

Asking the Muslim Woman Question:

Understanding the Social and Legal Construction of Muslim Women

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INTRODUCTION

I have worn the hijab¹ since the age of nine. I still recall the tremendous

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1. The hijab, also known as headscarf or veil, is a practice that Muslim women carry out worldwide. It is an expression of their faith involving covering the body in loose, modest apparel, and covering the hair with a scarf. There are many reasons why women choose to wear the hijab. Saba Safdar & Rascelle V. H. Litchmore, *Meanings of the Hijab: Views of*

excitement I felt on the eve of my ninth birthday as I thought of donning the hijab full-time. To me, the world of hijabis² was special—exclusive, even, in a manner of great distinction. In public, hijabis, often complete strangers, nodded and waved to one another with familiar smiles. They shared tips for finding clothing that was long sleeved and modest and had a peculiarly impressive knack of holding a safety pin in their mouth while pinning their scarves closed (a trick I was overjoyed to learn from my mother after sufficient practice). It was not just these commonalities, but also a collective understanding of identity, a bond between them I longed to share.

Although the door to hijab revealed all that I had hoped for and more, there was a dark underbelly I had not anticipated. Detailed searches on airport premises, extra scrutiny about my country of origin, and Islamophobia follow me like a shadow. As I grow, become educated, and enter the workforce, microaggressions abound – questions about how long I am obligated to keep my hair, whether I choose to wear the scarf full-time, whether I can choose what color to wear that day, and the most curious seekers' favorite: whether I will have an arranged marriage. Every question is grounded in an assumption that my choices are not my own, but instead enforced by a patriarchal religious system.

Although they may not sound explicitly racist to the untrained ear, these comments and exclusionary stereotypes cut deeply.³ They are rooted in entrenched

Canadian Muslim Women, 19 ASIAN J. OF SOC. PSYCH., 198, 199-200 (2016). However, theologically, hijab represents ungendering the body and removing “appearance...from the realm of what can legitimately be discussed.” Naheed Mustafa, *My Body is My Own Business*, (Apr. 2016), <https://cpb-ca-c1.wp.mucdn.com/myriverside.sd43.bc.ca/dist/6/1809/files/2016/05/My-Body-Is-My-Own-Business-Uniform-of-Oppression-text-2eew4um.pdf> [https://perma.cc/8WEP-KCAP]. Though the practice appears physical, it holds a distinctly spiritual dimension. *Id.* Islamic theorists explain that the soul was created by God as the form nearest to Him, a genderless spirit placed within the body to be raised to its highest potential. Ali Afzali & Fatemeh Ghasepour, *Gendering the Human's Soul in Islamic Philosophy: An Analytical Reading on Mulla Sadra*, 3 INT'L J. WOMEN'S RSCH. 1, 10 (2014). The body itself is simply a vessel to carry the soul while it is on its corporeal journey, a journey which is intended to return the soul to its original form near to God. *Id.* at 13. The hijab acts to put the soul in a similar state as it was when created: ungendered and free from otherwise corporeal conceptions of physicality. SACHIKO MURATA, *THE TAO OF ISLAM* 318 (1st ed. 1992). To be in such a state represents true liberty for an individual, for their physical body is most similar to the state it would be in “the spiritual realm.” *Id.*

2. A term for an individual who wears the hijab.
3. In a study performed on Muslim women in Victoria, Australia, data indicated a higher prevalence of racism experienced by Muslim women compared to other ethnic minority groups. Tahira Yeasmeen, Margaret Kelaher & Julia M.L. Brotherton, *Understanding the Types of Racism and its Effect on Mental Health Among Muslim Women in Victoria*, ETHNICITY & HEALTH 1 (2022). These types of racism included internalized racism (internal possession of racist attitudes or behaviors), interpersonal racism (interactions between individuals), and systemic racism (expressed in policies, practices, and control of resources). *Id.* Muslim women experienced all three and fell victim to physical attacks, violence, name-calling, humiliation, or other forms of racism— such as being left out, avoided, treated as inferior, less intelligent, or with suspicion. *Id.* This increased discrimination leads to higher cortisol levels, higher heart rates, paranoia, and psychological distress. *Id.*; see also Memoona Tariq & Jawad Syed, *Intersectionality at Work: South Asian Muslim Women's Experiences of Employment and Leadership in the United Kingdom*, 77 SEX ROLES 510 (2017); Sahar Aziz,

conceptions of Islam and of hijab-wearing Muslim women: the idea that we are “other,” inclined to terrorism, deserving of thorough searches in airports, and oppressed by controlling religious systems and men in our lives.⁴

As I work towards my J.D., these hindrances still manage to find me. No matter how assimilated, educated, or professional I attempt to be, there is always the lingering trace of my veil upon my work, a silent damper during interviews and in the classroom. There is a strange absence of scholarship on this topic, both by and about women like me, who observe the hijab within the legal field.

This paper will explore why and how that came to be—beginning with the forces which act upon Muslim women to exclude them from roles within the law, obstacles they face once they have made it, and resistance to such pressure. Though I am not the first to note the gendered treatment to which veiled Muslim women have been subjected, I will examine this intersection through a historical lens, looking at the manner in which Orientalist conceptions, against the backdrop of imperialism, created dichotomous categories which have caught veiled Muslim women in their fold. I hold that a very purposeful, gendered account of Islam, rooted in Orientalism and exemplified by 9/11, affects the way Muslim women are treated in the legal sphere at large, keeping their voice outside of the cultural norm.

Finally, I will briefly touch upon how the legal profession’s notion of “bleach[ed]-out”⁵ professionalism is a misguided notion, and rather than assuming that a lawyer’s neutrality should be grounded in mitigating their identity, the profession can discover a more distinct form of justice by engaging with Muslim women, listening to their voices, and allowing them into the profession as they are.

As Simone de Beauvoir wrote, “being a woman is not a natural fact, it’s the

From the Oppressed to the Terrorist: Muslim-American Women in the Crosshairs of Intersectionality, 9 HASTINGS RACE & POVERTY L. J. 191 (2012).

4. The issue of choice and autonomy is one that is of central importance to the discussion to follow, and though I cannot speak to the reason every woman who wears a scarf chooses to put one on her head, I can emphasize that Islam is a religion which gives utmost importance to intention (niyah). Intention is a mental state that “represents a commitment to carrying out an action” and is considered the “essence of worship” by Islamic scholars. Hajj Muhammad Legenhausen, *Intention, Faith and Virtue in Shi’i Moral Philosophy*, AL-ISLAM.ORG, <https://www.al-islam.org/intention-faith-and-virtue-shii-moral-philosophy-muhammad-legenhausen/intention-faith-and-virtue#allahamah-tabatabai> [https://perma.cc/4G2T-2YGA] (last visited Apr. 27, 2022). Using a Platonic framework of the soul, Islam requires an individual to orient themselves by use of knowledge and individual devotion to God before embarking upon any act of worship. *Id.* To make an intention is to choose an “action for its own sake.” *Id.* It therefore becomes clear that autonomous decision-making is a central tenet of the Islamic faith, and to perform an action of worship, such as wearing the hijab, it is important to form such an intention on an individual level. Though I do not mean to minimize very real issues faced by Muslim women who may be forced into situations of discomfort and lack autonomy, I am instead critiquing the underlying assumption that *all* Muslim women face those issues and lack autonomy when the religion itself emphasizes the need for such autonomy.
5. Russel G. Pearce, *White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law*, 73 FORDHAM L. REV. 2081, 2083 (2005).

result of a certain history.”⁶ I hope this analysis can serve as a map of the social and legal construction of veiled Muslim women to fully understand the intersection at which they stand within the legal profession today.

I. THE ORIENTALIST’S IMAGINATION

A. Overview

To fully trace the origin of the veiled Muslim woman as we know her today, the account must begin with an analysis of Orientalism. First coined by Edward Said, the term Orientalism means three things:

1. An academic tradition or field;
2. A worldview, representation, and style of thought based upon an ontological and epistemological distinction made between the ‘Orient’ and the ‘Occident’⁷; and
3. A powerful political instrument of domination.⁸

The third point is essential to understanding Orientalism. The project of Orientalism was “nothing natural.”⁹ Rather, it served the power and domination of a complex hegemony¹⁰ by which the West was able to justify their “superiority” and colonization of the Eastern world.¹¹ The central teleology of Orientalism was creating a dichotomy of “us” Westerners versus “them” Easterners, which in turn distorted perceptions of non-Europeans to the point of imperialism, both physical and psychological.¹²

This dichotomy remains widespread in popular culture, reinforced in art and

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6. *Simone de Beauvoir Explains “Why I’m a Feminist” in a Rare TV Interview* (1975), OPEN CULTURE (May 23, 2013), https://www.openculture.com/2013/05/simone_de_beauvoir_explains_why_im_a_feminist_in_a_rare_tv_interview_1975.html [https://perma.cc/FYR3-AQ33] (“It’s history that has constructed her, firstly, the history of civilization that has led to her current status.”). The physical aspects of a woman, which Beauvoir spoke of as her ability to be pregnant or to have children (which I will analogize in the case of hijab-wearing Muslim women as their physical identifier, the hijab) garnered a second meaning based on “the social context” in which the women were situated. *Id.* Though hijab has meaning in and of itself—both individually, spiritually, and socially—the trait of wearing the hijab is not what creates “a difference in status” or treatment for Muslim women, but rather the historical context which provides that meaning. *Id.*
 7. Loosely, the ‘Orient’ encompasses the global East, including Asia and most parts of Africa. EDWARD SAID, *ORIENTALISM* 1 (1978). The ‘Occident’ is the global West, largely defined by Said as Western Europe and the Americas. *Id.*
 8. *Id.* at 2-3.
 9. *Id.* at 19.
 10. “It is hegemony, or rather the result of cultural hegemony at work, that gives Orientalism the durability and the strength.” *Id.* at 7.
 11. *Id.* at 8.
 12. *Id.* at 14.

media for centuries.¹³ Orientalist discourse promotes the tenet that the Orient is “the opposite of the Occident.”¹⁴ What the Occident has, the Orient lacks. If the Occident is the picture of rationality and reason, the Orient is a land of the insane, of delinquents, of everything alien. If the Occident is a land of peace, the East is a land of “vengeance...strife, not peace.”¹⁵

B. Gendered Conceptions

Islam occupies a unique place in the Orientalist imagination. Though Islam is practiced in many geographic regions,¹⁶ Orientalist perceptions of Islam typically amalgamate Arabs, South Asians, and other Middle Eastern countries into one indistinguishable Islamic mass.¹⁷ Arab societies, and therefore Muslims as a whole, are portrayed as “tribal societies,” “devoid of energy and initiative,”

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13. Evidence of this abounds—even children’s movies, like *Aladdin*, strongly feature Orientalist stereotypes and reduce the entire Middle East to a monolithic town featuring an amalgamation of Indian, Arab, and Persian clothing, architecture, and language. See REEL BAD ARABS: HOW HOLLYWOOD VILIFIES A PEOPLE (Media Education Foundation 2006). Paintings, particularly those from the mid-1800s, featured Arabs and Muslims in a particular Orientalist dreamscape out of touch with reality, initiating fictions about the Middle East. Julia Tugwell, *An Introduction to Orientalist Painting*, THE BRITISH MUSEUM (Oct. 9, 2019) <https://blog.britishmuseum.org/an-introduction-to-orientalist-painting/> [https://perma.cc/6U5U-TYBB]. Artists who never stepped foot in the Middle East “looked to the Middle and Far East for inspiration.” Dmitry Lebedev, *Edmund Dulac’s Book Graphics and the Problem of Orientalism in British Illustration of Edwardian Era and the Second Decade of XXth Century*, 368 ADVANCES IN SOC. SCI, EDUC. AND HUMANITIES RSCH. 801, 802 (2019). They approached the East “from the outside looking in.” *One of the Greatest Collections of Orientalist Paintings Ever Assembled*, SOTHEBY’S, <https://www.sothebys.com/en/articles/one-of-the-greatest-collections-of-orientalist-paintings-ever-assembled> [https://perma.cc/Y6T9-C9G4] (last visited Apr. 27, 2022). Poets and writers translated Persian and Arabic texts without having any understanding or prior knowledge of the languages, taking control of the narrative of the East itself, altering it to fit their expectations. COLEMAN BARKS, *THE ESSENTIAL RUMI: NEW EXPANDED EDITION* (HARPER COLLINS PUBLISHERS, 2004). Much of this art was intended as propaganda to support imperialism, “depicting the East as a place of backwardness, lawlessness, or barbarism enlightened and tamed by” Occidental rule. Jennifer Meagher, *Orientalism in Nineteenth-Century Art*, THE METROPOLITAN MUSEUM OF ART (Oct. 2004) https://www.metmuseum.org/toah/hd/eur/hd_eur.htm [https://perma.cc/8MRD-6UCK]. For many of these artists, “ethnographic accuracy” was never the goal. Instead, they “indulge[d] their exotic fantasies” in the depictions. *Collecting Guide: Orientalist Art*, CHRISTIE’S (Jun. 27, 2021) <https://www.christies.com/features/Orientalist-Art-Collecting-guide-8426-1.aspx> [https://perma.cc/HX53-RXGN]. Such fascination with the East “cannot be fully divorced from its colonial context,” as it reinforced the “superior mindset of colonialists.” Nicolas Pelham, *The Blurred History of Orientalist Art*, THE ECONOMIST (Nov. 15, 2019) <https://www.economist.com/1843/2019/11/15/the-blurred-history-of-orientalist-art> [https://perma.cc/HCH7-TTMT].
14. Khaled Beydoun, Nina Moseihem & Samuel Bagenstos, *Interview with Khaled Beydoun*, 52 U. MICH. J. L. REFORM 903, 905 (2019).
15. SAID, *supra* note 7, at 49, n.6.
16. The Muslim World, WORLD ATLAS, <https://www.worldatlas.com/articles/islamic-countries-in-the-world.html> [https://perma.cc/Y5QW-MZ3M] (last visited Apr. 27, 2022).
17. See Khaled A. Beydoun, *Between Muslim and White: The Legal Construction of Arab American Identity*, 69 N.Y.U. ANN. SURV. AM. L. 29, 37 (2014) (discussing contemporary constructions of Arab and Muslim American identities as non-white and inassimilable).

unkind to the natural world, violent, and extreme.¹⁸ In Muslim societies, authorities cut “off...hands and heads, massive crowds [pray] in unison [and]...public morality” is imposed in legal texts.¹⁹

The Orientalist framing of Islam has a gendered dimension. Muslim men are portrayed as having a violent and intolerant hatred of the west.²⁰ These men hold “barbaric ignorance...[and] murderous cruelty” towards the world around them in the name of Islam.²¹ In contrast, Muslim women are viewed through a patriarchal lens, fashioned as “creatures of a male power-fantasy.”²² These gendered conceptions promote the idea that Muslim men terrorize and overpower all aspects of their society—even the women.²³

Because of the imposition of such a gendered frame, much written and conceived about the Muslim woman creates and reinforces stereotypes about her, isolating her from understanding. The Orientalist’s lens concocts narratives about Muslim women but never features their voices. Instead of listening to accounts of Muslim women with any real understanding of their own voices, the Orientalist’s lens places and keeps Muslim women in the shadow of men. They are thus considered “more or less stupid...willing...static, frozen, fixed eternally.”²⁴ The Orientalist conception of the Muslim woman denies her the very possibility of development, transformation, [or] human movement in the deepest sense of the word.²⁵

Veiled Muslim women are consistently stereotyped as meek individuals, covered up and exposed to “the exploitation of [Muslim] men and the slavery of the harem.”²⁶ In colonial history, the Orientalist could not enter the harem, and instead created within it a fantasy of subjugated women, powerless against their

18. SAID, *supra* note 7, at 39-40.

19. Charles Hirschkind & Saba Mahmood, *Feminism, The Taliban, and Politics of Counter-Insurgency*, 75 ANTHROPOLOGICAL Q. 339, 348 (2002).

20. Eero Janson, *Stereotypes that Define “Us”: the Case of Muslim Women*, 14 ENDC PROCEEDINGS 181 (2011).

21. ZIAUDDIN SARDAR, ORIENTALISM 44 (1999) (internal quotation marks omitted).

22. *Id.*

23. SAID, *supra* note 7, at 207.

24. *Id.*

25. *Id.* at 208.

26. See ALEX LYTLER CROUTIER, HAREM: THE WORLD BEHIND THE VEIL 173 (1991); see also KATHERINE BULLOCK, RETHINKING MUSLIM WOMEN AND THE VEIL: CHALLENGING HISTORICAL & MODERN STEREOTYPES 5-6 (2002) (noting that the manner in which the veiled woman was unseen reversed “the expected relationship between superior and inferior,” making veiled women “mysterious beings who refused to offer themselves up” and leading to the orientalist “attack[ing] the veil...try[ing] to rip it off...try[ing] everything they could to see the women”). This phenomenon was portrayed in art as well. The Harem was a particular fixation of the patriarchal orientalist’s imagination, viewed with “sexual intrigue and subjugation,” where men were admitted and women existed in private space. Tugwell, *supra* note 13. The western patriarchal lens investigated the harem with “invasive attention,” with artists resorting “to their imaginations, using the backdrop of the harem as an excuse to paint nude women.” *Id.* This provides a great metaphor to the entire orientalist approach to Muslim women in the region. *Id.*

male oppressors.²⁷ The idea that a woman could exist beyond their reach “frustrate[d] the colonizer,”²⁸ and instead, they “relied largely on hearsay and imagination” to create a Muslim woman who fit their fiction.²⁹

Hijab was a key factor in this fiction. The veil was considered a metaphor for the entire Muslim world and was the root of all shortcomings that Muslim women faced due to their religion.³⁰ It represented the harem even when a woman was outside of the physical harem. It was this lack of access to their body that colonizers interpreted to mean “only accessible by oppressive Muslim males.”³¹ Since they could not access her beyond the veil, they eliminated her from the equation all together, preferring to imagine her as a victim rather than an individual in her own right.³² The veiled woman, therefore, was not in control of her own body, but rather, covered up for her dominating male’s benefit. Her hidden body, they assumed, did not exist as an extension of her autonomy but was necessarily linked with male subjugation.

Hence, these gendered conceptions reinforced the notion that Muslim women were oppressed and subject to the whim of their male masters, unable to make choices in their own life. Two, that Muslim men were controlling, violent, and ravaging toward the world and the Muslim female. Such a perception leads to the Orientalist’s natural conclusion: Muslim women needed to be “saved” from the degraded morals and customs that men enforced to oppress them. They needed to be saved from villainizing Muslim men “through imperialist interventions.”³³

C. In Modern Day

This gendered dimension of Orientalism played right into the hands of the media in post-9/11 America. The extremist attack on American soil shook the core of the country. The United States Government acted quickly in response, creating the Department of Homeland Security and 9/11 Commission to investigate the

27. There are many theories on the emergence of the so-called harem fantasy. One such theory notes that the medieval West conceived the East as the “location of the Garden of Eden,” and the women they encountered within, often held in private spaces, were considered a vision of Eve, tempting them with “forbidden knowledge,” depicting the male-centric conception of the entire region. Croutier, *supra* note 26.

28. FRANTZ FANON, *A DYING COLONIALISM* 44 (1965) (“The woman who sees without being seen frustrates the colonizer. There is no reciprocity. She does not yield herself, does not give herself, does not offer herself.”).

29. Meagher, *supra* note 13 (“Some of the most popular Orientalist genre scenes—and the ones most influential in shaping Western aesthetics—depict harems. Probably denied entrance to authentic seraglios, male artists relied largely on hearsay and imagination, populating opulently decorated interiors with luxuriant odalisques, or female slaves or concubines (many with Western features), reclining in the nude or in Oriental dress.”); *see also Collecting Guide: Orientalist Art*, *supra* note 13 (“The harem was common subject matter, even though males weren’t allowed to enter one, and so the artists could never have witnessed such scenes at first hand.”).

30. Bullock, *supra* note 26, at 7.

31. *Id.* at 19.

32. *See* Janson, *supra* note 20.

33. *See* Bullock, *supra* note 26.

events and to prevent future similar attacks.³⁴ Yet the responses to the events often carved out Muslims and Muslim-looking populations as suspect communities, although the extremist faction that conducted the attack was not representative of Muslims as a whole. A suspect community is not “simply one that is targeted...but also one that is ‘imagined,’” or socially constructed by members of the non-suspect group not only to reinforce their image as suspect, but also to direct cultural, political, and ideological outcomes surrounding them.³⁵ On both the personal and political level, Muslims were cast as suspect. Cultural and political measures after the attack strengthened this idea, and Muslims became victims of “backlash discrimination,” or an influx of anti-Arab or anti-Muslim discrimination due to extreme feelings incited by the attacks.³⁶ Attacks and harassment directed towards Muslims increased substantially.³⁷ Government retaliatory measures post-9/11 imposed particular harms on Muslims and Arabs, including the Patriot Act.³⁸ The Act resulted in government actors profiling and targeting Muslims, South Asians, and others with Muslim names and the detention of around 1,182 people, 750 of whom were arrested on immigration charges.³⁹

These detention policies, which led to the disproportionate capture and imprisonment of Muslim men, overwhelmingly characterized the mass of Muslim men as violent terrorists, subjecting them to harsh interrogation and torture by

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34. *September 11 Attacks*, HISTORY.COM (Sep. 1, 2022) https://www.history.com/topics/21st-century/9-11-attacks#section_8 [<https://perma.cc/WY5Y-NQ3C>].
35. Adrian Cherney & Kristina Murphy, *Being a ‘Suspect Community’ in a Post 9/11 World – The Impact of the War on Terror on Muslim Communities in Australia*, 4 J. OF CRIMINOLOGY 480, 481 (2015).
36. *Muslims in America After 9/11, Part II*, 9/11 MEMORIAL & MUSEUM, <https://www.911memorial.org/learn/students-and-teachers/lesson-plans/muslims-america-after-911-part-ii> [<https://perma.cc/C66L-9DX9>] (last visited May 25, 2022). FBI Hate Crime Statistics note that anti-Muslim hate crimes increased from less than 50 reported incidents per year in 2000 to more than 450 reported incidents in 2001. *Id.*; see also Jack Lyon Jones, *When is Patriotism Illegal? EEOC Focuses on September 11 “Backlash Discrimination,”* 8 No. 7 Ark. Emp. L. Letter 7 (2003).
37. *Id.*
38. Sally Wesley Bonet, *Educating Muslim American Youth in a Post-9/11 Era: A Critical Review of Policy and Practice*, 95 THE HIGH SCHOOL J. 46, 46-47 (2011). The Patriot Act, which initiated the issuance of 192,499 National Security Letters for FBI agents to obtain personal information of largely Muslim communities, led only to one terror-related conviction between 2003 and 2006. *Surveillance Under the Patriot Act*, AMERICAN CIVIL LIBERTIES UNION, <https://www.aclu.org/issues/national-security/privacy-and-surveillance/surveillance-under-patriot-act> [<https://perma.cc/SBS3-EN2Y>] (last visited May 25, 2022). Critics have stated that though the Patriot Act was intended to apply to all citizens to locate terrorists, it was “written with Muslims in mind and in practice denies them their civil liberties by empowering law enforcement authorities to raid their homes, offices, and mosques in the name of the war on terrorism.” Kam C. Wong, *The USA Patriot Act: A Policy of Alienation*, 12 MICH. J. OF RACE & L. 161, 180 (2006).
39. Arshad Ahmed & Farid Senzai, *The USA Patriot Act: Impact on the Arab and Muslim American Community Analysis and Recommendations*, INST. FOR SOC. POL’Y & UNDERSTANDING (2004); see also *Naming the Detainees*, (PBS television broadcast Aug. 5, 2002) <https://www.pbs.org/newshour/show/naming-the-detainees> [<https://perma.cc/GZ9Z-5FCF>].

United States government officials.⁴⁰ These ideas did not disappear in the years after 9/11. Instead, through the present day, Muslims have openly been considered “evil, totalitarian, and terroristic.”⁴¹ In 2016, then-president Trump claimed on CNN that “Islam hates us. There’s something there that – there’s a tremendous hatred there.”⁴² Movies, TV shows, and video games portray Arab men as cloaked, masked, and violent.⁴³ The National Counterterrorism Center published guidance about indicators of violent extremism, which featured graphics depicting bearded men wearing kufis (a traditional hat worn by Muslim men),⁴⁴ seeming to imply that the Arab male is the icon of an extremist threat. There is a strong association between these prevalent modern stereotypes and Said’s original formulations of the angry Arab, a concept that underscores the throughline that Muslim men are a threat to what is American.⁴⁵

Simultaneously, the urge to liberate the oppressed Muslim woman by freeing her of all that they assumed men in her culture imposed upon her caught Muslim women between traditional Islamophobic tropes and Orientalist conceptions.⁴⁶ Muslim women were cast as victims of their circumstances, who needed to be saved from their headscarves.⁴⁷ When war broke out in Afghanistan, Oprah Winfrey appeared on national television and lifted the burqa⁴⁸ off of an Afghani woman as a demonstration of the woman’s newfound empowerment, insinuating that freedom from terrorism meant no longer being forced to wear the veil.⁴⁹ Laura Bush stated that “the fight against terrorism is also a fight for the rights and dignity of women,” drawing a stark divide between Afghani men (depicted as terrorists) and Afghani women (depicted as victims who needed liberation), reinforcing the

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40. Gary Fields & Noreen Nasir, *Muslims Recall Questionable Detentions that Followed 9/11*, ASSOCIATED PRESS (Oct. 4, 2021) <https://apnews.com/article/immigration-africa-canada-religion-asia-bf725e0016e88eef2abc73bedd0c5718> [<https://perma.cc/G675-LA45>]; see also Letta Tayler & Elisa Epstein, *Legacy of the “Dark Side”: the Costs of Unlawful US Detentions and Interrogations Post 9/11*, HUMAN RIGHTS WATCH (Jan. 9, 2022) <https://www.hrw.org/news/2022/01/09/legacy-dark-side> [<https://perma.cc/7CR7-NBE3>].
41. SAID, *supra* note 7, at 27.
42. See Kiara Alfonseca, *20 years after 9/11, Islamophobia continues to haunt Muslims*, ABC NEWS (Sept. 11, 2021) <https://abcnews.go.com/US/20-years-911-islamophobia-continues-haunt-muslims/story?id=79732049> [<https://perma.cc/Y24E-97TB>].
43. REEL BAD ARABS: HOW HOLLYWOOD VILIFIES A PEOPLE, *supra* note 13.
44. NAT’L COUNTERTERRORISM CTR., HOME GROWN VIOLENT EXTREMIST MOBILIZATION INDICATORS (2019), https://www.dni.gov/files/NCTC/documents/news_documents/NCTC-FBI-DHS-HVE-Mobilization-Indicators-Booklet-2019.pdf.
45. SAID, *supra* note 7, at 27.
46. Aziz, *supra* note 3, at 196.
47. Leti Volpp, *The Citizen and the Terrorist*, in SEPTEMBER 11 IN HISTORY: A WATERSHED MOMENT (Mary L. Dudziak ed., 2003).
48. The burqa is one form of veiling, which typically requires covering the entire body and face. It is distinct from the hijab in that hijab does not necessitate covering the face, hands, or feet. However, both are equally symbolic of Islam. *What’s the Difference Between a Hijab, Niqab and Burka?*, BBC (Aug. 7, 2018) <https://www.bbc.co.uk/newsround/24118241> [<https://perma.cc/2PZB-EGBX>].
49. GILIAN WHITLOCK, *SOFT WEAPONS: AUTOBIOGRAPHY IN TRANSIT* 52 (Univ. of Chicago Press 2007).

idea that “saving” Muslim women was a major purpose of the War.⁵⁰ When leadership changed in Saudi Arabia in 2009, American magazines published pictures of women in short skirts next to veiled women, writing that the latter had “more rights and greater freedom,”⁵¹ equating western wear with freedom and traditional religious gear with oppressive, backwards cultural practices. Notably, in subsequent wars or interventions in non-Muslim countries, political actors have eschewed gendered rhetoric. When President Biden speaks of intervention in Ukraine, he discusses “The Ukrainian people” as a mass of ungendered people.⁵² When then-president Obama spoke of intervention in Venezuela, he again spoke of “Venezuelan citizens” without focusing on particular groups or genders.⁵³ No other war seems to have taken such a particular interest in the women of a country and their clothing.

Taken together, these acts take away the voice of the veiled Muslim woman, eliminating the Muslim woman herself in favor of her dramatized portrayal. In the above examples, outside voices impose gendered and Orientalist perceptions of Muslim women’s needs. Mainstream media discourse is *about* Muslim women, but fails to capture their perspectives or insights *from* them. The dominant rhetoric obscures the reality of veiled women’s experiences; scholars have argued that forcing removal of the veil actually decreased women’s participation in the public sphere,⁵⁴ and others have pointed out that Afghani women faced increased violence because of long-standing US involvement in their region.⁵⁵ Instead, the voices in power explained what they believed a Muslim woman should have, without any regard for her voice or desire. This skewed narrative creates a confirmation bias whereby veiled Muslim women are consistently portrayed as oppressed and devoid of any rights and are, in effect, treated with the underlying

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50. Lila Abu-Lughod, *Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and its Others*, 104 AM. ANTHROPOLOGIST 783, 784 (2002).
51. Andrew Lee Butters, *Saudi Women’s Quiet Revolution: More rights and greater freedom. But too slowly for some*, TIME (Oct. 19, 2009), <http://content.time.com/time/covers/europe/0,16641,20091019,00.html> [<https://perma.cc/MN9E-AR3T>].
52. *President Biden to Announce Uniting for Ukraine, a New Streamlined Process to Welcome Ukrainians Fleeing Russia’s Invasion of Ukraine*, DEP’T OF HOMELAND SEC’Y (Apr. 21, 2022) <https://www.dhs.gov/news/2022/04/21/president-biden-announce-uniting-ukraine-new-streamlined-process-welcome-ukrainians> [<https://perma.cc/YYE8-FKQJ>].
53. *Obama Declares Venezuela a National Security Threat*, AL JAZEERA (Mar. 10, 2015) <https://www.aljazeera.com/news/2015/3/10/obama-declares-venezuela-a-national-security-threat> [<https://perma.cc/9SMR-JQZY>].
54. Aliah Abdo, *The Legal Status of Hijab in the United States: A Look at the Sociopolitical Influences on the Legal Right to Wear the Muslim Headscarf*, 5 HASTINGS RACE & POVERTY L. J. 441, 452-53 (2008); see also Camron Michael Amin, *Selling and Saving “Mother Iran”: Gender and the Iranian Press in the 1940s*, 33 INT’L J. OF MIDDLE EAST STUD. 335, 349 (2001) (describing the effects of forced veil removal under Iranian ruler Reza Shah on women in Iranian public space and finding that when Reza Shah sought to Westernize his country, officers took to the streets with scissors to snip off women’s veils, believing that the hijab was something that needed to be removed to become modern).
55. See Volpp, *supra* note 47, at 153-54.

belief that they need to be saved.⁵⁶ It is an indicator of a gendered Orientalism, a “selective concern about the plight of...women that focuse[s] on the veil as a sign of oppression” but gives no weight to women’s desires.⁵⁷ This gendered Orientalism creates a strange irony: though it asserts concern for the woman’s choice, it refuses to see the hijab as a valid choice, instead assuming that Muslim women only don the veil under pressure. These portrayals “other”⁵⁸ those who wear hijab,⁵⁹ casting them “in simplistic and limiting ways as part of an undifferentiated and homogenized ‘Muslim woman’ who cannot be thoughtful, independent, and progressive if she identifies with her religious community.”⁶⁰

In the day-to-day world, women in hijab make reports of discrimination that echo these gendered Orientalist tropes. One hijabi woman reported being told that she wore the hijab because she was “scared of [her] parents” and did it just for her parents.⁶¹ Other women say that people assume they are “forced into seclusion” because of the hijab.⁶² Many face outright vitriol, usually statements that other and stereotype them, such as “I hate you,” “Go home,” “America is for Americans,” and “Death to Muslims.”⁶³ After 9/11, many hijabis removed or considered

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56. See Rochelle Terman, *Islamophobia and Media Portrayals of Muslim Women: a Computational Text Analysis of U.S. News Coverage*, 61 INT’L STUD. Q. 489, 489-90 (2017) (“Muslim women (defined as women from Muslim-majority or Middle Eastern societies) are more likely to appear in the US press if they live in societies with poor records of women’s rights[.]” and “[n]on-Muslim women, on the other hand, are more likely to appear in the media in contexts where their rights are respected.”). Terman posited that her findings “suggest[] a kind of confirmation bias, whereby Muslim women are associated with countries that violate women’s rights, whereas non-Muslim women are associated with countries that respect their rights.” *Id.* at 489-90.
57. Abu-Lughod, *supra* note 50.
58. See Ahmed Ajil & Kwan-Lamar Blount-Hill, “Writing the Other as Other”: Exploring the Othered Lens in Academia Using Collaborative Autoethnography, 2 DECOLONIZATION OF CRIMINOLOGY & JUST. 83, 93 (2020) (“Physical and cultural markers of ethno-racial difference, which comprise the major source of othering explored here, are not determined by individuals but rather imposed onto and into them, provoking processes of othering and reactions thereto ubiquitous and recurrent enough to be considered a social phenomenon having an existence of its own.”).
59. See SAHAR AZIZ, *THE RACIAL MUSLIM: WHEN RACISM QUASHES RELIGIOUS FREEDOM*, 31 (Univ. of Cal. Press 2022).
60. Sahar Aziz, *Coercive Assimilationism: The Perils of Muslim Women’s Identity Performance in the Workplace*, 20 MICH. J. RACE & L. 1, 39 n.239 (2014) (citing SHAHNAZ KHAN, *MUSLIM WOMEN: CRAFTING A NORTH AMERICAN IDENTITY* XII (2000)) (arguing that “Muslim women are often viewed in simplistic and limiting ways as part of an undifferentiated and homogenized ‘Muslim woman’ who cannot be thoughtful, independent, and progressive if she identifies with her religious community”).
61. Tabassum F. Ruby, *Listening to the Voices of Hijab*, 29 WOMEN’S STUD. INT’L F., 54, 63 (2006).
62. Yvonne Y. Haddad, *The Post-9/11 Hijab as Icon*, 68 SOCIOLOGY OF RELIGION 253, 259 (2007) (“Although the stereotypes shifted every decade, they were always negative and the Muslim woman is always ‘the other.’ During one of her talks, someone in the audience lamented, ‘Oh, yes, isn’t it sad that those women are suffering under illiteracy (1960s), that they are subject to polygamy and divorce (1970s), that they are forced into seclusion (1980s), that they cannot drive (1990s), that they are stoned and beaten in the streets (2000).’”).
63. *Id.* at 263.

removing their hijab because of the influx of such negative stereotyping.⁶⁴

D. Statistical Impacts in the Workforce

Likely due to the stereotypes Muslim women often face, Muslim women who wear the hijab experience animus in hiring practices across almost all fields. Studies focusing on the legal field often fail to account for religious demographics.⁶⁵ Yet what we do know seems grim. Research has indicated that women who wear the hijab not only experience more overt discrimination, but also have lower job satisfaction, the latter of which may correlate with their experiences of discrimination. In Europe, studies report that Muslim women who wear the hijab face unique difficulty “accessing job opportunities” in addition to experiencing “lower incomes, longer periods of unemployment, lower performance of their qualifications, and slower job advancement.”⁶⁶ Studies also have shown that donning the hijab leads to higher rejection rates for professional positions across all levels of academic achievement, implicating biases in hiring bodies.⁶⁷ In one study, where hijabi applicants and non-hijabi applicants sent out equivalent applications, hiring groups took longer to accept “excellent” applicants who wore the hijab (i.e., applicants with the highest grades and excellent resumes) than it did to accept non-hijabi women with similar applications.⁶⁸ Women who wore hijab and had mediocre applications were rejected more quickly than non-hijabi women with mediocre applications.⁶⁹ Participating hiring bodies felt more confident and made quicker decisions when women did not wear headscarves, in contrast to the time and deliberation they took when women did wear headscarves.⁷⁰ Researchers who conducted these studies postulated that hiring bodies may have judged hijabi women in a number of ways, largely embedded in negative stereotypes about Muslims.⁷¹ They also suggested that hiring bodies

64. Barbara Perry, *Gendered Islamophobia: Hate Crime Against Muslim Women*, 20 J. FOR THE STUDY OF RACE, NATION, & CULTURE 74, 85 (2013) (stating that “[r]ecognizing the visibility presented by the hijab, many women have come to question their choice to be covered”).

65. See e.g., NAT’L ASS’N FOR LAW PLACEMENT, INC., 2021 REPORT ON DIVERSITY IN U.S. LAW FIRMS, (2022) <https://www.nalp.org/uploads/2021NALPReportonDiversity.pdf> [<https://perma.cc/H5VN-QWVG>]. The reason NALP lacks information on religious data and therefore Muslim lawyers is not apparent. However, it is sufficient to note that the lack of information on the subject makes it difficult to think of ways to solve any presumed disparities.

66. Carme Garcia-Yeste, Lena de Botton, Pilar Alvarez, & Roger Campdepadros, *Actions to Promote the Employment and Social Inclusion of Muslim Women Who Wear the Hijab in Catalonia (Spain)*, 13 SUSTAINABILITY (2021).

67. Christian Unkelbach, Hella Schneider, Kai Gode, & Miriam Senft, *A Turban Effect, Too: Selection Biases Against Women Wearing Muslim Headscarves*, 4 SOC. PSYCH. AND PERSONALITY SCI. 378 (2010) (“Although factual information about academic achievements had the largest effect on participants’ decisions, decisions on all achievement levels were biased against women wearing hijabs. This pattern was substantiated by participants’ response latencies; women wearing hijabs were more quickly rejected and more slowly accepted compared to women not wearing hijabs.”).

68. *Id.* at 381.

69. *Id.*

70. *Id.*

71. *Id.*

feared the growth of Islam in their workspace, and that hijabis in particular activated negative stereotypes such as the aggressive nature of Islam and the submissive role of women.⁷²

Furthermore, one study found that job applicants who wore more fitted and properly tailored clothes received more positive perceptions than those who did not.⁷³ Though this study did not distinctly mention Muslim women or hijab, it does indicate expectations from employers and cultural norms regarding the “good” applicant. These expectations and cultural norms are likely to harm Muslim women, since women who wear headscarves also often wear loose, non-formfitting clothing. Another study reported that the texture and color of a woman’s dress could help others perceive her as more attractive or confident.⁷⁴ Hijab, which instead triggers thoughts of Islam and gendered Orientalism, creates perceptions of unattractiveness and lower intelligence.⁷⁵ Therefore, perceptions of the hijab serve to disadvantage Muslim women in professional spaces.

Although these studies do not directly connect to the legal field, they demonstrate the culture of implicit and explicit discrimination against Muslim women. It is not a large jump to assume that the hiring trends outlined above extend to the legal system. Such strong stereotypes harm Muslim women’s ability to gain professional experience and systemically keep them out of positions of power, which slows or prevents any changing of their circumstances. One possible solution to undo the harm done to Muslim women within the legal profession is to increase the presence of hijab-wearing Muslim women. However, when such implicit and explicit bias works against them, that increase is gradual. Women of color make up less than five percent of partners in major law firms and only six percent of general counsels.⁷⁶ From 2006 to 2021, the number of women of color partners only increased 2.6 percent.⁷⁷ This comes out to a rate of .158 increase for women of color, where the rate of women in general has increased by .508, almost three times as much as women of color.⁷⁸ Though law firm statistics are only one aspect of the entire profession, and such statistics do not specifically account for Muslim women, assuming Muslim women to be within this group allows us to see the disparity for their group.⁷⁹ It is easy to imagine that the numbers for Muslim

72. *Id.* at 381-2.

73. Sandra Forsythe, *Effect of Applicant’s Clothing on Interviewer’s Decision to Hire*, 20 J. OF APPLIED SOC. PSYCH. 1579, 1585 (1990).

74. *Id.*; see also Shahzeen Aslam, *Stereotyping Muslim Women in Australia: Perceptions of the Veil* (2018) (B.A. thesis, University of Adelaide) (“The garments worn by both genders influenced the probability that they would get hired at a job interview.”).

75. See Yusr Mahmud and Viren Swami, *The Influence of the Hijab (Islamic Head-cover) on Perceptions of Women’s Attractiveness and Intelligence*, 7 BODY IMAGE 90, 92 (2010) (“Specifically, women wearing the hijab were rated as significantly lower on attractiveness and intelligence than women not wearing the hijab.”).

76. NAT’L ASS’N FOR LAW PLACEMENT, INC., *supra* note 64, at 4.

77. *Id.* at 14.

78. *Id.*

79. See generally Ajil & Blount-Hill, *supra* note 57 (discussing otherness in the field of criminology); Hilary Sommerlad, *Minorities, Merit, and Misrecognition in the Globalized*

women are far lower, though they are not recorded. In the next section, I will expand on the reasons this may be, adding to existing scholarship about Muslims within the legal profession and focusing on how popular conceptions of Muslim women in hijab have impacted the understandings of Muslims as a whole.

II. IN THE LEGAL IMAGINATION

A. The Muslim Man as a Violent Oppressor

Courts in the United States have long shown insensitivity to claims involving Muslims, a trend dating back to the Naturalization Era from 1790 - 1952.⁸⁰ In many naturalization cases from this period, courts demonstrated hostility towards Arab Muslims, preventing them from naturalizing because of their faith, while simultaneously allowing Arab Christians to enter the country.⁸¹ In present-day criminal cases, many judges explicitly mention the religion of Muslim defendants in a possible effort to inflame juries by deploying preexisting gendered stereotypes about violence and oppression against women.⁸² Scholars have noted that state courts often mention religion when dealing with Muslim criminal defendants, regardless of whether religion is relevant to the case.⁸³ For example, in *Trammell v. State*, the appellate court highlighted the fact that defendants in an armed robbery case were purchasing literature from a member of an organization known as the Black Muslims, even though the group's substantive religious beliefs were not relevant to the robbery.⁸⁴ Similarly, in *Commonwealth v. Adams*, the appellate court mentioned twice that the defendant was Muslim, even though it did not use this information in any significant way.⁸⁵ In *People v. Howk*, the Supreme Court of California drew a direct link between the defendant's Islamic faith and the murder of his girlfriend, reading out passages of his journal which noted his rage

Profession, 80 FORDHAM L. REV. 2481 (2012) (exploring the impact of globalization on "social inequalities within large corporate professional firms").

80. See Maryam Saleh, *U.S. Courts Have Been Treating Muslims Differently for a Very Long Time*, THE INTERCEPT (Dec. 7, 2017) <https://theintercept.com/2017/12/07/trump-travel-ban-supreme-court-muslims-national-security/> [https://perma.cc/X67V-H48L].
81. See Beydoun, *supra* note 16, at 68-70 (citing *Ex Parte Mohriez*, 54 F. Supp. 941 (D. Mass. 1944); *In re Ahmed Hassan*, 48 F. Supp. 843, 845 (E.D. Mich. 1942)).
82. See *id.* at 64 (stating that as early as 1942, the disorientation of Arab identity due to Orientalist construction of Arab identity "blinded judges.") (citing *Hassan*, 48 F. Supp. at 845); see also Marie A. Failinger, *Islam in the Mind of American State Courts: 1960 to 2001*, 28 S. Cal. Rev. L. & Soc. Just. 22, 28 (2019) (citing *Trammell v. State*, 283 So.2d 620, 621 (Ala. Crim. App. 1973)); see also *State v. Aqu-Simmons*, No. 70035, 1997 WL 209166 at *1; *Hayes v. State* 449 S.E.2d 663, 665 (Ga. Ct. App. 1994); *State v. Pratt* 544 A.2d 392, 394 (N.J. Super. Ct. App. Div. 1988), *abrogated by State v. Comer* 266 A.3d 374 (N.J. 2022); *Parris v. State* 421 S.E.2d 137, 138 (Ga. Ct. A. 2p. 1992), *abrogated by Gary v. State* 422 S.E.2d 426 (Ga. 1922).
83. See Failinger, *supra* note 82, at 30.
84. See 283 So.2d at 621.
85. See 753 N.E.2d 105, 108 (Mass. 2001). In this case, the state pointed out the defendant converted to Islam and changed his name to a Muslim one. *Id.* "The court...repeated Adams'...Muslim name, but said that it was nonetheless going to use his original name because 'as is our custom we recite the defendant's name as it first appears on the indictments.'" Failinger, *supra* note 81, at 62 (citing *Adams*, 753 N.E. at 107 n.1).

against “enemies of Islam.”⁸⁶ Although these journal entries did not mention the death of his girlfriend, and there were many other potentially relevant statements about his objective urge to kill without any mention of religion, the court seemed to give preference to the statements involving Islam.

These cases show a potential selective bias on behalf of courts in that they chose to enter otherwise irrelevant evidence that plays into preexisting stereotypes of Muslim men, or supplement evidence in a violent case with the defendant’s religion. Marie Failinger considered this to be an “ambiguity” by which it is unclear “whether the court was simply trying to tell a full story, or whether...judges believed” that the defendants’ actions were “particularly devious or threatening” because they were done in association with Islam.⁸⁷ This ambiguity plays into stereotypes of Muslim men’s rage, violence, and terror: somehow it may be more believable for a Muslim man to commit violent crimes, particularly if the crime is against a woman, as it was in *Howk*.⁸⁸ *Commonwealth v. Riggins* solidifies this conception and is a paradigm of the manner in which courts have employed gendered orientalist stereotypes. The Pennsylvania Superior Court admitted evidence regarding the defendant’s Muslim religion just because a plaintiff accused her assailants of being Muslims. The court notes that “the appellant’s being a Muslim was a relevant fact in view of the victim’s dying declaration,” yet the statement did not contribute to the analysis or fact finding much or at all.⁸⁹ Such gendered orientalism potentially taints the justice system for Muslim male defendants, as it is unclear whether such statements will influence jurors if they hold animus or bias towards Muslims.

This gendered orientalist framing parallels the experiences of Muslim women in immigration cases. Cases about Muslim women reinforce negative stereotypes about hijab and Muslim women, enforcing a binary contrasting the “liberated Western woman and the oppressed Muslim woman.”⁹⁰ Immigration and asylum cases favor Muslim women who do not wear hijab, perhaps to indicating a belief that the hijab is un-American.⁹¹ In general, asylum cases are made by demonstrating an individual has been persecuted “on account of” their race,

86. See 56 Cal. 2d 687, 695 (1961).

87. Failinger, *supra* note 82, at 62.

88. See *id.*

89. See 542 A. 2d 1004, 1007 (Pa. Super. Ct. 1988).

90. Taylor Markey, *Westernized Women?: The Construction of Muslim Women’s Dissent in U.S. Asylum Law*, 64 UCLA L. REV. 1302, 1320 (2017).

91. *Id.* at 1318. “Westernized women” are often given preference when looking at the facts emphasized by U.S. immigration lawyers. We see women described as “not a devout Muslim,” a nonpracticing Muslim, or one who “did not have the mentality of a Moslem,” or wearing “small veils” or “could not wear this veil as it symbolizes to her oppression, submission and lack of freedom.” *Id.* Just as Malala Yousafzai was highly mediatized in the West partly because she was the “only girl with [her] face not covered” at her school, the “Westernized women” in these cases are described as wearing “small veil[s],” or as women who have “never worn a veil,” who “did not wear a veil,” who “could not wear this veil as it symbolizes to her oppression, submission and lack of freedom,” who “refuse[d] to” veil, who were “forced to” veil, or who have “never worn a veil and consider the concept offensive and demeaning.” *Id.* at 1318-19.

nationality, political opinion, or particular social group.⁹² Gender is not sufficient to constitute a particular social group but it is often paired with another characteristic group, such as race, to sufficiently form a claim.⁹³ Muslim women have pled that they were persecuted on account of their gender as well as their “Westernized” traits in their country of origin.⁹⁴ For example, in *Sharif v. INS*, one refugee woman spoke of herself as holding “pro-western” beliefs in her country of origin.⁹⁵ She stated that she held “longing” for “the freedoms enjoyed by American women” in order to successfully plead her case.⁹⁶ In a similar case, *Kane v. Gonzales*, the Third Circuit considered a Malian woman as “westernized” because she would not “accept the traditional, oppressed role of a Muslim woman in a Muslim society” and thus granted her asylum. Again, in *Moosa v. Holder*, the female applicant was compared to Western women, with the court assessing how Western women believed in “broad personal choice” and “equal treatment with men.”⁹⁷ In these cases, the courts reinforced boundaries between Muslim and non-Muslim women, playing into a dichotomy of westernized or non-westernized, oppressed or modern. It thereby pushes the narrative that freedom, liberation, and democracy are non-Muslim concepts, and things that Muslim women’s faith and countries of origin do not grant them. This dichotomy reinforces the notion that, due to their societal and religious status, Muslim women are naturally oppressed and not granted the freedoms Western women are, and therefore are the antonym of the liberated Western woman. These courts assume that “gender discrimination or persecution is required by” and organic to Islam, making Islam into a monolithic entity that oppresses women and pandering to the culturally accepted narratives of Muslim women as oppressed.⁹⁸

With respect to hijab, asylum courts advance the assumptions that Muslim religion and culture oppress those in hijab and that they are in need of saving.⁹⁹ In *Fatin v. INS*,¹⁰⁰ the Third Circuit allowed a broad generalization about hijab—that an applicant fleeing the Iranian veil mandate would be “subject to the same restrictions and requirements’ as the rest of the population” if she stayed in her home country.¹⁰¹ This lack of specificity about Muslim countries’ treatment of women shows an underlying assumption that Muslim women are treated with restriction and discrimination in their countries and culture. This assumption once again causes the erasure of the individual Muslim woman’s experience in favor of her stereotypical ideal. In *Moosa v. Holder*, the court looked at gender-discriminatory practices of the Taliban—a particularly extremist group not

92. G.A. Res. 429 (V), Convention relating to the Status of Refugees at 33 (Jul. 28, 1951).

93. *See id.*

94. *See Markey, supra* note 89, at 1317.

95. 87 F.3d 932 (7th Cir. 1996); *see Markey, supra* note 89, at 1319.

96. 87 F.3d at 934, 936.

97. *Moosa v. Holder*, 644 F.3d 380, 383 (7th Cir. 2011).

98. Markey, *supra* note 90, at 1323 (citing Susan Musarrat Akram, *Orientalism Revisited in Asylum and Refugee Claims*, 12 INT’L J. REFUGEE L. 7 (2000)).

99. *See id.*

100. *Fatin v. INS*, 12 F.3d 1233, 1237 (3d Cir. 1993).

101. *Id.*

representative of the broad Muslim population—as “broad social strife,” generalizing the discriminatory practice of one particular group to the woman’s society without any justification.¹⁰² Rather than acknowledging the Taliban’s behavior as a unique instance of extremism, the court considered the behavior a broad social issue within her country of origin. Finally, in *In re S-A-*, the court looked at a father’s controlling behavior over his daughter as a tenet of “Muslim law.”¹⁰³ These generalizations cement stereotypes and Orientalist misunderstandings of Muslim women within the court system and reveal the courts’ entrenchment within stereotypical confines. The courts’ behavior also represents a possible hijacking of the authentic Muslim woman experience. By holding such requirements for Muslim women seeking asylum, the courts either force women to plead in such Orientalist ways or restrict from entry those women who do not fit the stereotypes.

Furthermore, when politics were involved, the Supreme Court repeatedly refused to restrain the executive in issues involving Muslims, in effect upholding government surveillance programs that targeted people from Muslim majority countries.¹⁰⁴ Even cases with such grievous human rights and constitutional violations such as the Guantanamo cases, the Supreme Court “rarely gave an acknowledgement that these individuals have substantive rights” and made it difficult to bring claims for even the most basic issues, such as the exercise of religious rights or freedom from torture.¹⁰⁵ In *Ziglar v. Abbasi*, where men primarily from South Asian and Middle Eastern countries were mass detained, often after anonymous tips of their “suspicious” behavior were reported, the Supreme Court held that the detainees could not assert *Bivens* claims to obtain damages.¹⁰⁶ The detainees were “indiscriminately labeled, and treated...as terrorism suspects, rather than as ordinary immigration detainees.” They asserted that this treatment, including harsh conditions, physical abuse, excessive strip searches, and denial of access to basic hygiene, was due to their racial and religious identities.¹⁰⁷ However, the court considered the context of this case “different in a meaningful way” from earlier cases because the case occurred after 9/11 and implicated national security concerns.¹⁰⁸ Justice Kennedy ignored that *Bivens*, along with earlier cases, “generously implied a cause of action to vindicate individual rights” and instead disfavored such remedies, making them presumptively unavailable.¹⁰⁹ Such differentiation from precedent seems to imply that Justice Kennedy “regards constitutional liberty as limited for certain classes

102. *Holder*, 644 F.3d at 373, 387.

103. *In re S-A-*, 22 I. & N. Dec. 1328, 1330 (B.I.A. 2000).

104. See Saleh, *supra* note 79; *Ziglar v. Abbasi*, 137 S. Ct. 1843 (2017).

105. *Id.*

106. *Ziglar*, 137 S. Ct. 1843.

107. Shirin Sinnar, *The Ziglar v. Abbasi Decision: Unsurprising and Devastating*, STANFORD LAW SCHOOL (Jun. 20, 2017) <https://law.stanford.edu/2017/06/20/the-ziglar-v-abbasi-decision-unsurprising-and-devastating/> [<https://perma.cc/9FNK-A8HF>].

108. *Id.*

109. Russell K. Robinson, *Justice Kennedy’s White Nationalism*, 53 UNIV. CAL. DAVIS L. REV. 1027, 1061 (2019).

of people,” particularly Muslims.¹¹⁰ Moreover, “although the Court has often cited wartime contexts as a special reason for judicial intervention,” in this instance, they saw it as “grounds for judicial abdication.”¹¹¹ The creation of a new rule in the face of established precedent when considering Muslim plaintiffs appears to have occurred due to Islamophobia or selective reasoning towards Muslims.

Ashcroft v. Iqbal is another depiction of such analysis.¹¹² The Court easily paints Muslims as an “out-group,” which is homogenous and undifferentiated.¹¹³ Because some Muslims were terrorists, the Court could easily intrude upon the lives of many Muslims under the assumption that all Muslims are the same.¹¹⁴ The majority opinion called mass arrests of Muslims or Muslim-seeming individuals “likely lawful and justified” because the September 11 attacks were “perpetrated by 19 Arab Muslim hijackers” who belonged to a group “headed by another Arab Muslim . . . and composed in large part of his Arab Muslim disciples”—all of which, the Court said, made it unsurprising that law enforcement actions should disproportionately impact “Arab Muslims.”¹¹⁵ The Court did not differentiate between “Arab” and “Muslim” and treated the categories as interchangeable, assuming that those who were detained were suspect simply because they shared a religion or ethnicity with the 9/11 hijackers.¹¹⁶ Such a thought process reflects the Orientalist assumption that Arab or Muslim men, who made up the majority of those detained, are inherently violent and an obvious threat to America. However, even a basic understanding of probability would make it clear to someone thinking without Orientalist heuristics that the fact that one Muslim committed a terrorist attack does not make it more likely that another would, just as landing heads in a coin toss does not make it more likely for the next toss to be tails. Again in *Trump v. Hawaii*,¹¹⁷ the Court upheld Trump’s Muslim ban, which rested on the underlying assumption that Muslims, who are inherently violent, can be regulated from entering the country.¹¹⁸ Though the case was framed in terms of presidential authority,¹¹⁹ the majority ignored, as Justice Breyer pointed out, the religious animus that played a significant role in the Proclamation itself.¹²⁰ By stating that a reasonable observer would not view the government action as enacted for the purpose of disfavoring a religion, the majority assumes that the

110. *Id.* at 1064.

111. *Id.*

112. See Shirin Sinnar, *The Lost Story of Iqbal*, 105 GEO. L. J. 379 (2017).

113. *Id.* at 412.

114. See *id.* at 388-99.

115. *Id.* at 388.

116. See *id.*

117. See *Trump v. Hawaii*, 138 S. Ct. 2392, 2403, 2415 (2018) (upholding the Muslim ban, which “vest[ed] the President with authority to restrict the entry of aliens whenever he [found] that their entry ‘would be detrimental to the interests of the United States’”) (citing 8 U.S.C. § 1182(f)). This conclusion, that entrance of Muslims to the U.S. would be detrimental to the country, speaks clearly to the paradox with which Orientalists viewed the Orient: that its interests were opposite the Occident.

118. See *id.* at 2415.

119. *Id.*

120. *Id.* at 2429 (Breyer, J., dissenting).

regulation of immigrants from eight Muslim-majority countries was based on a true detriment from those countries, regardless of the fact that all individuals, – including infants and children, –were blocked by the Proclamation. We have seen this reasoning before: willful ignorance to authentic facts, in favor of stereotypical Orientalist beliefs, to the detriment of Muslims seeking relief in the courts. It also makes achieving justice more difficult for all Muslims because of the actions of a few, –a schema that the Court refuses to see as religious animus.

Finally, the majority made a weak attempt at deflecting the argument that the Proclamation was religiously-motivated, stating that “the Federal Government and the Presidents who have carried its laws into effect have—from the Nation’s earliest days—performed unevenly in living up to” the ideal of religious plurality in America.¹²¹ In doing so, the Court acknowledged the possibility of religious animosity within the Proclamation, yet dismissed it under the excuse that such discrimination has always been present. Citing to *Ziglar*, the majority stated that the president needs to have the ability to “respond to changing world conditions,” which, by implication, may include using religious animus.¹²² This reasoning not only solidifies religious animus as a potential tool for the executive, but it also hints at excusing its presence within the Proclamation. These cases blemish the justice system, accepting the use of Islam as a proxy for suspicion and aggression. In turn, these cases potentially accept the underlying contentions that Muslims are inherently suspicious and violent, that Muslims are less deserving of justice, and that Islam itself is an amalgamated threat to America.

Noting the law’s treatment of Muslims is impactful both for the legal community and the country at large. Not only did the majority opinion reflect biases within decision-making, but it also sends ripples throughout the legal world. The underlying acceptance of this reasoning, and the unquestioned racism written into the law, raise the question: how many others thought the same? How many others swallowed the Orientalist implication that Muslims are inherently suspect?

B. An Exclusive Neutrality

The Another crucial lesson to pull from this analysis is that the law, and most legal officers, who are meant to be neutral enforcers of laws enacted on an objective basis, may not be as neutral as they originally appear. Though the rule of law is considered to function as a set of norms that “does not take sides on factitious moral issues” to facilitate democratic equality,¹²³ neutrality does not always mean value-neutral, but rather neutrality in pursuit of a goal considered valuable to the case at issue.¹²⁴ On the one hand, this false neutrality is present in the court system’s understanding of its own role: as a neutral decisionmaker, the

121. *Id.* at 2418.

122. *Id.* at 2420.

123. Tara Smith, *Neutrality Isn’t Neutral: on the Value-Neutrality of the Rule of Law*, 4 WASH. UNIV. JURIS. REV., 49, 63 (2011).

124. *See id.* at 67 (“[P]olicy neutrality has a purpose...and it is that value that determines the contours of the neutrality that is adopted.”).

court system upholds itself as free from bias. The American justice system asserts its ability to make decisions in a neutral and objective manner. Yet the judicial system is just as affected by day-to-day biases, prejudices, and implicit predispositions as the rest of us. For women in hijab, this means that implicit or explicit expressions of Islamophobia or Orientalism may worm their way into opinions involving them.

In another vein, in cases where courts are required to assess neutrality within a law or policy,¹²⁵ courts seem to ignore the version of the Muslim's story in favor of an exclusive neutrality. For example, the majority in *Trump v. Hawaii* failed to see the Proclamation as motivated by religious animus, regardless of the sufficient evidence in the dissent.¹²⁶ These rulings—in which the court gets to determine what is and is not neutral—prove to be more detrimental to Muslim women because courts fail to understand the nuances of the hijab itself. Therefore, both larger, culturally-entrenched biases against Muslim women in hijab and the fact that hijabis have not yet made it into positions of power within the judiciary or the legal system may disparately impact them.

In many cases, these two forces act in tandem, to detrimental effects for Muslim women. For example, in *Webb v. City of Philadelphia*,¹²⁷ the Third Circuit had an opportunity to determine whether the hijab was or was not neutral for the sake of a policy banning religious symbols. A police officer who wore the hijab was forced to remove it due to concerns her department had for her safety and for the uniform look of officers.¹²⁸ The court upheld this policy, opining that concerns dictated by “maintaining the appearance of neutrality” weighed the facts in favor of the City.¹²⁹ The City cited the need to support “public confidence in the neutrality of its protectors” as the rationale for prohibiting its officers from wearing religious symbols.¹³⁰ Contrast this result with *Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, a parallel case in which Muslim male police officers brought suit against their employer for a policy that prevented them from growing beards, as was required by their faith. In that case, the plaintiffs prevailed on their claim that the policy in question violated the free exercise clause.¹³¹

What separated these two claims? The court in *Webb* suggested that the department had a need to articulate “the police department’s religious neutrality (or the appearance of neutrality)”¹³² to deal with the public and to promote the image of a “disciplined, identifiable and impartial police force”¹³³ free from

125. See, e.g., 138 S. Ct. 2417-18 (involving the question of religious animus in President Trump's Proclamation).

126. *Id.* at 2429 (Breyer, J., dissenting).

127. 562 F. 3d 256 (3d Cir. 2009).

128. *Id.* at 258.

129. *Id.* at 261.

130. *Id.*

131. 170 F. 3d 359, 360-67 (3d Cir. 1999).

132. *Webb*, 562 F. 3d at 261.

133. *Id.*

expressions of religion, bent, or bias. The court distinguished the cases because the department in *Fraternal Order of Police* had already given exceptions for beards to those who had medical reasons, and therefore was able to grant the exception for religious reasons, noting that failing to provide a religious exemption to the no-beards policy while granting medical exemptions suggested discriminatory intent. Yet in *Webb*, when the plaintiff pointed out that other officers wore cross pins or other religious symbols, and nonetheless she was denied the opportunity to wear her hijab, the court turned a blind eye and considered her evidence “unpersuasive.”¹³⁴ The Third Circuit stated that because there were no specifics about who or when these symbols were worn, and because there was no evidence that the police department was aware of these other symbols, their existence could not be brought into evidence.¹³⁵ This showcases a unique issue that Muslim women face—the visibility of their religious symbol creates a type of disenfranchisement others seeking to express their religion may not encounter. Instead of being sympathetic to this concern, the court in *Webb* upheld an employment policy that prevented the plaintiff from wearing her hijab. This shows a strange imbalance: where the court claims to hold all religions to the same standard, some are more disadvantaged than others due to their inherent hypervisibility. The court’s premise of neutral decision-making harms those with beliefs outside of the norm, as the court remains blind to the impact otherwise neutral policies may have upon Muslim women specifically.

These cases make it plausible to consider that some religious symbols portray appearance of that which is “other” (further from the court’s defined “neutral”) more than others. Whereas a beard may be viewed as a stylistic choice by the outside public and therefore is less “othered,” the hijab is unmistakably Muslim and thus unmistakably not neutral. Where a cross pin may be ignored because of its size and inconspicuousness, a woman in hijab does not have the option of making her hijab less noticeable. She cannot pass off her headscarf as anything other than religious, nor can she shrink the size of the scarf to make it invisible to the casual observer. Thus, those people and things which invariably seem Muslim, like the hijab, are subject to different treatment than those which can pass as unaffiliated. Additionally, the hijab ranks highly in the hierarchy of symbols which are considered “other” due to its necessary link to Islam and its rigid appearance.

This exclusionary treatment of Muslim women’s religious symbols is repeated in *EEOC v. GEO Group Incorporated*.¹³⁶ There, the Third Circuit ruled that three Muslim women, who sought to wear religious headscarves within a prison, did not have a right to wear their religious garb within the workplace due to a zero-tolerance headgear policy.¹³⁷ The court stated that there could be no religious accommodation for the women, even though male employees who wore

134. *Id.* at 262.

135. *Id.*

136. *See* 616 F.3d 265, 277-80 (3d Cir. 2010) (Tashima, J., dissenting).

137. *Id.* at 274-75 (majority opinion).

beards for religious reasons were permitted to have beards regardless of the management's clean-shaven policy.¹³⁸ The no headgear policy, which was supposed to prevent employees from wearing unauthorized hats or caps to differentiate them from prisoners and to preserve their safety, was not linked to preventing any accidents or attacks from prisoners. In fact, staff from the prison kitchen were permitted to wear headgear, even though they frequently interacted with prisoners.¹³⁹ Management appeared to exclude the hijab from the workplace, regardless of the fact that employees in different positions were permitted to display their religion or cover their head.¹⁴⁰ When women in hijab were at the forefront, the court favored the employer's "neutral" approach, ignoring that such neutrality was at the cost of a marginalized group.¹⁴¹

Finally, *Webb* and *GEO Group* display the court's willingness to police and presume control over women in hijab, possibly based on the Occidental urge to liberate Muslim women. Other cases involving women protesting forceful removal of their hijabs also seem to permit the disenfranchisement of women who wear veils.¹⁴² Though it is not explicitly stated in these rulings, there is a sense that the court polices something as personal as headgear more easily when the target is the veiled Muslim woman.¹⁴³ In other words, the court feels less hesitation asking Muslim women to remove their veils because of the unique historical and social background in which veiled Muslim women are created, and because they favor a "normal" that does not include hijab.

Court decisions that favor removing hijabs functionally constrain self-expression for veiled Muslim women. Greene analogized such policing to the manner in which courts prohibit natural hairstyles on African American women, "[divesting] Black women of complete autonomy over deeply personal, political, as well as pragmatic grooming choices and bespeak[ing] a unique sense of identity informed by broader race and sex dynamics."¹⁴⁴ She claimed that "arming employers with unlimited control over whether and the manner in which a Black woman can wear a natural hairstyle deprives Black women power and privilege over how they adorn their heads and limits employment opportunities for which

138. *Id.* at 282 (Tashima, J., dissenting).

139. *Id.* at 286.

140. *See id.* at 286-87.

141. *See id.* at 290.

142. *See* D. Wendy Greene, *A Multidimensional Analysis of What Not to Wear in the Workplace: Hijabs and Natural Hair*, 8 FLORIDA INT'L UNIV. L. REV. 331, 334 (2013). Notably, "religious observance [is] in accordance with its 'neutral' or universal policy of prohibiting hair or head coverings in the workplace, rather than a targeted employment policy ridden with negative racial, gender, and/or religious stereotypes, bias, or animus." *Id.* (citing *EEOC v. GEO Group, Inc.*, 616 F.3d 265, 277-92 (3d Cir. 2010)). Greene explained that "[u]nequivocally, *Geo Group*... demonstrate[s] the high level of deference that courts accord to employers in their enactment and enforcement of grooming codes regulating the manner in which women of color can adorn their hair in the workplace." *Id.* at 351. Green also notes, "however, recent Title VII cases that challenge private employers' bans are generally denominated as an employer's failure to accommodate." *Id.* at 343.

143. *See id.* at 351.

144. *Id.* at 350.

they are qualified.”¹⁴⁵ Similarly, this pattern creates and continues a practice of othering and gatekeeping hijabi Muslim women from their own identities by casting them as outside of the “normal” neutral. It represents a way that workplaces may deprive Muslim women in hijab of the power to choose how they dress, giving the law an intrusive control over hijabis that is both rare and disenfranchising and limiting hijabis’ ability to express and form their identity.¹⁴⁶

III. FROM THE LEGAL IMAGINATION TO THE LEGAL INSTITUTION

It is worthwhile to note how legal institutions that uphold our democracy may affect legal actors all the way down. Just as the legal system prides itself for and accepts neutrality, legal actors are placed in a system which requires the “lawyers [who] interpret and implement” law to be “unaffected by issues of race.”¹⁴⁷ Due to normative values in the legal profession, lawyers are not supposed to allow “their nonprofessional commitments to interfere with their professional obligation[s].”¹⁴⁸ This central tenet has led to the conception of bleached out professionalism, rooted in the idea that the “legal rules and procedures that lawyers interpret and implement” should be “unaffected by issues of race.”¹⁴⁹ The application of these ideals, when placed upon Muslim women existing at the intersection of their gender and Islamophobia, create an exceptional weight.¹⁵⁰ Because hijab can never be fully negated, barring removal of the scarf itself, women in hijab can never fully pass as part of the majority group. In turn, the hijab is related to the wearer facing discrimination at all avenues of their legal careers. This discrimination begins during the bar exam, where women in hijab have reported harassment when they wear their headscarves, even if they fill out the necessary paperwork,¹⁵¹ all the way until they make court appearances.¹⁵²

145. *Id.* at 350-51.

146. *See id.* at 351 (referring to “the lack of understanding, respect, autonomy, and dignity the employers conferred to the Black and Muslim female employees who donned natural hairstyles and hijabs in the workplace”).

147. David B. Wilkins, *Identities and Roles: Race, Recognition, and Professional Responsibility*, 57 MD. L. REV., 1502, 1514 (1998).

148. *Id.* at 1505.

149. *Id.* at 1514.

150. *See Aziz, supra* note 59 (stating that “[i]f she is Muslim, then her behavior triggers stereotypes of Muslims as terrorists, disloyal, foreign, and suspect.”).

151. Staci Zaretsky, *Muslim Woman Harassed Over Religious Headwear While Taking Bar Exam*, ABOVE THE LAW (Aug. 2, 2013) <https://abovethelaw.com/2013/08/muslim-woman-harassed-over-religious-headwear-while-taking-bar-exam/> [<https://perma.cc/H2LA-R5AK>].

152. *See Prejudice is Alive and Well in the Legal Profession*, THE AGE (Jun. 23, 2003), <https://www.theage.com.au/national/prejudice-is-alive-and-well-in-the-legal-profession-20030623-gdvx6t.html> [<https://perma.cc/DJ9D-KU7Z>]; *see also* Kristin Choo, *Muslim women lawyers aim to reconcile traditional beliefs with secular society*, ABA JOURNAL (Feb. 1, 2013), https://www.abajournal.com/magazine/article/walking_the_tightrope_muslim_women [<https://perma.cc/2VM7-TDGH>] (detailing the experience of Amina Saeed, co-founder and president of the Muslim Bar Association of Chicago, who says she wore a hijab from the time she started practicing law in 1996. But as she walked into the court, people often mistook her for a translator—sometimes even after she identified herself. “It made it more nerve-wracking because I felt I had to perform better than anyone else just to be considered an equal,” she says. “But I honestly believe that that experience made me a better lawyer.”).

A. Deprivation of Cultural Capital

Women in hijab are required to create a neutral workplace identity that may conflict with or erase their personal, religious, and social identity. Wilkins described neutrality in the professional world as the “professional self”—a version of self that is created through self-selection, professional education, discipline, and the unique norms and practices of the craft.¹⁵³ Scholars also have noted that the legal workplace, particularly the law firm, has an “up-or-out” structure, which “suggests the kind of identity an employee would want to negotiate” to advance in the rank.¹⁵⁴ To move up, employees need to not only be the most productive but must also project a “workplace identity” that conforms with the desired characteristics and criteria of the firm.¹⁵⁵ It is thus unsurprising that outsiders “subject to negative stereotypes” feel incentivized to put effort into constructing a workplace identity at the cost of their stereotyped identity.¹⁵⁶

As feminist scholars have suggested, such bleached out professionalism led women, who do not fall within the neutral ideal, to take on traits of the dominant group to adapt when they were first joining the profession. As Carrie Menkel-Meadow proposed, “[s]ince our knowledge of how lawyers behave and of how the legal system functions is based almost exclusively on male subjects of study, our understanding of what it means to be and act like a lawyer may be misleadingly based on a male norm.”¹⁵⁷ When women began entering the workplace, they had to learn to “speak male as a second language” to become expert lawyers.¹⁵⁸ From the outset, women were treated as “other” compared to the norms of the field.

Azizah al-Hibri, a Muslim corporate lawyer in the early 1990s, noted a similar concept applied to her religious identity. She stated, “legal culture...presses the religiously faithful to be other than themselves, to act publicly, and sometimes privately as well, as though their faith does not matter to them.”¹⁵⁹ This creates a very unique choice pushing Muslims to either be lawyers or their Muslim selves.¹⁶⁰ In the same manner in which women initially found themselves hiding and covering their identity, Muslim lawyers felt the need to

153. Wilkins, *supra* note 146, at 1503.

154. Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV., 1259, 1273 (1999) (explaining that “[a]n up-or-out structure is an incentive mechanism. The ‘up’ is the carrot and the ‘out,’ the stick...[inducing] employees to exert high amounts of efforts without the employer having to constantly supervise the employees...The specific nature of the up-or-out structure suggests the kind of identity an employee would want to negotiate.”).

155. *Id.* at 1276.

156. *Id.*

157. Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Woman's Lawyering Process*, 1 BERKELEY WOMEN'S L. J. 39, 40 (1985).

158. Erika Rackley, *From Arachne to Charlotte: An Imaginative Revisiting of Gilligan's in a Different Voice*, 13 WM. & MARY J. WOMEN & L. 751, 759 (2007); see also SIMONE DE BEAUVOIR, *THE SECOND SEX* 77 (Vintage Books 2011) (stating, “man is defined as a human being and a woman as a female...whenever she behaves as a human being she is said to imitate the male.”).

159. Azizah al-Hibri, *On Being a Muslim Corporate Lawyer*, 27 TEX. TECH. L. REV. 947, 948 (1996).

160. See *id.*

compartmentalize their faith to enter the workplace. The fact that veiled Muslim women exist at the intersection of both religious and gendered identities implicates concern.¹⁶¹

Because the hijab is an obvious religious signal, on many occasions, the mere appearance of women in hijab can trigger a barrage of harassment, implicit or explicit,¹⁶² resulting in women feeling excluded or targeted.¹⁶³ If women choose to don the hijab at any point throughout their employment, they may be the victim of intrusive questioning, echoing the traditional Orientalist stereotypes regarding women in hijab.¹⁶⁴ They also may face the hard choice of picking between their religious identity or advancing their career.¹⁶⁵ Because women in hijab, by virtue of their headscarves, visibly display characteristics outside of the norm of the profession, they feel the heavy weight of negotiating and performing their identity to signal to the group that they are neutral.¹⁶⁶ Women in hijab are forced to perform the extra work of overcoming Orientalist stereotypes, and their bargaining power to lay claim to their identity weakens.¹⁶⁷ The weaker their bargaining power, the more they may have to compromise their identity and engage in the extra work.¹⁶⁸

This depicts the bind Sahar Aziz spoke of—while members of the dominant group are able to live and work with minimal pressure to compromise their cultural values and norms, those deemed outsiders are coerced to relinquish, or, at the very least, hide their foreign languages, clothing, cultural practices, hairstyles, and associations to obtain gainful employment.¹⁶⁹ When veiled Muslim women refuse these pressures by existing in their veils, they are deprived of necessary cultural capital that would allow them to advance on the same plane as others who have the benefit of this capital. As studies regarding women and minorities have shown,

161. See Greene, *supra* note 141, at 340, 354-55 (stating that a “multi-dimensional” analysis of hijabis reveals they are subject to “grooming codes that are the products of racial and gender stereotypes and bias” that they bear).

162. See *Types of Workplace Discrimination Experienced by Muslim Women Wearing Hijab*, http://atwork.settlement.org/downloads/atwork/Accommodating_Hijab_Types_Discrimination.pdf [<https://perma.cc/WDM4-BTFY>] (last accessed Apr. 28, 2022).

163. See Garcia-Yeste, Botton, Alvarez, & Campdepados, *supra* note 65, at 8 (describing the experience of Noura, a Muslim woman who studied law and stated the discrimination she suffered from her classmates due to wearing a hijab came in many different types: “it could be that there was a section of the class who did not like (me) too much[...]we were in a group and talking to others and me, although I wanted to participate, I did not exist.”).

164. See *Prejudice is Alive and Well in the Legal Profession*, *supra* note 151 (describing a situation in which a female partner noted her managing partner quizzed her after she chose to don the hijab asking, “How will the scarf sit on your head? Can any of your hair show? Will there be any problems with you representing male clients? Is this your husband's choice? Is this your final decision?”).

165. See *id.* Numerous law school graduates stated they had been told if they removed their headscarf, the job would be theirs. *Id.* “It doesn't fit in,” they were told. *Id.* The legal profession is “unfortunately brutal” and they would “stand out.” *Id.* Though the firms stated they had “nothing against Muslims... [they were] concern[ed] about how clients would react to a woman wearing a headscarf handling their case.” *Id.*

166. See Carbado & Gulati, *supra* note 153, at 1277 (discussing how minority women must perform identity to combat stereotypes in the workplace).

167. See *id.*

168. *Id.*

169. Aziz, *supra* note 59, at 36-38.

groups deprived of valuable cultural capital, including disposition to share firm values, social networks and relationships, and affinity with firm culture, tend to have lower rates of attaining high-ranking legal positions, regardless of law school performance.¹⁷⁰ Judgments of cultural capital are based on the dominant group's traits, which are considered the "ideal type" of worker.¹⁷¹ Women who wear the hijab, by the very condition of their appearance, do not fit into the typical matrix of cultural capital that is required to advance in law firms and the profession in general.¹⁷² These implicit pressures to be a different "type" of worker systemically disparage and exclude them and create psychological costs from negating an inherent part of their identity.¹⁷³

It is important to note that there is an intersection between deprivation of identity at the hands of expected neutrality and the imposition of outside stereotypes, which doubly harms Muslim women in hijabs. Though the pressure to conform to "neutral" itself is a heavy burden, veiled women simultaneously face the typical, traditional stereotypes about their appearance. Even within the law, and perhaps more so because of the profession's norms, Muslim women in hijabs indicate that people think they are "weak and not able to express opinions...hidden behind the veil" and are "surprised [that they are] competent."¹⁷⁴ Muslim women in hijab are confronted with outright comments and thoughts that they are "prohibited from getting an education and being engaged in society."¹⁷⁵ It is this pairing that creates the unique nexus at which they stand, between the pressures of neutrality and archaic gendered Orientalism.¹⁷⁶

CONCLUSION: THE MUSLIM WOMAN QUESTION, OR, SOLUTIONS

Ahmed Ajil and Kwan-Lamar Blount-Hill suggested that, to discover "the lived realities of the colonized subject inside the global north, knowledge should be produced by researchers who have an intimate understanding of these lived

170. See Fiona Kay & Elizabeth Gorman, *Women in the Legal Profession*, 4 ANN. REV. OF L. & SOC. SCI. 299 (2008), in THE LEGAL PROFESSION: ETHICS IN CONTEMPORARY PRACTICE (Ann Southworth & Catherine Fisk, eds. 2019).

171. Ruth Woodfield, *Gender and the Achievement of Skilled Status in the Workplace: the Case of Women Leaders in the UK Fire and Rescue Services*, 30 WORK, EMPLOYMENT AND SOCIETY 237, 239 (2015).

172. See Monique R. Payne-Pikus, John Hagan, & Robert L. Nelson, *Experiencing Discrimination: Race and Retention in America's Largest Law Firms*, 44 L. & SOC'Y REV. 553 (2010), in THE LEGAL PROFESSION: ETHICS IN CONTEMPORARY PRACTICE (Ann Southworth & Catherine Fisk, eds. 2019) "African American associates are less likely to be mentored because of their differences in human capital... one would expect mentoring and training to matter less in explaining disparities in retention outcomes once "merit" is controlled for...and...one would expect mentoring to continue to impact attrition even when 'merit' is controlled for.").

173. Carbadó & Gulati, *supra* note 153, at 1277.

174. Chicago Tribune, *Muslim women's law firm breaks down stereotypes*, EAST BAY TIMES (Aug. 15, 2016) <https://www.eastbaytimes.com/2008/09/03/muslim-womens-law-firm-breaks-down-stereotypes/> [<https://perma.cc/E8KK-5EC4>].

175. *Id.*

176. See generally Aziz, *supra* note 59, at 42-43 (discussing how even after she has negotiated the pressures of coercive assimilationism, "she is often assumed to lack agency by the dominant social group" due to traditional Orientalist stereotypes.).

realities.”¹⁷⁷ I hold that this applies in the case of Muslim women, not only for purposes of producing academic knowledge, but also for purposes of producing cultural awareness and capital. Rather than allowing a world in which the male, non-Muslim is the yardstick of maturity, autonomy, and rationality, there is much we can gain if we accept a world where our ethnic, religious self is not judged by the archaic majority’s rules, but rather by a human perspective, inclusive of all voices.

Here, I see a parallel with early feminist writers who explored the various values women brought to the workplace and world stage. As Carol Gilligan posited, we lose something when we neglect to ask the woman question and exclude women from thought.¹⁷⁸ Similarly, there is much we lose out on when we neglect Muslim women from our perception of “normal” and from our discourse as a whole. To ask the Muslim woman question, to ask what her version of the story is, and how will she tell it,¹⁷⁹ is revolutionary: it finally unveils the Orientalist narrative and the exclusion of Muslim women. It finally increases opportunities otherwise denied to Muslim women by breaking down the stereotypes she otherwise would be confronted with every time she enters a room. When we refuse to bring the veiled Muslim woman into the picture, we are not only making an oversight but maintaining a longstanding worldview that denies veiled Muslim women autonomy. We are allowing structures which alienate Muslim women, and thereby alienate all of us from Muslim women, to dominate.

We should encourage law firms and legal institutions to engage in implicit bias testing so that individuals may be made aware of the version of Muslim women they have been falsely taught about. Furthermore, diversity and inclusion training should include cultural information about Muslim women, the stereotypes they face, and the ways to counteract negative thought processes the public may hold. Re-education about Muslim women is necessary to ensure their freedom to exist in the future. On a structural level, legislation, such as that which has been brought to protect the right to wear natural hair at work, should be expanded to include wearing hijab in workplaces.

It is possible to create a world that is not distinctly colonial and rife with stereotyping, but balances various perspectives, blending identities beyond our created perceptions of one another.¹⁸⁰ Where the veil does not signify a tired narrative but individuals in themselves. Where various voices, ways of dress, and

177. See Ajil & Blount-Hill, *supra* note 57, at 88.

178. See generally CAROL GILLIGAN, REVISITING IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT XV (Harvard Univ. Press 1982) (discussing “psychological theory and women’s development”).

179. See generally Carol Gilligan, *Revisiting “In a Different Voice,”* 39 HARBINGER 19 (2015) (discussing a range of topics, including gender and reproductive rights in a keynote address).

180. See BELL HOOKS, FEMINISM IS FOR EVERYBODY: PASSIONATE POLITICS X (South End Press 2000). (“Imagine living in a world where there is no domination, where females and males are not alike or even always equal, but where a vision of mutuality is the ethos shaping our interaction. Imagine living in a world where we can all be who we are, a world of peace and possibility...for...fully self-actualized females and males able to create beloved community, to live together, realizing our dreams of freedom and justice, living the truth that we are all ‘created equal.’”).

true selves are naturally embraced. Welcoming veiled Muslim women to speak about their own gender, religion, and stature without preconceived notions not only makes it possible to see opinion and autonomy where there previously was only the assumption of oppression, but also makes room for Muslim women—and thereby Muslims as a group—to define their own neutral, to enter professional and traditionally closed-off spaces with ease, and to be a part of the conversation.