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From the Oppressed to the Terrorist: Muslim-American Women in the Crosshairs of Intersectionality

SAHAR F. AZIZ*

"We should never pass judgment on barrels and barrels of apples just because one of them may be rotten."¹

-- Justice John Paul Stevens

INTRODUCTION

In the post-9/11 era, Muslim women donning a headscarf in America find themselves caught at the intersection of bias against Islam, the racialized Muslim, and women. In contrast to their male counterparts, Muslim women face unique forms of discrimination not adequately addressed by Muslim civil rights advocacy organizations, women's rights organizations, or civil liberties advocates.

This paper examines how the September 11th attacks adversely impacted the lives of headscarved Muslim women in ways different than Muslim men. Ten years after 9/11, there is a plethora of literature about what has become known as "post-9/11 discrimination." Most of the discussion focuses on the experiences of Muslim men or analyzes law and policy through a male gendered

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1. Justice John Paul Stevens, Address at the National Japanese American Memorial Foundation, 10th Anniversary Gala Celebration in Washington, DC (Nov. 4, 2010) (transcript available at <http://njamf.com/jps%20speech.pdf>).

paradigm. Amidst pervasive suspicion of Islam, continuing sexism, and bias against her particular race group, the Muslim women are both visible targets and silent victims.²

From the outset, it is worth emphasizing that there is no singular, unitary “Muslim woman” that can represent the experiences and grievances of the diversity of women who identify as Muslim.³ Muslim women come from various racial and ethnic backgrounds, hold diverse political viewpoints, and adopt beliefs ranging from staunch secularism to religious orthodoxy. That said, the diversity of Muslim women often experience similar adverse experiences because they are falsely stereotyped as meek, powerless, oppressed, or sympathetic to terrorism.

Muslim women of all races and levels of religiosity face unique forms of discrimination at the intersection of religion, race, and gender⁴ because the September 11th terrorist attacks transformed the meaning of the Muslim headscarf.⁵ The debate no longer centers on whether the “veil” serves to oppress women by controlling their sexuality and, by extension, their personal freedoms and life choices or if it symbolizes choice, freedom, and empowerment for Muslim women. Rather, the Muslim headscarf now “marks” women as representatives of the suspicious, inherently violent, and forever foreign “Terrorist other” in our midst.⁶

2. See Nadine Strossen, *Freedom and Fear Post-9/11: Are We Again Fearing Witches and Burning Women?*, 31 NOVA L. REV. 279, 306 (2007) (citing Neil MacFarquhar, *A Simple Scarf, But Meaning Much More Than Faith*, N. Y. TIMES, Sept. 8, 2006, at A22).

3. See Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 Stan. L. Rev. 581, 585-90 (1990).

4. See Strossen, *supra* note 2 (“Before Sept. 11, Muslim women who wore head scarves in the United States were often viewed as vaguely exotic. The terrorist attacks abruptly changed that, transforming the head scarf, for many people, into a symbol of something dangerous, and marking the women who wear them as among the most obvious targets.”); John Blake, *Muslim Women Uncover Myths About Hijab*, CNN (Aug. 19, 2009), http://articles.cnn.com/2009-08-12/us/generation.islam.hijab_1_hijab-muslim-women-muslim-americans?reporting=that%5B%5Dsome+hijab-wearers+say+that+strangers+treat+them+as+if+they%27re+terrorists%22; (reporting that “[s]ome hijab-wearers say that strangers treat them as if they’re terrorists”); See also Nadine Naber, “Look, Mohammed the Terrorist Is Coming!” *Cultural Racism, Nation-Based Racism, and the Intersectionality of Oppressions after 9/11*, SCHOLAR & FEMINIST ONLINE (Summer 2008), http://barnard.edu/sfonline/immigration/naber_01.htm (identifying cultural racism as a “process of Othering that constructs perceived cultural (e.g., Arab), religious (e.g., Muslim), or civilizational (e.g., Arab and/or Muslim) differences as natural and insurmountable” and nation-based racism as a construct that treats certain immigrants as potentially criminal or immoral).

5. Adrien Katherine Wing & Monica Nigh Smith, *Critical Race Feminism Lifts the Veil?: Muslim Women, France, and the Headscarf Ban*, 39 U.C. DAVIS L. REV. 743, 750 (2006) (discussing the origin and significance of the headscarf in Islamic history and in the French headscarf debate).

6. Strossen, *supra* note 2; See also Naber, *supra* note 4 (observing that headscarves

It is, therefore, long overdue to examine the experiences of Muslim women in order to expose the unique challenges they face as Muslims, as women, and as people of color. By examining the experiences of Muslim women donning a headscarf, a religious gender marker, this article brings gender to the forefront of the discussions on post-9/11 discrimination.

Whether guilty by association through her marriage to a presumed terrorist husband, or an active accomplice in secret plots to terrorize Americans, some headscarved Muslim women are perceived as individuals incapable of developing their own beliefs and protestations.⁷ Instead, they are viewed as mere extensions of familial relationships with actual or presumed male terrorists. As national security prerogatives filter perceptions of Muslims through the prism of terrorism, the Muslim “veil” has become a symbol of terror.⁸ This critical shift in perception results in palpable adverse consequences to a Muslim woman’s freedom of religion, freedom of individual expression, and physical safety.⁹

The shift in meaning of the Muslim headscarf is due in large part to a recasting of Islam as a political ideology as opposed to a religion.¹⁰ Once this definitional shift occurs, acts that would otherwise qualify as actionable religious discrimination are accepted as legitimate, facially neutral national security law enforcement measures or protected political activity by private actors. Recasting thus serves as the basis for calls to deny Muslims rights otherwise protected under the law. Moreover, mundane religious accommodation cases become evidence of stealth, imperialistic designs of the hostile ideology.¹¹ Contrary to America’s traditional

mark Muslim women as “daughters or sisters of terrorists”).

7. See Iyiola Solanke, *Putting Race and Gender Together: A New Approach to Intersectionality*, 72(5) Mod. L. Rev. 723 (2009) (highlighting that additive discrimination claims fail “to acknowledge the black woman as ‘an integrated, undifferentiated, complete whole’ with a ‘consciousness and politics’ of her own.” quoting Regina Austin, *Sapphire Bound!*, 1989 Wis. L. Rev. 539, 540 (1989)).

8. See Editorial, *Terrorists Hiding in Hijabs: Muslims Seek Special Treatment to Elude TSA Groping*, WASH. TIMES (Nov. 17, 2010), <http://www.washingtontimes.com/news/2010/nov/17/terrorists-hiding-in-hijabs> (arguing that by granting religious accommodation to Muslim women who wear the headscarf, terrorists will use it to elude security measures).

9. See Tony Perry, *El Cajon Police Ask Public’s Help to Solve Iraqi Woman’s Beating Death*, L.A. TIMES (Mar. 25, 2012), <http://articles.latimes.com/2012/mar/25/local/la-me-iraqi-woman-20120326> (detailing the story of the murder of Shaima Alawadi where her attacker left a hateful note next to her body).

10. See Mark H. Hunter, *SLU Professor Talks About Significance of Hijab*, THE ADVOC. (Dec. 5, 2010), <http://www.theadvocate.com/news/latest/111333919.html> (discussing the hijab’s role internationally and in the Muslim experience).

11. Dana Milbank & William M. Arkin, *Monitoring America*, WASH. POST, Dec. 20,

deference to religious precepts in personal affairs, opponents of mosque construction and Muslim religious accommodation dismiss religious freedom for Muslims as inapplicable by focusing on extremist Muslims to shift the debate to Islam's alleged pathological violence.¹²

The shift in symbolism of the headscarf results in two notable outcomes. First, and foremost, Muslim women continue to be objectified within a larger conflict of ideas among predominantly male decision makers. Heated national security debates about the emergence of "homegrown terrorism," now code for domestic Muslim terrorists, focus primarily on persecuting or defending male suspects.¹³ Stereotypes of the dark-skinned, bearded, Muslim male

2010, at A1 (showing trend among self-labeled terrorism experts training law enforcements of portraying Muslims as seeking to impose Sharia law in America); ROBERT SPENCER, *STEALTH JIHAD* (2008); Andrea Elliott, *The Man Behind the Anti-Shariah Movement*, N.Y. TIMES (July 30, 2011), <http://www.nytimes.com/2011/07/31/us/31shariah.html> ("Shariah, the Islamic code that guides Muslim beliefs and actions, is not just an expression of faith but a political and legal system that seeks world domination."); Gladkov Vladimir, *America against the Sharia law*, THE VOICE OF RUSS. (Aug. 2, 2011), <http://english.ruvr.ru/2011/08/02/54090646.html> ("Driven by the belief that Sharia is not just an expression of faith and a code of behavior but a political and legal system that seeks world domination.").

12. See *Islam inherently violent? New Blockbuster 'Religion of Peace? ', Reveals Disturbing Facts*, WORLD NEWS NET (Nov. 02, 2006), <http://www.wnd.com/?pageId=38666> (relying primarily on Islam's own sources, "Religion of Peace? Islam's War Against the World" attempts to show that Islam is a violent, expansionary ideology that seeks the subjugation and destruction of other faiths, cultures and systems of government, and further, that the jihadis that Westerners have been indoctrinated to believe are extremists, are actually in the mainstream); See also Christopher Brauchli, Op-Ed., *Muslims and Intolerance*, HUFFINGTON POST (Nov. 11, 2010), http://www.huffingtonpost.com/christopher-brauchli/muslims-and-intolerance_b_775141.html ("The good citizens of Murfreesboro, putting their worst instincts on display for all to see, oppose the construction for, among other reasons, 'Islam is not a valid religion but instead a political cause to force the U.S. to adopt Muslim laws.'" Newt Gingrich " compared those proposing the Islamic Center, whom he referred to as 'radical Islamists,' to 'Nazis.'"); See also SHAHNAZ KHAN, *MUSLIM WOMEN: CRAFTING A NORTH AMERICAN IDENTITY* 21 (2000) (arguing that views about Islam are often influenced by populist political Islamist movements).

13. See, e.g., Letter from 51 American Advocacy Groups to Nancy Pelosi, House Minority Leader, and John Boehner, Speaker of the House (Feb. 1, 2011), available at <http://www.muslimadvocates.org/Coalition%20Ltr%20re%20King%20hearings%2C%202-1-11.pdf> (raising concerns that hearings on "homegrown terrorism" focused primarily on American Muslims stigmatizes the communities and facilitates discrimination in various forms); See also Michael Brick, *Man Crashes Plane Into Texas I.R.S. Office*, N.Y. TIMES, Feb. 19, 2010, at A14, available at <http://www.nytimes.com/2010/02/19/us/19crash.html> (highlighting that in place of the typical portrait of a terrorist driven by ideology, Andrew Joseph Stack III was described as generally easygoing, a talented amateur musician with marital troubles and his act of smashing an aircraft into an IRS building in Austin, Texas, a maddening grudge against the tax authorities); See also, *Man*

as representative of the primary threat to national security consume the (predominantly male) government's anxious attempts to prevent the next terrorist attack. Sparse attention is paid to the impact of the post-9/11 national security era on Muslim women, and specifically those who wear the headscarf. Irrespective of their place of origin or the color of their skin, the headscarf "marks" these women as sympathetic to the enemy, presumptively disloyal, and forever foreign.¹⁴

Further objectifying Muslim women are the predominantly male Muslim spokespersons responding to the polemic, as well as physical attacks on Muslims in America. Notwithstanding that the headscarved woman equally bears the brunt of the government's harsh counterterrorism tactics and the public's distrust of Muslims, her voice and perspectives are notably absent from the discourse.¹⁵ Yet again, she finds herself an object within a grander political conflict between two patriarchies different in form, but similar in substance.¹⁶

With Explosives Nabbed Outside Michigan Mosque, N.Y. POST (Jan. 30, 2011), http://www.nypost.com/p/news/national/man_with_explosives_nabbed_outside_lo2fpMwSdyEq7vCmqeoiP (failure to label him as a terrorist in the mainstream media is further evidence of the racial association with the phrase "homegrown terrorism").

14. See Robert A. Kahn, *The Headscarf As Threat: A Comparison of German and U.S. Legal Discourse*, 40 VAND. J. TRANSNAT'L L. 417, 419 (2007) (finding that Judge Thorpe repeatedly identified the headscarf as the means for accomplishing terrorist acts in her ruling and discussed the idea that an "insincere" terrorist could threaten national security by falsely posing as a religious Muslim at the department of motor vehicles stating that "wearers of full face cloaks would 'pretend to ascribe to religious beliefs in order to carry out activities that would threaten lives.'"); See also Kathleen M. Moore, *Visible through the Veil: The Regulation of Islam in American Law*, 68 Soc. Of Religion, 269 (2007) (While most Muslim women in the United States choose not to wear the *hijab*, the visibility of it as a focal point for controversy influences American perceptions about what constitutes Islam. Such cases as the Florida driver's license case of Sultaana Freeman putatively pit a benighted image of Islam against the necessities of national security, and only serve to entrench already polarized opinions about the nature of Islam. Worse, such a binarism posits gender relations as an essential point of divergence between the Islamic world and secular democracies, and promotes the simplistic view that cultures are set on an unavoidable collision course, a clash of civilizations. Not only is the *hijab* a volatile emblem that can be viewed as a symbol of male oppression or of modesty and religious or cultural identity, it is also intertwined with discussions about the assimilability of Muslims in western societies.)

15. See Eman Hashim, *Increasing Muslim Women's Significance Through Mediatization, Part I*, MUSLIM MEDIA WATCH (Dec. 14, 2010), <http://muslimahmediawatch.org/2010/12/increasing-significance-through-increasing-mediatization-part-i/> ("The dominance of male actors is a trend in such shows, there're [sic] high barriers for female voices in political talk shows." She continues: "The concept of public sphere empowerment is highly connected to the female almost-absent appearance and involvement in talk shows.").

16. See Nadine Strossen, *Leo C. Goodwin Symposium: Tilting the Scales: The Changing Rules of Women in the Law and Legal Practice*, 31 NOVA L. REV. 279, 307 n.178 (2007) (citing

Second, any meaningful discourse surrounding a woman's right to wear a headscarf in America must include the racial subtext of the "Terrorist other" associated with her headscarf.¹⁷ Debates about a woman's legal right to wear a headscarf inadequately analyze the issues through the narrow lens of religious freedom,¹⁸ while, post-9/11, the Muslim headscarf symbolizes more than a mere cloth worn by a religious minority seeking religious accommodation. It is a visible "marker" of her membership in a suspect group.¹⁹ Thus, the label "Muslim" is both a religious and racial identifier. The shift in symbolism of the "veil" from subjugation to terror(ism) causes palpable discrimination against Muslim women. Indeed, much of the discrimination faced by Muslim women occurs in conjunction with accusations of terrorism and disloyalty.

Gone are the days when the worst a Muslim woman could expect were patronizing and condescending allegations about her oppressive religion or wife-beating husband. She now must worry about her and her family's physical safety, her ability to obtain employment, and the government's harsh prosecutorial tactics. Many Muslim women also suffer tangible economic harm because

Neil MacFarquhar, *A Simple Scarf, But Meaning Much More Than Faith*, N.Y. TIMES, Sept. 8, 2006, at A22.

17. See Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575, 1585-86 (2002) (discussing the failure of racial profiling and the notion of "others" in American society).

18. See Keith S. Blair, *Better Disabled Than Devout? Why Title VII Has Failed to Provide Adequate Accommodations Against Workplace Religious Discrimination*, 63 ARK. L. REV. 515, 516 (2010) (discussing a religious discrimination suit filed by the Department of Justice against Essex County, New Jersey on behalf of a county employee prevented from wearing her headscarf at work); See also *President Cites CAIR Hijab Case*, THE SOP (Sept. 3, 2009), <http://thesop.org/story/usa/2009/09/03/president-cites-cair-hijab-case.php> (In his address during last night's White House affair, President Obama said: "One of those values is the freedom to practice your religion a right that is enshrined in the First Amendment of the Constitution. Nashala Hearn, who joins us from Muskogee, Oklahoma, took a stand for that right at an early age. When her school district told her that she couldn't wear the hijab, she protested that it was a part of her religion. The Department of Justice stood behind her, and she won her right to practice her faith. She even traveled to Washington to testify before Congress."). See also, *Anti-Hijab Discrimination: Some Legal Advice From CAIR*, THE MOD. RELIGION (last visited Feb. 20, 2012), <http://www.themodernreligion.com/women/hijab-legal.htm> (framing the issue of discrimination against women who wear the hijab to bring a claim on ground of religious discrimination).

19. See Kathleen M. Moore, *Visible Through the Veil: The Regulation of Islam in American Law*, 68 SOC. OF RELIGION 237 (2007) (discussing the extensive line of litigation around discrimination on the basis of hijab as argued under the First Amendment religious freedom clause). Especially after 9/11, the heightened daily concern over an "Islamic threat" to the United States has made objects associated with Muslim-ness, such as the *hijab*, the displaced locus of debates over the social reality of contemporary America and the global war on terrorism.

they choose to wear the headscarf.²⁰ In a country that promotes the economic independence of women as a means of preserving their legal and political rights, some Muslim women are forced to forfeit their right to practice their faith in their preferred manner in order to preserve their economic independence and all the corresponding benefits. As the costs of wearing the headscarf become prohibitively high, the legal right to wear it rings hollow.

Accordingly, this paper examines the implications of the shift in symbolism of the Muslim headscarf in America from gender subjugation to terror(ism). Specifically, this paper argues that the Muslim woman is a casualty of the post-9/11 "war on terror" in ways different from Muslim men. Not only are her religious freedoms under attack in ways different from men because the headscarf is unique to women, but she is objectified in ideological and corporal domestic conflicts that profoundly affect her life. Perhaps worse than the gender rights debates of the 1990s when Muslim women were talked about rather than talked to, their experiences post-9/11 are neglected by mainstream American feminist organizations or used by male leaders of Muslim organizations to implement a civil rights agenda tailored to the Muslim male experience. Consequently, Muslim women are trapped in the crosshairs of national security conflicts that profoundly affect their lives, receiving little support from advocacy groups focused on defending Muslims, women's rights, or civil liberties post-9/11.

Section I of this paper prefaces the paper's thesis by highlighting Islam's transition from obscurity to notoriety in the American public's psyche as a result of the September 11th attacks. Section II highlights how the recasting of Islam from a bona fide

20. See Jerry Markon, *Justice Department Sues on Behalf of Muslim Teacher, Triggering Debate*, WASH. POST (Mar. 22, 2011), http://www.washingtonpost.com/politics/justice-department-sues-on-behalf-of-muslim-teacher-triggering-debate/2010/07/28/ABfSPtEB_story.html (recounting the story of a Muslim teacher who was placed in a position to choose her job or her religious obligation even with qualified substitutes available for seeking three weeks' vacation in order to make the obligatory pilgrimage to Mecca); See also Javier Lavagnino, *Muslim Police Officer Kimberlie Webb Loses Discrimination Claims Based on Headscarf Ban: Workplace Dresscodes and Discrimination*, FIND L. (April 13, 2009) http://blogs.findlaw.com/law_and_life/2009/04/muslim-police-officer-kimberlie-webb-loses-discrimination-claims-based-on-headscarf-ban-workplace-dr.html (suffering discipline and loss of employment due to the Police Department's refusal to accommodate Ms. Webb's religious practice or wearing the hijab). See also Debra Cassens Weiss, *Suit: Abercrombie & Fitch Told Muslim Job Seeker Scarf Not Part of Look*, ABA J. (Sept. 2, 2010), http://www.abajournal.com/news/article/suit_abcrombie_fitch_told_muslim_job_seeker_scarf_not_part_of_the_look/ (refusing to hire a Muslim job seeker due to her headscarf not being part of the "Abercrombie look").

religion to a political ideology is a necessary precursor for accepting otherwise discriminatory acts as legitimate national security practices. The reclassification is most glaring in the nationwide campaigns opposing mosque constructions because of the public's fixation on mosques as hotbeds of extremism.²¹ Likewise, as Islam becomes defined as an expression of politics instead of religion, demands for religious accommodation by Muslims are deemed stealth Islamic imperialism not protected by law.²² Against this backdrop, Section III examines how the meaning of the Muslim headscarf has transformed from a symbol of female subjugation to a symbol of terror(ism). Through an analysis of employment discrimination, racial violence, political marginalization, and exclusion from the courthouse, this article demonstrates how the transition of the headscarf's meaning has resulted in palpable and widespread discrimination against Muslim women donning it. Yet, discourse on civil liberties in the national security context are woefully lacking due to the conspicuous absence of the Muslim woman's voice.

The internal debates within the Muslim communities about gender rights in Islam are beyond the scope of this article. Nor is the paper about whether the headscarf is effectively a patriarchal tool that subjugates women—the paradigm of the 1990s multiculturalism discourse pertaining to Muslim women. While these issues have not yet been fully resolved, this paper argues that the September 11th attacks eclipsed internal community grievances of sexism, to the detriment of women's rights within the community, with more

21. See, e.g. *Misguided and Counterproductive*, TANENBAUM, (Feb. 11, 2011), <https://www.tanenbaum.org/blog/02/11/%E2%80%9Cmisguided-and-counter-productive%E2%80%9D-news-roundup> (citing Representative Peter King's assertion that "80% of mosques in America are run by extremists, implying that they are hotbeds of extremism. To the contrary, experts have concluded that mosque attendance is a significant factor in the prevention of extremism."); See also Jaja Atenra, *Park 51 Lower Manhattan (Ground Zero) Mosque - A National Security Threat?*, EXAMINER (Sept. 2, 2010), <http://www.examiner.com/foreign-policy-in-san-diego/park-51-lower-manhattan-ground-zero-mosque-a-national-security-threat> (highlighting that opponents of the Park 51 Lower Manhattan Mosque argue that they are opposed to the building of a mosque controlled by "radical" Islamists); See also Blake Farmer, *In Tenn., Mosque Location Isn't the Issue: Religion Is*, Nat'l Pub. Radio (August 19, 2010), <http://www.npr.org/templates/story/story.php?storyId=129302961> (reporting that the building of a new Islamic Center in Murfreesboro, Tennessee has faced opposition from people who fear the center will breed extremism); See also John Del Signore, *Anti-Mosque Protesters In SI Bring Out NYC's Inner Bigot*, GOTHAMIST (June 21, 2010), http://gothamist.com/2010/06/21/anti-mosque_protesters_on_si_bring.php (citing a turnout of 175 locals in opposition to plans to turn a former Catholic convent on Staten Island into a mosque with signs reading, "Mosques breed terrorism, I'm sorry.").

22. See *supra* note 11 and accompanying text.

existential concerns such as the Muslim woman's ability to obtain employment, right to freedom from physical attack in public spaces, and ability to shape civil rights strategies aimed at countering post-9/11 discrimination. Thus, the focus here is on extra-community factors that disparately and uniquely impact Muslim women's individual expressive freedoms, religious freedoms, and gender rights vis-à-vis the American public and government.

By developing a more accurate and in-depth analysis of her circumstances post-9/11, this article aims to include "headscarved Muslim women" in the contemporary intersectionality dialogue to pave the way towards adequately redressing the multiple levels of subordination against this oft-overlooked group of intersectionals.

I. FROM OBSCURITY TO NOTORIETY

In a matter of days, Islam in America went from a relatively obscure religion to the focal point of public anxieties. More than ten years later, the attention has far from waned.²³ The odious acts of nineteen Muslim hijackers thrust the lives of six million²⁴ ordinary American citizens and residents under increased scrutiny by the government and the public.

Otherwise invidious scrutiny is accepted as a neutral and rational national security measure countering a virulent political ideology.²⁵ Consequently, open and brazen Muslim-bashing invites little public shaming or political backlash.²⁶ Indeed, suspecting

23. See *Public Top Stories of the Decade – 9/11 and Katrina*, PEW RES. CENTER. (Dec. 30, 2010), <http://pewresearch.org/pubs/1841/publics-top-news-stories-2001-2010-september-11-katrina> (finding that the 9/11 terrorist attacks drew more public interest than any other story in the past decade with 78% of people following the stories around the attacks closely).

24. *About Islam and American Muslims*, CAIR, <http://www.cair.com/AboutIslam/IslamBasics.aspx> (last visited May 4, 2012).

25. See, e.g., W. Thomas Smith, Jr., *Boykin: Islam's Primary Object is Conquest*, FAM. SECURITY MATTERS (Aug. 6, 2010), http://www.familysecuritymatters.org/publications/id.6966/pub_detail.asp (quoting U.S. Army Lieutenant General (ret.) and former Senior Defense Department official William Boykin stating "We need to remember that Islam is not a religion, but a totalitarian way of life with a religious component.").

26. See, e.g., Mona Shadia & Paloma Esquivel, *Villa Park Councilwoman Deborah Pauly Ignites Controversy With Speech at Islamic Charity Event*, L.A. TIMES (March 24, 2001), <http://articles.latimes.com/2011/mar/24/local/la-me-0324-villa-park-20110324> (quoting councilwoman Pauly at a rally outside of a charitable fundraiser in Yorba Linda, California, where she said, "I know quite a few Marines who will be very happy to help these terrorists to an early meeting in paradise"); Compare David Folkenfilk, *NPR Ends Williams' Contract After Muslim Remarks*, NAT'L PUB. RADIO (Oct. 21, 2010), <http://www.npr.org/templates/story/story.php?storyId=130712737> (discussing Juan Williams's contract termination on the basis of his comment, "when I get on the plane, I got to tell you, if I see people who are in Muslim garb and I think, you know, they are

Muslims en masse of disloyalty has become politically expedient for many ambitious politicians.²⁷

While other racial and ethnic minorities suffer from public bias, most noticeably in the anti-immigrant sentiment directed primarily at Latinos, and in long-standing racial bias against African Americans, animus against Muslims is different in nature and expression. The “race-ed” Muslim lies at the unenviable intersection of preexisting American biases against racial, immigrant, and religious minority groups. Those suspicious of Muslims often contribute to a perceived grand civilizational clash between the inherently violent, oppressive, and blood thirsty Islam of the “East,” and the liberal, pluralistic, and free America of the “West.”²⁸ The prejudice is rooted in an essentialist definition of a Muslim as prone to terrorism and disloyalty, coupled with an ingrained aversion to freedom.²⁹ Hence, otherwise discriminatory acts are perceived as

identifying themselves first and foremost as Muslims, I get worried. I get nervous.”), with Paul Farhi, *NPR Probe of Juan Williams Firing Questions Ellen Weiss’s Management Style*, WASH. POST (Jan. 27, 2010), http://www.washingtonpost.com/lifestyle/style/npr-probe-of-juan-williams-firing-questions-ellen-weiss-management-style/2011/01/27/AB5K63Q_story.html (citing that Vivian Schiller, current CEO of NPR demanded that Ellen Weiss, then CEO of NPR, resign after Weiss fired Juan Williams for his anti-Muslim remarks); See also David Cole, *Are Foreign Nationals Entitled to the Same Constitutional Rights as Citizens?*, 25 T. JEFFERSON L. REV. 367 (2003) (concluding that, in short, “in striking the balance between liberty and security, we have adopted the easy choice of sacrificing the liberties of a vulnerable minority – foreign nationals, and especially Arab and Muslim foreign nations – for the purported security of the majority,” ultimately concluding that we should uphold our freedoms and liberties). A similar public acceptance of anti-Muslim bias tends to take place in Great Britain. See, e.g., Alice Ritchie, *Baroness Warsi Attacks ‘Acceptable’ Islamophobia*, Associated Free Press (Jan. 20, 2011), <http://www.google.com/hostednews/afp/article/ALeqM5g0-UTKcs5FWIIBaQlGkIXRhMORgw?docId=CNG.dd4a72c03d05289270a5b0c91dbe7e44.281> (warning that “discrimination against Muslims in Britain has become socially acceptable and must be tackled.”)

27. Scott Keyes, *Herman Cain Would Require Muslim Appointees to Take a Special Loyalty Oath*, THINK PROGRESS (June 8, 2011), <http://thinkprogress.org/politics/2011/06/08/240415/herman-cain-require-muslim-appointees-loyalty-oath/> (quoting the following conversation on the Glenn Beck show: “BECK: So wait a minute. Are you saying that Muslims have to prove their, that there has to be some loyalty proof? CAIN: Yes, to the Constitution of the United States of America. BECK: Would you do that to a Catholic or would you do that to a Mormon? CAIN: Nope, I wouldn’t. Because there is a greater dangerous part of the Muslim faith than there is in these other religions.”).

28. Compare Samuel P. Huntington, *The Clash of Civilizations?*, 72 FOREIGN AFF. 22 (1993) (hypothesizing a clash between “Western civilizations” and the “Eastern world” focusing on the “Islamic civilization” as a major force with “bloody borders” spiraling towards an inevitable clash), with Marc Lynch, *Why the Clash of Civilizations Won’t Go Away*, FOREIGN POL’Y (July 22, 2010), http://lynch.foreignpolicy.com/posts/2010/07/22/resilient_narratives_about_islam (discussing the resilience of the “clash of civilizations” narrative especially as it played out in Ground Zero context).

29. Liaquat Ali Khan, *The Essentialist Terrorist*, 45 WASHBURN L. J. 47, 52–54 (2006), available at <http://washburnlaw.edu/wlj/45-1/articles/khan-liaquat.pdf>.

rational responses to real threats to the nation's security.³⁰

Notably, a significant number of people and institutions have recognized that discrimination against Muslims is inconsistent with fundamental American values. They have called on the nation to uphold its cherished freedom of religion, equal protection, free speech, and due process principles.³¹ Some media outlets such as National Public Radio have fired commentators whose statements reinforced the racialization of Muslims as the "Terrorist other" – though they consequently faced public censure for doing so.³² Similarly, four out of five local newspapers in Oklahoma opposed the constitutional amendment denying Muslims religious accommodations in their personal contractual affairs.³³ And

30. See Ronald Sievert, *A New Historical Perspective on National Security Law Policies During the Bush Administration and Their Implications for the Future: Constitutional in Conception, Problematic in Implementation*, 7 RUTGERS J.L. & PUB. POL'Y 35, 99 (2009) (discussing the various government actions taken during the Bush administration that led to widespread perception that the U.S. government put national security concerns ahead of civil rights); Muqtedar Khan, *American Response A Threat to Freedom*, GLOCALEYE (Sept. 20, 2011), <http://www.glocaleye.org/threatfreedom.htm> (concluding that "American leadership ha[d] resolved the tensions between security and freedom by privileging the former over the latter. Without a debate over how far we can jeopardize our freedom in pursuit of security, we seem to be inclined towards doing 'whatever it takes.'").

31. See, e.g., Irene Khan, Sec'y Gen., *We Must Stand Up for Human Rights*, AMNESTY INT'L (Sept. 26, 2001), <http://www.amnesty.org/en/library/asset/ACT30/023/2001/en/0535aaf9-d8e0-11dd-ad8c-f3d4445c118e/act300232001en.html> (highlighting the wave of racist attacks directed against people because of their appearance or religion while calling upon the government to "take a strong action against racist attacks directed at the Muslim, Asian and Middle Eastern populations in their countries, whether they are citizens or foreigners." She ends with the reminder that, "You cannot claim to speak in the name of freedom if all those on your territory do not feel equally protected."); See also Laura Murphy, *White Man's Pass: the Heightened Danger of racial profiling in the Post 9/11 World*, in THE PARADOX OF LOYALTY: AN AFRICAN AMERICAN RESPONSE TO THE WAR ON TERRORISM 175 (2002) (essays offering the Black perspective on the attacks of 9/11 and the American "War on Terror"); Anita L. Allen, *Undressing Difference: The Hijab in the West*, 23 BERKELEY J. GENDER L. & JUST. 208, 211-13 (2008) (noting the American justice system's tendency to defend religious expression despite its contrary willingness to restrict some practices "loathed by and threatening to the majority"); Nadine Strossen, *The Real ACLU*, 2 YALE J.L. & FEMINISM 161, 161-87 (1989); Los Angeles City Council Resolution, 10-002 S103, *Islamaphobia and Repudiate Random Acts of Violence Against Muslim Americans*, Dec. 15, 2010 (adopting a city resolution opposing Islamaphobia and repudiating random acts of violence against Muslim Americans), available at http://clkrep.lacity.org/online/docs/2010/10-0002-S103_ca_12-15-10.pdf.

32. See Folkenfilk, *supra* note 26.

33. See Oklahoma "Sharia Law Amendment", *State Question 755* (2010), *Media Endorsements*, BALLOTEDIA, http://ballotpedia.org/wiki/index.php/Oklahoma_%22Sharia_Law_Amendment%22,_State_Question_755_%282010%29 (last visited May, 4 2012); See also MARTHA F. DAVIS & JOHANA KALB, AM. CONSTITUTION SOC'Y FOR LAW AND POLICY OKLAHOMA STATE QUESTION 755 AND AN ANALYSIS OF ANTI-INTERNATIONAL LAW INITIATIVES 4 (2011) available at <http://www.acslaw.org/files/>

Muslims have benefited from these individuals and institutions'³⁴ laudable, albeit relatively muted, defenses. But within an apparent culture war about the utility of American constitutional values before a citizenry fixated on national security, the Muslim (woman and man) is relegated to the lowest rung of the racial and religion hierarchy.³⁵

II. RECASTING ISLAM AS A SUSPECT POLITICAL IDEOLOGY

The September 11th terrorist attacks recast Islam as a hostile political ideology, as opposed to a bona fide religion.³⁶ As a result, what would otherwise qualify as "religiously driven racial discrimination" became legitimate safeguards to protect the homeland—a homeland that Muslims find increasingly antagonistic to their presence, despite their status as United States citizens.³⁷

Anything overtly Muslim becomes an indicia of terrorism.³⁸ To some, this assertion is an exaggeration calling into question the

Davis%20and%20Kalb_Anti-International%20Law.pdf (detailing the legal and political developments around the Oklahoma "Sharia Law" Amendment and the negative media coverage supporting its passage as an efforts to "prevent the takeover of Oklahoma by Islamic extremists who want to undo American from the inside out.").

34. Organizations such as the Open Society Institute, American Civil Liberties Union, Center for Constitutional Rights and the National Lawyers Guild have all spoken out against the post-9/11 backlash against the Arab/South-Asian/Muslim community and have served as legal defense for various criminal charges as well as having asserted their civil rights in other arenas. See, e.g., *Protecting the Religious Freedom of Muslims*, ACLU, <http://www.aclu.org/protecting-religious-freedom-muslims> (last visited May. 4, 2012).

35. See Natsu Taylor Saito, *Alien and Non-Alien Alike: Citizenship, "Foreignness," and Racial Hierarchy in American Law*, 76 OR. L. REV. 261 (1997) (discussing the theory of racial hierarchy as it relates to immigrants). See also Lisa C. Ikemoto, *The Racialization of Genomic Knowledge*, 27 SETON HALL L. REV. 937, 943-50 (1997) (discussing racial identity and the Genome Project).

36. The longevity of these suspicions is due in large part to our continued military engagement in Iraq and Afghanistan where Muslim combatants physically oppose our presence.

37. See Bill Ong Hing, *Vigilante Racism: The De-Americanization of Immigrant America*, 7 MICH. J. RACE & L. 441, 442-44 (2002) (outlining the ostracizing of Muslims, Arabs and South-Asians from the American community); see also Letter from Wade Henderson, President, The Leadership Conference to Peter King, Chairman, Comm. on Homeland Sec. (Feb. 4, 2011), available at <http://www.civilrights.org/advocacy/letters/2011/king-hearing-letter-2-4-11.pdf> (raising concern with Rep. Peter King's implication "that American Muslims are not American.").

38. See Muneer I. Ahmad, *A Rage Shared by Law: Post-September 11 Racial Violence as Crimes of Passion*, 92 CAL. L. REV. 1259, 1278 (2004) ("The logic of post-September 11 profiling turns on an equation of being Muslim with being a terrorist."). See also Volpp, *supra* note 17, at 1582 ("[T]he American public is being instructed that looking 'Middle Eastern, Arab, or Muslim' equals 'potential terrorist.'").

speaker's impartiality. To others, this conclusion is becoming an alarmingly accurate appraisal of current events nationwide. Take for instance the furor in the fall of 2010 arising out of the approved plans to build a mosque two blocks from Ground Zero. What should have been a fringe right-wing effort to stop a lawful project exposed the entrenched animosity and distrust held against Muslims by a significant number of Americans.³⁹ Indeed, nine years after September 11, 2001, twenty-five percent of Americans believe that Muslim Americans are not patriotic.⁴⁰ Similarly, sixty-eight percent of Americans opposed the building of the mosque primarily because they associated a mosque with the terrorists of September 11th.⁴¹ While some commentators and political leaders reminded the public of America's cherished principle of freedom of religion, many doubted its applicability to the "Ground Zero Mosque."

In the midst of a suspicious public, Islam's perceived status as a hostile political ideology as opposed to a religion exempts Muslims' religious practices from constitutional or statutory protections.⁴²

A. "HOMEGROWN TERRORISM" AS CODE FOR MUSLIM TERRORISTS

The recasting of Islam as a hostile political ideology is most glaring in the debate about "homegrown terrorism," a politically charged term containing a racial subtext of "Muslim domestic terrorists." As law enforcement struggles to prevent the next attack on U.S. soil, it adopts essentialist definitions of Muslims as inherently prone to terrorism.⁴³ In the minds of law enforcement

39. *Muslim Community Center in Lower Manhattan (Park51)*, N.Y. TIMES, <http://topics.nytimes.com/top/reference/timestopics/organizations/p/park51/index.html> (last visited May 4, 2012) (detailing the spiraling of the Ground Zero mosque controversy to the point where "two-thirds of New York City residents wanted the project to be relocated to a less controversial site farther away from ground zero in Lower Manhattan").

40. *TIME Poll Results: Americans' Views on the Campaign, Religion and the Mosque Controversy*, TIME (Aug. 18, 2010) <http://www.time.com/time/politics/article/0,8599,2011680-2,00.html>.

41. *CNN Opinion Research Poll*, CNN (Aug. 11, 2010), <http://i2.cdn.turner.com/cnn/2010/images/08/11/rell1a.pdf>

42. See Eric Eckholm, *General Withdraws From West Point Talk*, N.Y. TIMES (Jan. 30, 2012), http://www.nytimes.com/2012/01/31/us/lt-gen-william-boykin-known-for-anti-muslim-remarks-cancels-west-point-talk.html?_r=1 (detailing the backlash caused when the United States Military Academy invited Lt. Gen. William G. Boykin to speak at the West Point Prayer Breakfast. Numerous groups protested his invitation because of Boykin's outspoken belief that Islam is a political ideology undeserving constitutional protection. Boykin subsequently withdrew from the engagement).

43. N.Y. POLICE DEP'T INTELLIGENCE DIV., N.Y. POLICE DEP'T, *RADICALIZATION IN THE WEST: THE HOMEGROWN THREAT* (2007) (A 90-page report hailed as the first to

(and the public), mundane religious practices are leading indicators of terrorist inclinations.

A highly influential report on terrorism by the New York City Police Department ("NYPD") tellingly states, "In the example of the homegrown threat, local residents or citizens gradually adopt an extremist religious/political ideology hostile to the West."⁴⁴ While many, if not all, terrorists who are Muslim are motivated by political objectives, law enforcement's response effectively recasts the religion of Islam as political, thereby legitimizing harsh investigative and prosecutorial techniques unconstrained by policies against profiling.⁴⁵

Drawing broad and faulty conclusions based on a mere five case studies, the NYPD report encourages policing activity based on religious conduct engaged in by millions of Muslims. For instance, "typical signatures" of homegrown terrorism include "giving up cigarettes, gambling and urban hip-hop gangster cloths," "wearing traditional Islamic clothing, growing a beard," and "becoming involved in social activism and community issues."⁴⁶ The doctrinally mandated prayer five times a day that millions of Muslims complete is also evidence of radicalization towards

measure "homegrown" terror in the United States, concluding that young Muslim men aged 15-35 are particularly vulnerable to "radicalization").

44. *Id.* at 16.

45. See U.S. DEPT J., CIV. RIGHTS DIV., GUIDANCE REGARDING THE USE OF RACE BY FEDERAL LAW ENFORCEMENT AGENCIES (2003) (allowing officers to consider race and ethnicity "only to the extent that there is trustworthy information, relevant to the locality or time frame, that links person of a particular race or ethnicity to an identified criminal incident, scheme, or organization" and in the context of National Security and Border Integrity officers may consider race to the extent permitted by the Constitution and laws of the United States); See also Memorandum from Tom Ridge, Secretary, U.S. Dep't Homeland Security, The Department of Homeland Security's Commitment to Race Neutrality in Law Enforcement Activities (June 1, 2004) (prohibiting the reliance on race or ethnicity unless a compelling governmental interest is present and when information is specific to particular suspects or incidents, or ongoing criminal activities, schemes or enterprises). National security is a compelling governmental interest, as stated within these directives themselves; thus, creating no real ban on racial profiling. At present, there is no law prohibiting the use of racial profiling in law enforcement activities; however, Congressmen John Conyers, Jr. and Jerrold Nadler introduced, End Racial Profiling Act of 2010, H.R. 5748, 111th Cong. (2010) to eliminate law enforcement practices of racial profiling; See also Sonia Chopra, Anti-Arab and Anti-Muslim Sentiment Amongst Potential Jurors: Underlying Psychological Constructs and Tools for Identification, address before the American Society of Trial Consultants Annual Conference (June 2008), available at <http://www.njp.com/articles/AntiArabSentiment.pdf> (noting there "was significantly greater prejudices against Arabs than Blacks" and that "those who had heavy media exposure were significantly more prejudiced overall as compared to those in the light exposure category.").

46. N.Y. POLICE DEP'T, *supra* note 43, at 31.

terrorism.⁴⁷ In effect, a profile of the archetypes of domestic terrorists is nothing short of designating converts to Islam, orthodox Muslims, and imams as suspect. The NYPD report wrongfully correlates religiosity with violence, thereby reinforcing the false stereotype of Muslims as terrorists.

Consistent with this approach, the NYPD also includes a film in its new cadet training that, in the words of one journalist who viewed the film, is “72 [sic] minutes of gruesome footage of bombing carnage, frenzied crowds, burning American flags, flaming churches, and seething mullahs. All of this is sandwiched between a collection of somber talking heads informing us that, while we were sleeping, the international Islamist Jihad that wrought these horrors has set up shop here and is quietly going about its deadly business. This is the final drive in a 1,400-year-old bid for Muslim world domination, we’re informed.”⁴⁸ Such films reinforce the idea that Islam is a political ideology exempt from the normative and legal protection religious belief and practice is due in law enforcement action. Because the NYPD is viewed as a national leader in local counterterrorism efforts, their flawed policies and practices have a domino effect nationwide.⁴⁹

B. ANTI-BLACK BIAS THINLY VEILED IN ANTI-MUSLIM SLURS

Shortly before the Ground Zero controversy, a Pew Poll found that two years after his election, one in five Americans believed President Obama was a closeted Muslim.⁵⁰ These same allegations, intended as derogatory racial slurs, were hurled against him in the 2008 presidential elections.⁵¹

47. *Id.* at 39, 77.

48. Daniel Tencer, *NYPD Officers Shown Muslim-Bashing Film in Counter-Terror Training*, THE RAW STORY (Jan. 19, 2011), <http://www.rawstory.com/rs/2011/01/nypd-muslim-bashing-terror-training/>.

49. See Richard A. Falkenrath, Prepared Statement Before the Comm. on Homeland Security and Governmental Affairs, United States Senate (Sept. 12, 2006), available at http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=1b242c82-3428-41f1-8b9a-0183defa44fb (touting the New York Police Department’s outreach to public safety agencies in other states and Canada).

50. See *Editorial, THIS JUST IN...*, N.Y. TIMES, Feb. 20, 2011, at WK9 (reporting that during a recent focus group conducted by Frank Luntz, approximately half of a group of Iowa Republicans said they believed that President Obama is a Muslim); See also *Growing Number of Americans Say Obama is a Muslim*, PEW RES. CENTER (Aug. 19, 2010), <http://pewresearch.org/pubs/1701/poll-obama-muslim-christian-church-out-of-politics-political-leaders-religious> (finding that nearly one-in-five Americans (eighteen percent) say Obama is a Muslim).

51. See Michael Conlon, *Smears Against Obama Energized Muslim Voters: Experts*,

The accusations say less about the veracity of Obama's religious beliefs and more about the affiliation with Islam as a political liability. Calling the President a Muslim is a pejorative label aimed at a President whose drop in the polls is due more to an economic recession and controversial health care reform — both of which have nothing to do with Muslims per se. Yet, tellingly, some voice their displeasure with his governance through derogatory accusations of Obama being a Muslim. This speaks volumes about the positioning of the "Muslim" as the most distrusted minority group in America despite repeated efforts by Muslim communities to prove their fidelity to the nation.⁵²

When two Muslim American women donning headscarves sought to sit in a special section behind the podium during one of Barack Obama's presidential campaign speeches, a campaign volunteer quickly ushered them away from the cameras.⁵³ The campaign volunteer admitted, "Because of the political climate and what's going on in the world and what's going on with Muslim Americans, it's not good for [the Muslim woman] to be seen on TV or associated with Obama."⁵⁴

Because the headscarf symbolized the terrorism associated with

REUTERS (Nov. 6, 2008), <http://www.reuters.com/article/2008/11/06/us-usa-election-muslims-idUSTRE4A57ZC20081106> (discussing the impact of the widespread campaign to link Obama to Islamic extremists); See also Nicholas D. Kristof, Op-Ed., *Obama and the Bigots*, N.Y. TIMES (March 9, 2008), <http://www.nytimes.com/2008/03/09/opinion/09kristof.html> (stating that the ugliest prejudices in the 2008 presidential campaign were campaigns alleging that "Mr. Obama is a secret Muslim planning to impose Islamic law on the country.").

52. See *Editorial, Proving Patriotism*, DAILY FREEMAN (March 9, 2011), <http://www.dailyfreeman.com/articles/2011/03/09/opinion/doc4d7548b408419453082523.txt?viewmode=fullstory>; See also David A. Fahrenthold & Michelle Boorstein, *Rep. Peter King's Muslim Hearing: Plenty of Drama, Less Substance*, WASH. POST (March 10, 2011), http://www.washingtonpost.com/politics/peter-king-tempers-rhetoric-on-muslims-as-congressional-hearing-gets-under-way/2011/03/10/ABhV3BQ_story.html (discussing Rep. Keith Ellison, one of two Muslims in the House, telling a "story about a Muslim paramedic who died responding to the terrorist attacks of Sept. 11, 2001" in his testimony at Rep. King's hearing, characterizing the paramedic as a "fellow American who gave his life for other Americans"). Statements from Muslim-Americans, leading Muslim-American organizations and Muslim-American leaders came pouring in immediately after the September 11 attacks denouncing the actions and expressing grief. See *Statements from Leading American Muslim Organizations*, COLGATE U., <http://groups.colgate.edu/aarislam/response.htm#Statements%20from%20Leading%20American%20Muslim%20Organizations> (last visited May 4, 2012) (extensively documenting responses from within the Muslim-American community in response to the September 11, 2001, attacks).

53. Deepa Iyer & Priya Murthy, *Courting the South Asian Vote: One Step Forward, Two Steps Back*, 24 ST. JOHN'S J. LEGAL COMMENT. 281, 294 (2009).

54. *Id.*

all things Muslim, the mere sight of it next to candidate Obama could have doomed his chances at the presidency. While Obama privately apologized to the women, he tellingly did not address the underlying problem by taking photographs with visibly Muslim individuals during his campaign. Nor has he visited a mosque during his campaign or Presidency, although he has visited numerous churches and synagogues. No doubt, anti-Muslim rhetoric lunged at Obama is often thinly veiled anti-Black racism. But, in the racial (re)positioning of racial minorities vis-à-vis the majority, the rejection of the Muslim women by a Black candidate confirms that Muslims are sufficiently suspect to have secured a place at the bottom of the racial hierarchy.⁵⁵

This phenomenon is partially attributable to temporal factors such as America's military engagement in Muslim-majority Iraq and Afghanistan. As was the case in past wars, persons in America that share the same national origin as the countries America is fighting are viewed with suspicion and disdain.⁵⁶ They are perceived as proxies of our nation's enemies. This factor alone, however, does not fully explain the dynamics behind the increasingly entrenched racialization of disparate ethnic and racial groups as "Muslim terrorists." Over the past ten years, the religion of Islam has been positioned as an enemy of the state at odds with America's fundamental values.⁵⁷ Moving beyond arguments based on events in Afghanistan or Iraq, discriminatory acts against Muslims are now rooted in an irreversible clash of civilizations theory between Islam and modern, pluralistic democratic societies.⁵⁸

55. See Saito, *supra* note 35, at 312 (discussing racial stratification).

56. See Peter Siggins, Cal. Chief Deputy Att'y Gen., Address at the Markkula Center for Applied Ethics Forum (March 12, 2002) (transcript available at <http://www.scu.edu/ethics/publications/ethicalperspectives/profiling.html>) (stating that after the September 11 attacks, law enforcement investigations concluded that this crime was committed by a group of foreign nationals of middle eastern descent and that "immediately law enforcement officials focused special investigative efforts upon foreign nationals from middle eastern countries, often in disregard of any other factors warranting suspicion.").

57. See Robert P. Jones, Ph.D. & Daniel Cox, *Old Alignments, Emerging Fault Lines: Religion in the 2010 Election and Beyond: Findings from the 2010 Post Election American Values Survey*, PUB. REL. RES. INST. (Nov. 2010), <http://www.publicreligion.org/objects/uploads/fck/file/AVS%202010%20Post-election%20report%20FINAL.pdf> (reporting that approximately two thirds of Republicans (67%) and those identifying with the Tea Party movement (66%) say the values of Islam are at odds with American values. Less than one third of Democrats (30%) and only about 4 in 10 (43%) of Independents agree.).

58. See Volpp, *supra* note 17, at 1586 ("Edward Said describes Orientalism as a master discourse of European civilization that constructs and polarizes the East and the West."), and *id.* at 1587 n.42 ("Silvio Berlusconi boasted of the 'supremacy' and 'superiority' of Western civilization . . . and claimed links between Islamic terrorism and

Shortly after the September 11th attacks, when the nation was panic-stricken and shocked, commentators concluded that the severe backlash against Muslims, Arabs, and South Asians was merely a rational and temporary response to a traumatic national event.⁵⁹ Ten years later, however, the resentment and deep distrust of over four million people has not abated.⁶⁰ Indeed, government policies and practices have institutionalized and normalized the manifestations of entrenched stereotypes as part of the public's discourse about Muslims.⁶¹

As demonstrated in the following section, opposition to the building of Muslim community centers nationwide, repeated mosque vandalizing, political scapegoating of Muslims in the 2008 and 2010 election cycle, rising employment discrimination, and the acceptance of anti-Muslim sentiment in major media outlets⁶² are

the antiglobalization movement as the enemies of Western civilization."); See also Andrew Ward, *Swedish Leader Urges Tolerance After Failed Terror Attack*, WASH. POST (Dec. 12, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/12/AR2010121202901.html> (suspected Swedish suicide bomber killed in car bomb explosion on street filled with Christmas shoppers); Michael Brick, *Man Crashes Plane Into Texas I.R.S. Office*, N.Y. TIMES, Feb. 19, 2010, at A14, available at <http://www.nytimes.com/2010/02/19/us/19crash.html> (highlighting that in place of the typical portrait of a terrorist driven by ideology, Andrew Joseph Stack III was described as generally easygoing, a talented amateur musician with marital troubles and his act of smashing an aircraft into an IRS building in Austin, Texas, a maddening grudge against the tax authorities).

59. See Michelle Malkin, *Racial Profiling: A Matter of Survival*, USA TODAY (Aug. 16, 2004), http://www.usatoday.com/news/opinion/editorials/2004-08-16-racial-pro_filing_x.htm ("[W]hen our national security is on the line, 'racial profiling' — or more precisely, threat profiling based on race, religion or nationality — is justified" and "targeted intelligence-gathering at mosques and in local Muslim communities, for example, makes perfect sense when we are at war with Islamic extremists").

60. See, e.g., Los Angeles City Council Resolution, *supra* note 31 (documenting "a marked nationwide increase in acts of violence, discrimination, and hostility directed at Muslim Americans on the basis of their religious identity including here in Southern California" and that "this rise in anti-Muslim sentiment, commonly called Islamaphobia, has contributed to opposition to the lawful construction and expansion of religious centers across the United States, including in Tennessee, Wisconsin, Illinois, Connecticut, and California").

61. See Siggins, *supra* note 56; See also Am. Civil Liberties Union, *Sanctioned Bias: Racial Profiling Since 9/11* (2004), available at <http://www.aclu.org/FilesPDFs/racial%20profiling%20report.pdf> (reporting that, "since the 9/11 terrorist attacks, it has been the official policy of the United States government to stop, interrogate and detain individuals without criminal charge — often for long periods of time on the basis of their national origin, ethnicity and religion" and that "the very inclusion of a national security exception in the guidelines is an admission by the Department of Justice that it relies upon racial and ethnic profiling in its domestic counterterrorism efforts").

62. Alexander Zaitchuk, *Glenn Bleck rises again*, SALON (Sep. 23, 2009, 06:22 ET), http://www.salon.com/news/feature/2009/09/23/glenn_beck_three; See Sheryll Cashin, *To Be Muslim or "Muslim-Looking" In America: A Comparative Exploration of Racial and*

arguably more harmful than random hate crimes or a temporary surge in discrimination immediately following 9/11.

C. MOSQUES AS BASTIONS OF POLITICAL EXTREMISM

After 9/11, mosques were no longer perceived as merely houses of worship, but rather as hotbeds of extremism.⁶³ As a result, mosques are fair game for infiltration by law enforcement and attacked by the public as undeserving of religious protections.⁶⁴ A telling case involved a new mosque construction in Murfreesboro, Tennessee.

In September 2010, private citizens sued the Rutherford county government for issuing permits for a local mosque expansion. The claimants boldly asserted that Islam is not a religion entitled to First Amendment protection because it is a political system or ideology.⁶⁵ They alleged a stealth “Shariahization” of America implemented through the construction of mosques.⁶⁶ Without a single citation, plaintiffs asserted, “Sharia law⁶⁷ is more severe, devastating and destructive not only to Rutherford County but the entire United

Religious Prejudice in the 21st Century, 2 DUKE F. FOR L. & SOC. CHANGE 125, 126–130 (2010) (citing evidence that bias against Muslims is more likely to be expressed explicitly and accepted without public outrage in contrast to bias expressed against other minority groups).

63. See, e.g., Nonie Darwish, *Why I left Islam*, YOUTUBE (Jun. 29, 2008), <http://www.youtube.com/watch?v=Y7zGcYaNKTl&feature=related> (interview with Nonie Darwish where a commentator on a Christian channel calmly concludes that mosques are a breeding ground for terrorists).

64. See William G. Boykin, *Sharia Law or The Constitution? America Must Choose*, 3 CENTENNIAL REV. 1, Feb. 2011, at 1 (laying out detailed reasons why Islam is a political ideology not deserving First Amendment protection).

65. See Brief of the United States as Amicus Curiae at 2, *Estes v. Rutherford County*, No. 10cv-1443 (2010) (citing Pl. [s] Trial Tr. Vol. 3, 77, Sept. 29, 2010, “Q. Can you show me where the United States of America’s government has recognized Islam as a religion? . . . Q. I’m telling you it needs to be decided.”), available at http://www.muslimadvocates.org/USDOJ_MurfreesboroBrief.pdf; See also Am. Compl. at 8, Sept. 22, 2010 (alleging that the County failed to investigate whether the ICM intended to promote the “political practice of ‘Jihad’” or “establish a caliphate”).

66. See Donna Leinwand, *More States Enter Debate on Sharia Law*, USA TODAY (Dec. 9, 2010), http://www.usatoday.com/news/nation/2010-12-09-shariaban09_ST_N.htm (citing seven states other than that of Oklahoma as states having proposed legislation that, as stated by Newt Gingrich, “clearly and unequivocally states that we’re not going to tolerate any imported law.”).

67. See Justin Elliott, *What Sharia Law Actually Means*, SALON, http://www.salon.com/news/politics/war_room/2011/02/26/sharia_the_real_story/index.html (last visited May 4, 2012) (discussing the lack of understanding about what Sharia Law means along with how it is used in American courts and that all of these proposed legislations appear to be driven by an agenda infused with hate, ignorance and Islamophobia intent on dehumanizing an entire religious community).

States because the purpose of Sharia law is to replace all other law with Sharia, including but not limited to the United States Constitution.”⁶⁸ They further stated, “Sharia Law advocates sexual abuse of children, beating and physical abuse of women, death edicts, honor killings, killing of homosexuals, outright lies to Kafirs, Constitutional free zones, and total world dominion[.]”⁶⁹

The allegations were sufficiently troubling and baseless to cause the United States Department of Justice Civil Rights Division to file an Amicus brief arguing that Islam is in fact a religion and a mosque is entitled to treatment as a place of religious assembly protected by the Religious Land Use and Inmate Protection Act (“RLUIPA”) and the First Amendment.⁷⁰ A few weeks earlier in September 2010, the Civil Rights Division issued its annual RLUIPA report where it found that of the eighteen complaints filed by Muslims since 9/11, eight were filed from May to September 2010. “This fact is a sober reminder that, even in the 21st century, challenges to true religious liberty remain,” stated the report.⁷¹

Mosques across the United States face threats of attack and vandalism. In New York,⁷² New Jersey,⁷³ Tennessee,⁷⁴ Wisconsin,⁷⁵

68. Pl. [’s] Br. ¶ 20

69. Pl. [’s] Resp. to Def. [’s] Mot. to Require Pl. to Post Bond and Mot. for Relief, Case No. 10CV-1443 (2010).

70. Press Release, Off. Pub. Aff., Dep’t. of Just., Justice Department Files Brief in Support of Continued Construction of Murfreesboro, Tenn. Mosque (Oct. 18, 2010), <http://www.justice.gov/opa/pr/2010/October/10-crt-1162.html>.

71. David Morgan, *U.S. Monitoring 11 Muslim Sites for Discrimination*, Reuters, (Sept. 22, 2010), available at <http://in.reuters.com/article/2010/09/22/idINIndia-51655420100922>.

72. Goodwin, *New York Mosque Vandalized with Racial Slur*, YAHOO NEWS (Sep. 9, 2010), <http://news.yahoo.com/blogs/upshot/york-mosque-vandalized-racial-slur.html> (reporting vandalism of a mosque in Hudson, N.Y. on Sept. 8, 2010 with “F-cking Sand Niggers” spray-painted on the side of the building).

73. See The Muslim News, *Three teens charged in vandalizing of Ocean County mosque* (Apr. 4, 2004), <http://www.muslimnews.co.uk/news/news.php?article=7251> (detailing vandalism at a mosque site under construction in Toms River, NJ, defaced with Nazi graffiti); See also *Beheadings Fuel Backlash Against Muslims*, NewsMax (June 27, 2004), <http://archive.newsmax.com/archives/articles/2004/6/27/84123.shtml> (reporting an incident of the throwing of beer and liquor bottles at a Union City, New Jersey, mosque while congregants were inside mourning an Arab-American teenager who had been killed in a car crash).

74. *Arson Reported at Tennessee Mosque Construction Site*, USA TODAY (Aug. 28, 2010), http://www.usatoday.com/news/religion/2010-08-29-arson28_ST_N.htm (covering the attack on the much disputed construction of an Islamic center and mosque in Murfreesboro, Tennessee, leading to the pouring of flammable liquid on four pieces of construction equipment in August, 2010, at the site of construction).

75. Barbara Abel and Julia Lieblich, *Rural Controversy: A Mosque in Sheboygan*, TIME (Aug. 19, 2010), <http://www.time.com/time/nation/article/0,8599,2011842,00.html?xid=rss-mostpopularemail> (documenting the town of Wilson’s strong and racist opposition to the conversion of an abandoned health store into a mosque).

Connecticut,⁷⁶ Kentucky,⁷⁷ California,⁷⁸ Oklahoma, and other states where concerted anti-Muslim and anti-mosque campaigns have formed,⁷⁹ mosques were flooded with hate emails and threats, including a video of a man destroying a mosque.⁸⁰ On April 10, 2011, the Islamic Center of Springfield received a threatening letter stating that Muslims “stain the earth” and vowing that, “Islam will not survive.”⁸¹ The letter ended with a drawing of a ram’s head with “Death to Islam!” printed below it.⁸² This is the second such incident at this center where earlier this year the walls of the mosque were vandalized with graffiti stating, “You bash us in Pakistan, we bash you here.”⁸³ The following week, on April 20, 2011, there was an attack on the Islamic Center of Cartersville in Georgia shattering its doors and windows with rocks, one of which was reportedly painted with “Muslim murderers.”⁸⁴

76. *Hamden Mosque Vandalized*, WFSB EYEWITNESS NEWS (Feb. 25, 2011) <http://www.wfsb.com/story/14807873/hamden-mosque-vandalized-2-25-2011> (reporting on the defacing of a Hamden mosque spray-painted with profanity and graffiti, one of four instances of vandalism in the past two years).

77. *Democracy Now: Islamic Center Vandalized in California: Kentucky Board Rejects Mosque* (Aug. 26, 2010), available at http://www.democracynow.org/2010/8/26/headlines/islamic_center_vandalized_in_california_kentucky_board_rejects_mosque (reporting on the rejection of a building permit for a new mosque in the town of Mayfield, Kentucky, with cheers after the decision was announced to a packed hearing).

78. *See id.* (documenting a report of vandalism at Masjid Madera center in Madera, CA with signs reading, “No Temple for the God of Terrorism at Ground Zero” and “Wake up America, the Enemy is Here.”).

79. *See Controversies Over Mosques and Islamic Centers Across the U.S.*, PEW RES. CENTER’S (Aug. 30, 2011), <http://features.pewforum.org/muslim/assets/mosque-map-all-text-8-30.pdf> (documenting thirty-seven known cases); Kara L. Richardson, *Bridgewater Looking for Bigger Venue to Fit Crowd to Hear Mosque Application*, MY CENTRAL JERSEY (Jan. 25, 2011), <http://www.mycentraljersey.com/article/20110125/NEWS/101250355/Bridgewater-looking-bigger-venue-fit-crowd-hear-mosque-application> (reporting that 400 people arrived at the Planning Board meeting regarding the application to convert an a closed Redwood Inn into a mosque where residents find that the mosque represents “a coming in and taking over an entire community by the Islamic World.”); *See also* Leinwand, *supra*, note 66.

80. *See* James C. McKinley, Jr., *Oklahoma Surprise: Islam as an Election Issue*, N.Y. TIMES, Nov. 15, 2010, at A12 (highlighting backlash against Oklahoma City mosques in connection with the anti-Shariah constitutional amendment in Oklahoma).

81. CAIR: *Mo. Mosque Targeted With ‘Terrorist Threat,’ Desecrated Quran*, PR NEWSWIRE (Apr. 14, 2011), <http://www.prnewswire.com/news-releases/cair-mo-mosque-targeted-with-terrorist-threat-desecrated-qurans-119850384.html>.

82. Jess Rollins, *Islamic Center Reports Threat, Finds Charred Qur’an*, USA TODAY, (Apr. 19, 2011, 8:15 AAM), <http://www.usatoday.com/news/nation/2011-04-14-islam-threat-quran-burning.htm>.

83. *Missouri Mosque Officials Say Vandalism was Hate Crime*, MISSOURIAN (Jan. 13, 2011, 4:43 PM), <http://www.columbiamissourian.com/stories/2011/01/13/missouri-mosque-officials-say-vandalism-was-hate-crime/>.

84. CAIR: *Georgia Mosque Targeted by Hate Vandalism*, REUTERS, (Apr. 19, 2011, 12:32

These events illustrate how recasting Islam as a political ideology and Muslims as hostile political actors reinforces public perceptions that otherwise discriminatory acts are morally sanctioned as defending the nation.⁸⁵ Attacking a mosque, unlike a church or synagogue, is not viewed as offensive to America's cherished religious freedom principles.

New mosque construction, in particular, is believed by many Americans to signal an insidious "Shariahization" of America wherein a fifth-column minority is secretly planning to take over the country from the inside.⁸⁶ National conservative commentators, such as Newt Gingrich, often legitimize these sentiments by proclaiming that practicing Muslims are presumptively engaged in a stealth jihad "to replace Western civilization with a radical imposition of Sharia."⁸⁷

PM), <http://www.reuters.com/article/2011/04/19/idUS189624+19-Apr-2011+PRN20110419>.

85. See Greg Bates, *Back with a Vengeance: The Return of Racial Profiling*, COUNTERPUNCH (Aug. 20, 2010), <http://www.counterpunch.org/bates08202004.html> (summarizing a statement by Rudy Maxa, the travel expert in residence on the public radio program Marketplace from Aug. 11, 2004, that, "No subject is more controversial right now than racial or ethnic profiling. Paying special attention to passengers of Middle East descent can get an airline in trouble. Pull more than two such passengers aside per flight for special scrutiny, and an airline risks a lawsuit. But captured al Qaeda documents show that Arab men are probing for weaknesses in U.S. security. So, is secondary profiling at airports a civil rights violation? I say no. Not if done efficiently and with respect and courtesy. Political correctness mustn't get in the way of security"); See TheBoksMan, *Dan Fanelli Ad*, YOUTUBE (May 6, 2010), <http://www.youtube.com/watch?v=umTITWQuXwY> (documenting an ad campaign by Dan Fanelli, a Republican nomination to challenge Rep. Alan Grayson in Florida, speaking against "political correctness" and explicitly supporting racial profiling).

86. See *Forum on Religion & Public Life, Controversies Over Mosques and Islamic Centers Across the U.S.*, PEW RES. CENTER (Sept. 24, 2010), available at <http://features.pewforum.org/muslim/assets/mosque-map-all-text-10-5.pdf>; Scott Broden, *Mosque Protestors Show Up on Public Square*, DAILY NEWS J. (Mar. 19, 2011), <http://pqasb.pqarchiver.com/dnj/access/2288135581.html?FMT=ABS&date=Mar+09%2C+2011> (demonstrating the allegations of shariahization of America as common basis of opposition by local citizens in seeking to deny requests for new mosques or mosque renovations across the country, including protestor holding a large sign which reads, "What part of STEALTH do you not understand?" and another contending that the creation of a mosque in Murfreesboro is ugly and deceptive and that the "Islamic Center will be a political organization that's detrimental and harmful to the community and the country."); See also *Our View on Religious Freedom: New York Mosque Fight Stirs all the Wrong Passions*, USA TODAY (Aug. 15, 2010), http://www.usatoday.com/news/opinion/editorials/2010-08-16-editorial16_ST_N.htm (discussing that the proposed Islamic center near Ground Zero has become a rallying point for fomenting hatred targeted at Islam nationwide citing one protestor's statement that, "Islam will take over the world."); See also CAIRtv, *CAIR Rep Discusses Rep. King's 'Too Many Mosques' Statement*, YOUTUBE (Sept. 21, 2007), <http://www.youtube.com/watch?v=fUsVBj4YwPM> (commenting on Rep. King's statement that "unfortunately we have too many mosques in this country").

87. Eugene Robinson, *Newt's Sharia Scare*, WASH. POST, Sept. 21, 2010, at A23; See

Also facilitating the recasting of Islam is the cottage industry of self-labeled terrorism experts hired to train law enforcement officers nationwide on how to combat terrorism.⁸⁸ The trainers admit their objective is to warn state and local police officers of the threat posed by Islam in America. Ramon Montijo tells law enforcement officials in Alabama, Colorado, Vermont, Los Angeles, Texas, Missouri, and other states that most Muslims in the United States want to impose Sharia law in America. He states, "They want to make this world Islamic. The Islamic flag will fly over the White House – not on my watch! My job is to wake up the public, and first, the first responders."⁸⁹ Another purported terrorism expert, Walid Shoebet, advises local police to "look at the entire pool of Muslims in a community."⁹⁰ At the first annual South Dakota Fusion Center Conference in June 2010, he advised the police to monitor Muslim student groups and local mosques, and tap their phones to find information about their plans to impose sharia in America.⁹¹ These views have become sufficiently prevalent that neo-conservative DC based think tanks are publishing books on "stealth jihad"⁹² that are relied upon by lawmakers in developing policy on "homegrown terrorism" and anti-Shariah legislation.⁹³

ROBERT SPENCER, *STEALTH JIHAD: HOW RADICAL ISLAM IS SUBVERTING AMERICAN WITHOUT GUNS OR BOMBS* (2008) (characterizing Islam as a political ideology with the aims "not to bring America to its knees through attacks with guns or bombs, but to subvert the country from within by gradually Islamizing America" with the ultimate goal of the adoption of Islamic law in the United States).

88. Milbank & Arkin, *supra* 11 (finding that law enforcement agencies, seeking to learn more about Islam and terrorism, have hired as trainers self-described experts whose extremist views on Islam and terrorism are considered inaccurate and counterproductive by the FBI and U.S. intelligence agencies.").

89. *Id.*

90. *Id.*

91. *Id.*

92. See Lisa Miller, *The Misinformants: What 'Stealth Jihad' Doesn't Mean*, NEWSWEEK (Aug. 28, 2010), <http://www.newsweek.com/2010/08/28/stealth-jihad-conveys-paranoia.html> (documenting the systematic use of the term "stealth jihad" by Newt Gingrich, Robert Spencer, the Center for Security Policy, Fox News commentators and the like, to fuel a sense of fear against Islam by stating that "'stealth jihad' is an effort 'to replace Western civilization with a radical imposition of Sharia."); See also *American Exposed to 'Stealth Jihad' Threat, Security Report Warns*, FOX NEWS (Sept. 15, 2010), <http://www.foxnews.com/politics/2010/09/15/america-threatened-stealth-jihad-security-report-warns/> (referencing a report sponsored by the Center for Security Policy which asserts that "this form of warfare includes multi-layered cultural subversion, the co-opting of senior leaders, influence operations and propaganda and other means of insinuating Shariah into Western societies," the study said.).

93. See Milbank & Arkin, *supra* note 11 (finding that law enforcement agencies, seeking to learn more about Islam and terrorism, have hired self-described experts with extremist views on Islam to train officials on fighting domestic terrorism); See also Max

D. USING ELECTORAL POLITICS TO RECAST RELIGIOUS ACCOMMODATION AS ISLAMIC IMPERIALISM

In October 2010, seventy percent of Oklahoma voters approved the "Save Our State" amendment to the Oklahoma constitution prohibiting state courts from considering Islamic law when deciding cases.⁹⁴ The discourse surrounding the amendment further evinces Islam's recasting as a political ideology.

Political pundits framed the issue as, "Sharia law, in short, is a comprehensive, theo-political law system,"⁹⁵ and lawmakers adopted it wholesale into the legislative record. The author of the bill, Representative Rex Duncan, proclaimed that Sharia was a "cancer" and that his bill would "constitute a pre-emptive strike against Shariah [sic] law coming to Oklahoma."⁹⁶ Mr. Duncan believes that Muslims come to America to take away "liberties and freedom from our children . . . This is a war for the survival of America. It's a cultural war."⁹⁷ Similarly, Senator Anthony Sykes, who co-authored the bill, stated, "Shariah [sic] law coming to the U.S. is a scary concept. Hopefully the passage of this constitutional amendment will prevent it in Oklahoma."⁹⁸ At least seven other states are considering similar legislation prohibiting judges from considering foreign law, including Muslim religious precepts, in legal disputes.⁹⁹

Even those opposed to the Oklahoma amendment on First Amendment grounds, including non-Muslim Democratic state representative Cory Williams, are accused of enabling "an international movement, supported by militant Muslims and

Blumenthal, *The Great Islamophobic Crusade*, CBS NEWS (Dec. 20, 2010), <http://www.cbsnews.com/stories/2010/12/19/opinion/main7166626.shtml> (hysteria about Muslims and Islamophobia has increased since 9/11.); See also Geore Zornick, *Peter King: It's Not Enough For Muslims To 'Denounce All Terrorism,' They Must Also Denounce Muslims*, THINK PROGRESS (Feb. 15, 2011), <http://thinkprogress.org/2011/02/15/king-attacks-muslims/> (citing various statements made by Rep. Peter King establishing a different standard of guilt for all Muslims).

94. See H.J. Res. 1056, 52nd Leg., Reg. Sess. (Okla. 2010).

95. Brigitte Gabriel & Lauren Losawyer, *Sharia Law Question Merits Support*, NEWS OK (October 16, 2010), <http://newsok.com/sharia-law-question-merits-support/article/3504712>.

96. Mark Schlachtenhaufen, *Sharia Law, Courts Likely on 2010 Ballot*, EDMOND SUN (June 4, 2010), <http://www.edmondsun.com/local/x1996914371/Sharia-law-courts-likely-on-2010-ballot>.

97. McKinley, Jr., *supra* note 80.

98. Christopher Brauchli, *Sharia Leaves Oklahoma*, HUFFINGTON POST (Nov. 5, 2010), http://www.huffingtonpost.com/christopher-brauchli/sharia-leaves-oklahoma_b_779081.html.

99. Donna Leinwand, *More states enter debate on sharia law*, USA TODAY (Dec. 9, 2010), http://www.usatoday.com/news/nation/2010-12-09-shariaban09_ST_N.htm.

liberals" to establish Islamic law worldwide.¹⁰⁰ Indeed, his Republican challenger won votes by sending out mailers showing Mr. Williams next to a suspicious figure in an Arab headdress.¹⁰¹ By shifting the focus of the debate from religious freedom to foreign political and cultural imperialism, otherwise discriminatory acts become legitimate acts of American self-preservation.

Many other political candidates in the 2010 elections sought votes by vilifying Islam as a national threat. Florida Representative Allen West unabashedly stated, "Islam is a totalitarian theocratic political ideology, it is not a religion. It has not been a religion since 622 AD."¹⁰² In his campaign for governor, Tennessee Lieutenant Governor Ron Ramsey responded to a question on whether he believed Islam was a threat by questioning whether Islam was a religion or a cult.¹⁰³ Consistent with this anti-Muslim sentiment, Republicans in Tennessee passed an "anti-terrorism" bill that permits the governor to label any individual or group a terrorist; the original version of the bill specifically targeted anyone practicing Sharia law.¹⁰⁴ In North Carolina, Renee Ellmers widely distributed a campaign ad condemning her opponent for not vociferously opposing the Park 51 New York City Islamic Center and showed Muslims conquering America through mosque constructions.¹⁰⁵ Political fear mongering is also propagated by some religious leaders such as Pat Robertson, who rebuked Islam as "a violent political system bent on the overthrow of governments of the world and world domination."¹⁰⁶

These incidents set the stage for the symbolic shift of the Muslim headscarf. The Muslim woman cannot simply go about her

100. McKinley, Jr., *supra* note 80; See also Kathleen Parker, *Who Will Lead the Centrists*, WASH. POST, Nov. 28, 2010 at A21 (noting Republican Representative Bob Inglis lost because he would not demonize Barack Obama by refusing to say Obama is a Muslim or that he wasn't born in the United States).

101. McKinley, Jr., *supra* note 80.

102. Kara L. Kraemer, *Allen West "Never pick a fight with a guy that knows how to fight"*, EXAMINER (Feb. 4, 2011), <http://www.examiner.com/conservative-in-yakima/allen-west-never-pick-a-fight-with-a-guy-that-knows-how-to-fight?render=print>.

103. Brian Montopoli, *Tennessee Lt. Gov. Ron Ramsey Questions Whether Islam is a Religion*, CBS NEWS (July 26, 2010), http://www.cbsnews.com/8301-503544_162-20011712-503544.html.

104. Andrea Zelinski, *Republicans Broaden Anti-Terrorism Bill*, TENN. REPORT (April 27, 2011), <http://www.tnreport.com/2011/04/republicans-broaden-anti-terrorism-bill/>.

105. See Brian Montopoli, *Renee Ellmers Ad: No Muslim "Victory Mosque" at Ground Zero*, CBS NEWS (Sept. 22, 2010), http://www.cbsnews.com/8301-503544_162-20011712-503544.html.

106. Michelle Boorstein, *Muslims in Military Seek a Bridge Between Worlds*, WASH. POST (Nov. 11, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/10/AR2009111018598.html>.

daily life unaffected by the growing societal conspiracy theories about her religion. She is involuntarily ensnared in a polemic debate that has serious implications for her physical safety, employment opportunities, and individual expressive rights.

III. FROM SUBJUGATION TO TERRORISM - THE MUSLIM "VEIL" POST-9/11

Before September 11th, the Islamic faith garnered little attention from an American public generally indifferent about the religions of the Middle East, North Africa, and South Asia. The minimal attention paid to Islam was often limited to scholarly and activist debates about whether the Muslim headscarf undermined Western feminist ideals as a subjugating byproduct of patriarchy, coerced domestication, and oppression.¹⁰⁸ Discussions were often couched in a broader debate on whether the law should incorporate multiculturalism and more specifically whether multiculturalism was bad for women.

The September 11th attacks made moot the question of whether the Muslim "veil" oppressed women. Women were no longer victims of Muslim male patriarchs, but rather they were conspirators with the terrorists that victimized Americans.¹⁰⁹ Overnight, the oppressed Muslim woman became the oppressor of those who just a few years back had pledged to liberate these same women from the tyranny of certain religious practices.

A. THE "VEIL" AS A SYMBOL OF SUBJUGATION - THE DEBATES OF THE 1990s

In the 1990s debates about multiculturalism's impact on the rights of women, some Western feminists categorically denounced the Muslim headscarf as a symbol of patriarchy. Some doubted that

108. See, e.g., Cyra Akila Choudhury, *Empowerment or Estrangement?: Liberal Feminism's Visions of the "Progress" of Muslim Women*, 39 U. BALT. L. FORUM. 153, 164 (2009) (describing the Feminist Majority Foundation's strategy of showing the powerlessness and oppression of women caused by the burkah to garner public support for Muslim women's rights in Afghanistan). See also Cashin, *supra* note 62, at 131-133 (noting that when participants in implicit bias surveys are asked open-ended questions about what they knew or heard about Muslims through the media, common responses included discrimination against women).

109. See Lynn Olanoff, *Lehigh Valley Muslims share American experiences*, LEHIGH VALLEY LIVE (Jan. 10, 2012, 10:59 am), http://www.lehighvalleylive.com/breaking-news/index.ssf/2012/01/lehigh_valley_muslims_share_am.html (sharing their post-9/11 experiences at an interfaith gathering, Muslims discussed the increased prejudice they experienced in the wake of the September 11, 2001, attacks).

a Muslim woman could “choose” to wear a headscarf.¹¹⁰ Rather, she was coerced by male (or female) family members or indoctrinated from youth to accept the headscarf as mandatory for her spiritual salvation.¹¹¹ But, if given a meaningful choice, according to many Western feminists, a Muslim woman seeking liberation would surely rebuke the “veil.”¹¹²

What started out as an international issue quickly penetrated the domestic American legal discourse. Intellectuals began to question whether multiculturalism as a jurisprudential tool effectively legitimized patriarchy to the detriment of minority and immigrant women.¹¹³ Feminists contested the deference that American society paid to culture, even when certain cultural practices seemingly oppressed women either physically or psychologically. According to many American feminists, Western liberal ideals of equality took precedence over any foreign cultural practice, notwithstanding that America is a nation of immigrants.¹¹⁴ While much of the focus was on the legality of raising affirmative defenses to criminal charges based on cultural practices,¹¹⁵ the Muslim “veil” was not spared in critiques against multiculturalism.¹¹⁶ To some, the Muslim “veil,” though not as

110. See Choudhury, *supra* note 107.

111. See Katha Pollitt, *Whose Culture?*, in IS MULTICULTURALISM BAD FOR WOMEN? 30 (1999) (women would be forced to wear a headscarf unless protected by the law).

112. See Choudhury, *supra* note 107.

113. See, e.g., Madhavi Sunder, *Piercing the Veil*, 112 YALE L.J. 1401, 1427 (2003) (critiquing multiculturalism in the international human rights context on the basis that “deference to religious leaders’ arguments elides the claims of women dissenters within these religious communities”).

114. See LOUISE MICHELE NEWMAN, *WHITE WOMEN’S RIGHTS: THE RACIAL ORIGINS OF FEMINISM IN THE UNITED STATES* (1998) (analyzing how white women’s rights proponents viewed their work as part of a larger mission to civilize where converting savages to Christianity meant “Americanizing” Indians and uplifting Negroes and because this mission was underlined by an assumption of white superiority and the victimization of people of color, the ideology of racism cast the black woman, for example, in the role of “debased victim,” while portraying the free white woman in the role of “an empowered, sanctified uplifter.”). See also Catherine Powell, *Lifting Our Veil of Ignorance: culture, Constitutionalism, and Women’s Human Rights in Post-September 11 America*, 57 HASTINGS L.J. 331, 345–46 (2005) (noting that Western liberal ideals even appear in the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) where Western States are portrayed as good actors and non-Western States as bad actors). Powell further notes that “the notion that women’s human rights are inherently Western . . . undermines the work of non-Western feminists, who are seen as mere agents of their Western counterpart, even when the work on non-Western feminists draw on local or indigenous resources.” *Id.*

115. See SUSAN MOLLER OKIN, *IS MULTICULTURALISM BAD FOR WOMEN?* 18 (1999).

116. See Barbara Kay, *Feminists Back Women as Possessions in Supreme Court Case*, NAT’L POST (Dec. 9, 2011), <http://fullcomment.nationalpost.com/2011/12/09/barbara->

egregious, was comparable to female genital mutilation in that its aim was to control women's sexuality.¹¹⁷ Hence, the "veil" was part of a larger debate on whether multiculturalism was bad for women.¹¹⁸

In one camp were multiculturalists, also known as cultural relativists, who supported granting protections and privileges to minority cultures to prevent them from extermination by majority cultures. According to multiculturalists, minority cultures are intrinsically valuable to individual rights because they provide "members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres."¹¹⁹ Therefore, cultural practices of minorities in the United States should be protected through group rights even if such practices contradict Western liberal ideals. America's history as a nation of immigrants necessitates cultural tolerance. Absent this, cultural practices of White, Anglo-Saxon, Protestant culture would inevitably dominate and coercively assimilate anyone outside of that racial and cultural group. Ultimately, whatever costs are born of tolerating some subjectively offensive cultural practices are outweighed by the benefits of religious and cultural plurality.

In the other camp were a group of Western feminists¹²⁰ and progressives who questioned whether multiculturalism had any place within liberal Western society. Focusing specifically on gender equality, acclaimed feminists such as Susan Moller Okin argued against multiculturalism to the extent that protecting minority cultures perpetuates gender disparities within those cultures.¹²¹ If cultures endorse or facilitate control of women by men then support of group rights are potentially antifeminist. Religious cultures, particularly those that look to ancient texts or revered traditions for

kay-feminists-back-women-as-possessions-in-supreme-court-case/ (discussing the current debate in Canada between multicultural feminists and democratic Muslims over whether Muslim women may testify in court while wearing a veil covering their face).

117. See, e.g., Maryam Namazie, *Unveiling the Debate on Secularism and Rights*, MARYAM NAMAZIE (Jan. 19, 2004), http://www.maryamnamazie.com/articles/on_ban_religious_symbols_veil.html ("My Hijab, My Right' is like saying 'My FGM (Female Genital Mutilation), My Right'!!! The veil is an instrument to control a woman's sexuality, like FGM.").

118. See OKIN, *supra* note 114.

119. See *id.* at 11 (citing Will Kymlicka).

120. See OKIN, *supra* note 114, at 10 (defining feminism as "[t]he belief that women should not be disadvantaged by their sex, that they should be recognized as having human dignity equal to that of men, and that they should have the opportunity to live as fulfilling and as freely chosen lives as men can.").

121. *Id.*

how to live in contemporary times, are most likely to discriminate against and control the freedom of women.¹²² Many religious cultures, for example, use “personal law” to more intrusively control the lives of women and girls than the lives of men and boys. By defining the contours of the laws of marriage, divorce, child custody, and inheritance, religious cultural groups control the degree to which women may participate in public life.

Okin criticized Islam, among other religions, as being “rife with attempts to justify the control and subordination of women.”¹²³ Specifically, Okin claimed that Islam characterized women as overly emotional, untrustworthy, evil, or sexually dangerous such that male control is warranted for the women’s own good.¹²⁴ The Muslim “veil” was thus a tool for blaming and punishing women for men’s failure to control their sexual urges. Indeed, according to Okin, the full-face veil was nothing short of sexual servitude of women.¹²⁵ Acknowledging group rights, therefore, strengthens male domination within Muslim cultural subgroups.¹²⁶ Ultimately, multiculturalism and feminism could not be reconciled.

In response, Western multiculturalists as well as some self-identified “Muslim feminists”¹²⁷ argue that the Muslim headscarf is not necessarily antithetical to feminist ideals. Many Muslim women choose to wear it as a feminist statement rejecting the hypersexualization of women’s bodies by male dominated societies in both the East and the West.¹²⁸ Moreover, Okin and her followers

122. *Id.*; See also AZIZAH AL-HIBRI, DECONSTRUCTING PATRIARCHAL JURISPRUDENCE IN ISLAMIC LAW: A FAITHFUL APPROACH 43 (2000) (admitting that despite Islamic jurisprudence’s principle that many laws change with the change of time and place, many Muslims continue to follow the jurisprudence of past centuries and civilizations); See also Powell *supra* note 113, at 348 (discussing how the Western construct of women’s rights has directed post-9/11 U.S. foreign policy, quoting First Lady Laura Bush characterizing the “War on Terrorism” as “a fight for the rights and dignity of women”).

123. See OKIN, *supra* note 114, at 16.

124. See *id.* at 8 (linking the characterization of women as related to female primary parenting and the uncertainty of paternity, which technology has now changed, saying that if these issues are at the root of it, then the cultural preoccupation with controlling women is not an inevitable fact of human life, but a contingent factor that feminists have a considerable interest in changing).

125. See OKIN, *supra* note 114, at 16.

126. See YAEL TAMIR, REVISITING THE CIVIC SPHERE 47 (Amy Gutmann ed., 1998).

127. See AL-HIBRI, *supra* note 121.

128. See Pamela K. Taylor, *France, Spain and Syria: To Ban or Not to Ban the Burqa?*, WASH. POST (Jul. 23, 2010), http://onfaith.washingtonpost.com/onfaith/modernmuslim/2010/07/france_spain_and_syria_to_ban_or_not_to_ban_the_burqa.html (seeing the “hijab (the headscarf and long, loose clothes) as the ultimate ‘up yours’ to the cult of causal sexuality that seemed to have overtaken American youth, the abusiveness of the beauty industry, and the objectification of women by Hollywood and advertisers that

objectify Muslim women by imposing Western secular feminist ideologies upon Muslim women without allowing them to speak for themselves.¹²⁹ Proponents of the Muslim headscarf argue in favor of choice and contest the conclusion that Muslim women have no choice in the matter.¹³⁰ With the exception of a few countries, such as Saudi Arabia, Iran, and Afghanistan, Muslim women are not required by law to wear the headscarf. While not determinative of a particular woman's circumstances, the legal right to choose to wear the headscarf provides sufficient assurances to some Muslim feminists and multiculturalists that the headscarf is not necessarily a tool of oppression.¹³¹

But for the September 11th terrorist attacks, these debates could very well have continued to dominate American discourse on Islam well into the twenty-first century. However, nationwide fears of terrorists in our midst who hold American citizenship in paper but no loyalty to the nation in fact have eclipsed any concerns with individual rights of religious minority women. The question of whether or not Muslim women are oppressed by patriarchy quickly became submerged by more important questions about their intentions to harm the nation.

had spawned an epidemic of anorexia and bulimia among young women and its flip side, an epidemic of obesity, which left practically no woman happy with her body" and felt the "hijab was delightfully freeing, a way of stepping outside that game and rejecting it utterly."); See also Cecile Laborde, *Female Autonomy, Education and the Hijab*, 9 *Critical Rev. of Int'l Soc. & Pol. Phil.* 351, 365 (2006), available at <http://www.sss.ias.edu/files/pdfs/Laborde-Female-Autonomy.pdf> (discussing that the hijab liberates them from the perceived dictates of Western fashion and from the pervasive sexualization of women's bodies).

129. See AL-HIBRI, *supra* note 121, at 44.

130. See *id.* at 46; But see Sunder, *supra* note 112, at 1401-1427 (critiquing international human rights laws' deference to traditional (male) religious authority as a cause of subordination of women's rights, seeing the subordination of women's rights is a common outcome to efforts to preserve minority cultures and religions because it de facto privileges male perspectives).

131. Azizah Y. Al-Hibri, *Is Western Patriarchal Feminism Good For Third World/Minority Women?*, in *IS MULTICULTURALISM BAD FOR WOMEN?* 41 (1999); Cass R. Sunstein, *Should Sex Equality Law Apply to Religious Institutions?*, in *IS MULTICULTURALISM BAD FOR WOMEN?* 85 (1999).

B. TERRORIZING THE “VEIL” POST-9/11

After 9/11, the headscarved Muslim woman¹³² in America finds herself in a precarious position. No longer does the headscarf reflect an individual decision (or lack thereof) about personal faith and dress. Rather, the headscarf “marks” her as a member of the enemy. Her personal beliefs and individual behavior are irrelevant to the harsh judgments she faces from a suspicious and fearful public.¹³³

Facing little control over the prohibitively costly consequences of wearing a headscarf she believes is religiously mandated, her legal right to wear it is of little value. She faces the false choice between, on the one hand protecting her and her children’s physical safety,¹³⁴ obtaining employment,¹³⁵ or actively engaging in the

132. Admittedly, one cannot speak of the “Muslim woman” or “Muslim women” as a singular, monolithic category. Women that are Muslim originate from various racial, ethnic, and immigrant backgrounds. Moreover, they hold diverse political, social, and religious views that cannot be summed up in one term. When I use the term “Muslim woman,” I assume and accept such diversity.

133. See *Southwest Airlines apologized on Wednesday to a Muslim Woman removed from one of the carrier’s jets before a flight out of Lindbergh Field*, CAIR (Mar. 16, 2011), http://ca.cair.com/sandiego/news/outrage_after_california_muslim_removed_from_plane (Irum Abassi, a Muslim graduate student at San Diego University, wearing a headscarf was removed from a Southwest plane before a flight “due to concerns about a comment she made while awaiting takeoff” and the flight attendant’s feeling that she was “suspicious”); But see M. Imran Hayee, *For Muslim Women, Wearing a Veil Isn’t Oppression*, STAR TRIBUNE (Aug. 17, 2011), <http://www.startribune.com/opinion/otherviews/127972598.html> (The author – a male Muslim – justifies use of the headscarf as a religious marker, notably omitting his wife’s narrative and thereby exemplifying her denial of agency within the community).

134. See, e.g., Tarice Gray, *Muslim American Girls Taunted, Assaulted at School for Wearing Hijab*, CHANGE (Dec. 21, 2010), <http://education.change.org/blog/view/muslim-american-girls-taunted-assaulted-at-school-for-wearing-hijab> (reporting that “The Greater Los Angeles office of the Council on American-Islamic Relations (CAIR-LA) says it’s hearing from students and their parents saying that children are being verbally harassed and tagged with labels like “terrorist” or “jihadi,” just for being Muslim and that girls have reported being physically assaulted for wearing hijab, the traditional headscarf worn by Muslim women.”); See also Engy Abdelkader, Op-Ed., *In Post-9/11 World, Anti-Bullying Bill Carries Special Significance*, N.J. L. J. (Dec. 20, 2010), <http://www.law.com/jsp/nj/PubArticleNJ.jsp?id=1202476472974&slreturn=1> (reporting that post-9/11 harassment of American-Muslim and South-Asian youths has dramatically worsened including derogatory name-calling and physical threats and violence); See also Felicia Sonmez & Michelle Boorstein, *Few fireworks at hearing examining civil rights of American Muslims*, WASH. POST (Mar. 29, 2011), http://www.washingtonpost.com/politics/few-fireworks-at-hearing-examining-civil-rights-of-american-muslims/2011/03/29/AFykZtvB_story.html (testifying that evidence indicates that religiously-inspired bullying of youth also is increasing.); See also John Doyle, *New ‘Bias’ Attack on SI Muslim*, N.Y. POST (Oct. 14, 2010), http://www.nypost.com/p/news/local/staten_island/new_bias_attack_on_si_muslim_1OLCBmqAqg0loZigplufsO (reporting that a man was arrested for punching a headscarf-wearing woman and her four year old son from Staten Island).

political process, and, on the other hand, exercising her religious freedom and individual expressive rights.¹³⁶

No longer evoking the Western public's pity, the headscarf now marks the Muslim woman as a target of the aggression arising out of societal prejudices against a religion that has been recast as an illegitimate political ideology. Like Muslim males, the Muslim woman bears the brunt of entrenched stereotypes that portray Muslims as the primary threat to American national security.¹³⁷ But, unlike her male counterpart, the headscarved Muslim woman is caught at the intersection of discrimination against religion, women, and the racialized "Muslim other."

135. See Tracy Clark-Flory, *Abercrombie Hates Your Hijab*, SALON (Feb. 25, 2010), http://www.salon.com/life/broadsheet/feature/2010/02/25/hijab_abcrombie_hollister_discrimination (discussing a Muslim employee of Abercrombie & Fitch Co.'s allegation that she was fired for not removing her headscarf when she was initially told she could wear a hijab, or headscarf, but later told by a visiting district manager said scarves were not allowed during work hours saying that she was fired when she refused to take it off.); See also Amy Joyce, *External Symbols of Faith Can Unfairly Add to Interview Stress*, WASH. POST, Sept. 25, 2005, at F6 (telling the challenges in obtaining employment faced by a Muslim woman who wears the headscarf due to employers discomfort with her headscarf).

136. A similar debate grips the French dialogue where veiled Muslim women are the "targeted other" seen as both subjugated and loyal to the terrorist threat as they face the banning of the full-face veil, the niqab, going into effect April, 11, 2011. A recent report undertaken by the Open Society Foundations shows that women wearing the face veil face high levels of verbal and physical assault. The French government, along with other supporters of the prohibition on full-face coverings, argue that the law is aimed at protecting women who are forced by male members of their families and their religious communities into wearing the niqab. However, the findings and conclusions of this report show that the majority of women interviewed chose to wear the niqab freely despite strong family opposition and without the role of religious organizations and individuals as a factor in their decision. Women interviewed for the report stated they found public verbal abuse to have increased after the controversy over the veil began, finding the law to have failed to advance the cause of women's rights or dignity. "The law banning full-faced coverings is a strong indicator of the growing tensions in France, and across Europe, over perceived national identity and values and the acceptance of increasingly diverse populations, in which Muslims play a large part." Although there exists a difference between the full-face veil and the headscarf, the perceptions of the two are often conflated in the eyes of the stereotyper. See UNVEILING THE TRUTH: WHY 32 WOMEN WEAR THE FULL-FACE VEIL IN FRANCE, OPEN SOCIETY FOUNDATIONS (2011), http://www.soros.org/initiatives/home/articles_publications/publications/unveiling-the-truth-20110411/a-unveiling-the-truth-20100510.pdf.

137. See Tara Bahrapour, *TSA Procedures Offend Followers of Many Faiths*, WASH. POST, Dec. 23, 2010, at A1 (reporting on consistent Muslim women donning headscarves' subjection to secondary screening when they travel by plane).

IV. AMERICAN MUSLIM WOMEN CAUGHT IN THE CROSSHAIRS OF INTERSECTIONALITY

The deafening silence about Muslim women's perspectives in the post-9/11 debates is analogous to Black women's experiences in antiracist politics. Thus, Kimberlé Crenshaw's seminal piece on the intersectionality of race and gender informs the analysis of Muslim women's experiences in the post-9/11 era.¹³⁸

Crenshaw argues that any analysis of antidiscrimination doctrine and antiracism politics "that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated."¹³⁹ For example, the centrality of White female experiences conceptualizes gender discrimination while the centrality of Black male experiences conceptualizes race discrimination. Thus, Black women are protected only to the extent that their experiences coincide with those of Black men or White women.¹⁴⁰

Intersectionality claims go beyond aggregation of factors such as race, gender, or religion¹⁴¹ by acknowledging the discrimination that arises from an interaction of these characteristics.¹⁴² "Intersectionality aims to provide an account of a whole person whose subjectivity is shaped by different discourses, always in a particular social historical context."¹⁴³ Therefore, the headscarved

138. See Kimberlé Crenshaw, *Mapping the Margins: Intersectionality Identity, Politics, and Violence Against Women of Color*, 43 STANFORD L. REV. 1241 (1989) (highlighting how the construction of various social categories of religion, race, gender and more contribute to systematic social inequity and that in order to actually address such systematic oppression there needs to be an approach which reflects the intersection of these various forms of discrimination); See also *Intersectionality: The Double Bind of Race and Gender*, AM. B. ASS'N (2004), http://www.americanbar.org/content/dam/aba/publishing/perspectives_magazine/women_perspectives_Spring2004CrenshawPSP.authcheckdam.pdf ("In thinking about discrimination against women and people of color, women of color are frequently lost. Some of the very early cases where African-American women challenged employment policies of major industries were quite eye-opening because they showed that gender- and race-segregated industries had jobs that are deemed appropriate for blacks and jobs that are appropriate for women, but virtually none available for blacks who were women, or women who were black.").

139. Kimberlé W. Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 139 U. CHIC. LEGAL F. 1989 140 (1989). available at <http://faculty.law.miami.edu/zfenton/documents/Crenshaw-DemarginalizingIntersection.pdf>

140. Crenshaw, *supra* note, at 143.

141. Solanke, *supra* 7 (noting that intersectional discrimination goes beyond additive discrimination).

142. *Id.*

143. Anastasia Vakulenko, 'Islamic Headscarves' and the European Convention on

Muslim woman does not face one-dimensional discrimination as a woman, a practicing Muslim, or a person of color. She faces intersectional discrimination experienced only by “headscarved Muslim women.”

In application, an intersectional analysis seeks to understand discrimination against “headscarved Muslim women” qua headscarved Muslim women. An intersectional analysis, therefore, interrogates the behavior that conforms to stereotypes specific to headscarved Muslim women, such as the oppressed, subjugated, and domesticated woman. After 9/11, as this article argues, the headscarved woman faces an additional stereotype—a disloyal and anti-American terrorist or terrorist-sympathizer.¹⁴⁴ For these reasons, intersectionality is particularly germane to Muslim women.¹⁴⁵

A. POSITIONED AT THE BOTTOM OF THE RACIAL, GENDER, AND RELIGION HIERARCHY

Like Black women, headscarved Muslim women often experience discrimination as Muslim women—not the sum of race, religion, and sex discrimination.¹⁴⁶ Yet, their rights are protected

Human Rights: An Intersectional Perspective, 16(2) SOC. & LEGAL STUD. 183, 186 (2007).

144. See Gowri Ramachandran, *Intersectionality as “Catch 22”: Why Identity Performance Demands Are Neither Harmless Nor Reasonable*, 69 Alb. L. Rev. 299, 302 (2006) (noting that intersectionals “experience a qualitatively different kind of subordination”).

145. Devon W. Carbado & Mitu Gulati, *The Fifth Black Woman*, 11 J. CONTEMP. LEGAL ISSUES 701, 701-02 (2001) (demonstrating how intersectionality provides a launching pad for addressing identity performance discrimination). Carbado and Gulati argue that the choices a person makes when presenting herself publicly may subject her to discrimination and intersectionality concepts prove useful in addressing this type of discrimination. See Devon W. Carbado & Mitu Gulati, *Conversations at Work*, 79 Or. L. Rev. 103 (2000) (analyzing the repressive impact that stereotypes have on identity performance in the workplace). See also Richard Delgado, *Rodrigo’s Reconsideration: Intersectionality and the Future of Critical Race Theory*, 96 IOWA L. REV. 1247, 1261 n.67 (2011) (noting that Muslim women suffer discrimination at the intersection of gender and religion). See also Wing & Smith, *supra* note 5, at 777-83 (discussing the “spirit injury,” contemplating the “psychological, spiritual, and cultural effects,” that intersectional assaults have on a woman who wears the headscarf).

146. Whether it is daily hostile stares or offensive discourtesies, these aggressions degrade the quality of her life in a way unknown to (White) women and Muslim males as evidenced by the recent removal of a Muslim graduate student from the flight from a Southwest flight within California because a member of the crew said the woman, who wears an Islamic headscarf, was “suspicious.” The only explanation given was a reference to a flight attendant claiming she overheard the phrase “it’s a go” in the passenger’s cell phone conversation while waiting to take off. The Muslim passenger reports that what she really said was, “I’ve got to go.” Muslim males, on the other hand, can “pass” by shaving their beard and wearing Western clothing without compromising their religious beliefs because to many practicing Muslims the beard and traditional

only to the extent that Muslim males or White women experience the same type of discrimination. While Muslim women experience some forms of discrimination in ways similar to Muslim males, the headscarf engenders subordination of women in ways overlooked by generic strategies against anti-Muslim (male) discrimination. Specifically, her headscarf marks her as a terrorist, terrorist sympathizer, unassimilable foreigner, and an oppressed woman. If she has an ostensibly assertive personality and strong intellect, then she is also prone to being stereotyped as a "bad woman," often pejoratively labeled a "bitch."

Broader societal biases against women coupled with the visibility of the distinctly female headscarf expose Muslim women to discrimination different in form and frequency from Muslim males. If a co-worker, neighbor, or other member of the public has never interacted with a headscarved Muslim woman, she is more likely to be treated according to negative stereotypes, namely that she is associated with terrorists and oppressed by her terrorist husband or father.¹⁴⁷

Meanwhile, although the stereotype of subjugation has been eclipsed by the "Terrorist other" stereotype, it still lingers in the background such that if a Muslim woman manages to evade one, she is likely to be subjected to the other.¹⁴⁸ Additionally, within the Muslim community, she continues to be subjected to cultural norms that mirror mainstream gender stereotypes of the "good Muslim woman" as docile, deferential to male authority figures, and prioritizing her family over her career.¹⁴⁹ Hence Muslim women,

Islamic dress are optional unlike the headscarf. Moreover, because Muslim men have not been historically patronized and objectified in the same way as Muslim women vis-à-vis the "West," it is one less burden they carry within the hostile post-9/11 environment.

147. See Solanke, *supra* note 7, at 735 (discussing how stereotypes, in the absence of personal experiences, inform a person's perception of groups to which he or she does not belong).

148. See, e.g., ARSHAD IMTIAZ ALI, FINDING HOME: FORMULATIONS OF RACE AND NATIONHOOD AMONG MUSLIM COLLEGE STUDENTS IN SOUTHERN CALIFORNIA (2009) (unpublished Ph.D. dissertation, University of California, Los Angeles) (concluding that "[t]he Muslim female is thus depicted not only as a colluder with the Muslim man, but also as a demonstrable physical site of liberation. . . . Specifically then, the physical body of the Muslim woman, through the shedding of clothing, can be seen as a metaphor for the 'freeing' of Muslim nations overseas through war. Just as the Muslim must be liberated, not only from tyrannical Arab autocrats, the Muslim must be freed from theocratic, antiquated, 'barbaric' and anti-liberal forms of communal organization. Following this logic, the Muslim women cannot simply be educated, attend the same universities as 'American' (the two do not overlap) women, but must also shed the cultural and religious baggage, the most explicit manifestation being the hijab, which holds her place as subservient within Muslim societies.").

149. See, e.g., Maryam Amir-Ebrahimi, *Wifehood and Motherhood are Not the Only*

unlike Muslim men, are ordained to subordination whether as terrorists, terrorist sympathizers, or victims of Muslim male patriarchy.¹⁵⁰

Take for instance the situation of an educated and ambitious headscarved Muslim woman with an assertive personality. This archetype, which is quite common among Muslim women in America,¹⁵¹ faces multiple stereotypes that implicate her gender, religion, and race. Thus, the discrimination she faces is tailored to her intersectional position such that there may be Muslim men and White women who do not experience discrimination in the same manner.

Her demonstrably smart, ambitious, and self-confident characteristics do not comport to a "good female employee" who is soft-spoken, deferential, and mild-mannered.¹⁵² Her male colleagues perceive her as the stereotypical "bitch" who exhibits an inappropriate sense of entitlement. Consequently, she is denied a promotion and raise, given poor evaluations based on pretextual reasons such as needing to "improve her attitude" and be a better team player. Similar to a White woman in her circumstances, but for the headscarf, she is held to a different and more rigorous standard than a similarly situated white male. Placed at the bottom of the gender hierarchy,¹⁵³ she faces gender discrimination.

Meanwhile, some of the Muslim woman's colleagues (both men

Ways to Paradise, SUHAIB WEBB (Oct. 7, 2011, 5:00 AM), <http://www.suhaibwebb.com/relationships/marriage-family/wifehood-and-motherhood-%E2%80%93-not-the-only-ways-to-paradise/> (discussing the experience of a young woman pressured to marry by her family and quoting her to say "I'm already twenty-six," another sister lamented. "I'm expired. My parents are going crazy. They think I'm never going to get married and they pressure me about it daily. My mom's friends keep calling her and telling her I'm not getting any younger. She keeps crying over it and says she'll never be a grandma. It's not like I don't want to get married; I've been ready since college! I just can't find the right guy.").

150. See Vakulenko, *supra* note 142, at 191 (using the court's narrow interpretation in *Sahin v. Turkey*, 2005-XI Eur. Ct. H.R. 173, to highlight the necessity of considering gender in cases of religious discrimination against Muslim women on the basis of their headscarf).

151. See *Muslim Americans Exemplify Diversity, Potential*, GALLUP (Mar. 2, 2009), <http://www.gallup.com/poll/116260/muslim-americans-exemplify-diversity-potential.aspx> (noting that Muslim women are among the most highly educated religious groups in the United States).

152. See *Price Waterhouse v. Hopkins*, 490 U.S. 228, 234-35 (1989) (discussing Price Waterhouse's rejection of a female partnership candidate due to her "masculine" demeanor; the very demeanor that won her high praise as an effective executive).

153. See Frank Rudy Cooper, *Against Bipolar Black Masculinity*, 39 U.C. DAVIS L. REV. 853, 859 (2006) (noting the absence of guilt by whites for putting nonassimilating bad Black men in jails or permanently within the lower classes).

and women) hold bias against Muslims due to a variety of factors including personal experiences, national events, and negative stereotypes promoted in the media.¹⁵⁴ These co-workers and supervisors believe Muslims are disloyal to America, are probably terrorists, and oppress women.¹⁵⁵ This is manifested through offensive comments about Muslims as terrorists and misogynists. The Muslim woman's loyalty to the nation and right to be in the workplace, especially in a leadership capacity, is explicitly or implicitly questioned. In general, she feels unwelcome at least partially because of her religion.¹⁵⁶ Placed at the bottom of the religion hierarchy, she experiences anti-Muslim discrimination.

Her headscarf also marks her as an unassimilable foreigner with the attendant suspicions of disloyalty and anti-Americanism.¹⁵⁷ The dominant assimilationist culture in the United States interprets her refusal to uncover herself as unpatriotic and unappreciative of the opportunities America makes available to immigrants and women. In exchange for such opportunities, immigrants are expected to assimilate by adopting the predominant Anglo-Saxon culture, dress, and mannerisms. And women are expected to uncover to look more "Western." Refusing to do so becomes a basis for legitimate suspicion. Unlike a Muslim man who can shave his beard without violating a mandatory religious obligation, she does not have the

154. See generally Wajahat Ali et al., *Fear, Inc.: The Roots of the Islamophobia Network in America*, CENTER FOR AM. PROGRESS (Aug. 26, 2011), <http://www.americanprogress.org/issues/2011/08/pdf/islamophobia.pdf> (discussing the proliferation of anti-Muslim organizations and the ways these organizations feed American Islamophobia).

155. See Alex Seitz-Wald, *Fox News Watchers Consistently More Likely to Have Negative Views of Muslims*, THINK PROGRESS (Feb. 16, 2011, 8:00 pm), <http://thinkprogress.org/media/2011/02/16/144856/fox-news-watchers-consistently-more-likely-to-have-negative-views-of-muslims/> (citing a Public Religion Research Institute poll highlighting conservative media's effect on many Americans who distrust Muslims); See also *Muslim Americans: No Signs of Growth in Alienation or Support for Extremism*, PEW RES. CENTER (Aug. 30, 2011), <http://www.people-press.org/2011/08/30/muslim-americans-no-signs-of-growth-in-alienation-or-support-for-extremism/> (indicating that, while there has been no appreciable change in alienation among Muslims, 50% of Muslims reported being treated with suspicion or being called an offensive name — up from 41% in 2007); *In U.S., Religious Prejudice Stronger Against Muslims*, GALLUP (Jan. 21, 2010), <http://www.gallup.com/poll/125312/Religious-Prejudice-Stronger-Against-Muslims.aspx> (indicating that 43% of Americans feel at least "a little" prejudice towards Muslims).

156. See Devon W. Carbado & Mitu Gulati, *Conversations at Work*, 79 *Or. L. Rev.* 103 (2000) (analyzing the repressive impact that stereotypes have on identity performance in the workplace).

157. See Allen, *supra* note 31, at 221–22 (noting the same view of headscarved Muslim women as unassimilable contributed to France's hijab ban). Allen further notes that, if not for the ban, concerns over the hijab would likely have faded over time in the same way that concerns over feminine dress among female lawyers in the 1980s faded as firms and clients got accustomed to "having competent women around."

option of “passing” without abandoning her religious beliefs.¹⁵⁸ Placed at the lower rungs of the racial hierarchy, she experiences racial or ethnic origin discrimination.

The headscarved Muslim woman is also still susceptible to stereotypes that she is oppressed and subjugated by her husband, father, and religion. Before 9/11, this stereotype often evoked pity and sympathy¹⁵⁹ but increasing anti-Muslim sentiment now produces anger and disgust. Her presence is just another reminder of what is wrong with Islam and make her deserving of mistreatment for continuing to adhere to this violent and pathologically dysfunctional ideology.¹⁶⁰ Hence, she faces gender, race, and religious discrimination in ways that a Muslim man, a White woman, or another racial minority would not face. Facing three levels of subordination, the headscarved Muslim woman finds herself caught in a “Catch 22” because she is unable to “pass,” “convert,” or “cover” as a means of avoiding discrimination.¹⁶¹ A “conversion” for purposes of identity performance is effectively a religious conversion of sorts, as she replaces her orthodox religious beliefs with a secularized interpretation of Islam.¹⁶² Removing her headscarf, therefore, requires her to abandon a fundamental religious belief.¹⁶³

158. See Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 772 (2002) (discussing the three means by which minorities attempt to assimilate into a culture: conversion, passing, and covering). Conversion involves altering a person’s underlying identity. Passing involves hiding one’s underlying identity. Covering involves downplaying one’s underlying identity, but not hiding it. While some groups can pass without betraying their true identity (Yoshino identifies homosexuals as such a group), headscarved Muslim women cannot because the headscarf is a critical aspect of their Muslim faith.

159. See Sunder, *supra* note 112, at 1435-36 (discussing in an interview with Anissa Hélie, a director of Women Living Under Muslim Law, that women are viewed as defenseless victims of immutable religious laws).

160. See Frank Rudy Cooper, *Against Bipolar Black Masculinity*, 39 U.C. DAVIS L. REV. 853, 859 (2006) (noting the absence of guilt by whites for putting nonassimilating bad Black men in jails or permanently within the lower classes).

161. See Gowri Ramachandran, *Intersectionality as “Catch 22”: Why Identity Performance Demands are Neither Harmless Nor Reasonable*, 69 ALBANY L. REV. 299, 324 (2006) (examining the “Catch 22” experienced by African-American women facing discrimination as a lazy black worker or a bad housewives and mothers blamed for raising lazy, criminal black children).

162. See Suhaib Webb, *Is Hijab an Obligation? Don’t Religious Rules Change?*, SUHAIB WEBB (Mar. 2, 2009), <http://www.suhaibwebb.com/islam-studies/is-hijab-and-obligation-dont-religious-rules-change/> (noting that orthodox Muslim scholars consider the hijab as a fixed obligation); See also Yoshino, *supra* note 157 (describing conversion as changing one’s underlying identity).

163. See Sunita Patel, Comment, *Performative Aspects of Race: “Arab, Muslim, and South Asian” Racial formation after September 11*, 10 ASIAN PAC. AM. L.J. 61, 84 (2005) (discussing the gender and religious considerations at play in “covering” by removing the hijab).

Nor can the headscarved Muslim woman “pass” as a non-Muslim because there is no acceptable way of wearing a headscarf that circumvents stereotypes.¹⁶⁴ Despite the various fashionable ways to wear a headscarf, it remains the marker of the terrorist, the terrorist’s wife, the unwelcome foreigner, and the oppressed woman. In the eyes of many Americans, the only “good Muslim woman” is the one that does not cover her hair and secularizes, which brings her back to having to effectively convert out of her religious beliefs. For similar reasons, she cannot “cover” as a means of downplaying her differences with mainstream groups.¹⁶⁵ Some women wear make-up, modern suits, and adopt dominant cultural mannerisms as a means of “covering.” But so long as that “cover” is on her head, her differences are on full display, rendering attempts to “cover” futile.

B. THE PRIVILEGING OF THE MALE PERSPECTIVE IN AMERICAN MUSLIM LEADERSHIP

Further exacerbating the marginalization of Muslim women’s rights is the privileging of male perspectives in the American Muslim leadership. On the surface, this outcome appears to be a byproduct of patriarchal institutions founded before September 11th. However, a more complex explanation exists that mirrors experiences of women in other minority communities.

As articulated by legal scholars Devon Carbado and Mitu Gulati, “political agendas of identity groups tend to focus on the interests of the privileged within the group.”¹⁶⁶ Because Muslim women are generally politically subordinated within Muslim communities, especially where community activities center around a mosque, the articulation of political claims for equality by Muslims privileges the experiences of Muslim males over the experiences of Muslim females.¹⁶⁷ This intra-racial hierarchy further constricts the agency of Muslim women in the post-9/11 era. They live in a community that is defined and subordinated by the racialized “Muslim” identity and culture while also subjected to varied degrees

164. Yoshino, *supra* note 157.

165. *Id.*

166. See Devon W. Carbado & Mitu Gulati, *The Fifth Black Woman*, 11 J. CONTEMP. LEGAL ISSUES 701, 709 (2001) (defining “political intersectionality” as to the allocation of resources and articulation of political agendas based on the privileging of certain groups within a larger group).

167. *Id.*; Jehanzeb Dar, *Part 1: Time to End Gender Segregation in Mosques*, ALTMUSLIMAH (Nov. 30, 2011), www.altmuslimah.com/a/b/mca/3413 (discussing the various ways in which Muslim men are privileged within the American Muslim community).

of patriarchy within their own communities.¹⁶⁸

Predominantly male perspectives cause resources to be directed at forms of discrimination common to Muslim men such that distinct discrimination experienced by Muslim women is obscured.¹⁶⁹ Muslim leaders and spokespersons claim to speak for “Muslims” but often fail to incorporate the perspectives of Muslim women beyond a superficial defense of her right to wear a headscarf.¹⁷⁰ Community-wide protests against unlawful government action often focus on cases involving profiling of Muslim men in airports and immigration enforcement. Selective anti-terrorism investigation and prosecution of Muslim men is also a source of grievance. With regard to private acts of discrimination, resources are expended towards protecting the right to build mosques, the right to religious accommodation in the workplace, and negative stereotyping in the media. The focus on discrimination of women is often limited to a case-by-case basis rather than a more effective systemic approach.

Underrepresentation of Muslim women’s issues by Muslim civil rights and cultural organizations takes on additional importance in light of recent efforts by the government to correct culturally insensitive counterterrorist practices.¹⁷¹ On February 8, 2012, the FBI

168. See Crenshaw, *supra* note 138, at 162; See also M. Imran Hayee, *For Muslim Women, Wearing a Veil Isn’t Oppression*, STAR TRIB. (Aug. 17, 2011), <http://www.startribune.com/opinion/otherviews/127972598.html> (The author – a male Muslim – justifies use of the headscarf as a religious marker, notably omitting his wife’s narrative and thereby exemplifying her denial of agency within the community).

169. In nearly every joint national press conference by Muslim organizations, the individuals speaking in a representational role are consistently males despite their fifty percent female constituency. One of many examples includes the joint press conference responding to President Obama’s speech on May 18, 2011, about democracy in the Middle East and North Africa. The Council on American Islamic Relations (“CAIR”) issued a joint statement citing the following Muslim leaders of the largest American Muslim organizations all of whom are males: “Those who watched or spoke following the president’s speech included CAIR National Executive Director Nihad Awad, Naeem Baig of the Islamic Circle of North America, Mahdi Bray of the Muslim American Society Freedom Foundation, Dr. Mohammed Elsanousi of the Islamic Society of North America, Mouaz Moustafa of the Libyan Council of North America, and Dr. Louay Safi of the Syrian American Council.” Press Release, CAIR: Obama’s ‘Arab Spring’ Address Sets the Right Tone, CAIR (May 19, 2011, 4:15 pm), <http://www.cair.com/ArticleDetails.aspx?mid1=777&&ArticleID=26779&&name=n&&currPage=2>.

170. See Crenshaw, *supra* note 138, at 160 (highlighting a similar situation with Black leaders and spokespersons).

171. See *Joint Statement on Meeting with FBI Director Robert Mueller*, AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE (Feb. 15, 2012), <http://www.adc.org/media/press-releases/2012/february-2012/joint-statement-on-meeting-with-fbi-director-robert-mueller/> (detailing a meeting between FBI Public Affairs Director, Robert Mueller, and a number of Muslim and Interfaith organizations to discuss changes in FBI counterterrorism training materials to remove materials containing “falsehoods and negative connotations

Director of Public Affairs met with leaders of several Muslim and Interfaith organizations to discuss changes in FBI training materials.¹⁷² While the government's overture to the Muslim American community was a positive step in dealing with the contentious topic of offensive FBI training material, the meeting unintentionally highlighted the danger that underrepresentation of Muslim women in these organizations presents. Namely, government policy makers will not receive an adequate representation of issues facing all Muslims, women included, unless those representative organizations include women in positions to direct advocacy efforts. While the Muslim organizations that met with Mueller have women in leadership roles, only one has women visibly directing advocacy efforts.¹⁷³

While these are legitimate concerns that warrant attention and affect both men and women, they constitute only part of the post-9/11 adverse impact on Muslim communities in America. For instance, in the context of religious accommodation in the workplace, the Muslim woman faces discrimination against her faith and discrimination against her gender. A strategy that considers this intersectionality would work with both women's rights and civil rights groups to defend the right of religious minorities *and* the rights of women to have equal opportunity in the workplace. Thus, if the religious freedom issue is resolved, then the gender equality issue need not fall by the wayside.

Meanwhile, Muslim civil rights groups focus solely on the discrimination she faces as a Muslim who wears a headscarf. Should

of the Muslim American community.”).

172. *Id.*

173. The Arab American Institute web site lists several women among its leadership team, including Executive Director, Maya Berry, but Muslim women's issues are not listed among the issues on which it focuses. See *Our Team*, ARAB AM. INST., <http://www.aaiusa.org/pages/our-team/> (last visited (Feb. 25, 2012)). The Interfaith Alliance web site lists several women among its leadership team but Muslim women's issues are not listed among the issues on which it focuses. See *Meet our Board*, INTERFAITH ALLIANCE, <http://www.interfaithalliance.org/about/board> (last visited Feb. 25, 2012). While the Islamic Society of North America's (ISNA) web site includes information on Domestic Violence, there is no mention of its advocacy efforts concerning Muslim women's civil rights. Additionally, the ISNA Board of Directors only has one woman, Asma Mirza, in an “at large” position. See *ISNA Executives and Board of Directors*, ISLAMIC SOC'Y OF N. AM., <http://www.isna.net/ISNAHQ/pages/Board-of-Directors.aspx> (last visited May 4, 2012). The Muslim Public Affairs Council (“MPAC”) is the lone standout with several women in director positions. Additionally, MPAC has published a policy paper on women's rights, albeit not dealing with Muslim women's rights in America. See Dina Chehata et al., *Abusing Women, Abusing Islam: Re-Examining Sharia Court Rulings in Contemporary Times*, MUSLIM PUB. AFF. COUNCIL (2009), <http://www.mpac.org/assets/docs/publications/abusing-women-abusing-islam.pdf>.

she choose not to wear it, yet nonetheless face discrimination; it is unlikely that community resources are expended in her defense.¹⁷⁴ If groups do offer to assist the headscarved woman, they often do so through agendas based on a male-centric definition of anti-Muslim bias that does not see the issue beyond the right to practice one's faith. Muslim civil rights groups may even decide that she is to blame for the discrimination because of her "bad attitude," mirroring mainstream American gender stereotypes of the "good woman" as obedient and deferential. .

C. SACRIFICING MUSLIM WOMEN'S RIGHTS TO DEFEND MUSLIM (MALE) CIVIL RIGHTS

Like many women of color in communities experiencing systemic discrimination, Muslim women are ambivalent about the degree of political and social capital that should be expended toward challenging gender barriers within their communities. Muslim women are understandably hesitant to compromise the broader Muslim civil rights agenda by challenging the patriarchy within their communities and institutions.¹⁷⁵ As Muslim communities across the country experience mosque vandalizations,¹⁷⁶ hate

174. See Leti Volpp, *Feminism Versus Multiculturalism* 101 COLUM. L. REV. 1181, 1187 (2001) ("Culture is invoked to explain forms of violence against Third World or immigrant women while culture is not similarly invoked to explain forms of violence that affect mainstream Western women."). A good example of this is the support for an article written by a headscarved Muslim woman who criticizes "dehijabized" Muslim women for taking it upon themselves to interpret Islam for themselves rather than rely on male Muslim religious leaders proclaiming wearing the headscarf is mandatory. Darah Rateb, *The Dehijabization Phenomenon*, ALTMUSLIM (March 30, 3009), <http://www.altmuslim.com/a/a/a/2999>. It is common for male-run Muslim organizations to promote the women who perpetuate their male-centric interpretations of Islam and visions of how Muslim communities should function. LISA BLAYDES & DREW A. LINZER, *THE POLITICAL ECONOMY OF WOMEN'S SUPPORT FOR FUNDAMENTALIST ISLAM* (2007), available at <http://blaydes.bol.ucla.edu/Women.pdf> ("[S]ome of the strongest support for the Islamist movement is among extremely well-educated women, such as doctors and university educators, who may see the opportunity for prestigious employment . . . for serving in a leadership capacity for the mass Islamist movement") (citing VALENTINE M. MOGHADEM, *MODERNIZING WOMEN: GENDER AND SOCIAL CHANGE IN THE MIDDLE EAST* (1993)).

175. See, e.g., Sunder, *supra* note 112, at 1410-11 (arguing that a similar phenomenon occurs in the United States as Muslim civil rights, that religious freedoms are protected at the expense of Muslim women's empowerment within their communities and the public at large and those seeking reform (i.e., cultural dissenters) are forced to vote with their feet by leaving the community altogether and "covering" their Muslim identity to the public to avoid the wrath of anti-Muslim bias).

176. See, e.g., *Hamden Mosque Vandalized*, EYEWITNESSNEWS3 (Feb. 25, 2011), <http://www.wfsb.com/news/26998327/detail.html> (reporting that a mosque in Hamden, Connecticut, was marred with spray-painted profanity and graffiti having

crimes,¹⁷⁷ forced exile on No Fly lists,¹⁷⁸ profiling in airports,¹⁷⁹ and aggressive law enforcement tactics that border on entrapment,¹⁸⁰ intra-community gender rights are quickly marginalized. Further complicating women's predicament is the likelihood that internal power struggles based on allegations of male domination, even if true, only reinforce negative stereotypes of (male) Muslims as oppressive, pathologically authoritarian, and deserving of suspicion.¹⁸¹

Challenging male patriarchy within the Muslim communities also subjects a woman to allegations of harming the collective interests of Muslims in America—additional harms they cannot afford in light of political and physical attacks by the public and the government. These practical concerns deny Muslim women the

experienced such vandalism four times before in the past two years.); *see also*, John Doyle, Frank Rosario & Jessica Simeone, 'Drunk' desecration at mosque, N.Y. POST (Aug. 26, 2010), http://www.nypost.com/p/news/local/queens/drunk_desecration_at_mosque_fA7FZKYh59hx3Bjika6UGN?CMP=OTC-rss&FEEDNAME#ixzz0xjJJ5jgi (reporting on a man who barged in began cursing at the mosque attendees and ultimately urinated on the prayer rugs before he was able to be escorted out); *see also* CAIR: *Southern California Mosque Vandalized*, CAIR-CA (Dec. 13, 2009), http://ca.cair.com/losangeles/news/cair_southern_california_mosque_vandalized (accounting the vandalism of a mosque in Los Angeles where vandals shattered windows and glass doors of the mosque and broke into the donation boxes, further commenting that an Oregon mosque was previously targeted with hate graffiti reading, "Allah is a pig").

177. *See* Robert Koenig, *Discrimination, hate crimes against Muslim Americans rising, officials say*, ST. LOUIS BEACON (Mar. 29, 2010, <http://www.stlbeacon.org/issues-politics/280-washington/109204-discrimination-against-muslims-on-the-rise>) (documenting that "while Muslims represent less than 1 percent of the U.S. population, officials said about a quarter of religion-related workplace discrimination cases involve Muslims, as well as more than 14 percent of the overall number of federal religious discrimination cases" with the Anti-Defamation League reporting "an intensified level of anti-Muslim bigotry").

178. *See* Press Release, *ACLU Files Lawsuit Challenging Unconstitutional "No Fly List"*, ACLU (Jun. 30, 2010), <http://www.aclu.org/national-security/aclu-files-lawsuit-challenging-unconstitutional-no-fly-list>.

179. *See* *Wrong Then, Wrong Now: Racial Profiling Before & After September 11, 2001*, Leadership Conference on Civil Rights Education Fund, Feb 21, 2003, at 27 (documenting and critiquing "terrorism profiling" specifically the profiling of Arabs, South-Asians and Muslims at airports).

180. *See* *Democracy Now!: Entrapment or Foiling Terror? FBI's Reliance on Paid Informants Raises Questions about Validity of Terrorism Cases* (radio broadcast Oct. 6, 2010) (questioning the law enforcement tactics of using paid informants directed at Muslim communities arresting on terror charges when no terrorist crime was actually committed particularly as it relates to the case of the Newburgh Four, the Fort Dix Five and a case out of Albany focusing on whether this constitutes entrapment).

181. The same occurs within communities of color when women complain about domestic violence; rather than focusing on the needs of the women of color, society interprets the complaints as evidence that black men are uncontrollably violent consistent with stereotypes. *See* Crenshaw, *supra* note 137 at 1252-53.

ability to contest gender-biased interpretations of religious doctrine and cultural practices thereby stifling a healthy evolution of Islam in America.¹⁸² Consequently, a significant portion of the new generation of Muslim women leaders may have little choice but to support defensive strategies that collectively marginalize Muslim women as a group.¹⁸³

Notably, and perhaps in response to the effects of intersectionality, a new generation of Muslim women post-9/11 have begun to break into the community leadership. Although Muslim women collectively remain at the periphery of community leadership, women are founding and managing some new organizations. Organizations founded and operated by highly educated Muslim women include: Muslim Advocates,¹⁸⁴ South Asian Americans Leading Together,¹⁸⁵ and Karamah.¹⁸⁶ These represent the few examples of female leadership at the national level.¹⁸⁷ While there are certainly other talented Muslim female

182. See Sunder, *supra* note 112, at 1441.

183. See Richard Delgado, *Rodrigo's Sixth Chronicle: Intersections, Essences, and the Dilemma of Social Reform*, 68 N.Y.U. L. Rev. 939, 652-53 (1993) (discussing the dangers in joining a social movement that does not perfectly align with the goals sought by minority members); See also Crenshaw, *supra* note 138, at 162. However, note the increase in women who claim to be experts on Muslims or Islam but proffer views highly controversial, if not outright offensive, to a broad group of Muslims in America. See, e.g., Samer Araabi, *Apostate Politics: How Some Recanted Muslims Have Bolstered Militarist U.S. Policies*, INST. POL'Y STUD. (Dec. 18, 2010), http://www.rightweb.ironline.org/articles/display/apostate_politics_how_some_recanted_muslims_have_bolstered_militarist_us_po. I posit that this phenomenon is partially attributable to the exclusion of women from leadership positions, especially those who hold controversial views or are exceptionally talented. Hence, Muslim women stuck at the intersectionality of race, religion, and gender tend to either suffer in silence to preserve community unity, start their own organizations with varying success, or become adamant opponents of mainstream Muslim organizations exploited by groups holding anti-Muslim biases.

184. MUSLIM ADVOCATES, <http://www.muslimadvocates.org/> (last visited May 4, 2012) (having emerged in 2005 as a non-profit sister entity to the National Association of Muslim Lawyers (NAML), Muslim Advocates is a professional association of approximately 500 Muslim lawyers, law students and other legal professionals).

185. SAALT, <http://www.saalt.org> (last visited May 4, 2012). While this civil rights and civic engagement organization was founded and is lead by a non-Muslim South Asian woman, SAALT has a large Muslim South Asian constituency.

186. KARAMAH, <http://www.karamah.org/> (last visited May 4, 2012) (working to build this global network of informed, empowered advocates in two ways – first, by creating and sharing knowledge about the rights Islamic law grants to women, and second, by educating Muslim women in Islamic jurisprudence, leadership, and conflict resolution, so that they may become the leading agents of change within their communities).

187. Similar examples exist at the local level where Muslim women have founded female focused and led organizations to address social, economic, and political issues faced by women and ignored by male-dominated mosques or other community

professionals in leading roles, many of them work for and report to predominantly male executives and male board members.¹⁸⁸

Another consequence of women's exclusion from American Muslim leadership is the rise of female dissidents who converted out of Islam and now ally with far right organizations holding anti-Muslim bias. Women such as Ayaan Hirsi Ali,¹⁸⁹ Wafa Sultan,¹⁹⁰ Bridgette Gabriel, and Nonie Darwish¹⁹¹ hold themselves out as experts on Islam but proffer views highly controversial, if not outright offensive, to a vast majority of Muslims in America.¹⁹² These women, with no identifiable Muslim constituency, are often touted by their benefactors as courageous voices against the oppressive ideology of Islam. While they may hold sincere views, they appear to be exploited to do the bidding of right-wing political groups with clear anti-Muslim agendas, which further objectifies

organizations. See, e.g., Texas Muslim Women's Foundation, <http://www.tmwf.org/website/index.php> (last visited May 4, 2012) (discussing with the author the basis for their starting the organization, primarily their frustration with the lack of female representation in existing Muslim organizations and as a consequence the neglect of issues most important to Muslim women in the community).

188. See, e.g., CAIR-Greater Los Angeles Area (CA) Staff, CAIR-CA, <http://ca.cair.com/losangeles/about> (last visited May 4, 2012). See also Muslim Public Affairs Council (MPAC) Staff and Board, <http://www.mpac.org/about/staff-board.php> (last visited May 4, 2012).

189. See Rogier Van Batel, *The Trouble is the West*, REASON (Nov. 2007), <http://reason.com/archives/2007/10/10/the-trouble-is-the-west/singlepage> ("I think that we are at war with Islam. And there's no middle ground in wars. Islam can be defeated in many ways. For starters, you stop the spread of the ideology itself; at present, there are native Westerners converting to Islam, and they're the most fanatical sometimes. There is infiltration of Islam in the schools and universities of the West. You stop that. You stop the symbol burning and the effigy burning, and you look them in the eye and flex your muscles and you say, 'This is a warning. We won't accept this anymore.' There comes a moment when you crush your enemy."). Although Ms. Ali is a self-avowed atheist, her views by some in the American public are interpreted as representative of Muslim women.

190. John M. Broder, *For Muslim Who Says Violence Destroys Islam, Violent Threats*, N.Y. TIMES (Mar. 11, 2006), <http://www.jihadwatch.org/2006/03/for-muslim-who-says-violence-destroys-islam-violent-threats.html> (finding that "Dr. Sultan said the world was not witnessing a clash of religions or cultures, but a battle between modernity and barbarism, a battle that the forces of violent, reactionary Islam are destined to lose.").

191. See Mark Medley, *Cruel and Usual Punishment: The Terrifying Global Implications of Islamic Law by Nonie Darwish*, NAT'L POST (Feb. 17, 2009), <http://network.nationalpost.com/np/blogs/afterword/archive/2009/02/17/book-review-cruel-and-usual-punishment-the-terrifying-global-implications-of-islamic-law-by-nonie-darwish.aspx> (discussing that, "she writes that Islam is a 'sinister force' that must be resisted and contained").

192. See IDA LICHTER, *MUSLIM WOMEN REFORMERS: INSPIRING VOICES AGAINST OPPRESSION* (2009) (citing the above mentioned women as courageous Muslim reformers whom barely receive any notice and are women who are prepared to challenge institutionalized persecution, risking derision, arrest, physical harm, and even death; thus, further legitimizing their highly controversial, if not offensive, views).

Muslim women within the larger culture war. Indeed, many Muslims perceive such women as mere pawns in the larger assault on Muslim's civil rights in America.

As a result, Muslim women trapped at the intersection of race, religion, and gender tend to suffer in silence to preserve community cohesion during a time of siege, take on the monumental endeavor of starting their own organizations and competing with legacy organizations, or become surrogates of opponents of mainstream Muslim organizations as a channel for expressing their dissent.

To prevent such distorted consequences, Muslim American women should have opportunities to play meaningful roles in existing institutions whose mandates are to defend the rights of women, Muslims, or civil liberties in the post-9/11 era. Those roles should not be limited to those associated with traditional gender roles such as mothers, nurses, or teachers. Similarly, American feminist groups have an obligation to include American Muslim women in their leadership and gender rights agenda and advocacy campaigns. Civil liberties groups focused on adverse consequences of national security laws would also be more effective if they included American Muslim women in their discussions on identifying violations of individual rights in the American Muslim communities. Their strategies would be more informed in ensuring all those caught in the post-9/11 counterterrorism preventive dragnet¹⁹³ benefit from advocacy projects, not just males.

Until such changes occur, American Muslim women are likely to remain caught at the intersection of bias against gender, race, and religion with little recourse.

D. THE FAILURES OF AMERICAN WOMEN'S RIGHTS ORGANIZATIONS

Some American feminists' near obsession with Muslim women's rights abroad¹⁹⁴ makes their ten-year silence over the various forms of discrimination against Muslim women in America ironic. Western feminists have failed to identify with Muslim women beyond wanting to "liberate" them from oppressive

193. Sahar F. Aziz, *Caught in a Preventive Dragnet Ten Years Later: Selective Counterterrorism Against Muslims, Arabs, and South Asians*, 47 GONZAGA L. REV. (forthcoming 2012).

194. See *Muslim Women Take Lead - Social Justice and Human Rights*, MUSLIM HUM. RTS., <http://www.muslimhumanrights.wordpress.com> (last visited May 4, 2012); See also *Mobilising for Muslim Women's Rights in India*, OPEN DEMOCRACY (Jan. 14, 2011), <http://www.opendemocracy.net/5050/nida-Kirmani/mobilising-for-muslim-women%E2%80%99s-rights-in-india>.

patriarchies originating from their “Eastern” cultures; at the same time, they fail to recognize how their own “Western” patriarchy prevents some Muslim women from attaining the economic independence necessary for exercising individual rights.¹⁹⁵

Western feminists’ silence exposes their failure to recognize the significance of excluding women, whatever their religion or racial identity, from the courtroom, the work place, and the political process. Instead, the cases are narrowly viewed as anti-Muslim (male) religious discrimination.¹⁹⁶ These cases also highlight Western feminists’ double standards as they criticize “Eastern” practices that subordinate Muslim women while failing to acknowledge their “Western” society’s subordination of the same women.¹⁹⁷ Specifically, Western feminist groups such as Vital

195. Western Feminists have consistently called for the ban of the burqa and spoken in defense of women’s rights in Iraq, Afghanistan and other Middle Eastern nations, but have largely remained silent on a Muslim woman’s right to wear hijab along with other gender rights in the United States. See, e.g., *Demanding Rights, Resources & Results for Women Worldwide*, MADRE, <http://www.madre.org/index/meet-madre-1/our-projects-20.html> (last visited May 4, 2012) (an international organization calling for greater women’s rights in Iraq and Afghanistan, but completely silent on women’s issues post-9/11 in the “Western” world); See also *Our Initiatives*, ASS’N FOR WOMEN’S RTS IN DEV., <http://www.awid.org/Our-Initiatives> (last visited May 4, 2012) (focusing primarily on combating hijab enforcement internationally); See also FEMINIST MAJORITY FOUNDATION, <http://feminist.org/welcome/index.html> (last visited May 4, 2012) (focusing on women’s rights issues primarily in Afghanistan and Iran, more specifically on banning the burqa in Afghanistan and change in discriminatory laws in Iran). Organizations such as Vital, CODE Pink and EQUALITY NOW all focus primarily on international women’s rights efforts in Iraq, Iran, Afghanistan and other countries of the Global South and are largely silent on the issue of domestic women’s rights issues, particularly the issues of Arab/South-Asian/Muslim women.

196. See, e.g., David Beasley, *Muslim Woman Sues Georgia City Over Headscarf Arrest*, REUTERS (Dec. 14, 2010), <http://www.reuters.com/article/2010/12/14/us-headscarf-lawsuitidUSTRE6BD6LL20101214?feedName=OutloudFeed&feedType=RSS&rpc=1120> (discussing that Lisa Valentine’s suit argues that by prohibiting her from wearing a headscarf in court, the city violated her constitutional rights to free expression of religion.); See also Clark-Flory, *supra* note 134 (framing her legal claim around religious discrimination).

197. See Volpp, *supra* note 173, at 1190 (“[The West identifies] sexual violence in immigrant of color and Third World communities as cultural, while failing to recognize the cultural aspects of sexual violence affecting mainstream white women. This is related to the general failure to look at the behavior of white persons as cultural.”). See also *National Now Conference: 2009*, NAT’L ORG. FOR WOMEN, <http://www.now.org/organization/conference/2009/workshops.html> (“Female infanticide and sexual slavery are just a few of the barbaric practices that are used to oppress Islamic women and girls. Within Islamic fundamentalism, extreme misogyny is a disturbingly common mindset that is physically, mentally and spiritually damaging for women and children. Workshop panelists include the executive director of Women’s Freedom Forum, who has worked with women in the Middle East to promote freedom and democracy. Also, Feminist Majority Foundation (FMF) President and former NOW President Eleanor

Voices, CODE Pink, EQUALITY NOW, and the Feminist Majority Foundation have consistently called for the ban of the burqa and spoken out in defense of women's rights in Iraq, Afghanistan and other Middle Eastern nations while remaining silent on a Muslim woman's right to wear the hijab free of discrimination and violence in the United States.¹⁹⁸ While Western feminists' focus on equal pay, abortion rights, and other gender specific issues certainly benefit Muslim women, the American women's rights agenda fails to address the unique forms of subordination experienced by Muslim women in the United States.

Thus, the supposedly patriarchal "East" can no longer be the sole culprit for a Muslim woman's economic and political marginalization in America. It is long overdue for those concerned with gender rights of Muslim women abroad to acknowledge her subordination in the post-9/11 era in the United States. American women's rights groups overlook gender discrimination because they may mistakenly believe the bias is solely on account of her religion and thus not within their mandate.¹⁹⁹ Likewise, spokespersons of Muslims in America should acknowledge the domination of male voices whose focus on women is limited to her religious right to wear a headscarf within the broader agenda of protecting Muslim (males) civil rights.

Both Muslim civil rights and women's rights groups are likely to overlook one of the two dimensions of the bias, either gender or religion. Meanwhile, advocacy groups that defend the civil rights of persons within a particular Muslim woman's racial group will not recognize the racial component of the discriminatory animus.²⁰⁰

When you add the dimension of race or ethnicity, then a third layer of intersectionality exacerbates her predicament. In the case of an African American headscarved Muslim woman, rarely, if ever,

Smeal will address the plight of women and girls in Afghanistan, where hundreds of girls' schools have been bombed and violence against women is increasing daily. FMF has launched a new campaign in the U.S. to promote the expansion of peacekeeping efforts and support the leadership of Afghan women and rebuild schools. Come learn how you can help.").

198. See *Code Pink in Iraq*, CODE PINK, <http://www.codepink.org/section.php?id=19> (last visited Dec. 24, 2011); *Discrimination in Law*, EQUALITY NOW, <http://www.equalitynow.org/our-work/discrimination-law> (last visited Dec. 24, 2011) (listing nations in which EQUALITY NOW is working; the United States is not on the list).

199. See Volpp, *supra* note 173, at 1185 ("The discourse of feminism versus multiculturalism presumes that minority cultures are more patriarchal than Western liberal cultures.").

200. Harris, *supra* note 3 (arguing that traditional feminist thought views issues from the perspective of the ideal (White) woman).

have Black civil rights groups taken on these issues directly.²⁰¹ And while Arab or South Asian groups may be sensitized to the ethnic origin bias underlying the discrimination, they often punt the case as an anti-Muslim or anti-Black case. In all scenarios, few of the organizations recognize the gender dimension in the same way they would had the discrimination occurred within the pre-9/11 subjugation paradigm. Quite the opposite, many groups vociferously defended the scarf as a liberating practice from the base sexualization of women in the West.²⁰² Consequently, the headscarved Muslim woman is caught in the crosshairs of intersectionality at her own peril. Consequently, analysis of antidiscrimination that does not take intersectionality of race, religion, and gender into account cannot sufficiently address the particular ways in which Muslim women are subordinated.²⁰³

As demonstrated in Section V below, Muslim women donning a headscarf face palpable discrimination in employment and public spaces. Some are physically attacked in conjunction with accusations of terrorism. Their children are also bullied as their mother's headscarves "out" them as the same Muslims the bully's parents vilify at the dinner table. Headscarved Muslim women have also been evicted from courthouses and law enforcement agencies for pretextual reasons.²⁰⁴

201. After a thorough search of the agenda and the strategies of these organizations, the author could not find evidence of their inclusion of discrimination against Muslim women. *But see* Moni Basu, *Woman Jailed Over Scarf Gets Support*, ATLANTA METRO NEWS (Dec. 20, 2008), <http://www.ajc.com/search/content/metro/stories/2008/12/20/metrail.html> (noting that CAIR and the NAACP appeared together at a anti-Muslim discrimination rally outside the Douglasville, Georgia courthouse in response the arrest of a woman for refusing to follow a judge's order to remove her headscarf in court).

202. *See* Taylor, *supra* note 127. *See also* John Blake, *Muslim Women Uncover Myths About Hijab*, CNN (Aug. 19, 2009), http://articles.cnn.com/2009-08-12/us/generation.islam.hijab_1_hijab-muslim-women-muslim-americans?s=PM:US (reporting on a young American-Muslim woman's decision to wear the hijab because it liberates her as she states "I really liked the purpose behind the hijab — a woman covering herself so that a man should know her mind, not her body.").

203. *See* Crenshaw, *supra* note 137 (arguing that the failure to address the intersection of race and gender in antidiscrimination and anti-racist politics against Blacks marginalizes the experiences of Black women).

204. *See* Webb v. Philadelphia, 562 F.3d 256, 259 (3d Cir. 2009) (holding that accommodating a police officer's request to wear a hijab while on duty presented an undue hardship on the city); Press Release, ACLU, ACLU Files Lawsuit On Behalf Of Muslim Woman Forced To Remove Head Covering In Georgia Courthouse (Dec. 14, 2010), <http://www.aclu.org/religion-belief-womens-rights/aclu-files-lawsuit-behalf-muslim-woman-forced-remove-head-covering-geo>.

V. MOVING BEYOND SYMBOLS OF TERROR TO PALPABLE DISCRIMINATION

These issues are not merely theoretical concerns. The shift in symbolism of the headscarf has transformed Muslim women's lives in America as they face various forms of palpable discrimination.²⁰⁵ As a result, an unprecedented number of Muslim women have been compelled to remove the headscarf after September 11th to be free from physical harassment, obtain gainful employment, and meaningfully participate in American civic life.²⁰⁶

Thus far, the Muslim woman's relevance in the post-9/11 context appears limited to the question of whether she has a legal right to wear the headscarf. The answer is usually "yes," with some exceptions. Analyzing the discrimination she faces in this limited doctrinal context, however, is too simplistic.²⁰⁷ The scarf is no longer merely religious headwear. It has been racialized to symbolically "mark" the woman and her familial affiliates as the suspect "Terrorist other" Muslim.²⁰⁸ The relationship between her and the

205. See *Discrimination Against Muslim Women*, AM. C. L. UNION, <http://www.aclu.org/pdfs/womensrights/discriminationagainstmuslimwomen.pdf> (last visited Dec. 17, 2011) (highlighting the increase in discrimination claims by Muslim women and enumerating the laws protecting a woman's right to wear a headscarf).

206. *Lifting the Veil*, NAT'L PUB. RADIO (April 21, 2011), <http://www.npr.org/2011/04/21/135413427/lifting-the-veil> (documenting the stories of twelve Muslim women who wore the headscarf and the political and social reasons why they decided to stop wearing it in public – specifically that the price was too high in terms of loss of economic opportunity and physical harassment); See also Christine Pomatto, *Behind the veil of Islam, Muslim students face significant obstacles*, THE BREEZE (Jan. 17, 2012, 12:30 AM), http://www.breezejmu.org/news/article_a7f4d412-40cc-11e1-ae9-001a4bcf6878.html (chronicling the accounts of several students' experiences with post-9/11 discrimination, include one student's account of her mother's rejection of the hijab out of concern for her personal safety); See also JOHN TEHRANIAN, *WHITEWASHED: AMERICA'S INVISIBLE MIDDLE EASTERN MINORITY* 79 (2010). These stories are representative of thousands of Muslim women across America with similar experiences. But see Leslie Scrivener, *Shaila Kibria Made a Painful But Liberating Decision to Give Up the Muslim Hijab*, THE TORONTO STAR (Oct. 1, 2011), <http://www.thestar.com/news/article/1063072> (quoting a woman that ultimately removed her headscarf but not necessarily because of its terrorism association "After 9/11 her hijab became a symbol of defiance. "To me it became a political statement . . . People were calling us terrorists. I thought, 'I'm going to wear this in your face. This is my country. I was born here. My kids were born here.'").

207. See, e.g., Sunder, *supra* note 112, at 1442–43 (critiquing liberals for casting the debates about religion as being about civil liberties which results in essentializing Islam as unchangingly patriarchal).

208. See Naber, *supra* note 4 ("[T]he 'veil' serves as a boundary marker between 'us' and 'them,' and as long as women remain 'veiled' they remain intrinsically connected to 'potential terrorists.'"); See also Volpp, *supra* note 17, at 1582; See also Cashin, *supra* note 62, at 131–33 (noting how the terrorist other stereotype is perpetuated in mainstream media).

observer becomes defined by societal perceptions of Islam as the political ideology of America's identified enemies — al Qaeda, the Taliban in Afghanistan, the Taliban in Pakistan, insurgents in Iraq, and terrorist plotters on U.S. soil. In the eyes of many in the American public, there are simply no redeeming qualities about Islam. And the visible headscarf is an explicit reminder of the threat in their midst.²⁰⁹

As the headscarf "outs" the woman, she and her family experience adverse consequences in various contexts.²¹⁰ The woman's children become subjected to bullying and derogatory slurs based on the visibility of their mother's Muslim identity.²¹¹ The headscarved woman also faces discrimination in employment,²¹² threats to her physical safety,²¹³ and exclusion from courthouses. Cumulatively, these circumstances deny her the individual expressive right to choose to wear her headscarf as a reflection of her personal beliefs.²¹⁴

209. See D.C., M.D., V.A. ADVISORY COMM. U.S. COMM. CIVIL RIGHTS, CIV. RTS., CIVIL RIGHTS CONCERNS IN THE METROPOLITAN WASHINGTON DC AREA IN THE AFTERMATH OF THE SEPTEMBER 11, 2001 TRAGEDIES (2003) (showing that the Muslim veil is perceived as a mark of separation and proof of a refusal to assimilate into mainstream society).

210. See *Americans' Perceptions of Woman Wearing Shawl Decline Compared to Previous Study*, MEDIA CURVES (Oct. 6, 2010), <http://www.mediacurves.com/Culture/Head-dressovertime2010/> (surveying various participants' opinion of a woman depicted in two pictures, one with and one without a headscarf). Conducted annually from 2008 to 2010, the most recent survey indicated that 62% of those surveyed would prefer to have the woman wearing the headscarf live next door or in their neighborhood compared to 83% for the woman without the headscarf. Additionally, respondents rated the headscarved woman lower on the educational scale, more likely to be married, and more likely to be a stay-at-home mother. Most significantly, only 23% of respondents thought the headscarved woman was an American, compared to 73% for the woman without a headscarf.

211. See AM. ARAB ANTI-DISCRIMINATION COMM., 2010 ADC LEGAL REPORT LEGAL ADVOCACY & POLICY REVIEW: SIGNIFICANT INCREASE IN LEGAL COMPLAINTS (2010) (documenting that after a minor car accident, a young man was questioned by police in a hospital bedroom about what had happened and that when his mother arrived at the hospital and began to complain about the way the officers were treating her son, in retaliation to the mother's complaints, it is alleged that the police officers began beating her son, while yelling discriminatory comments such as "your mother is a Muslim bitch!").

212. See Subir Ghosh, *Study: US Muslim Women Who Wear Headscarves Face Discrimination*, DIGITAL J. (Oct. 4, 2010), <http://www.digitaljournal.com/article/298488> (finding that "almost a third of Muslim women in the US who wear hijabs (headscarves) are concerned about applying for work and that almost two-thirds say they are aware of instances where women wearing hijabs have been refused work).

213. See, e.g., Gray, *supra* note 133.

214. See, e.g., Karen Gardner, *Headscarf Causes Controversy at Basketball Game*, FREDERICK NEWS POST (Jan. 18, 2011), <http://www.fredericknewspost.com/sections/news/display.htm?storyid=115397>. The article reports on a middle school basketball player who was benched because she wore the headscarf during the game. As more of such incidents occur, young Muslim women will either be deterred from wearing the

A. EMPLOYMENT DISCRIMINATION

Nowhere is the adverse effect of the symbolic shift from subjugation to terrorism more evident than in the employment context. Indeed, the EEOC reported the number of complaints of unlawful discrimination against Muslim employees more than doubled from 697 in 2004 to 1,490 in 2009, 425 of which were filed by Muslim women.²¹⁵ Of those, 803 formal charges were filed on behalf of Muslim complainants wherein twenty five percent alleged religious discrimination.²¹⁶

Thus, the Muslim woman finds herself increasingly unwelcome so long as she chooses to practice her faith by covering her hair.²¹⁷ And if termination is not the discriminatory act of choice, she finds herself subjected to ethnic and racial slurs conflating her religion

headscarf or decide not to participate in athletics despite their personal interest and desire to do so; *See also* Vakulenko, *supra* note 142, at 194 (citing Judge Tulkens's dissenting opinion in *Sahin v. Turkey* (challenging a ban on headscarves in universities), concluding that the European Court of Human Rights paternalistically denied the Muslim woman applicant's right to personal autonomy).

215. *See Religious Freedom Has a Place in the Workplace*, FIND LAW (Nov. 9, 2010), <http://knowledgebase.findlaw.com/kb/2010/Nov/208334.html>.

216. *See* Brian Murphy, *Stop the Hate - Anti Muslim Discrimination Complaints at Record Levels*, SUBMIT YOUR ARTICLE (Nov. 12, 2010), <http://www.submityourarticle.com/articles/Brian-Mahany-8446/employment-discrimination-lawyer-123783.php>.

217. *See* Debra J. Groom, *Former Pulaski Health Center Worker Files Federal Complaint Stating He Was Fired Because He Is Muslim*, *The Post-Standard* (Feb. 7, 2011), http://www.syracuse.com/news/index.ssf/2011/02/former_pulaski_health_center_w.html; *See also* Abercrombie & Fitch (SFDO) filed 9/1/10 - Charging Party is Muslim. She was denied a reasonable accommodation (hijab) and denied hire into a stockroom position because of her religion; Abercrombie & Fitch (SLDO) filed 9/29/09 - Charging Party is Muslim. She was not hired by defendant because she wore a headscarf to her interview; Kaze Japanese Steakhouse (CTDO) filed 9/7/10 - Charging Party converted to Islam. She was denied the reasonable accommodation of wearing a hijab and discharged from her servicer position because of her religion; *Imperial Security* (PHDO) filed 9/16/10 - Charging Party is Muslim. She was denied the reasonable accommodation of wearing a Khimar and discharged from her security guard position because of her religion; White Lodging Services Corp. (INDO) filed 7/4/06, resolved 7/21/10 (\$40,000) - A Marriott hotel did not hire four Muslim women for housekeeping jobs because the women wore religious head coverings.; Ivy Hall Assisted Living (ATDO) filed 9/30/08, resolved 1/28/10 (\$43,000) - Charging Party, a housekeeper, was denied a religious accommodation to wear a traditional religious head covering, a hijab, and was discharged for violating defendant's dress code.; The Geo Group (PHDO) filed 9/27/07, summary judgment to defendant 5/18/09, affirmed on appeal 10/12/10 - A Muslim nurse in a correctional institution was denied a reasonable accommodation to defendant's dress code for her religious headdress and was terminated for violating the dress code; Kelly Services (CHDO) filed 9/26/07, summary judgment to defendant 10/9/08, affirmed on appeal 3/25/10 - a temporary firm did not hire a Muslim applicant for a printing press job when the applicant refused to remove her religious head covering; AAA Parking (ATDO) filed 9/21/06, resolved 6/7/07 (\$29,500) - Charging Party is Muslim. She was fired from her cashier job after showing up to work wearing a head covering in recognition of the religious holiday of Ramadan.

with disloyalty and a basis to question her right to work there.²¹⁸

In some cases, employers changed their policies after 9/11 to coerce Muslim women into taking off their headscarves. In *Mohamed-Sheik v. Golden Foods/Golden Brands, LLC*,²¹⁹ the Somali women plaintiffs began working for the employer before the 9/11 attacks during which time they were permitted to wear their headscarves, wear their shirts untucked to accommodate their desire for modesty, and pray during their breaks. Despite these workable accommodations, the employer changed its policy after the 9/11 attacks to stop the religious accommodations to the employees. The temporal relationship between the denial of accommodation and the 9/11 attacks are unlikely a coincidence but rather a reflection of increased intolerance towards Muslim workers, especially women seeking to cover their hair.

In a case involving a convert to Islam who chose to wear her headscarf at work, a coworker told her to take her scarf off because she "was a disgrace and was a symbol of 9/11 to customers."²²⁰ She was eventually fired for failing to timely file a personal injury accident report when luggage fell on her toe.²²¹ This pretextual basis for terminating her employment coupled with numerous incidents of religious harassment was sufficient to defeat the employer's motion for summary judgment.

In another case involving an Orthodox Catholic Arab female who did not wear the headscarf, the employee alleged a hostile work environment as a result of, among other things, derogatory comments about a customer's headscarf and associating it and the employee with terrorism.²²² The Arab Christian employee's ethnic association and defense of the customer's right to wear the headscarf subjected her to religious animus against Muslims, demonstrating the racialization of Arabs regardless of their religion as Muslim terrorists.

In 2008, a 17-year-old Muslim woman applied for a job at Abercrombie & Fitch Kids store and was recommended "as a very good candidate" by the store manager, who suggested that the

218. Project Group of Illinois (CHDO) filed 3/29/07, resolved 10/9/08 (\$25,000) – a Palestinian Muslim was subjected to derogatory remarks about her head covering and was referred to as a terrorist.

219. *Mohamed-Sheik v. Golden Foods/Golden Brands*, No. Civ.A. 303CV737H, 2006 WL 709573 (W.D. Ky. Mar. 16, 2006).

220. *Campbell v. Avis Rent A Car Sys., Inc.*, No. Civ.A. 303CV737H, 2006 WL 2865169 at *2 (E.D. Mich. Oct. 5, 2006).

221. *Id.* at *6.

222. *Salem v. Heritage Square, Inc.*, No. C 06-04691 WHA, 2007 WL 2555513 (N.D. Cal. 2007).

applicant wear a different color headscarf that was consistent with the store's "Look Policy." After recommending her for the job, the store manager consulted with the district manager who told her not to hire the applicant because she wore the headscarf.²²³ In late 2010, another American-born Arab woman applied to work at Abercrombie & Fitch while wearing the headscarf.²²⁴ After being rejected for the position because she did not have the "Abercrombie look," the woman lamented, "[t]he interview crushed me because I never imagined anyone in the Bay Area would reject me because of my headscarf."²²⁵ Fearing future discrimination from prospective employers, the young woman decided to take off her headscarf out of her economic necessity to obtain a job.²²⁶

In addition to demonstrating the headscarf's symbolic association with terrorism, these four sample cases exemplify how various races, ethnicities, and religious identities that constitute the "Muslim" are racialized as the "Terrorist other."²²⁷ Women donning the headscarf or those merely associated with someone who does are grouped into a false unitary "Muslim woman"²²⁸ who is "race-ed" as a disloyal terrorist deserving of disparate treatment. These cases, and many others like them,²²⁹ also highlight the stark contrast between the debates of the 1990s when Western feminists were calling for the economic independence of a Muslim woman through employment and the deafening silence from American feminist groups about the ongoing employment discrimination against Muslim women.

In light of the multiple levels of subordination, discussed in detail in Section II, a headscarved Muslim woman is likely to face discrimination while Muslim males, White females, or racial

223. *EEOC v. Abercrombie & Fitch, Co.*, No. 09-CV-602-GKF-FH (N.D. Okla. July 13, 2011).

224. See Clark-Flory, *supra* note 134.

225. *EEOC v. Abercrombie & Fitch, Co.*, No. CV10-3911-HRL, 2010 WL 4638269 (N.D. Cal. 2010).

226. First Amended Complaint and Demand for Jury Trial, *EEOC v. Abercrombie & Fitch, Co.*, No. CV10-3911-HRL (N.D. Cal. Oct. 7, 2010), 2010 WL 4638269.

227. See Volpp, *supra* note 17, at 1582; see also Cashin, *supra* note 62, at 131-133 (discussing the perpetuation of the "Terrorist other" stereotype in mainstream journalism and the impact on bias against Muslims).

228. See Harris, *supra* note 3 (critiquing the essentialization of women as assuming their experiences are biologically determinative based on their sex- or race-specific biology); *But see*, Catharine A. Mackinnon, *Keeping It Real: On Anti-"Essentialism,"* in *CROSSROADS, DIRECTIONS, AND A CRITICAL RACE THEORY* (Francisco Valdes et al. eds., 2002) (critiquing anti-essentialism as a trap imposed by liberal individualism that denies subordinated groups from seeking group-based remedies arising from their common identities).

229. See Aziz, *supra* note 192.

minorities in her work place do not. An employer accused of discrimination may avoid liability by highlighting the fact that other Muslims, women, or racial minorities are not discriminated against as proof that disparate treatment of the Muslim woman is not based on unlawful grounds.²³⁰ As a result, analysis of a discrimination claim that fails to take into account intersectionality of race, religion, and gender does not sufficiently incorporate the various means by which Muslim women are subordinated.

B. RACIAL VIOLENCE AGAINST MUSLIM WOMEN

Discrimination in employment is but one consequence of the terror(ization) of the Muslim headscarf. A more lethal consequence is found in the substantial increase in random acts of racial violence against cognizably Muslim women.

To students of American civil rights history, it may come as no surprise that the shift in the symbolic meaning of the Muslim headscarf has resulted in numerous hate crimes threatening the physical safety of the women and their families. Racism against racial minorities has historically been expressed through acts of violence that humiliate, maim, or kill the victim. The Muslim woman's gender deems her an easy target presumed incapable of physically defending herself against violence, leaving her and any accompanying children vulnerable to physical assault.²³¹ That is not to say that Muslim men are not subjected to racial violence.²³² But violence committed against men is often more lethal, and thus less frequent, because he is assumed capable of punching back. In contrast, the Muslim woman may be more vulnerable to less fatal but more frequent physical assault by individuals viscerally reacting

230. See *Alsaras v. Dominick's Finer Foods, Inc.*, 99 C 4226, 2001 WL 740515 (N.D. Ill. June 28, 2001), *aff'd*, 39 Fed. App'x 416 (7th Cir. 2002) (granting employer's summary judgment in suit brought by employee claiming religious discrimination. The court noted that the employer brought evidence that it treated similarly situated Muslims equally, yet the employee was fired only after she started wearing the hijab.)

231. See CAIR, *THE STATUS OF MUSLIM CIVIL RIGHTS IN THE UNITED STATES 2005* 54 (2005) (highlighting the story of a California Muslim woman almost struck by a truck while she was pushing her child in a stroller down the sidewalk. After admonishing the driver for "almost kill[ing] me and my baby," the driver replied, "It wouldn't have been a big loss.")

232. See Randy Furst, *Minneapolis Man Pleads Guilty to Civil Rights Crime*, STAR TRIB. (Aug. 10, 2011), <http://www.startribune.com/local/127474763.html> (In May and July, 2010, a man harassed two Somali men, one of whom was 83 years old, chasing and threatening both of them with death. Unlike the cases of violence against Muslim women, the attacker did not target visible signs of religiosity, like a headscarf. Instead, the attacker first asked if the victim was from Somalia before instigating his attack.)

to the sight of her headscarf.²³³ She also experiences more daily micro-aggressions, such as hostile stares, rude behavior, dismissive statements, or outright disrespect. Cumulatively, these micro-aggressions have adverse consequences on her psychological well-being.²³⁴

Shortly after the 9/11 attacks, several Muslim women had their headscarves ripped off.²³⁵ When a Muslim woman reporter for a Seattle newspaper put on the headscarf as an experiment to investigate how Muslim women were treated, she was pushed into the path of a truck.²³⁶ More than three years later, in 2004, a Muslim woman was stopped in her car by three individuals who, after demanding a lighter, called her “Stupid Muslims, f-cking Muslims,” kicked her car, punched her in the face, and tore off her headscarf.²³⁷

By late 2010, the frequency of violence committed against Muslim women because of racial and religious animus was on the rise at a troubling rate.²³⁸ In the span of two months, at least six

233. See Naber, *supra* note 4. See also Julie M. Cohen, *Police: Women called ‘Muslim terrorists’*, WICKED LOCAL ROSLINDALE (Nov. 29, 2011), <http://www.wickedlocal.com/roslindale/news/x1525678704/Police-Women-called-Muslim-terrorists#axzz1gq80ywFN> (detailing the story of a Muslim woman and her relatives being physically accosted and called “Muslim terrorists” while entering an Islamic worship center).

234. See Daniel Solorzano et al, *Keeping Race in Place: Microaggressions and Campus Racial Climate at the University of California, Berkeley*, 23 CHICANO-LATINO L. REV. 15, 17 (2002) (“Microaggressions are subtle verbal and non-verbal insults directed toward non-Whites . . . based on one’s race, gender, class, sexuality, language, immigration status, phenotype, accent, or surname.”). See generally, Peggy C. Davis, *Law as Microaggression*, 98 YALE L.J. 1559 (1989).

235. See Mackenzie Carpenter, *Muslim Women Say Veil is More About Expression than Oppression*, PITTSBURGH POST-GAZETTE (Oct. 28, 2001), <http://www.post-gazette.com/headlines/20011028muslimwomennat3p3.asp>. See also Franchesca Benzant, *Donning the Hijab: My Day as an Undercover Muslim Woman*, CLUTCH (Dec. 9, 2011), <http://www.clutchmagonline.com/2011/12/donning-the-hijab-my-day-as-an-undercover-muslim-woman/2/> (detailing the author’s experience as part of an outreach effort by the Muslim Women of Maryland challenging women to wear a hijab for a day. The author also recounted another participant’s post-9/11 experience, stating, “One girl who was Muslim admitted that this was her first time wearing the hijab since since 9/11. She used to be teased to the point students would yank her hijab off of her head and once it was even thrown in the toilet.”); See also Naber, *supra* note 4 (citing incidents of school children having their headscarf pulled off while commuting to school).

236. Carpenter, *supra* note 234.

237. *Id.*

238. *Lifting the Veil*, *supra* note 205 (reporting on Samia Nasseem’s experience being physically attacked because of her headscarf which caused her to remove it out of concern for her physical safety); See also Asma Uddin, *A Response to “The de hijabization phenomenon,”* ALTMUSLIM (May 12, 2009) (discussing the increasing trend of American Muslim women removing their headscarves post-9/11); *But see* Rateb, *supra* note 173 (“Post 9-11, many women felt the need to show their solidarity and oneness with the Muslim *ummah*. Donning of the *hijab* – formerly a spiritual act – achieved that political

reported cases of hate crimes across the country were committed against Muslim women wearing the headscarf; in one case, a woman's four-year-old son was also physically attacked, causing him to bleed. On October 14, 2010, a Staten Island woman and her toddler were attacked by a pedestrian who punched her in the face, pulled on her scarf, asked her why she was in America, and called Muslims and Arabs terrorists.²³⁹

One week later, in Seattle, Washington, two American citizens of Somali descent were physically attacked at a gas station.²⁴⁰ The female attacker called them suicide bombers, terrorists, and told them to go back to their country.²⁴¹ She then slammed the door on the leg of one of the women, kicked her, and pulled her headscarf. She pushed the other one to the ground. As the Muslim women were screaming for help, bystanders just watched the attack without taking action. One of the victims stated, "As Muslims, we're human beings and we deserve the same respect as everybody else. This country is a melting pot and there's [sic] so many diverse people. I think we should all respect each other and [each other's] space."²⁴² Despite her optimism, the victim expressed fear of leaving her house because her ostensibly Muslim identity would invite further physical attacks.²⁴³

Just weeks later on December 20, 2010, a Muslim woman wearing the headscarf in Columbus, Ohio was allegedly stalked, verbally harassed and then pepper-sprayed by a White man shouting religious and ethnic slurs such as, "Tell all of your Muslims that this is not your country," "Go back to wherever you came from," and threatening, "I will kill you."²⁴⁴ During that same time

end."). See also Scott Henson, *Hijab Reveals More Than It Conceals*, TRUMAN ST. U. INDEX, (Oct. 6, 2011), <http://www.trumanindex.com/hijab-reveals-more-than-it-conceals-1.2632453?pagereq=1#.TuV8-nNcluc> (detailing one student's choice to wear the hijab in order to deepen her faith despite suffering verbal abuse implying that she was a terrorist).

239. See John Doyle, *New 'Bias' Attack on SI Muslim*, N.Y. POST (Oct. 14, 2010 1:14 AM), http://www.nypost.com/p/news/local/staten_island/new_bias_attack_on_si_muslim_1OLCBmqaQg0IozigplufsO.

240. See Janet I. Tu, *Woman Charged With Hate Crime Against Two Muslim Women*, THE SEATTLE TIMES (Oct. 22, 2010), http://seattletimes.nwsources.com/html/localnews/2013220695_muslimwomen22m.html.

241. Tu, *supra* note 239.

242. Conor Christofferson, *Hate Crime Charges Filed in Attack on Muslim Women*, KOMO NEWS (Oct. 21, 2010), <http://tukwila.komonews.com/content/hate-crime-charges-filed-attack-muslim-women>.

243. See Sidney Gills, *Hate Crime at ARCO: Two Muslim women attacked*, REAL CHANGE NEWS (Oct. 21, 2010), www.realchangenews.org/index.php/site/archives-blog/4819/ (reporting the women's fear of leaving their house as this may result in another physical attack for being Muslim).

244. Gina Potthoff, *FBI Investigates Reported Assault on Local Muslim*, THE COLUMBUS

period, a woman who had converted to Islam and began wearing the headscarf received threats and intimidation by a neighbor. The reported verbal threats included, "I'm going to kill you, you f-ing b-ch," "I'm going to shoot your dog and [rape you] while you pray with your head on the ground."²⁴⁵ The neighbor also physically intimidated the Muslim woman by shoving her against a wall, monitoring her with binoculars and attempting to unlawfully enter her apartment.²⁴⁶

That same week on December 24, 2010, a man in Twin Falls, Idaho harassed a Muslim woman wearing a headscarf and with her two children.²⁴⁷ After asking if she was Muslim, the assailant reportedly told her he "spent time in Iraq and my friends were killed by you, I was blown up by you."²⁴⁸ According to court records, the alleged assailant shouted that the woman "didn't belong here in the U.S." and claimed he had killed Muslims and planned to kill more. He also reportedly told her that he had a concealed weapon. A loaded weapon was later found in the man's car. Around that same time, a Muslim woman cashier wearing a headscarf was threatened by a male customer.²⁴⁹ He accosted her with derogatory names and screamed "This is f-ing America, why are you here" and demanded that she leave the country. He threatened to "get her" at the end of her shift.²⁵⁰

In another incident on March 30, 2011, a 13-year-old honors student in Staten Island was harassed, beaten, thrown to the ground and assaulted, as her headscarf marked her as a Muslim.²⁵¹ On July

DISPATCH (Dec. 20, 2010), http://www.dispatch.com/live/content/local_news/stories/2010/12/21/columbus-muslim-reports-harassment-assault.html?sid=101.

245. *Harassment Allegedly Began After Victim Began Wearing Islamic Scarf*, NOVA NEWS (Dec. 22, 2010), <http://www.shoah.org.uk/2010/12/23/harassment-allegedly-began-after-victim-began-wearing-islamic-scarf/>. See CAIR: *FBI Asked to Probe Bias Motive for Harassment of Ore. Muslim*, PR NEWSWIRE (Dec. 21, 2010), <http://www.prnewswire.com/news-releases/cair-fbi-asked-to-probe-bias-motive-for-harassment-of-ore-muslim-112274619.html>.

246. *Supra* note 243, and all it contains.

247. See Ben Botkins, *Twin Falls man arrested for allegedly harassing Muslim*, MAGIC VALLEY NEWS (Dec. 24, 2010), http://www.magicvalley.com/news/local/twin-falls/article_cc705188-c402-534f-8d71-7e5f64fe9283.html.

248. *Id.*

249. Levi Pulkkinen, *Hate Crime Charge Filed in Seattle Grocery Store Attack*, SEATTLEPI (Jan. 4, 2011), <http://blog.seattlepi.com/seattle911/2011/01/04/hate-crime-charge-filed-in-seattle-grocery-store-attack/> (reporting the man was charged with a hate crime of malicious harassment). See also CAIR: *Seattle Muslim Targeted in Bias Attack*, BREIT BART (Jan. 5, 2011), http://www.breitbart.com/article.php?id=xprnw.20110105.DC25496&show_article=1.

250. Pulkkinen, *supra* note 248.

251. Doug Auer, *SI Student Slapped with Hate Crime Charge After Trying to Rip Off*

6, 2011, a 56-year-old Muslim woman wearing a headscarf in Harlem was attacked by two women after she had asked one of them to stop taking her photo. One of her attackers called her “a f-ing terrorist” as she punched the victim in the eye and threatened to kill her. The two attackers pulled off the woman’s headscarf and continued to verbally attack her.²⁵² In a similar incident a week later, a 26-year-old headscarved Pakistani American Muslim was attacked on July 14, 2011, in Niagara Falls. Two women yelled ethnic slurs from a van while following the victim, who was on foot, before the two assailants pulled over and started slapping, punching, and kicking the victim repeatedly.²⁵³ On July 27, 2011, a Tennessean headscarved Islamic convert and her 18-year-old son were threatened with a knife by another motorist who made fun of an Islamic prayer and threatened to kill the two.²⁵⁴

In 2009, an African-American Muslim student at the University of Bridgeport was dismissed from school after another student falsely accused her of being a terrorist.²⁵⁵ The incident began when the Muslim student, Balayla Ahmad, reported to school officials that another student had been sexually harassing her with “graphic offensive comments.”²⁵⁶ School officials declined to investigate the matter and dismissed her complaint, prompting the harassing student to retaliate by accusing Balayla of terrorism.²⁵⁷ School officials then dismissed her from school.²⁵⁸ Balayla’s attorney noted

Religious Headscarf, N.Y. POST (March 30, 2011), [http://www.nypost.com/p/news/local/staten_island/religious_student_slapped_with_hate_O7xqayG7bMN1wkDHDdQGN;EdgarSandoval et al., *Girl Attacked for Wearing a Veil Says 11-year-old Bullied, Beat Her for Months with Another Student*](http://www.nypost.com/p/news/local/staten_island/religious_student_slapped_with_hate_O7xqayG7bMN1wkDHDdQGN;EdgarSandoval%20et%20al.,%20Girl%20Attacked%20for%20Wearing%20a%20Veil%20Says%2011-year-old%20Bullied,%20Beat%20Her%20for%20Months%20with%20Another%20Student), N.Y. DAILY NEWS (March 31, 2011), http://articles.nydailynews.com/2011-03-31/news/29386377_1_hate-crime-charges-muslim-girl-head-scarf.

252. Jamie Schram & Maura O’Connor, *Muslim Gal Assaulted in Harlem*, N.Y. POST (July 8, 2011), http://www.nypost.com/p/news/local/manhattan/muslim_gal_assaulted_in_harlem_tpbqmgjLNjIRdJzTtcpnKO.

253. Eli George, *Niagara Falls, NY: Police Charge Woman With Hate Crime*, AHMADIYYA TIMES (July 14, 2011), <http://ahmadiyyatimes.blogspot.com/2011/07/niagara-falls-ny-police-chargewoman.html>.

254. *Tennessee Knife-Wielding Driver Shouts “I’ll Kill You,” Spews Religious Slurs at Muslim Mother and Son*, AL-JAZEERAH (July 28, 2011), <http://www.aljazeera.info/News/2011/August/1%20n/Tennessee%20Knife-Wielding%20Driver%20Shouts%20I%20Kill%20You,%20Spews%20Religious%20Slurs%20at%20Muslim%20Mother%20and%20Son.htm>.

255. Tanya Somanader, *Muslim College Student Reports Sexual Harassment, Gets Reported to FBI For Terrorism and Expelled*, THINK PROGRESS (Jan. 18, 2011, 1:15 PM), <http://thinkprogress.org/security/2012/01/18/406061/connecticut-muslim-student-reports-sexual-harassment-gets-reported-to-fbi-for-terrorism-and-expelled-from-university/?mobile=nc>.

256. *Id.*

257. *Id.*

258. *Id.*

that her hijab made her an easy target because she fit the stereotype of the "Terrorist Other."²⁵⁹

Recently, in Ann Arbor, Michigan, on August 7, 2011, a motorist pulled up to a 21-year-old Palestinian woman while she was stopped at a red light and screamed racial epithets, yelling, "You're a terrorist," and, "Your people need to be killed," as he pointed a handgun at her.²⁶⁰ Unfortunately, for these women and many others whose stories are unreported, their headscarves will continue to expose them to hate crimes and other forms of discrimination as they symbolize the feared and despised terrorists in our midst.

These hate crimes show how hate speech permeates the public psyche to produce tangible discrimination and violence against persons associated with the hated group, as evinced during the vitriolic and divisive anti-Muslim rhetoric connected with the Ground Zero mosque. As the scarf increasingly becomes a symbol of disloyalty and foreignness, the Muslim woman is no longer merely a private citizen free to choose how to practice her faith. Instead, she faces the false choice between freely expressing herself based on religious, cultural, and personal values or protecting herself and her family from violence in public spaces.

C. SCHOOL BULLYING OF MUSLIM CHILDREN ARISING FROM THEIR MOTHER'S "MARKER" OF TERRORISM

Muslim children across the United States increasingly face threats to their physical and psychological safety upon entering school.²⁶¹ Activists cite the media's vilification of Muslims and Arabs as a key factor in the rise of school bullying. As a result, the

259. *Id.*

260. CAIR-MI Asks FBI to Probe Threat Against Muslim Driver, PR NEWSWIRE (Aug. 7, 2011), <http://www.prnewswire.com/news-releases/cair-mi-asks-fbi-to-probe-threat-against-muslim-driver-127096513.html>.

261. *Protecting the Civil Rights of American Muslims: Hearing Before the S. Comm. on the Judiciary*, 112th Cong. 9, 15 (2011) (statement of Farhana Khera, Executive Director of Muslim Advocates) ("A Muslim teenager in Iowa was called a "raghead" and a "sand nigger," and had his jaw broken; A Muslim high school student in Staten Island was punched, spat on and harassed at school for approximately one year before coming forward. . . . In March 2010, Muslim Mothers Against Violence, a community organization, surveyed 78 Muslim male and female youth between 12 and 17 years of age in Northern Virginia about their experiences in school. Eighty percent responded that they had been subjected to bigoted taunts and epithets and harassment, with three-quarters indicating the epithets had occurred more than once. Fifty percent report being called names in front of teachers and school administrators. The harassment includes being called "terrorist," "raghead," "tower takers," "bomber," and "pirate" (referring to Somali children). One youth said, "other minorities are protected but not us," while another said, "well, it's hard to avoid.").

physical safety²⁶² of a Muslim woman's children has become a primary concern as the guilt associated with her headscarf is imputed onto her children.

One young man in Indiana was taunted and harassed at school for a year, called "Little Osama" and "terrorist."²⁶⁴ He alleged that at least seven bullies taunted him because of his Middle Eastern heritage, culminating in a brutal attack by a student while other students watched.²⁶⁵ Another Muslim junior high student in Katy, Texas, suffered severe injuries at the hands of another student.²⁶⁶ Over the course of several weeks, the assailant subjected the victim to a series of verbal assaults, accusing the victim of being a terrorist and blowing up buildings.²⁶⁷ The attacks culminated when the assailant punched the victim in the face. As a result, the victim's jaw was broken in two places, requiring surgery and internal pins.²⁶⁸ Four bullies at a Staten Island, New York, high school subjected another Muslim teen to regular verbal and physical assaults.²⁶⁹ For nearly a year, the victim suffered almost daily physical and verbal abuse.²⁷⁰ The abuse included verbal assaults accusing the victim of being a "f---in' terrorist."²⁷¹ The physical assaults took place in and out of class.²⁷² One particular physical assault was so severe that the victim had to see a doctor due to blood in his urine.²⁷³ Aside from the physical toll, the assaults emotionally traumatized the victim,

262. See, e.g., Jerry Wofford, *Tulsan Accused of Hate Crime Should Be Committed, Witnesses Testify*, TULSA WORLD (Jan. 12, 2011), http://www.tulsaworld.com/news/article.aspx?subjectid=298&articleid=20110112_1_0_hrimgs501076 (reporting on the delivery of threatening anti-Muslim messages and videos sent to an Islamic school in Tulsa Oklahoma). See also Press Release, Off. Pub. Aff., Dep't. of Just., Texas Man Pleads Guilty to Federal Hate Crime in Connection with Mosque Arson in Arlington, Texas (Oct. 18, 2010), <http://www.justice.gov/opa/pr/2011/February/11-crt-228.html> (The Justice Department announced that Henry Clay Glaspell, of Arlington, Texas, pleaded guilty today to a hate crime charge stemming from the ethnically motivated arson of a children's playground at the Dar El-Eman Islamic Center in Arlington in July 2010).

264. Betsy Schlikerman, *Parents Sue over Bullying of Teen*, L.A. TIMES, Nov. 15, 2011, at A19.

265. Schlikerman, *supra* note 262.

266. CAIR: *Texas Muslim Student Targeted by Slurs Has Broken Jaw*, PR NEWswire (Feb. 4, 2010), <http://www.prnewswire.com/news-releases/cair-texas-muslim-student-targeted-by-slurs-has-jaw-broken-83579987.html>.

267. *Id.*

268. *Id.*

269. Justin Tinker, et al., *Muslim teen beaten, called a 'terrorist' by classmates says he stayed silent out of fear*, N.Y. DAILY NEWS (Oct. 11, 2010), http://articles.nydailynews.com/2010-10-11/news/27077883_1_abuse-victim-trinidadian.

270. *Id.*

271. *Id.*

272. *Id.*

273. *Id.*

who once was a promising student and piano player.²⁷⁴

One Muslim woman commentator noted that even with the passage of the anti-bullying laws in New Jersey, "it is important for lawmakers, school administrators, teachers and parents to remain mindful that Arab-American, American-Muslim and Southeast-Asian children are at an especially acute risk for harassment, intimidation and bullying in the public schools."²⁷⁵ Similarly, some educators note that a significant number of students come to school with misperceptions, in the form of negative stereotypes, about Muslims and Islam. They believe such views may be due to a growing anti-Muslim sentiment in the United States. "A lot of times it involves statements from students: 'They're all crazy. They all hate us,'" said Christopher S. Rose, the outreach director at the Center for Middle Eastern Studies at the University of Texas at Austin, who works extensively with K-12 teachers. "Kids are no longer coming into the classroom as a blank slate. They have something they've been told at home, at church, on Facebook, Twitter."²⁷⁶

This phenomenon likely contributed to a troubling case in April 2011 where a Somali second grade boy was found unconscious in the bathroom hanging by his neck in the stall.²⁷⁷ But for a security guard's opportune discovery of his body, the young boy would have likely died from the anti-Muslim bullying.

It is thus no surprise that Muslim women must consider sacrificing their religious freedom rights to protect their children from abuse in schools. A telling example is the response of a Palestinian American woman to the September 11th attacks as she rushed out of her house with her hair uncovered to pick up her son from middle school. Her daughter, who wore the headscarf, noted her shock when she saw her mother for the first time not wearing a headscarf in public. The daughter exclaimed, "I bumped into her. I was: 'Mom! You forgot to wear your hijab.' And [her mother] said: 'We can't wear it.' . . . My brother looks like a White kid with dark hair and she didn't want to wear a hijab so that people would not know he was a Muslim. I was speechless."²⁷⁸

274. *Id.*

275. Engy Abdelkader, *In Post-9/11 World, Anti-Bullying Bill Carries Special Significance*, N.J.L.J. (Dec. 20, 2010), <http://www.law.com/jsp/nj/PubArticleNJ.jsp?id=1202476472974>.

276. *Majority of States Have Yet to Write 9/11 Into Social Studies Standards*, CHARLESTON DAILY MAIL (Sept. 2, 2011), <http://www.dailymail.com/ap/APTopStories/201109020569?page=2&build=cache>.

277. Hortense M. Barber, *Bullies Hang Boy in Bathroom Stall*, BET (April 1, 2011), <http://www.bet.com/news/national/2011/04/01/bullies-hang-boy-in-bathroom-stall.html>.

278. Paul Harris, *Living With 9/11: The Muslim American*, THE GUARDIAN (Sept. 5, 2011),

When faced with such circumstances, it should come as no surprise if Muslim mothers decide to take off their headscarves or never put them on in the first place out of concern for the physical safety of their children. Whatever individual expressive rights are available by law to the Muslim woman are nullified by reality.

D. LIMITING HER ACCESS TO THE COURTS

An integral component of equal citizenship is access to the justice system. Since 9/11, an unprecedented number of Muslim women have been expelled from the courthouse because of wearing the headscarf.²⁷⁹ As judges internalize the public's and government's suspicions of Muslims, they exhibit their own biases by expelling headscarved women from the courtroom. Women who previously entered the courtroom wearing headscarves found themselves arbitrarily excluded by an obstinate judge intent on abruptly enforcing a "no hats" policy.

A judge in Georgia held an African American Muslim woman in contempt of court for refusing to remove her Muslim headscarf and sentenced her to 10 days in jail.²⁸⁰ A Black Muslim woman's exclusion from the courthouse on account of her headscarf²⁸¹ would

<http://www.guardian.co.uk/world/2011/sep/05/living-with-911-muslim-american>.

279. See Beasley, *supra* note 195; See also *Court Rule Would Unconstitutionally Deny Muslim Women Access to Justice*, ACLU and Allies Tell Court, AM. C.L. UNION (Apr. 30, 2009), <http://www.aclumich.org/issues/religious-liberty/2009-04/1362> (announcing that with the support of a diverse group of religious, ethnic and domestic violence organizations, the ACLU of Michigan submitted a comment to the Michigan Supreme Court asking the court to change a proposed court rule that would effectively close the courthouse doors to Muslim women who wear a niqab, a veil which covers the lower part of the face); See also Steven Staven, *Row Over Wearing of Niqab in Court*, THE NAT'L (June 19, 2009), <http://www.thenational.ae/news/world/americas/row-over-wearing-of-niqab-in-court> (stating that the rule change was backed by the Michigan Judges Association and the Michigan District Judges Association, which argue that the rule allows judges to clearly identify witnesses and better observe their demeanor; however, that civil liberties groups, such as the American Civil Liberties Union, said it opens the door to potential violations of first amendment rights); See also Allie Shah, *Sherburne County Jail Ban on Head Scarves Draws Protests*, STAR TRIB. (Oct. 27, 2011), <http://www.startribune.com/local/north/132755038.html> (reporting on the jail's refusal to allow a Somali American Muslim inmate to wear her headscarf when around other inmates).

280. See John Amis, *U.S. Judge Jails Muslim Woman Over Head Scarf*, ASS'N PRESS (Dec. 17, 2008), <http://www.msnbc.com/id/28278572>; See also *Valentine v. Douglasville*, No. 1:10-mi-99999-UNA (N.D. Georgia, filed Dec. 14, 2001) (alleging violations of First and Fourth Amendments and the Religious Land Use and Institutionalized Person Act arising out of Ms. Valentine's allegedly unlawful detention and forced removal of her headscarf).

281. *ACLU Files Lawsuit On Behalf Of Muslim Woman Forced To Remove Head Covering In Georgia Courthouse*, Am C.L. Union (Dec. 14, 2010), <http://www.aclu.org/religion-belief-womens-rights/aclu-files-lawsuit-behalf-muslim-woman-forced-remove-head>

not happen to Muslim men, whatever their race, as they are not religiously mandated to wear anything on their heads

Similarly, state courts in Michigan and Texas excluded women from the courtroom because their headscarf violated the court's headwear policy.²⁸² Each of the courts rescinded its order after facing legal challenges from the women and their lawyers. That the courts so quickly conceded to the demands of the women evinces that the underlying basis of exclusion are negative stereotypes of Muslims rather than the law.²⁸³

It goes without saying that access to the courts and the political process is a fundamental individual right. While the incidents discussed above arguably can be characterized as anomalies, the broad implications of such incidents should not be overlooked. Not only do they humiliate the individual women experiencing exclusion, but they also send a chilling message to all Muslim women that they are not free to choose to practice their faith as they want without paying a prohibitively high cost. Unless one accepts that being locked up at home to preserve one's safety or refraining from utilizing the courts from fear of biased judges constitute reasonable options, then Muslim women are de facto denied the freedom to decide how to dress and practice their faith.²⁸⁴

covering-geo; Beasley, *supra* note 195 (reporting on a Georgia Muslim woman was arrested and jailed after she refused to remove her hijab before entering a Georgia court).

282. U.S. DEP'T JUST. CIV. RTS. DIV., 40 RELIGIOUS FREEDOM IN FOCUS (2009), available at http://www.justice.gov/crt/spec_topics/religiousdiscrimination/newsletter/focus_40.html (reporting "The Civil Rights Division's Coordination and Review Section opened the compliance review on January 30, 2009, after receiving several complaints that Muslim women were barred from wearing headscarves in courtrooms, including a complaint that a woman was found to be in contempt of court for failing to remove her headscarf and ordered to serve ten days in jail.").

283. In a society that has historically looked down upon the Muslim "East" for allegedly subjugating its women, it is ironic that "Western" judges now deny these same women access to justice on account of their religious practices. This paradox calls into question the authenticity of the "West's" interest in women's rights in its critiques of the Muslim "East's" treatment of women. By denying her the freedom to meaningfully choose how to practice her faith and express her individuality, the purportedly liberal "West" is guilty of the same offense alleged against the purportedly illiberal "East."

284. *Lifting the Veil*, *supra* note 205 (documenting the stories of twelve Muslim women who wore the headscarf and the political and social reasons why they decided to stop wearing it in public – specifically that the price was too high in terms of loss of economic opportunity and physical harassment).

E. DECONSTRUCTING MUSLIM WOMEN-LED ORGANIZATIONS

A more subtle but equally harmful effect of the headscarf's association with terror is the deconstruction of women-led organizations that tailor to the needs of practicing Muslim women in contemporary American society. A telling example is the fate of Hip Muslim Moms, a group of over fifty young mothers in the Washington, DC, area, some of whom wear the headscarf. This women's group and many others like it are natural outgrowths of the coming of age of American-born children of Muslim immigrants who seek to preserve their Muslim religious identity as they adopt an American cultural identity. The mom's group clipped coupons, arranged play dates, and planned girls' nights out to see movies such as *Sex and the City 2*. They self-identified as modern, professional Muslim women who sought an alternative to moms' groups run by their older, immigrant moms.

But when one of the wives' husbands was charged with plotting to bomb the Washington DC Metrorail, the group was suspected of illicit activity. Questions percolated as to whether they were "jihadi" Muslim women married to terrorists. Not only do such suspicions raise the familiar specter of guilt by association, but they also objectify women as mere extensions of their husbands, as opposed to individuals independent of their husband's actions or beliefs. An onslaught of negative publicity forced the women's group to disband out of fear for their own physical safety.²⁸⁵ "A lot of moms were really sad . . . that this beautiful, pure group got tainted by this," commented one of the group leaders. "It's sad to see our name associated with actions of people we've never met."²⁸⁶ These women are now forced to either return to the traditional social groups dominated by patriarchal norms or disconnect from other Muslim women, leaving them socially isolated.

These types of experiences at the intersection of race, religion, and gender are not reflected in antidiscrimination strategies adopted by mainstream Muslim advocacy groups or religious institutions. Similarly, Western feminist organizations are unfamiliar with and apparently uninterested in the adverse effects such events have on Muslim women in America. Like Black women in the antiracism

285. See Tara Bahrapour, *Hip Hop Moms Group Undone by D.C. Metro Bomb Plot*, WASH. POST (Oct. 29, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/29/AR2010102902600.html>.

286. *Id.*

context, Muslim women's grievances are addressed only to the extent they apply to Muslim men or White women.

Because White Christian women are not collectively blamed for White Supremacist males' violence committed in the name of Christianity, whether through racial violence by the Klu Klux Klan or terrorist bombings by the likes of Timothy McVeigh,²⁸⁷ White women-led feminist organizations²⁸⁸ fail to fully appreciate how national security laws disparately impact Muslim women.²⁸⁹ Any attention paid to Muslim women's rights is often limited to patronizing and counter-productive anti-burka campaigns focused on Muslim majority countries.²⁹⁰

Unless there is a serious rethinking by Muslim and American feminist organizations, it is unlikely that Muslim women's experiences will be meaningfully redressed any time soon.

287. See generally Michael J. Whidden, *Unequal Justice: Arabs in America and United States Antiterrorism Legislation*, 69 FORDHAM L. REV. 2825, 2849 (2001) ("FBI statistics indicate that most acts of domestic terrorism are not committed by Muslim or Arab groups. Indeed, from 1984 to 1998, 95 percent of the terrorist incidents in the United States were attributed to domestic groups.") (internal citations omitted); See also Volpp, *supra* note 17, at 1584 (noting that despite the Oklahoma City bombing "there was little consolidation of a national identity in opposition to Timothy McVeigh's terrorist attack."); See also Russell Jacoby, *The Terror From Within*, N.Y. TIMES (July 25, 2011), <http://www.nytimes.com/2011/07/26/opinion/26jacoby.html> (noting that most threats and violence tend to emerge from within a society, not from outside it. "We prefer, however, to imagine threats as emanating from aliens and foreigners. Talk of a 'clash of civilizations' is, while inaccurate, oddly reassuring because it suggests that the enemies are outsiders who can be easily identified.").

288. Terry O'Neill, President, National Organization for Women (Anglo); Arcelia Hurtado, Executive Director, Equal Rights Advocates (Hispanic); Serrin M. Foster, President, Feminists for Life (Anglo); Eleanor Smeal, President, Feminist Majority (Italian); Elisabeth MacNamara, President, League of Women Voters (Anglo); Nancy Northup, President, Center for Reproductive Rights (Anglo).

289. Similar to domestic violence programs that do not gain white support until it is viewed as affecting the white community, the collective punishment of Muslim women arising out of terrorist acts by Muslim (men or women) that undermine gender rights is ignored unless white women experience an analogous context. See Crenshaw, *supra* note 137, at 1258-59 (discussing the prerequisite for domestic violence to affect White communities before domestic violence programs that affect minority communities are supported by mainstream White communities).

290. Shikha Dalmia, *The French Anti-Burqa Jihad*, FORBES (March 19, 2010, 3:49 PM), <http://www.forbes.com/2010/05/19/burqa-france-clothing-women-opinions-columnists-shikha-dalmia.html>.

VI. RETHINKING POST-9/11 CIVIL AND WOMEN'S RIGHTS STRATEGIES TO GIVE AGENCY TO MUSLIM WOMEN

As the "post-9/11 era" enters its eleventh year, the persistent discrimination against Arabs, Muslims, and South Asians can no longer be characterized as mere backlash. Public bias is on the rise and the government continues to ratchet up its aggressive preventative counterterrorism efforts directed at Muslims.²⁹¹ Because women bear a significant brunt of the adverse consequences, a rethinking of post-9/11 civil rights strategies is long overdue.

At the conceptual level, the debate can no longer be framed as merely about the legal right to wear the headscarf as a matter of religious freedom. Wearing the headscarf post-9/11 has become a psychological and physical hazard for Muslim women and their families. It has also impeded Muslim women's ability to obtain employment and become economically independent. Proposed solutions, therefore, must incorporate the multiple levels of subordination faced by headscarved Muslim women.

Four specific strategies would go a long way towards empowering, de-essentializing, and granting agency to Muslim women, particularly those wearing a headscarf. First and foremost, the unique forms of discrimination and subordination experienced by a diversity of Muslim women, particularly those who are easily identifiable as Muslim, must be acknowledged and incorporated into anti-discrimination campaigns. Towards that end, there needs to be more media coverage about the ways in which Muslim women experience post-9/11 discrimination and are uniquely impacted by anti-Muslim bias in ways different than Muslim males. Second, more Muslim women must be included in leadership positions in Muslim advocacy groups, American women's rights groups, and national security advocacy groups. Hate crimes and discrimination against Muslim women should be viewed as a women's rights issue and a national security issue, not just a religious bias issue. Third, Muslim women in advocacy leadership positions should reflect the various political viewpoints, religious practices, and ethnic backgrounds are represented in decision making processes. Fourth, government efforts to prevent post-9/11 backlash through community outreach efforts or civil rights litigation must purposely

291. See Aziz, *supra* note 192.

include a diversity of Muslim women in the relevant meetings and dialogues with the Muslim communities.

A. AVOIDING SUPERFICIAL QUOTAS THAT TOKENIZE MUSLIM WOMEN

One simple, but flawed, solution to problems examined in this paper is to increase the number of Muslim women in leadership positions in Muslim, civil rights, and women's rights organizations.²⁹² While promotion of Muslim women may mitigate the situation, a handful of women placed in key decision-making positions cannot single-handedly undo systemic problems because there is no singular, unitary "Muslim woman" that can represent the experiences and grievances of the diversity of women who identify as Muslim.²⁹³ Women who identify as Muslim come from various racial and ethnic backgrounds, hold diverse political viewpoints, and adopt beliefs ranging from staunch secularism to religious orthodoxy. Therefore, a misguided focus on a quota system will likely result in token selection of women who, knowingly or not, simply implement a male-centric vision without a complete restructuring of strategy to incorporate the diversity of experiences of Muslim women in America. Thus, inclusion of Muslim women in decision-making capacities within mainstream institutions is merely a first step towards integrating diverse perspectives into campaigns aimed at combating post-9/11 discrimination.

The number of women in leadership roles is certainly indicative of their influence. But equally important is ensuring that the women in leadership are high achievers in their professional lives with the requisite authority to apply their expertise to empower the community. This would require Muslim males to share, and in some cases cede, their control of the leadership reins with women who are not only more skilled than them in certain areas but also interject a gendered perspective that addresses the unique social, political, and legal challenges faced by Muslim women.

The more difficult task, however, is de-objectifying women in the psyche and practices of Western feminists and Muslim

292. See, e.g., Ben Smith & Byron Tau, *Muslim Groups Nervous About King Hearings*, POLITICO (Jan. 18, 2011), <http://www.politico.com/news/stories/0111/47756.html> (quoting Khaled Abou Fadl, a well-known Islamic studies professor who stated, "Nearly all Muslim organizations need ... new political leadership, simply because most of the leadership continues to be from the immigrant community. English continues to be not their first language, and their primary education was obtained elsewhere, before they came to the United States.").

293. See Harris, *supra* note 199.

community life in America. As demonstrated in this article, the Muslim woman's headscarf has become the insignia of the nation's political enemies, thereby subjecting her to forms of discrimination uniquely different from discrimination experienced by women at large. Women with an intimate knowledge of this complex intersectional experience should be integrally involved in developing civil rights strategies. Over the past few years, an increasing number of Muslim women of diverse political and ethnic backgrounds are publishing op-eds, books, and other literature that offer a window into their experiences post-9/11.²⁹⁴ Such work is rarely highlighted in mainstream print and television media, leaving in place specious stereotypes of Muslim women as meek, uneducated, and lacking agency. Thus, there needs to be a concerted effort by advocates and the media to increase exposure of such work.

Within Muslim communities, women's meaningful participation is often constrained by the superimposed primacy of their roles as wives, daughters, and mothers over their roles as executives, lawyers, doctors, and other professional positions they hold in mainstream American society. As a response to the persistent discrimination against women who wear the headscarf, a new generation of women has arisen who are increasingly proactive in empowering themselves against such bias and debunking these stereotypes. For example, in the local political race of the Chicago area, five women ran for political office. As Maha Hasan, running for library trustee, put it, "[B]eing a Muslim female running for this, and wearing the headscarf . . . , it might be difficult in that people will look at me and automatically judge me, but that's part of the process of getting people to know who I am and what I offer."²⁹⁵

But even those women who reject this ordering of their multiple identities by interacting with Muslim (predominantly male) leadership as skilled professionals find themselves marginalized either through subversive tactics by the new generation of Muslim males, or explicit rejection by the older immigrant generation.

294. See, e.g., *I SPEAK FOR MYSELF: AMERICAN WOMEN ON BEING MUSLIM* (Maria M. Ebrahimji & Zahra T. Suratwala eds., 2011); *LOVE INSHALLAH: THE SECRET LOVE LIVES OF AMERICAN MUSLIM WOMEN* (Ayesha Mattu & Nura Maznavi eds., 2012); *HIJABI MONOLOGUES* (2009) (play that aims to portray the varying social experiences of American hijabi women); Uddin, *supra* note 237; Sheila Musaji, found of *THE AMERICAN MUSLIM* (last visited May 4, 2012), <http://theamericanmuslim.org/>; Farhana Khera, Executive Director of Muslim Advocates, and Linda Sarsour, Head of the Arab American Association.

295. Kane Farabaugh, *Seven Muslim Americans on Ballot in Chicago*, *VOICE OF AM.* (Apr. 4, 2011), <http://www.voanews.com/english/news/usa/Seven-Muslim-Americans-on-Ballot-in-Suburban-Chicago-119217129.html>.

Through this gendered filtering process, the women remaining who have not been either expelled or opted-out from frustration are often technocrats who use their skills to merely implement male-centric strategies.

B. ACKNOWLEDGE THE DOUBLE STANDARDS AND FOLLOW THEIR LEAD

If American feminists want to be taken seriously in their call for universal women's rights in abroad, they must face the skeletons in their own countries' closets. Women's rights organizations must confront the double standards whereby they adamantly defend the rights of women in the "Muslim East" yet neglect their own society's subjugation of Muslim women. Such subordination is not limited to garden variety discrimination but also occurs in the national security context, making it prohibitively hazardous to wear the headscarf. Adopting the banal and patronizing approaches common in international development programs, where Muslim women are victims with no agency who must be "saved" by Western feminists, will not suffice.²⁹⁶ Similarly, tokenizing a few Muslim women — talking about, rather than to, Muslim women, or throwing some money at the problem — would do more harm than good by creating a false impression of progress. American feminists must face the reality that their society has contributed to denying Muslim women their fundamental individual "right to choose" how to express themselves, dress, practice their faith and define modesty according to their personal beliefs.

Despite having more than ten years to come to this realization, women's rights groups have yet to include "post-9/11 discrimination" in their scholarly and activist agendas because they shortsightedly view it as a national security issue. Although some feminists may feel no loss at the end of the Islamic practice of "veiling," which they believe does not adhere to the values of liberalism, they cannot escape their own culpability in stripping Muslim women of agency and individuality — two fundamental principles undergirding American feminism.²⁹⁷ Muslim women in America, like their non-Muslim counter parts, deserve the social and political space to make their own decisions on how to live.²⁹⁸ But, as

296. See Choudhury, *supra* note 107, at 168–70.

297. See Rosa Vasilaki, 'Victimization' versus 'resistance': feminism and the dilemmatics of Islamic agency, (Apr. 2011), available at http://www.bisa.ac.uk/index.php?option=com_bisa&task=view_public_papers&Itemid=126 (discussing the dilemma faced by feminists faced with Muslim women's choice to wear the headscarf).

298. See Dalia Mogahed, *Perspectives of Women in the Muslim World*, GALLUP MUSLIM

shown in this paper, the status quo has made it nearly impossible to do so without paying an unfairly high personal price in the form of unemployment, physical assault, and social and political marginalization.

American feminist organizations have failed to incorporate the perspectives of Muslim women, especially those who wear the headscarf, into their women's rights agendas.²⁹⁹ By inviting more Muslim women into the leadership of women's rights organizations, inclusion of diverse voices will occur organically. Likewise, non-Muslim American feminists can support existing efforts by various Muslim women rather than attempt to lead or speak on behalf of them. The latter is a common strategy that infantilizes and objectifies Muslim women.

Just as Black women face circumstances defined by their race, Muslim women's experiences are heavily defined by their racialization as the "Terrorist other." American feminists' failure to challenge head-on the racism underlying discrimination against Muslim women in America ultimately reinforces the subordination of Muslims as a group and, by extension, Muslim women.³⁰⁰ In light of Black women's dissatisfaction with feminist organizations' inattention to race and gender intersectionality, there is no excuse for such neglect of Muslim women's experiences.

American feminists should be looking to Muslim women to take the lead in developing strategies and projects tailored to experiences only they can articulate. As Cyra Choudhury perceptively articulated in the international development context, attempts to empower Muslim women in America should look to ordinary Muslim women to determine how to improve their lives based on their values and personal experiences.³⁰¹ It is crucial that Muslim women's rights go beyond simply the freedom from discrimination but also the freedom to shape their religious and cultural communities, as well as broader public policy.³⁰²

THINKFORUM, June 6, 2006 (finding that "One of the most pronounced themes to emerge from the study was the great importance Muslims attach to their faith, both for personal guidance and for the progress of society at large" and that "Muslim women clearly tend to agree that Islamic principles should guide public policy").

299. See Crenshaw, *supra* note 137, at 1252 (noting "the failure of feminism to interrogate race means that feminism's resistance strategies will often replicate and reinforce the subordination of people of color. . .").

300. *Id.*

301. See Choudhury, *supra* note 107, at 168-70.

302. Sunder, *supra* note 112, at 1413 (highlighting in the international human rights context the need for Muslim women's claims to move beyond freedom from violence to freedom to make the world).

What is ultimately at stake, both pre- and post-9/11, is that Muslim women should not be forced to make a false choice between individual rights, freedom of religion, and physical safety – whether imposed by Muslim males, American feminists, or the public.

CONCLUSION

This paper aims to provoke a reexamination of the post-9/11 era through the perspective of American Muslim women donning a headscarf – a population that thus far has been largely ignored in the relevant policy and legal debates. Her visibility as a marked Muslim inevitably subjects her to the entrenched bias against Muslims in America. Meanwhile, the disparities she experienced in the past because of her gender did not suddenly wane once her racialized Muslim identity took center stage. Quite the contrary, she now must overcome obstacles arising out of gender bias as well as religious and racial bias. She is caught in the crosshairs of intersectionality of these three characteristics.

Although there is no singular, unitary “Muslim woman” that can represent the diversity of women who identify as Muslim,³⁰³ many Muslim women experience similar adverse consequences because they are collectively stereotyped as meek, powerless, oppressed, or in the post-9/11 era sympathetic to terrorism.

Overt acts of violence and insidious forms of economic discrimination against headscarved women restrict a woman’s freedom of choice in practicing her religion. The threat this poses to a woman’s life and livelihood should not be taken lightly. The right to work directly impacts a woman’s self-esteem, individual autonomy, and placement in the power hierarchy of her family and community. Similarly, her inability to feel safe because of the headscarf strips her of a fundamental right to safety and religious expression.

The challenge now rests with Muslim rights, women’s rights, and civil liberties advocacy groups to uphold the civil rights of all women and all Muslims, rather than subordinate these women’s interests for the benefit of the dominant group’s agenda. The urgency of this project does not stem from merely abstract notions of justice but rather real civil rights violations – headscarved women have increasingly become targets of entrenched anti-Muslim attitudes, and consequently suffered palpable harm. Addressing this challenge is essential, not only to restore these women’s dignity,

³⁰³ See Harris, *supra* note3.

but also to strengthen American values of religious freedom and gender equality.
