative form of redemption sought by the converts; this poses a powerful epistemological as well as ideological challenge to American penology. The larger epistemological base of this challenge is continuously being formed, refurbished, and enhanced among a segment of the inner-city African-American communities who do not perceive their overall social, economic and political standing improving. For this segment, Islam is an empowering alternative to reclaiming their deserved share of the American Dream. With the tragic terrorism events of 11 September, 2001, prison administrators have been warned of the possibility of terrorist recruitment from among prison inmates who convert to what is known as "radical Islam" which is being identified with Wahhabism practiced in Saudi Arabia as well as among the followers of the terror master Usam Bin Laden's Al-Qa'ida movement. There are cases being documented showing that some of these converts are sympathetic to Al-Qa'ida organization and to its brand of radical, anti-Western Islam. At the same time, there is ample evidence of other Islamic groups that are working with a large segment of black inmates converting them to their brand of Islam such as for example, the Nation of Islam (NOI), and a host of other North American Islamic movements. The success of the Nation of Islam, as we shall explore in this book, is due to two interconnected factors. First, the Nation of Islam has provided an effective prison-bound mechanism of protection

to those who convert to its brand of Islam. Second, the literature of the Nation of Islam claims that not only has it converted a large number of inmates to Islam, but has also successfully reintegrated them into its social and economic infrastructures thus preventing them from recidivating and being re-incarcerated. Accordingly, this transformation from a convicted-felon to a rehabilitated Muslim convert takes place through several stages as prospective convert-inmates are taken under the Nation of Islam's prison-bound protective networks to be gradually assimilated into the Nation's version of Islam based on the teachings of the Honorable Elijah Muhammad, the founder and the spiritual leader. This is another aspect of the challenge that this book covers.

However, this book does not intend, nor is it my claim, that we should replace American penal philosophy with an Islamic alternative. In fact, Islam's Sacred Law, the *Shari'a* is almost silent on incarceration as a rehabilitative venue. Until recently, in many Islamic countries, modern prisons did not exist because those found guilty within the traditional Islamic jurisprudential norms, would be subjected to execution after a short sojourn in dungeon-like detention centers. In fact, thanks to the forces of modernization operating in the Islamic world from mid 19th century to present, the traditional view of the role and the function of prison has changed in many Islamic societies. Gradually, a more modern and rehabilitative penal philosophy and institutions have replaced the traditional system. In sum, in the post 9/11 specter of international terrorism, prison-bound conversion is also being perceived as a serious post-incarceration release risk. This book will address these issues arguing that we need to objectively examine the rehabilitative potentials of faith-based organizations in prisons, including the faith of those who convert to Islam.

Chapter 1

Introduction

Islam is one of the fastest growing religions in the world. Several reasons can be cited for this phenomenal growth. First, Islam is a simple yet coherent monotheistic faith professing that it is the destiny of humankind to follow one universal God, Allah, who personifies justice, law and universal compassion for humankind, especially the downtrodden. Allah, the faith professes further, is not only passionately concerned with our faith but is also watchful over human affairs. This is because it is Allah who has created the temporal world with “Its” very invisible hands. It is noteworthy that in the Qur’an Allah is depicted as one who is neither begotten nor begets, though in some verses the masculine epithet is used for Allah. The purpose of human creation is cited as one in which the Almighty wants to test human resolve against temptations caused by a wide range of individualistic as well as social, economic, political and communal factors. Crime, violence, injustice, aggression, greed and corruption are among temptations that the faith warns believers against criminogenic impacts. Allah with all Its majestic and unlimited might is on the side of the righteous, declares the Qur’an, in various verses as, for example, in cxiv, 1 through 6, whereby believers are told to seek refuge in the embrace of Allah from the temptations of evil forces which “whisper” in our hearts to us to entice us to commit evil deeds. It is the “duty” of men and women of faith to resist temptations. The faithful, instead of choosing the route of crime and evil deeds, should choose the righteous path that the Almighty has instituted.

Second, Islam, as a faith, is not overtly ritualistic. One only has to perform five daily prayers, make a one-time pilgrimage to Mecca, give a certain amount of one’s wealth to charity, and observe dusk to dawn fast during the month of Ramadan. There are also three principal beliefs in Islam. These are: (1) belief in the Oneness of Allah; (2) belief in the Messengers of God (from Adam to Abraham, to Noah, to Lot, to Janus, to Moses, to Jesus to Muhammad); and (3) belief in our resurrection in the Day of Judgment. For the faithful these are empowering because by adhering to these principles, one finds communion not only with the larger Islamic communities and cultures scattered throughout the world, but also with members of both Jewish and Christian communities and cultures. This is because both Jewish and Christian faiths teach similar messages of righteousness thus putting aside ritualistic differences; a devout Muslim has no problem in his or her camaraderie with the Judeo-Christian principles of righteousness. It is noteworthy that Islam’s sacred text, the Qur’an, portrays Allah, the *Howa* a term that can only be translated as ‘an everlasting entity that is, has always been, and will always be.’ Allah is the *sin qua non* entity that the Qur’an personifies as

The Creator whose realms of might, knowledge, and hegemonic dominance “over the earth and heavens and every thing in between” is beyond human range of cognition. This is the God of Abraham to whom Jews, Christians and Muslims give homage. Accordingly, Allah also possesses perfect sublime qualities as, for example in i, 1 through 7; ii, 1 through 19. Allah is categorically on the side of the righteous faithful who continuously struggle for good and ward off evil forces and their temptations. Thus, having faith in Allah and being righteous, are two complimentary aspects of belief in Islam as the faith seeks to instill peace and tranquility in those who embrace its message: submission to Allah; this is the message of *s.a.lm*— which stands for peace, the root word for Islam thus Islam in its essence is the religion of peace and tranquility. The Qur’an is adamant in this depiction of Islam.

Third, Islam, as a faith, admonishes believers to follow the straight path as, for example, in i,6; vi, 153; a path that is moral, righteous and uplifting. Thus, following such a path enables the faithful to opt for a rewarding and bountiful life in this world, and for salvation and eternal joy in the world to come. Once a believer opts for Islam’s straight path in conjunction with sincere and consistent efforts that he or she exerts so as not to deviate from this righteous path, he or she will be guided by Allah regardless of gender, creed, race or social class. The path of righteousness is, however, arduous. To traverse it successfully, believers have to equip themselves with sublime moral qualities to ward off lowly temptations that emerge against one’s progression in the righteous route. The unbelievers, on the other hand, stray from the straight path of Allah by not heeding the call to righteousness; this is because unbelievers’ ears and eyes and hearts have been sealed (ii, 136, 142, 281). But again, one is given a choice between good (*khayr*) and evil (*shar*). Naturally crime, violence, corruption and succumbing to lowly inclinations are factors that reside on the side of evil. In contrast, compassion and charity towards humankind, patience, tolerance, forbearance and kindness towards the downtrodden of society are on the side of the good. The struggle between the good and the evil is not on a cosmic plane of reference as, portrayed by the Zoroastrian faith, one of the oldest monotheistic religions that appeared among ancient Iranians before Islam. Unlike the Zoroastrian view of a cosmic battle between good and evil, the Islamic view of this battle is one that is of an intrinsic nature as both factors of good and evil exists within our human core. As humans, we are responsible for deciding which will influence our daily lives. We are responsible for our social acts and consequences, be they good or evil notwithstanding a certain notion of predestination to which verse of the Qur’an alludes.

Fourth, in Islam, believers are duty bound to help one another in times of hardship that befall on their respective communities. Believers are duty bound to encourage each other to do good deeds in the same manner that enjoyment from committing wrongs is sought, a premise which finds expression in the Qur’anic formula of *al-amri bi'l-ma'ruf wa al-nahy 'an al-munkar*. Islam, as a faith, and in its eschatological essence, posits the notion of salvation within the righteous

disposition of the believers saying, that it is the purity of one's thoughts and deeds (*taqwaa*) that endear one to Allah and not spurious attributes of wealth, race, gender, or class.

Finally, Islam, like its Judeo-Christian counterparts, is expressively anti-criminogenic in its core teachings proposing that:

1. One who shares earnestly believes in Allah's many sublime qualities expressed in the Qur'an, not only will refrain from the commission of sins or crimes, but will also enjoin others against such socially harmful and victimizing acts.
2. One who shares wealth with others helps to immunize social groups and communities to the criminogenic impacts of absolute and/or relative depravity that modern criminology now recognizes as an important etiology of crime.
3. One who prays regularly to remind himself/herself of Allah's presence and might, will refrain from the commission of crime or sin.
4. One who is reared up in a decent and upright family, educational system and community sharing these values will refrain from committing sin or crime.
5. It is incumbent upon parents, educators, religious and community as well as civic and state leaders to inculcate these values on the individual/community in order to combat sin-crime.
6. Islam stresses adherence to the principles of just conduct in social, economic and communal spheres, an emphasis that makes the religions in the line of Abraham (Judaism, Christianity and Islam) powerful advocates of compassion for the underprivileged and the disenfranchised social groups.

What do these premises imply for the subject matter of this book? One central premise of this book is that the faith of Islam is growing among the African-American community in the US, and, in particular, among black inmates who comprise a large percentage of the incarcerated population in both state and federal penitentiaries. This growth has much to do with the powerful social justice message of Islam, as well as with the nature of the prison life which is by and large oppressive, violent and dehumanizing. Survival is of chief concern to inmates in the prison settings despite the many rehabilitative, educational, and even recreational programs which have been instituted throughout the decades to make prison life more secure, rehabilitative and less violent. There are studies showing that different religious denominations, including Muslims and especially the Nation of Islam have created faith-based systems of protection within both state and federal penitentiaries with the stated aim of creating a more anti-criminogenic lifestyle within the prison settings. The efficacy of these programs differs. However, the fact that Islam is gaining a significant following among African-American inmates presents a powerful challenge to American penology considering that North American societies (Canada, United States of America and Mexico) have historically been part of the Christendom with a powerful Judeo-

Christian penal philosophy despite continuous efforts to secularize it. The fact that Islam is beginning to have influence on North American social and cultural spheres including penal institutions is a fascinating area that is explored in this book.

Islam on Social and Economic Justice

Islam represents a powerful message of social and economic justice because the Islamic notion of deity is of an all encompassing and universal nature; this deity has created human beings to follow the path of justice and righteousness. Thus a true believer should refrain from crime commission, and is duty bound to ward off individualistic as well as social and communal factors that are criminogenic. On the individual level, these typically include inclinations such as greed, aggression, unbridled violence, dishonest and immoral deeds, injustice as well as showing contempt towards those who are less fortunate. On the social and communal levels, these often include elements that disrupt the sanctity of institutions such as marriage, family, education, work and charity and the sense of communal responsibility towards the downtrodden.

The Qur'an's teachings on social and economic justice neither condemn the ownership of private property, nor condone the unlimited expropriation/concentration of wealth in the hands of a few. The emphasis of the Qur'an, however, is on the importance of honest and hard work in earning that which rightly belongs to the individual, *al-rizq*, which in the vernacular of the Qur'an denotes "that which Allah has apportioned for each individual." Thus, the text encourages believers to struggle in order to better their material conditions, but it also warns them that the Almighty has allowed some believers to prosper over others thus some have been entitled to more *rizq* than others. This premise is not to be construed to mean that one should not try to improve one's lot, but that one should also be cognizant that it is the Almighty who determines our destiny, be it good or bad, rich or poor. The anti-criminogenic implications of this "philosophy of contentment with one's station in life" have been profound in many Islamic countries in the past. Unlike the crude modern materialism that has been the hallmark of many modern societies promoting greed for consumption, contentment with one's station in life has helped many Islamic countries to ward off the criminogenic mentality of economic success regardless of its social costs. For example, Freda Adler's classical study aptly titled as *Nations Not Obsessed with Crime* shows that a good number of oil producing Islamic countries did not experience excessive amounts of crime in the 1970s and 1980s. This was partially due to the steady flow of oil income and to the anti-criminogenic impacts of Islamic teachings. In other words, when economic viability is built in Islamic societies, the moral teachings of Islam serves to reduce crime as witnessed in a good number of oil-producing Persian Gulf Sheikdoms in the past decades although the situation is changing as the

Middle East region is in a low intensity cycle of war, terrorism, and economic decline.¹

Islam in its societal disposition does not oppose good and comfortable life, however, a good life is more than having the ability to consume, but one that has to take into consideration human dignity within the social and political structures of a consuming culture. The Qur'an warns believers that they should live as if they were endowed with eternal life when it comes to creating conditions for a good life; it however reminds believers that they should conduct themselves in such a moral way as if they were to stand trial in front of what the Qur'an has characterized as the Final Arbiter, the *Qaazi-al-quzaat*, the Judge of all judges, Allah. This implies that a good life and righteousness are not contradictory. One could build a good life on the foundations of morality, justice and righteousness. It is in such a medium that attempts to reduce crime and rehabilitate offenders are capable of bearing fruit. As is explored in this book, the Nation of Islam claims that it has created a wide net work of economically viable institutions (e.g., Muhammad Farms) to help post-release reincorporation of its convict adherents. This is a claim whose truthfulness is worth reassessing.

Islam on Crime and Punishment

The question as to why people commit crime is as old as human history. Various branches of social sciences, from criminology to political science, to psychology, to ethics, have tried to provide an answer for this question. There is no doubt that the major religions of the world have renounced crime locating its causes within a moralistic context albeit with social and economic parameters. To give an example, there is a wide Islamic literature on what is known as the *Qesas al-Qur'an* which stands for the Stories of the Qur'an. The thrust of these stories is that Allah endows people, tribes, dynasties and nations with a range of opportunities in order to test their moral resolves in the face of empowering aspects of such opportunities. The thrust of the literature is that those who use their God-given opportunities for the greatest common good, justice and righteousness will prosper and have social contentment, joy and a harmonious life. In contrast, those who arrogate themselves against the teachings of the Qur'an will go astray. Allah shows mercy to both groups with the difference being that those who fear Allah will heed the divine warnings; those who do not fear Allah will ignore such warnings, a process which accelerates their straying from the righteous path leading such individuals, tribes or nations to their ultimate demise.

This scenario, dramatically depicted in the Qur'an time and again, is supposed to have a personal implication as well for those who are in the position of power and authority, be it Muslim, or non-Muslim. The Qur'an seems to be saying that:

1 Adler, Freda, (1983), *Nations Not Obsessed with Crime*, Published by The Contemporary Criminal Law Projects, Fred B. Rothman & Co., Littleton, CO, 1983.

those who are in the position of power, wealth, prestige and “life chances,” to borrow Max Weber’s famous term, should be cognizant of the fact that such opportune factors are temporarily entrusted to them by Allah to test their resolves. Those who are wise will use such factors expediently and for the largest amount of common good for to do otherwise is to arrogate oneself against the teachings of the Qur’an. The worst course of action is to use one’s endowments for a greed-based, corrupt and vile way of life inundated with anti-social acts, deviance and crime. In other words, the moral teachings of the Qur’an have both macro (social) and micro (individualistic) dimensions in relation to both etiology and epidemiology of crime and crime commission. This premise of the Qur’an is quite anti-criminogenic compared to the critical criminological view expressed by Left Realism. This may sound a bit odd considering that Left Realism comes from a Marxist perspective which is antithetical to any religiously oriented view. However, the thrust of the two approaches is based on the element of power and its utilization. The differences can be located in the nature of power and how it is attained. In the Islamic perspective that I propose here, power has both material and divine bases to its conceptualization whereas in the Marxist view, it is exclusively of a materialistic construction notwithstanding its psychosomatic dimensions.

Two contemporary Left Realist criminologists, Walter S. DeKeseredy and Martin D. Schwartz maintain that it is time to approach the causes of crime from the standpoint of the “Left Realism,”² an approach utilized in this book albeit within an Islamic perspective. Accordingly, predatory crime in general and that of the disenfranchised groups in particular, is a social reality that has to be seriously considered by critical criminologists. There is nothing romantic about predatory crime committed by this segment of society. DeKeseredy and Schwartz further maintain that the real challenge is to try to realistically assess those social, economic, political and psychological factors that make predatory crime an integral part of the daily realities of disenfranchised groups in North America. Approached from this perspective, albeit within the Islamic notion of moral conduct, it is this book’s contention that critical criminologists should apply a social-justice based approach to both the etiology as well as the epidemiology of crime. This approach should consider the following points:

1. Predatory crime is a social reality whose etiology covers individualistic as well as social, economic, political, psychological and existential factors.
2. Predatory crime creates its own sub-culture, rationale, norms of behavior as well as creates a legitimating mechanism for explaining its commission.
3. Predatory crime also creates a dichotomous social mentality expressed in a kind of “We” the non-criminal, against “Them,” the predatory criminal members of society. This mentality, in turn, allows for reactive and simplistic solutions to a complex problem such as crime causation and commission.

2 DeKeseredy, W.S., and Martin D. Schwartz. (1996), *Contemporary Criminology*, Wadsworth, Belmont, CA.

4. This mentality creates two different social worlds in each of which the other side is viewed as cruel, immoral, illegitimate and violent, a mentality that impacts the functional dynamics of every aspect of the criminal justice processes.
5. The challenge of critical criminologist is to bridge the gap between these two worlds by recognizing that society cannot be immunized against predatory crime by some panacea, but that it can be drastically reduced when different social strata conceive their share of the economic pie as just and in harmony with their perceived contribution to its formation. This can be expressed as giving the dues of both the prince and the pauper, but not at the expense of one another.

This book is not intended to prove the aforementioned points in the order that they are presented, but these points comprise this book's general intellectual as well as working assumptions namely, that predatory crime in modern democratic societies is a social reality that has a multifaceted base to its causation; predatory crime, in its most abstract format, relates to the manner in which the economic, legal and human capital resources are organized to serve the largest amount of common good. If this organization is generally perceived as being just functioning for the benefit of the largest amount of common good, it will produce less predatory crime. On the other hand, if this organization is perceived as being unjust, operating in a manner as to consistently exploit and/or disenfranchise a large segment of the society for the benefit of few, it will likely produce predatory crime.

With that stated, it should be reiterated that one premise of this book is that any form of crime and/or violence does have its individualistic choice dimension. In other words, the free will to commit predatory crime exists in many societies throughout the world including modern market economies, but free will does not operate within the confines of an abstract volitional mechanism that operates like an off and on switch. Barring exceptions, the will to commit predatory crime is inherently connected to and energized by the prevailing structural (economic, social, and political) and normative (individualistic and moral) factors. In general, it is this book's contention that most people in stable and functioning societies where legitimate opportunities for social mobility and economic progress exist do not commit predatory crime.

As this book will reveal, the correctional literature on the rehabilitative potentials of incarceration does not give much hope to the idea that American penal institutions have succeeded in being rehabilitative. In fact, it is very likely that inmates who convert to Islam do not consider American penal institutions corrective. Studies have shown that inmates consider penal institutions as oppressive, violent and exploitative, thus they seek prison-bound conversion as an effective means of protection. Some studies have shown that new converts believe that Islam is capable of providing a moral compass against those aspects of prison life that deprive a person of his or her moral worth and dignity. These include practices such as forced homosexuality, illicit drug use and pushing, alcoholism, or

petty theft, to name but a few. Thus, conversion to Islam may be due to an inmate's expectation of functional post-release incorporation within the "community of believers," which not only provides the wherewithal for prison-bound protection, but is also capable of providing employment and housing to ex-convicts within the embracing arms of the same "community of believers" upon release.

It is noteworthy that institutionalized incarceration does not occupy any discernable space in Islam's primary sources or in what we may consider as Islam's traditional penal measures. This is due to two factors: first the Islamic notion of exculpation based on the advice from the Qur'an is not of an adversarial nature as it is understood and practiced in the Anglo-American system of criminal trial, but is geared towards a complex notion of fact-finding in which the judge plays a central investigative as well as interpretational role. Second, the exculpation process is not one of winning or losing cases, but one of ensuring that a right (*haq*) has not been turned into a wrong (*baatil*) through various stratagems that the accused and/or the adjudicating authority may undertake (e.g., false witness, false oath, lying, counterfeiting, bribery, colluding, applying inappropriate *Hadith* to the case for lesser punishment, etc.). The Qur'an is quite specific on this aspect of exculpation warning believers that the biggest harm to the Almighty is transgression against principles of justice in adjudicating cases.

The Qur'an is adamant that one should not shy away from witnessing the cause of righteousness even if such witnessing were to damage one's tangible benefits and social standing. For example, in iv: 135, the faithful are advised, "O ye who believe! Be ye staunch in justice, witness for Allah, even though it is against yourselves or (your) parents or (your) kindred, whether (the case be of) a rich man or a poor man."³ In contrast to the Anglo-American notion of the exclusionary rule, the right against self-incrimination, scientific jury selection and all kinds of plea-bargaining schemes, Islamic system allows the convict to compensate the wronged party through monetary measures (in case of non-capital crimes). In the case of capital crimes, once the guilt is established, the judge is allowed to carry out the sentence provided that the wronged party does not forgive the convict. Thus, there has not been a history in the Islamic system of incarceration other than holding a convict on death row in a detention center for a short period of time prior to execution.

However, it is plausible to argue that modern forms of incarceration have garnered its modern Islamic rationale that may be as follows: I may be experiencing this ordeal because I did not follow the right path, thus I committed a crime that I have to face its consequence. The way I face this ordeal may indeed teach me how to face up to a temporal experience representing tribulations that the Heavens has placed on my path so as to test my resolve against all those negative aspects that the world of prison represents. The real ordeal here is not incarceration, but my ability not to give in to the temptations of survival through adaptation to prison-bred

3 *The Glorious Qur'an*, (1984), text and explanatory translation by Muhammad M. Pickthall, Mostazafan Foundation of New York, NY, p. 94.

violence or corrupt and unjust practices but remain true to the just and dignified standards of Islamic faith. The confessional aspect of the conversion raises one important question: what is my personal role and responsibility for being in this situation? Do I deserve it? Can I rescue myself from the criminogenic aspects of prison life? Considering the fact that I have committed crime, is there “salvation” for me in this world and in the next one to come? These are important questions that the literature of conversion depicts as operating in the pre and post conversion processes—not just to Islam, but to any other religion—that takes place within the American penal institutions.

What is peculiar about conversion to Islam is the fact that the central claim of Islam has been, from its inception to present, that Islam has perfected both Judaism and Christianity, and the fact that Islam is a supra-class, supra-race and supra-ethnicity faith in which salvation comes through repentance next to good deeds and noninvolvement in crime and deviance. In Islam, righteous deed is known as the *amal al-salih* whose range is almost limitless and whose magnitude, no matter how small, is nonetheless counted in Allah’s unlimited divine sense of justice on the Day of Resurrection, the *Yaum al-Qiyamah*. In addition, there is no time limit for performing righteous deeds. One could start at any moment by repenting and promising to redress past wrongs and ill-conceived destructive and socially harmful deeds and replacing them with good and decent ones even if one is being incarcerated.

Incapacitation in the American Penology

Incapacitation of the criminal offenders in secure corrective facilities sounds like a logical punishment for those who violate society’s values, mores and norms from which laws are made. The criminal codes in the United States, as in other modern and democratic societies, specify the boundaries of social norms and mores whose violations engender a punitive process based on meticulous procedure specifying a set of sanctions to be applied to offender(s). The secondary purpose of punitive process is to incapacitate convicted offenders in order to shield society from their antisocial behaviors that inflict social harm on individuals and social institutions. In the past, incapacitation took different forms such as banishment, execution, blinding, house arrest, or being thrown in dungeons until literally one rotted to death. A more humane form of incapacitation is the modern practice of incarceration in correctional institutions (jail, prison, half-way houses with electronic monitoring devices, community correctional facilities etc.). In the case of juveniles, mention could be made of juvenile correctional facilities, schools and boot camps.

In the US, incarceration has always been regarded as a humane punishment although it has also been used as a form of cheap labor exploitation. That is why it has been suggested that incarceration trends in the US have followed the economic trends. Giving an example of this exploitation from North Carolina’s state prison system during 1741–1868, Dean J. Champion points out that it was the

private businesses that controlled prison inmates due to the cost of confinement and maintenance of prison inmates that the state did not want to incur.⁴ It was only after the Civil War that a shift in the responsibility for the maintenance of the inmate population from private to the State of North Carolina took place even though the exploitation of the inmate as a source of cheap labor was kept alive in North Carolina. Other states such as Oklahoma and Louisiana followed suit. With the passage of time, each state in the Union developed its correctional authority to deal with the administrative, management and organizational aspects of correctional institutions. Through time, incarceration provided the foundation of a colossal industry with its rationale, logic and advocates as almost a limitless field of employment locked in what the German sociologist Max Weber has characterized as the iron cage of bureaucracy. This did not happen overnight, but occurred over time, a synopsis of which is presented in the next two chapters.

In short, it could be argued that a penal philosophy has to take into consideration why crime is committed. A penal philosophy devoid of the etiology of crime becomes only punitive in nature, losing other functions that it is supposed to perform. An effective penal system has to strike a balance between deterrence and corrective processes. Oppressive, vengeful and dehumanizing penal systems, which treat offenders as disposable objects to be warehoused in a penal institution because offenders are deemed devoid of any redeemable human values, would only inculcate deep-seated anger, frustration and vengeance in the convicts, creating human time bombs behind prison bars ready to explode after being released from the clutches of such penal systems.

Islam and the American Criminal Justice System

It is a central premise of this book that prison-bound conversion to Islam presents a powerful challenge to American penology. Why? Because the general test of the fairness of any system of justice and conflict resolution depends on several factors such as:

- equity in the application of the justice process;
- the speed with which civil and criminal conflicts are resolved;
- the *de jure* and *de facto* perceptions of just, or unjust, resolution of the civil and criminal conflicts as generated by the operational dynamics of the system;
- the manner in which the socially disenfranchised members of society are treated when they commit crime and are subjected to the justice process;
- the public confidence in the fairness of the system.

4 Champion, Dean J. (1998), *Corrections in the United States: A Contemporary Perspective*, Upper Saddle River, NJ, Prentice Hall, second edn., p. 12.

The validity of the above premises (e.g., the general test of the fairness), can be defended in terms of both common sense, and the logic of the etiology of crime.

First, it is a matter of common sense that equity in the application of the justice process is a universal demand in four major systems of conflict resolution that operate throughout the world, and so is the demand of the speedy resolution of civil and criminal conflicts. Throughout the world, members of the disenfranchised social strata face both *de jure* and *de facto* hurdles in their attempts to resolve conflicts. This is due to unequal distribution of wealth, prestige and power among different societies and different social strata throughout the world. It is the unequal distribution of these factors that determine the social status of various strata in modern open-end class societies on the one hand. On the other hand, these factors impact the manner in which members of society resolve conflicts. For example, access to bail, pre-trial release and the ability to mount a viable defense strategy have a direct bearing on one's social and economic status. As a general rule, the higher one's socioeconomic status, the greater one's likelihood of access to these instruments as one traverses through different stages of the justice process in any part of the world. In the American adversarial system of criminal trial, the almost causal relationship between pre-trial release and a successful defense leading to acquittal, or to the imposition of lesser severe sentences, has become an undeniable reality.

Second, from the standpoint of the logic of the etiology of crime, it is also plausible to argue that the unjust resolution of civil and criminal conflicts creates dismay, resentment, and cynicism among the members of the disenfranchised groups—a process that if unchecked could seriously undermine both the social and legal legitimacy of a system of justice and conflict resolution. In its crisis stage, this anti-system attitude of the disenfranchised group turns into the status of a cynical conviction that their civil and criminal conflicts are not resolved based on the principle of social harm, justice and equity, but based on factors such as race, class, gender and ethnic affiliations. This is a crisis not because some individuals entertain negative feelings against the system, but because the perception reaches the level of general consensus among one or more social strata as, for example, in the case of the indigent White, African-American, Native, and Hispanic-American communities in the United States.

Third, from the standpoint of prison-bound Islam, the American system of justice and conflict resolution is going through a legitimacy crisis as described above. The operative phrase is the *genesis* of legitimacy crisis—rather than a full blown crisis—whose epistemic frame of reference is shaping among African-American communities throughout urban America, as well as among African-American prison inmates. By the term epistemic frame of reference, I aim to describe a certain social-legal perspective whose thrust can be described as follows:

1. The American notion of justice is undoubtedly a complex one which, ideally speaking, permeates the thrust of both substantive and procedural laws utilized in the resolution of conflicts and in the dispensing of justice;

2. The American criminal justice system is the main venue through which the justice process is applied to the resolution of conflicts;
3. Whether conceived of a system, or non-system, the constituents of the American criminal justice system responsible for the orderly resolution of conflicts and dispensing of justice (the police, courts and corrections) are complex entities employing large number of persons from all walks of life with their likes, dislikes and proclivities;
4. The constituents of the American criminal justice system handle large number of both civil and criminal cases resolving a multifaceted array of legal and social conflicts on a daily basis.

This complexity is further compounded by the fact that each of the criminal justice constituents is locally, rather than nationally, financed and managed. There is a perception among both American lay people and intelligentsia that the American criminal justice system dispenses justice in the context of a tangible commercial commodity, rather than dispensing it on the basis of the presumed legalistic equity principle. This perception is the most prevalent among the members of socioeconomically disenfranchised groups and communities throughout the US. It is within these segments of the population that the call of legal justice finds its most receptive audience as for example, among the indigent poor and socioeconomically challenged segments of the American society.

What Does This Book Entail?

This book focuses on the role of one important factor that has played a significant impact on the formation of the genesis of the aforementioned crisis: the disproportionate and systematic incarceration of the African-American males in both state and federal correctional facilities. This book also focuses the role of the faith of Islam which is gaining adherents from among African-American community and inmates. This book outlines some of the most important aspects of this legitimating crisis by exploring: (1) the historical role of incarceration in the American penology from colonial times to the present, (2) the reasons for the disproportionate and systematic incarceration of African-American males, and (3) the paradoxical (corrective and/or radicalization) impacts of Islam on inmates. The book concludes by arguing that prison-bound conversion to Islam presents a powerful challenge to the American penal philosophy on the grounds that the faith emphasizes the role of personal responsibility, family and community in the rehabilitative processes.