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American Muslim Women: Who We Are and What We Demand From Feminist Jurisprudence

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When feminist jurisprudence excludes AMW, it inflicts harm on two parties: AMW and feminist jurisprudence itself. These harms should be of special concern to legal academia at large, scholars of feminist jurisprudence, and those committed to ending the subordination of all women. The harm that feminist jurisprudence inflicts upon AMW is further discussed in Part Three,¹ but, it is critical to understand how the discipline engages in self-harm at the outset.

This self-harm is best understood through a study of feminist jurisprudence's own founding principles. If one purpose of feminist jurisprudence as a field of scholarship is "to map the contours of the ongoing legal supports in an era characterized by a liberal consensus on very basic norms of nondiscrimination and formal equality,"² then, leaving AMW off the map violates this foundational principle. If a second equally important aim of feminist legal theory is to give women the sort of agency "according to which all of us are defined primarily by our individual attributes and ambitions rather than by any socially mandated role or set of presumed characteristics, and the value of autonomy, by which is meant the irreducible importance of self-determination and the pursuit of one's own understanding of the good life without societal or state based censorial control,"³ then it follows that denying AMW this sacred right to self-determination attacks the very ethos of feminist legal theory and threatens the integrity of the discipline as a whole.

Today AMW are primarily defined by the socially mandated roles and characteristics foisted upon us by western culture and feminist legal theories, and we are excluded from critical conversations that shape feminist jurisprudence. This exclusion is an egregious harm, but, the remedy is within reach. Small changes can begin to realign both parties into a powerful coalition. In fact, some feminist legal theories are natural allies for AMW's integration into feminist jurisprudence—but, this coalition has yet to be widely discussed in legal academia.

Our complex intersectional marginalization is invisible to feminist legal theories. This invisibility compounded with the failure of feminist legal theories to affirmatively challenge AMW's subordination renders feminist jurisprudence complicit in assaults on AMW's bodies and liberties in a post-9/11 Trumpian world. As it stands, third party accounts dominate the scholarship and public discourse on AMW. We are *written about*—our identities are constructed, reconstructed, and perverted to suit the writers' needs; but, we are not *spoken to* much less *listened to*. AMW exist in extremes because dramatic characterizations supply the best ammunition

1. See *infra* Part Three.

2. Robin West, *Introduction* to EDGAR ELGAR PUBLISHING, RESEARCH HANDBOOK ON FEMINIST JURISPRUDENCE 1, 1 (Robin West & Cynthia Grant Bowman eds., Edgar Elgar Publishing 2019).

3. West, *supra* note 2, at 1–2.

for third party agendas.⁴ Today, feminist discourse marginalizes AMW by singularly referring to us in relation to oppression.⁵

Intersectional feminism is a force of change, and our inclusion is long overdue. This article seeks to combat essentializing by adding much needed nuance to narratives on AMW. Instead of replacing one stereotypical image with another, my objective is to create a rich intersectional portrayal of AMW that is currently wholly lacking in legal academia and popular culture. Every section of this article could be an entire book, and I introduce these topics to spark pressing discussions where the academy is silent.

Part One will define AMW's group identity by exploring how faith and agency unite our diverse group. Part Two will offer a unique first-person perspective on the internal and external contours of AMW's intersectional marginalization. Part Three will explain how feminist jurisprudence marginalizes AMW today by analyzing how leading textbooks portray AMW. I invite scholars of feminist jurisprudence to critically examine how their work harms AMW, either by exclusion or misrepresentation, and insist that they pivot to acknowledge AMW as a distinct and agentic group with a right to self-determination.

II. PART ONE: AMERICAN MUSLIM WOMEN'S GROUP IDENTITY

I generally define AMW as Muslim women residing in the United States. AMW are bound together by powerful shared characteristics that forge their group identity. At the outset, Part One will briefly explain the importance of distinguishing between AMW and Muslim women globally.

AMW are, of course, members of the global community of Muslim women, but, conflating the two detracts both groups. Conflating AMW with Muslim women globally causes four distinct harms: (1) it muddles the unique struggles that each group faces, which in turn prevents finding effective solution for both groups; (2) it panders to stereotypes that peg Muslims as enemies of America and foists these stereotypes upon AMW; (3) it obscures AMW into a generalized mass of Muslims who exist outside the American context, thereby making it more palatable for Americans to support decreasing AMW's constitutional rights and ignore a rise in physical violence against them; and (4) it erases the history and legacy of Black AMW who laid the foundation for Islam in America.

4. *See infra* Part Two.A.1.

5. *See infra* Part Three.A.2.a.

Any construction of a group identity is vulnerable to essentializing experiences.⁶ I reject the notion that AMW are a monolith, and I do not seek to exchange one stereotype for another. But I do argue that there are certain foundational truths of the American Muslim woman's identity that binds us whether we realize it or not. For example, South Asian AMW who may be unaware that they are indebted to the sacrifices of their Black AMW sisters are nonetheless bound together in a common history.

Section A will describe AMW's shared faith identity, and section B will briefly explore AMW's demographics.

A. AMW's Shared Faith Identity

AMW are bound together by our shared (1) beliefs and (2) practices rooted in agency. Our beliefs are grounded in monotheism and a call to justice. Islam has given us agency, and while misogyny and other external forces can limit the ways in which we exercise our agency effectively, there is no force that can strip us of our agency entirely. There are countless examples of women from our faith tradition who exercised their agency to accomplish incredible feats, from fighting in battles to defend the Prophet Muhammad (peace and blessings be upon him), to building universities and institutions that educated luminaries like Averroes, Maimonides, and Ibn Khaldun.⁷ Any characterization of AMW that does not acknowledge us as an agentic group arises from an ignorance about our agency—not from its absence.

6. I intend to spark meaningful discourse about AMW while fully acknowledging that describing a group identity is vulnerable to essentializing AMW's identities. One article cannot begin to scratch the surface of AMW's complex identities.

7. Sania, *The Empowered Female Warrior that Fought Prophet Muhammad's Attackers*, MUSLIM GIRL (July 19, 2013), <https://muslimgirl.com/the-empowered-warrior/> [<https://perma.cc/KN5Q-TM2G>] (describing Nusaybah's role as a warrior in battle and an advocate for women's equality); Craig Considine, *Guiding Jewish/Muslim Relations Through the Life of Maimonides, the 12th Century Jewish Scholar*, HUFF POST (Nov. 5, 2013), https://www.huffpost.com/entry/guiding-jewish-muslim-relations_b_4210938?utm_hp_ref=tw [<https://perma.cc/57NZ-HTVA>] (describing the life of Maimonides as a scholar including the years he studied at Al-Qarawiyyin); Rayana Khalaf, *The World's Oldest-Standing University was Founded by a Muslim Woman*, STEP FEED (Mar. 3, 2017), <https://stepfeed.com/the-world-s-oldest-standing-university-was-founded-by-a-muslim-woman-6101> [<https://perma.cc/6ALL-H2V6>]; Corisande M. Fenwick, *The Al-Qarawiyyin Mosque-University of Fez by Zakaria Enzminger*, ARCHEOLOGY AT BROWN (Apr. 14, 2014), <https://blogs.brown.edu/archaeology/2014/04/14/the-al-qarawiyyin-mosque-university-of-fez-by-zakaria-enzminger/> [<https://perma.cc/F8JP-6M6B>] (explaining the history of Al-Qarawiyyin and its notable alumni including Averroes, Ibn Khaldun, Pope Sylvester II, Gerbert of Auvergne, and others).

1. Shared Faith Beliefs

a. Monotheism and Justice

AMW are inextricably bound by our faith. Monotheism is central to AMW's shared Islamic beliefs.⁸ We share beliefs in one God, that Muhammad (peace and blessings be upon him) was the final messenger of God, in prayer, in fasting during Ramadan, in giving charity, and in making pilgrimage to the holy cities of Makkah and Madinah.⁹ This common faith is the foundation of AMW's group identity.¹⁰ In an era where religious practice is modestly declining in America, we continue to practice Islam.¹¹

Faith gives AMW a moral compass that guides us toward justice. Islam urges, "[w]hosoever of you sees an evil, let him change it with his hand; and if he is not able to do so, then [let him change it] with his tongue; and if he is not able to do so, then with his heart—and that is the weakest of faith."¹² This imperative to fight against injustices is rooted in Islam, and it is central to the ethos of AMW's shared religious identity.

The Quran calls for social justice on many issues including gender equality. Early Islamic activists, inspired by the Quran, fought to eradicate female infanticide in Arabia.¹³ Chapter *An Nahl* forbade female infanticide calling the practice evil.¹⁴ Furthermore, this passage even prohibited parents from being disappointed by having a girl-child.¹⁵ Chapter *At Takhwir* also condemned female infanticide and rejected the notion that there was any sin inherent to femininity.¹⁶ AMW draw great power and agency from this Quranic rejection of feminine inferiority and channel it to continue fighting for justice and gender equality today.¹⁷

8. 9 AL-BUKHARI, SAHIH BUKHARI Book 93 Number 470.

9. 1 AL-BUKHARI, SAHIH BUKHARI Book 2 Number 7.

10. There are, of course, differences of opinion on how to practice these articles of faith.

11. *U.S. Public Becoming Less Religious*, PEW RESEARCH CTR. (Nov. 3, 2015), <https://www.pewforum.org/2015/11/03/u-s-public-becoming-less-religious/> [<https://perma.cc/WR8V-DJMF>].

12. AN-NAWAWI, FORTY HADITH 34 (Ezzeddin Ibrahim & Denys Johnson-Davies trans. 1982).

13. QURAN Surah At-Takwir 81:8–9 (Verses were revealed in the Quran condemning the pre-Islamic Arab practice of burying baby girls alive, "And when the girl [who was] buried alive is asked ... for what sin she was killed.").

14. QURAN Surah Nahl 16:58–59 ("And when one of them is informed of [the birth of] a female, his face becomes dark, and he suppresses grief. He hides himself from the people of the ill of which he has been informed. Should he keep it in humiliation or bury it in the ground? Unquestionably, evil is what they decide.").

15. *Id.*

16. QURAN, *supra* note 13.

17. Antonia Blumberg, *17 Muslim American Women who Made America Great in 2016*, HUFF. POST (Dec. 9, 2016), [<https://perma.cc/9V6Q-KDFG>].

b. Agency

Our faith community is replete with agentic women. These women, historic and contemporary, boast incredible accomplishments across disciplines as entrepreneurs, legal scholars, and spiritual leaders.¹⁸ They defy every misconception, stereotype, and misogynistic cultural norm imposed upon Muslim women. In fact, their accomplishments continue to provide AMW with an entire record of evidence to refute cultural misogyny clothed in religious dictates.

AMW are often told what we cannot do. But, in those moments we summon these iconic examples of Muslim female agency to the contrary. When we are told that women should not work, we think of Khadijah. Khadijah bint Khuwaylid was one of the most powerful businesswomen in Arabia, who funded much of the early establishment of Islam.¹⁹ When we are told that women are intellectually inferior to men and should take a backseat to male leadership, we think of Aisha. Aisha bint Abu Bakr was infamous for her bravery, intellectual prowess, and prolific memory, that preserved scores of hadiths²⁰ in the early Islamic era. She was a titan of Islamic Law, and men traveled far and wide to learn from her.²¹ When we are told that men have divine spiritual capabilities beyond our own, we think of Rabia. Rabia al-Adawiyya was one of the most revered Sufi saints who shattered ideas of masculine superiority in spirituality.²² When we are told that women should not go to school, we think of Fatima. Fatima al-Fihri built Al-Qarawiyyin, the oldest university in the world in 859 A.D., that it is still operational and granting degrees to this day.²³

18. See generally Benedikt Koehler, *Female Entrepreneurship in Early Islam*, 31 *ECON. AFF.* 93 (2011); Arezou Azad, *Female Mystics in Mediaeval Islam: The Quiet Legacy* 56 *J. ECON. & SOC. HIST. ORIENT* 53 (2013).

19. Koehler, *supra* note 18, at 94.

20. A hadith is a narration of an action or saying of the Prophet Muhammed (peace and blessings be upon him). The Quran and hadith are the two primary sources of Islamic Law.

21. See generally Hoda Elsadda, *Discourses on Women's Biographies and Cultural Identity: Twentieth Century Representations of the Life of A'isha Bint Abi Bakr*, 27 *FEMINIST STUD.* 37 (2001).

22. See WIDAD EL SAKKAKINI, *FIRST AMONG SUFIS: THE LIFE AND THOUGHT OF RABIA AL-ADAWIYYA, THE WOMAN SAINT OF BASRA*, (London Octagon Press 1982).

23. Natasha Maguder, *World's Oldest University, Library, Meets 21st Century with Massive Restoration*, CNN (Apr. 3, 2017), <https://www.cnn.com/style/article/fez-al-qarawiyyin-medina-restoration-unesco/index.html> [<https://perma.cc/B4UW-2PJU>]; Samantha Issam, *Fatima Al-Fihri: Pioneering Education for Muslim Women*, *THE REV. OF RELIGIONS* (Dec. 24, 2017), <https://www.reviewofreligions.org/13490/fatima-al-fihri-pioneering-education-for-muslim-women/> [<https://perma.cc/RM54-9ND6>]; Aylin Zafar, *The Arab Muslim Woman Who Brought Higher Education To The Entire World*, *GIRLBOSS* (Mar. 27, 2018), <https://www.girlboss.com/identity/2018-3-27-fatima-al-fihri-history> [<https://perma.cc/M6JZ-QKHR>]; Karen Frances Eng, *Restoring the World's Oldest Library*, TED (Mar. 1, 2016), <https://ideas.ted.com/restoring-the-worlds-oldest-library/> [<https://perma.cc/9GTB-KLHN>].

Today, when AMW try to conjure an image of what success looks like to us, we look into American society and are left gazing into a black hole. Black AMW fill this void. Black AMW are prime examples of courageous women who have succeeded *because* of their Muslim identity—not in spite of it. These women have inspired a new generation of AMW to dominate in politics, athletics, and academia. I am relentlessly hopeful that my writing and activism might open doors for young AMW who come after me when I think of Ilhan. Ilhan Omar, the first Congresswoman to wear hijab, was inducted into office at a swearing in ceremony that abolished the 181-year-old headwear ban in Congress.²⁴ When young AMW dream of becoming athletes, they look to the path forward that Ibtihaj paved. Ibtihaj Muhammed, an Olympic bronze medalist, was the first American Muslim woman to wear hijab while competing for Team USA.²⁵ AMW who are passionate about scholarship and academia see a place for themselves at the head of a classroom because of Aminah. Aminah McCloud is a professor and scholar who authored seminal works on Muslim women and Islam in America.²⁶ Individually, AMW continue to exercise their agency to rise to the top of their respective fields, while also battling the complex layers of intersectional marginalization they face as a group.

2. Shared Experiences Practicing Faith

Agency lies at the heart of how we practice our faith in America. Any reference to AMW that excludes how we exercise agency at every turn of our story is an incomplete and inaccurate depiction. Unfortunately, false characterizations dominate feminist jurisprudence and legal academia at large. This section offers a novel perspective by illustrating how agency underscores AMW's shared experiences of practicing our faith across every era in American history from slavery to 9/11. It will also explain how the realities of practicing Islam in America, from wearing hijab to facing discrimination, include important examples of exercising agency that are

24. David Smith, 'My choice': Ilhan Omar becomes first to wear hijab in US Congress, *GUARDIAN* (Jan. 3, 2019), <https://www.theguardian.com/us-news/2019/jan/03/ilhan-omar-hijab-congress-headwear> [<https://perma.cc/P65M-WB4W>]; Democracy Now, *Trump Supporter Sentenced to 1 Year in Prison for Threatening to Assault & Murder Rep. Ilhan Omar*, *DEMOCRACYNOW.ORG* (Mar. 13, 2020), https://www.democracynow.org/2020/3/13/headlines/trump_supporter_sentenced_to_1_year_in_prison_for_threatening_to_assault_murder_rep_ilhan_omar [<https://perma.cc/4EKN-U4NQ>] (Omar has faced virulent discriminatory backlash and a man was sentenced to one year in prison because he threatened to assault and murder her).

25. "U.S. Fencer Ibtihaj Muhammad: 'Don't Be Afraid To Reject Someone's Disbelief In You," *WASH. POST* (Sept. 20, 2019) https://www.washingtonpost.com/lifestyle/magazine/us-fencer-ibtihaj-muhammad-dont-be-afraid-to-reject-someones-disbelief-in-you/2019/09/20/c0c798fe-c8ef-11e9-be05-f76ac4ec618c_story.html [<https://perma.cc/4727-9MT9>].

26. Aminah Beverly Al-Deen, Ph.D., Curriculum Vitae, <https://las.depaul.edu/academics/religious-studies/faculty/Documents/Al-Deen.pdf>. (last visited Mar. 30, 2020) [<https://perma.cc/3Z7Y-NLL8>].

virtually ignored by feminist jurisprudence. Our tradition of exercising agency to practice our faith, even in times of tribulation, is a force that unites us.

AMW are deeply bonded by a shared history in the United States that began with slavery. AMW of all races and ethnicities²⁷ are united in our indebtedness to the first AMW—Black AMW who persevered through unfathomable pain to build the foundation of Islam in America. On the one hand, slavery completely subjugated Black AMW's bodies. But, on the other hand, Black AMW who lived through slavery manifested a spectacular display of agency by forbidding the "masters" of their physical bodies from having any dominion over their spiritual and intellectual truths. Black AMW guarded their faith at all costs, and, no third-party narrative can negate this truth—our community was established by a radical act of agency.

Hundreds of years later, we continue to exercise agency to overcome obstacles to practicing our faith. As a group, we share one date as a marker of two completely different eras—9/11. Prior to 9/11, AMW faced the same struggles that other minorities in America faced, but, generally enjoyed a sort of obscurity. However, after 9/11 AMW felt a marked surge of fear, hatred, and discrimination.²⁸ Even when AMW's physical bodies and constitutional liberties were on the line, we see examples of AMW exercising their agency. Our fear did not drive us into our homes—it pushed us to increase our civic engagement and to enter roles of greater visibility within our communities.²⁹ Our exercises of agency in the face of bigotry paved the way for us to enter the political stage at the federal level today.

Our shared faith beliefs forge a set of common experiences, and these experiences, both the hostile and mundane, bind AMW together. Many AMW struggle to find a small clean corner to pray in and repeatedly explain

27. See *infra* Part One.B.1. & Part One.B.2.

28. Aasim I. Padela & Michele Heisler, *The Association of Perceived Abuse and Discrimination After September 11, 2001, With Psychological Distress, Level of Happiness, and Health Status Among Arab Americans*, 100 AM. J. PUB. HEALTH 284 (Feb. 2010) (Physicians concluding that after September 11th Arab Americans reported higher levels of psychological distress, a reduction in happiness, and worse health status ultimately advocating for an increase in culturally competent and community based healthcare responses.); Dennis Gilbert, *Hamilton College Muslim America Poll: Accounts of Anti-Muslim Discrimination*, HAMILTON COLLEGE.EDU (2002), <https://www.hamilton.edu/news/polls/muslim-america-poll/analysis> [<https://perma.cc/XZ9K-S3D9>] (finding that polling results revealed one in four Muslims reported that they were discriminated against, harassed, verbally abused, or physically abused after 9/11, and approximately half of the respondents knew someone who suffered abuse).

29. Tom Gjelten, *Sept. 11 Marked Turning Point For Muslims In Increasingly Diverse America*, NPR (Sept. 7, 2016), <https://www.npr.org/2016/09/07/492413599/sept-11-marked-turning-point-for-muslims-in-increasingly-diverse-america> [<https://perma.cc/S5MR-8KZD>].

to their coworkers that fasting during Ramadan also means drinking no water. We respond to these challenges by using our agency to bridge these knowledge gaps and author guides to help employers understand fasting during Ramadan.³⁰

We have experienced discrimination while seeking housing, employment, and educational opportunities. AMW face hostile realities like property destruction, the systematic violation of constitutional rights as our personal liberties are balanced against national security interests, and physical violence from hate crimes. We have responded by becoming civil rights attorneys and building institutions like Muslim Advocates and the Council on American Islamic Relations. These institutions have led impact litigation and authored reports on our religious practices to educate employers, health care professionals, and law enforcement officers.³¹ AMW use their agency to resist every dimension of their marginalization including governmental surveillance and discrimination in a post-9/11 Trumpian America.³² We are a small, highly visible, and often hated minority group, and this body of common experiences breeds solidarity and sisterhood.

AMW have a unique shared experience of exercising agency by developing practices and personal beliefs around hijab—regardless of whether they choose to wear hijab. The important point here is that AMW often think deeply about hijab because there are no dominant cultural defaults to fall into like there are in Muslim majority countries. This is yet another example of AMW using their agency to practice their faith in America. AMW must make a decision. Hijab is rarely discussed from an agentic perspective, and as a result our nuanced relationship with hijab is entirely overlooked.

All women who wear hijab (“hijabis”) have a set of shared experiences, but American hijabis are profoundly connected by the harsh realities of wearing hijab in America. AMW face demands from law enforcement to loosen their hijab or show more of their neck and ears.³³ In many police precincts, AMW are forced to remove their hijabs for mugshots.³⁴ In addition, hijabis are disproportionate targets of hate speech and physical

30. Nashwa Khan, *Even Water? Why (And How) Muslims Fast During Ramadan*, JSTOR DAILY (June 21, 2016), <https://daily.jstor.org/why-do-muslims-fast-during-ramadan/> [<https://perma.cc/Q36F-C86K>]; Amaliah Writes, *The Ramadan Explainer for Your Work Colleagues*, AMLIAH (May 17, 2016), <https://www.amaliah.com/post/45601/ramadan-explainer-work-colleagues-why-do-muslims-fast> [<https://perma.cc/YAX9-JLE2>].

31. MUSLIM ADVOCATES, <https://muslimadvocates.org/about/> [<https://perma.cc/V69Q-QVK2>]; CAIR’S GUIDE TO MUSLIM RELIGIOUS PRACTICES, <https://www.cair.com/resources/guides-to-muslim-religious-practices/> [<https://perma.cc/RF4N-HKYE>].

32. *See infra* Part Two.A.1.

33. *See* Mehwish Shaukat, *Strip for Your Mugshot: The Forcible Removal of American Muslim Women’s Hijab*, 24 U.C. DAVIS SOC. JUST. L. REV. (forthcoming May 2020).

34. *Id.*

violence.³⁵ Many hijabis also feel particularly responsible for humanizing Islam in today's precarious political environment. As hijabis, our daily battles to preserve our right to self-determination and to unapologetically assert our identity in hostile environments, forge an enduring bond.

B. Group Demographics

The purpose of this section is to show how incredibly diverse we are as a group.³⁶ AMW are not a monolithic group of Arab refugee immigrants (although, some of us are, and, we are very proud of our heritage). It is time to retire this caricature of AMW in exchange for a more accurate image of who we are as a group: ethnically and linguistically diverse, young and old, with rich histories from Indonesian immigrant AMW to second generation Syrian AMW to Black AMW whose ancestors have lived in this country for hundreds of years. The demographics below paint a much richer picture of AMW and refute the notion that AMW are a monolith.³⁷

1. Racial Demographics

AMW are America's most racially diverse faith community and its members include (1) Black, (2) White, and (3) Asian women.³⁸

a. Black Women as Founders

The first American Muslim woman was a slave.³⁹ This fact is egregiously overlooked in academia and within the American Muslim community. Scholars estimate that between 15%-30% of slaves were Muslim, and although many Muslims were forced to convert to Christianity, a sizeable portion remained Muslim.⁴⁰ Slavery established Islam in America, but academic studies on Muslim slaves are scarce.⁴¹ Within the existing data, there is even less information about women. This scarcity itself is worth interrogating. If the dearth of scholarship arises from

35. *Report: Communities on Fire: Confronting Hate Violence and Xenophobic Political Rhetoric*, SOUTH ASIAN AMERICANS LEADING TOGETHER [SAALT] (2018), <http://saalt.org/wp-content/uploads/2018/01/Communities-on-Fire.pdf> [<https://perma.cc/67DJ-G99Y>]; see *infra* Part Three.B.

36. See *infra* Part Two.

37. The idea of Muslims as a monolith pervades through all fields of academia, which increases the urgency of adding depth and nuance to the Muslim identity throughout disciplines. Hakim Zainiddinov, *Racial and ethnic differences in perceptions of discrimination among Muslim Americans*, 39 ETHNIC & RACIAL STUD. 2701, 2702 (Dec. 2016) ("Yet, most research uses a broad categorization of Muslims as a single group in reporting perceived experiences with discrimination.").

38. DALIA MOGAHED & YOUSSEF CHOUHOUD, INSTITUTE FOR SOCIAL POLICY AND UNDERSTANDING, AMERICAN MUSLIM POLL 2017: MUSLIMS AT THE CROSSROADS 9 (2017).

39. See Khaled Beydoun, *Antebellum Islam*, 58 HOW. L.J. 141, 144 (2014).

40. *Id.*

41. *Id.* at 145; MICHAEL GOMEZ, *Muslims in Early America*, in A MUSLIM AMERICAN SLAVE: THE LIFE OF OMAR IBN SAID 95, 95 (Ala Alryyes trans. 2011).

an absence in evidence, this suggests that enslaved Black Muslim women were so marginalized that no libraries or institutions deigned to preserve their artifacts or writings.⁴²

Despite this data scarcity, there are some historical accounts that establish the presence of female Muslim slaves. For example, Katie Brown, a granddaughter of Muslim slaves, recounted that her grandmother Pheobe was a Muslim who used to pray with her husband and recite prayers on her prayer beads at very particular hours.⁴³

Today, Black Muslims are the second largest racial group of Muslims in America at 25%.⁴⁴ Discussions on AMW must acknowledge the enormous contributions of Black AMW who persisted through the darkest of times to transmit their faith.⁴⁵ Typecasting AMW as exclusively Arab, South Asian, or immigrant completely erases Black AMW's history.

b. "White" Muslim Women

White Muslims, 49% of the American Muslim population, are the largest racial group of Muslims in America.⁴⁶ Arabs and Latinos are included in this figure.⁴⁷

Most Arab immigration began after the 1965 Immigration and Nationality Act ("INA"), which abolished the national origin quota system to adopt a skills and family based immigration system.⁴⁸ Pursuant to the INA, Arab Muslim immigrants from the Middle East were legally categorized as white.⁴⁹ Arab immigrants possessed relatively high levels

42. GOMEZ, *supra* note 41, at 96.

43. Ayla Amon, *African Muslims in Early America: Religion, Literacy and Liberty*, SMITHSONIAN NATIONAL MUSEUM OF AFRICAN AMERICAN HISTORY AND CULTURE (Mar. 14, 2018), [<https://perma.cc/KK4B-RDL9>].

44. MOGAHED, *supra* note 38, at 10.

45. See Shajuti Hossain, *Lessons from Blackamerican Lawyers' Social Justice Advocacy for Immigrant Muslim Lawyers*, 24 U.C. DAVIS SOC. JUST. L. REV. (forthcoming May 2020); see JAMILLAH KARIM, *AMERICAN MUSLIM WOMEN: NEGOTIATING, RACE, CLASS, AND GENDER* (2008).

46. *Id.*

47. U.S. CENSUS BUREAU, *RACE & ETHNICITY* (2017), [<https://www.census.gov/mso/www/training/pdf/race-ethnicity-onepager.pdf>] [<https://perma.cc/R633-L5EG>] ("The United States Census Bureau considers race and ethnicity to be distinct concepts." They consider Hispanic or Latino as descriptors for ethnicity and not race. Thus, Latinas are racially categorized as white, but ethnically recognized as Hispanic. This article has adopted this formulation and categorizes Hispanic women racially white and ethnically Hispanic).

48. 8 U.S.C.A. § 1101; Caroline R. Nagel & Lynn A. Staeheli, *Citizenship, Identity and Transnational Migration: Arab Immigrants to the United States*, 8 SPACE & POLITY 3, 8 (2004); see SHERMAN JACKSON, *ISLAM AND THE BLACK AMERICAN* (2005); American-Arab Anti-Discrimination Committee, [<https://www.adc.org/facts-about-arabs-and-the-arab-world/>] [<https://perma.cc/PT8B-H299>] (explaining that the Arab world consists of 22 countries: Algeria, Bahrain, the Comoros Islands, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Mauritania, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, the United Arab Emirates, and Yemen).

49. JACKSON, *supra* note 48, at 15.

of education, professional qualifications, and post-graduate school admissions which increased their ease of entry to the United States.⁵⁰ Many people incorrectly assume that the post-1965 immigration established Islam in America, but the Black Muslim community preceded Arabs by several centuries.

Latinos, a rapidly growing population, constitute about 8% of American Muslims.⁵¹ Most of them are women.⁵² It is difficult to pinpoint the origin of Latina Muslims in America, however there is a record of Punjabi migrants, as early as the 1920s, moving to California and marrying Latina women, who then converted to Islam.⁵³ Another wave of Latina conversion occurred around 1970 with many Puerto Rican converts in New York.⁵⁴ Today, Latina AMW stand at the intersection of the most discriminated groups in America—Latinas and Muslims.⁵⁵ Future academic studies should explore the severity of their mistreatment in the Trump era.⁵⁶

c. Asian Muslim Women

Asian Muslims comprise 18% of the total American Muslim population.⁵⁷ Most Asian Muslim women are Indian and Pakistani, and their migration began shortly after the post-INA wave of Arab immigration. Approximately 30,000 Pakistani women migrated to the United States in the 1980s, and by 2015 there were approximately 453,000 Pakistanis in America.⁵⁸ Indian migration began around the 1980s, and by 2012 there were about 230,000 Muslim Indians in the United States.⁵⁹

50. Nagel & Staeheli, *supra* note 48, at 9.

51. MOGAHED, *supra* note 38, at 9, Figure 11.

52. See Gaston Espinosa, Harold Morales & Juan Galvan, *Latino Muslims in the United States*, 8 J. RACE, ETHNICITY & RELIGION 1, 1 (2017).

53. *Id.* at 10.

54. *Id.* at 11.

55. Elizabeth Elizalde, *Latino Muslims Embrace Heritage Faith in Trump's America*, N.Y. DAILY NEWS (May 13, 2017), <http://www.nydailynews.com/news/national/latino-muslims-embrace-heritage-faith-trump-america-article-1.3158113> [<https://perma.cc/J2DY-NUWV>] (“He (Trump) has presented both the Hispanic and Muslim minorities as threats to the nation and that it needs to be protected from them.”).

56. See HAROLD D. MORALES, *LATINO AND MUSLIM IN AMERICA: RACE, RELIGION, AND THE MAKING OF A NEW MINORITY* (2018); Lisa Viscidi, *Latino Muslims a Growing Presence in America*, 22 WASH. REP. MIDDLE E. AFF. JUNE 2003, at 56.

57. MOGAHED, *supra* note 38, at 9.

58. Migration Pol’y Inst. [MPI], *RAD Diaspora Profile: The Pakistani Diaspora in the United States* (June 2015 rev.); PAKISTAN BUREAU OF STATISTICS, *POPULATION BY RELIGION*, <http://www.pbs.gov.pk/sites/default/files/tables/POPULATION%20BY%20RELIGION.pdf> [<https://perma.cc/FK4X-78SH>] (showing that an estimated 96% of Pakistanis are Muslim).

59. Jie Zhong & Jenna Batlova, *Indian Immigrants in the United States*, MIGRATION POL’Y INST. (Aug. 31, 2017), <https://www.migrationpolicy.org/article/indian-immigrants-united-states> [<https://perma.cc/56QM-Aa kAV7>].

2. Ethnic Demographics

AMW have extremely diverse ethnic backgrounds.⁶⁰ Scholars estimate that American Muslims hail from a range of 68 to 80 different ethnicities.⁶¹ AMW's ethnic and national origins are Somali, Egyptian, Senegalese, Chinese, Syrian, and Kyrgyz to name a few. As a group, we have the rare luxury of vastly multicultural friendships and community relationships.

3. Immigration Demographics

American Muslims, and thus AMW, hold varied immigration statuses.⁶² Pew reports that 58% of American Muslims are First generation (were born abroad), 18% are Second generation (have immigrant parents), and 24% are Third generation (were born in the U.S. with U.S. born parents).⁶³

The image of dusty brown refugees that so many Americans subconsciously conjure upon hearing the words "Muslim women," remains virtually unchallenged because many Americans simply do not know how diverse we are as a group. We need more platforms in popular culture and in legal academia to dispel the notion that AMW are a homogenous mass by centering our conversations on data driven demographic studies and first-person narratives.

III. PART TWO: AMERICAN MUSLIM WOMEN'S INTERSECTIONAL MARGINALIZATION

Feminist jurisprudence distorts AMW's identities and erases their intersectional marginalization. There is no greater oppression than denying someone the right to self-determination; and, academia and popular discourse have yet to acknowledge AMW's group identity. Muslim women are solely referred to as a general global mass that is distinctly other.⁶⁴ The vilification of the Muslim identity is so pervasive that many Americans have accepted that discriminating against Muslims is a necessary and inevitable consequence of living in a post-9/11 Trumpian world.⁶⁵

60. See MOGAHED, *supra* note 38, at 9.

61. Zainiddinov, *supra* note 37, at 2703.

62. MOGAHED, *supra* note 38, at 9.

63. *U.S. Muslims Concerned About Their Place in Society, but Continue to Believe in the American Dream*, PEW RESEARCH CTR. (July 26, 2017), <http://www.pewforum.org/2017/07/26/demographic-portrait-of-muslim-americans/> [<https://perma.cc/9ZDV-QSA7>].

64. Janine Rich, *'Saving' Muslim Women: Feminism, U.S. Policy and the War on Terror*, INT'L AFF. REV. 1, 3 (2014). ("The powerful media portrayal of the oppressed Muslim woman, as signified by her veiled body and her refusal or presumed inability to speak for herself, has long been a tool by which violence is justified in the name of her salvation.")

65. See *infra* Part Two.B.1.

Just as Kimberlé Crenshaw described Black women's subordination as "greater than the sum of racism and sexism," AMW's subordination is greater than the sum of Islamophobia and sexism.⁶⁶ Oversimplifying AMW's marginalization closes the door to meaningful discourse that can empower the emergence of first-person narratives that offer nuance to feminist legal theories. The ropes that bind AMW are many: misogyny, patriarchy, sexism, racism, classism, immigration policies, governmental surveillance, cultural chauvinism, cultural expectations, language barriers, Islamophobia, employment and educational discrimination, and perpetual terror suspicion.

AMW's external and internal marginalization generates exponential subordination that cannot be dismantled until it is publicly acknowledged. AMW face endless permutations of intersectional marginalization: the Black hijabi AMW, the undocumented Latina AMW, and the LGBTQ Pakistani AMW. These women face complex layers of marginalization largely in silence. AMW's intersectional marginalization includes racism and sexism which is further compounded by the deafening silence surrounding our intersectional marginalization.

Agency requires that AMW be given a right to self-determination. We ought to be able to exercise our agency to define what we believe are our most pressing internal and external challenges. We should not be confined to discussing the marginalization that third parties assign to us. Although there are many successful and highly educated individual strong AMW, we still experience marginalization as a group.

This section explores AMW's internal and external marginalization. First, this section will analyze AMW's internal marginalization which includes religious and cultural marginalization. Second, this section will explore examples of AMW's external marginalization from the government and popular discourse.

A. Internal Marginalization

AMW combat misogyny from men and women within the American Muslim community. This section will discuss two forces of AMW's internal marginalization: (1) religious, and (2) cultural.

1. Religious Marginalization

Muslims often invoke religious standards to subordinate AMW. For example, Muslim men and women implicitly and explicitly impose dress codes on AMW. There are communities where AMW, dressed in a range of clothing, are shamed and even asked to leave religious gatherings because someone has declared that they are not covered appropriately, even

66. Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL FORUM 139, 140 (1989).

if they are wearing hijab. For example, women who do not wear hijab and women who wear hijab in different styles have been asked to leave or ‘cover up’ at religious gatherings inside and outside of a masjid. Similarly, women who wear hijab or prefer to wear flowing dresses are sometimes shunned and unwelcome from religious gatherings because they are viewed as too conservative or extreme. Pressuring someone to wear or remove clothing are two sides of the same coin that strip AMW of agency.

These practices annex AMW’s agency, violate our right to bodily integrity, and interfere in the most sacred sphere of religious practice. The practice of policing dress codes is sexist, as evidenced by its general lack of enforcement against men who also have a suggested dress code. For example, religious standards require men to cover their knees, but men who wear shorts to the masjid exposing their knees are not verbally attacked or cast out of prayers at the same rate as AMW. The unequal application of such modesty standards implies a continuation of arcane notions of property and ownership over women’s bodies.

AMW are also marginalized by exclusion. Formal and informal rules, allegedly based on Islamic principles, have excluded women from certain outward-facing leadership roles invoking modesty standards. These rules are often perverted, outright false, and ignore valid differences of opinion within Islamic law. For example, historical Islamic accounts support female leadership, but some masjids in America prevent or highly discourage female leadership because, in their estimation, a woman publicly leading community discussions is immodest and therefore impermissible. I must caveat that religious leadership is one example where I have seen great progress in my lifetime. As a young girl, I recall masjid boards across the country led exclusively by men, but now women of all ages are joining board leadership.⁶⁷

The unequal enforcement of religious standards on ritual purity also marginalizes AMW. There are broad categories of ritual purity that apply to men and women, and both men and women can be in the same category of ritual impurity, which would require them to perform a ritual bath before returning to prayer. Some masjids in America have codified the unequal enforcement of purity standards by instating policies that interrogate women on their state of ritual purity. Interestingly, women enforce these standards against other women. Women are interrogated on whether they are menstruating, and if they are, the woman is commanded to leave the

67. Sarah Sayeed et al., *Report Number 3: Woman and the American Mosque*, AMERICAN MOSQUE 2011 11 (2013), <http://www.hartfordinstitute.org/The-American-Mosque-Report-3.pdf> [https://perma.cc/4QLT-RPY5] (“Ideological support for women’s inclusion in governance seems to have grown in the last two decades, with 69% of mosques reporting they allowed women to serve in 2000 and 67% in 1994.”).

masjid.⁶⁸ However, men who can be in the same category of ritual impurity are not asked whether they have ejaculated without showering before entering the masjid. These legally unsound methods intimidate, isolate, and exclude AMW from participating in communal worship.

2. Cultural Marginalization

I want to highlight a group of AMW whose marginalization is almost never acknowledged—immigrant mothers. There is vast diversity within this small subgroup, but, the particular group of immigrant mothers that I refer to below are some of the least visible members of our community. They are marginalized by a cultural belief that an immigrant mother's sole purpose is to care for her husband and children.

Some AMW are culturally marginalized twice over—first by their husbands and then their children. First, they experience a sort of patriarchy paralysis where they are frozen in time between a husband who expects his wife to stay at home, but pushes his daughters to become professionals. Caught in the crosshairs of a generational revolution, these AMW immigrant mothers are forced to forego their own educational and professional aspirations to fulfil the 'traditional' role of being a housewife. Because they do not have careers of their own, their children expect them to be available as primary caretakers for their grandchildren while they continue to pursue their professional aspirations. This cycle of servitude must end. It is time for our community to understand that immigrant mothers are not our servants, and we need to use our newfound positions of power and influence to uplift our mothers to achieve their full potential.

B. External Marginalization

AMW routinely combat two external forces of external marginalization: (1) the government, and (2) American cultural norms. There is a bi-directional causality between AMW's governmental and cultural discrimination. Sociocultural vilification of Islam breeds fear and anxiety within the general public, which paves the road to popularly enacting discriminatory laws. When the public learns about laws that discriminate against AMW, the primacy of precedent fuels a belief that such measures must be essential to law and order, because AMW are dangerous. If AMW are considered dangerous, then, they really should be

68. In 2015, I went to Masjid Al-Faatir, a masjid in my beloved Hyde Park neighborhood built by the legendary Muhammad Ali. I sat in a corner, far away from the women's congregation when a woman brusquely approached me. She asked me if I was on my period and I said yes. She glared at me and said, "You cannot be here, you must leave immediately, go now." Only the heroic intervention of my beloved friend Huda spared me from having to sit alone in a dark car on a street that had numerous car break ins that month. She asked the masjid leadership if it was their policy to kick women out of the masjid onto a dark street where they felt unsafe. They seemed momentarily confused, but, ultimately replied, "No."

subject to additional screening without exception, because the government would not impose drastic laws if they were unnecessary. This cycle continues and AMW are caught in a precarious loop where past discrimination blindly justifies future discrimination.

1. Governmental Marginalization

Today, the government deploys the terms “Muslim” and “hijab” as ‘talismatic incantations’ that abruptly halt legal arguments before they begin. This practice has functionally promulgated an implicit *per se* terrorist doctrine—AMW are *per se* terrorist suspects for all legal encounters ranging from routine traffic violations to tax fraud. Accordingly, this doctrine has carved out an unparalleled legal discretionary zone that profoundly impacts how governmental actors, including the police, treat AMW. It is within this discretionary zone that police officers routinely violate the religious freedoms of hijabi arrestees by falsely invoking identification concerns.⁶⁹

A prime example of this is police officers forcing AMW to remove their hijabs for booking photos across the country.⁷⁰ In New York City three AMW sued police precincts after they were forced to remove their

69. The NYPD’s anti-Muslim sentiments have been documented in the following works, but further discussion is outside the scope of this paper. See generally Mitchell D. Silber & Arvin Bhatt, *Radicalization In The West: The Homegrown Threat* (2007); Aziz Huq, *Modeling Terrorist Radicalization The New Face of Discrimination: Muslim in America*, 2 DUKE F. FOR L. & SOC. CHANGE 39, 57 (2010) (describing the NYPD’s clumsy analysis finding that “the accumulation of facial hair and poor housekeeping skills” were “typical signatures” of radicalization of American Muslims).

70. See Shaukat, *supra* note 33; see also Niraj Warikoo, *Muslim Woman Sues Police Over Headscarf Removal*, USA TODAY (June 30, 2015), <https://www.usatoday.com/story/news/nation/2015/06/30/muslim-woman-sues-police-mich-headscarf-removal/29541393/> [<https://perma.cc/G7EH-SQV9>]; Vanessa Taylor, *Police Took My Hijab. Here’s Why It’s So Hard to Stop Them From Doing It Again*, TALK POVERTY (May. 13, 2019), <https://talkpoverty.org/2019/05/13/police-hijab-stop-again/> [<https://perma.cc/5ZXY-SLAL>]; Suzanne Baker, *Headscarf Issue In Mug Shot Illuminates Conflicts Between Police Policy, Religious Respect*, CHI. TRIB. (Apr. 1, 2017), <https://www.chicagotribune.com/suburbs/naperville-sun/ct-nvs-head-covering-st-0402-20170401-story.html> [<https://perma.cc/52Q4-VE8S>]; Spencer Neale, *Muslim Woman Awarded \$120,000 After Police Removed Hijab For Mugshot In ‘Humiliating’ Experience*, WASH. EXAMINER (Dec. 23, 2019), <https://www.washingtonexaminer.com/news/muslim-woman-awarded-120-000-after-police-removed-hijab-for-mugshot-in-humiliating-experience> [<https://perma.cc/PV43-HY4M>]; Sarah Ladd, *Muslim Woman Sues Louisville Over Jail Photo Taken Without Her Hijab*, USA TODAY (July 31, 2019), <https://www.usatoday.com/story/news/nation/2019/07/31/Muslim-Woman-Sues-Over-Louisville-Jail-Photo-Taken-Without-Her-Hijab/1885131001/> [<https://perma.cc/5J7C-GTXD>]; Kristina Bravo, *Ventura County Sheriff’s Office Denies Deputy ‘Yanked’ Hijab Off Woman’s Head While in Custody*, KTLA 5 (May 13, 2018), <http://ktla.com/2018/05/13/ventura-county-sheriffs-office-denies-deputy-yanked-hijab-off-woman-head-while-in-custody/> [<https://perma.cc/UD3S-EP3B>].

hijab and they were subsequently photographed without their hijab on.⁷¹ Each of these women received a \$60,000 settlement.⁷² In Portland two AMW were arrested, photographed without their hijab, and these photographs without hijab were released to the public.⁷³ The Sheriff publicly apologized for this error, explaining that his police officers were “ill prepared for the types of arrests.”⁷⁴ An overwhelming number of police precincts are “ill prepared” for interactions with AMW because they do not understand hijab. One reason that law enforcement does not understand hijab is because AMW are firmly lodged into the American psyche as a faceless, voiceless, and powerless minority. If feminist jurisprudence included more first-person narratives of AMW describing hijab in their own words, these religious liberty violations could significantly decrease.⁷⁵ My position is not based on conjecture; rather, it is based on the growing number of jurisdictions that were educated about the significance of hijab and subsequently amended rules to allow hijab in booking photos.⁷⁶

2. American Cultural Marginalization

Western culture is rife with stereotypical images of disenfranchised Muslim women from the infamous *National Geographic* cover of a young Afghan girl with piercing eyes, which was named the most recognized photo in the magazine's 132 year history,⁷⁷ to grocery store cash register donation boxes across America clumsily plastered with hijab clad women in Pakistan who would very much appreciate your change to buy books. AMW are challenging this stale image, but, we have yet to breakthrough into mainstream media with first-person narratives. Until then, AMW are beholden to western popular culture's presumptions on the appropriate

71. Christine Hauser, *Women Forced to Remove Hijabs for Mug Shots Settle With New York City*, N.Y. TIMES 5 (Feb. 28, 2018), <https://www.nytimes.com/2018/02/28/nyregion/muslim-hijab-nypd.html> [https://perma.cc/RX8X-Z2FF].

72. *Id.*

73. Associated Press, *Sheriff Apologizes For Photos Of Muslim Women Without Hijabs*, SEATTLE TIMES (Sept. 15, 2018), <https://www.seattletimes.com/nation-world/sheriff-apologizes-for-photos-of-muslim-women-without-hijabs> [https://perma.cc/HA98-ESE6]; Dan MacLeod, *Sheriff Apologizes For Releasing Photos Of Muslim Protesters Without Their Hijabs*, BDN BLOGS, (Sept. 14, 2016), <http://portland.bangordailynews.com/2016/09/14/news/sheriff-apologizes-for-releasing-photos-of-muslim-protesters-without-their-hijabs/> [https://perma.cc/NKE7-T8GM]; Michael Arria, *Police Released Mugshots of Black Muslim Women Without Hijabs – and Charged Them More Heavily Than White Counterparts*, ALTERNET (Sept. 20, 2016), <https://www.alternet.org/2016/09/portland-police-sorry-releasing-booking-photos-muslim-women-without-hijabs/> [https://perma.cc/3T66-WJXY].

74. Associated Press, *supra* note 73.

75. Shaukat, *supra* note 33.

76. *Id.*

77. Steve McCurry, *National Geographic: Afghan Girl, A Life Revealed*, WASH. POST (Apr. 10, 2001), https://www.washingtonpost.com/wp-srv/liveonline/02/world/world_mccurry041002.htm [https://perma.cc/2YTC-VP5U].

roles and characteristics of an American Muslim woman's identity. This section will discuss (1) the overwhelmingly negative portrayals of AMW in the media, and (2) how politicians and activists commandeer AMW's identities to best suit their agendas.

a. Negative Media Portrayals

AMW are featured in two onscreen roles: a terrorist or an oppressed woman (both of which strip them of their agency).⁷⁸ The media's inability to imagine AMW as regular women who live normal lives dooms us to a one-dimensional existence. Even still, television panders to orientalist conceptions pitting AMW as inherently incompatible with western democracy.⁷⁹ Contemporary political discourse is mired in Islamophobia, but the media can transcend political rhetoric—through storytelling. Sadly, this potential for change is greatly diminished by the lack of Muslim representation within the media. We have meager few avenues to tell people who we are, and our voices alone have the power to banish stereotypes.

b. AMW as Terrorists, Oppressed, or Heroes

Third parties construct AMW's identities in binaries to benefit their agendas. AMW are either terrorists or heroes. These constructions can be understood as parasitic or symbiotic.

After 9/11, the Bush administration rallied for the war on terror first by inciting fear and dehumanizing Muslims by portraying them as terrorists.⁸⁰ Then, to enlist greater support, the narrative shifted—the government would descend as a benevolent savior to rescue the oppressed Muslim women in Afghanistan.⁸¹ “Freeing” emerged into political discourse a noble goal that was worthy of greater popular and financial support.⁸² Both identity constructions substantially harmed AMW and benefitted the Republican agenda, exemplifying a parasitic relationship.⁸³ Republicans

78. Nagel & Staeheli, *supra* note 48, at 9.

79. Laura Navarro, *Islamophobia and Sexism: Muslim Women in the Western Mass Media*, 8 HUM. ARCHITECTURE: J. SOC. SELF-KNOWLEDGE 95, 100 (2010).

80. Rich, *supra* note 64, at 1.

81. Rich, *supra* note 64, at 1 (“In addition to the specter of terrorism, the ideological rallying cry of ‘saving’ the women of the Middle East has been a powerful tool in justifying U.S. military intervention in the region.”).

82. *Id.*

83. *Id.* (“Yet when examined critically, it becomes apparent that U.S. foreign policy and military intervention in the Middle East has both worsened the status of women's rights in the region, and subsequently used the discourse of women's rights as a justification for the ‘war on terror.’”).

clumped AMW into a generalized mass of potential terrorists or oppressed women, and emerged as heroes.⁸⁴

Popular discourse conflates American Muslims with foreign enemies of the republic, and this generates two distinct harms. First, merging these groups makes it easier for lawmakers and politicians to systematically discriminate against AMW, with little to no pushback, because AMW are equal members of a threatening global terror mass. This discrimination leads to the second harm—a decrease in constitutional rights with massive community surveillance.⁸⁵ This narrative denies AMW an equal stake in liberty, by effectively turning us into foreign enemies and prime targets for programs like the NYPD's Muslim surveillance.⁸⁶

The Trump era ushered in an interesting paradox for AMW's identities. On the campaign trail, Trump openly vilified Muslims promising to ban them from entering America.⁸⁷ His anti-Muslim platform was a successful political strategy that reaffirmed the terrorist narrative.⁸⁸ Once again, AMW became suspicious, dangerous, and visible threats to democracy. This parasitic construction facilitated Trump's ascension to the presidency, and it severely harmed AMW who became frequent victims of hate crimes in the first year of Trump's presidency.⁸⁹

Simultaneously, the Women's March on Washington advanced a different narrative—the hijab became a symbol of freedom and resistance.⁹⁰ Posters of a hijabi wearing the American flag as a hijab became an iconic symbol of the Women's March that millions of people brandished in protests across the country.⁹¹ Suddenly, we were heroes. This bullet train

84. *Id.* at 5. (“... [T]he U.S. was free to declare a war on terror that would be played out on the bodies of Afghan women, continuing the cycle of violent intervention in the name of their salvation.”).

85. *Factsheet: The NYPD Surveillance Program*, ACLU, <https://www.aclu.org/other/factsheet-nypd-muslim-surveillance-program> [<https://perma.cc/D7QP-9TFF>] (The NYPD's Intelligence Division, “singled out Muslim religious and community leaders, mosques, student associations, organizations, businesses, and individuals for pervasive surveillance that is discriminatory and not conducted against institutions or individuals belonging to any other religious faith, or the public at large.”).

86. *Id.*

87. Jenna Johnson & Abigail Hauslohner, *'I think Islam hates us': A timeline of Trump's comments about Islam and Muslims*, WASH. POST (May. 20, 2017), <https://www.washingtonpost.com/news/post-politics/wp/2017/05/20/i-think-islam-hates-us-a-timeline-of-trumps-comments-about-islam-and-muslims/> [<https://perma.cc/WSB6-5S3F>].

88. *Id.*

89. BRIAN LEVIN, CTR. FOR THE STUDY OF HATE AND EXTREMISM; CAL. STATE UNIV., SAN BERNARDINO, SPECIAL STATUS REPORT: HATE CRIME IN THE UNITED STATES: 20 STATE COMPILATION OF OFFICIAL DATA 26 (2016).

90. Edward Helmore, *Munira Ahmed: The Woman Who Became The Face Of The Trump Resistance*, GUARDIAN (Jan. 23, 2017), <https://www.theguardian.com/Us-News/2017/Jan/23/Womens-March-Poster-Munira-Ahmed-Shepard-Fairey-Interview> [<https://perma.cc/3YNC-CPLA>].

91. *Id.*

from oppressed woman to hero was certainly an upgrade, but, it gave me whiplash. Oscillating from a terrorist to a hero or model minority overnight leaves no room for the complex first-person narratives that are needed to humanize AMW and afford us an equal right to self-determination.

For the first time in American history hijabis had the spotlight and were celebrated as heroes. This hero narrative was extremely beneficial to the Women's March because an image of a hijabi wearing an American flag flips the oppression narrative on its head—it takes the object of oppression and replaces it with an article of freedom that transforms the woman wearing it into a symbol of strength and defiance. It was striking. Some AMW would argue that the Women's March on Washington constructed a symbiotic relationship because, for the first time, an American Muslim woman was symbolically leading a worldwide resistance movement.⁹²

IV. PART THREE: FEMINIST JURISPRUDENCE MARGINALIZES AMERICAN MUSLIM WOMEN

Feminist jurisprudence excludes and distorts AMW's voices from seminal scholarly works thereby stripping us of our right to self-determination. Discourse on intersectionality would be profoundly enriched by including one of the most intersectional groups of women into the conversation—AMW. First, Part Three will explain that although feminist jurisprudence is a natural ally for AMW,⁹³ it currently harms AMW. Second, Part Three will raise a call to action, aimed at aligning feminist jurisprudence with AMW.

A. Feminist Jurisprudence

1. Natural Ally for AMW

Feminist theories have been instrumental in American women's liberation from external marginalization. Theories inspire the activism that shifts jurisprudence. When women were denied the right to vote, feminist theories inspired activism which gave rise to the suffrage movement that secured the women's right to vote.⁹⁴

Feminist jurisprudence has historically excluded marginalized groups like women of color and the LGBTQ community, but, it has also proven its capability to integrate marginalized communities. The intersectionality movement demonstrates that feminist theories are not inelastic. They can expand to include AMW—this is not out of reach. When feminists excluded women of color, Crenshaw's theory of intersectionality exposed

92. See *infra* Part Three.A.2.b. for a counterargument on the use of AMW's images in the Women's March on Washington.

93. See *infra* Part Two.B.1.

94. SUSAN GOODIER & KAREN PASTORELLO, WOMEN WILL VOTE: WINNING SUFFRAGE IN NEW YORK STATE 1 (2017).

this marginalization.⁹⁵ AMW's alliance with feminist jurisprudence is indeed critical at a time when civic organizations view advocating for us as political suicide. AMW are tirelessly working to build grassroots movements, and we welcome the sincere support of the feminist movement so long as it is rooted in an acknowledgement of our fundamental equality.

2. Actively Marginalizing AMW

Feminist jurisprudence actively marginalizes AMW, and this section focuses on two resulting harms: AMW are (1) ignored as a group, and (2) excluded from intersectionality.

a. Excluded as a Group from Textbooks

Foundational textbooks on feminist jurisprudence exclude and marginalize AMW by pegging our identities squarely in an oppression narrative. This section examines three widely used textbooks across law schools today.

In the first textbook titled *Gender and Law Theory, Doctrine, Commentary*, there are two entries in the Index under "Muslim women," the first is "rape of" and the second is "veiling."⁹⁶ This entry brilliantly encapsulates the agony of AMW's marginalization. A section titled "Multiculturalism and the Veil" includes this sentence: "Some women engage in the practice as a form of identification with and loyalty to conservative, male-controlled Muslim communities."⁹⁷ This sentence has no citation.⁹⁸ This textbook is described as the "leading casebook" in gender law.⁹⁹ Muslim women are so marginalized, and the oppression narrative is so entrenched in feminist jurisprudence that the leading textbook on gender law can comfortably label some Muslim women as loyal to misogyny without so much as a citation.

The second book is titled *Research Handbook on Feminist Jurisprudence*. It surveys a wide range of subjects on feminist legal theories. In the introduction the author explains how different areas of law have been influenced by feminist legal theories emphasizing that, "Each of these fields of law as well as others must countenance the equality of women, their equal rights to liberal self-determination and self-regard and their entitlement to an equal regard for their aspirations for liberty, accomplishments and aspirations."¹⁰⁰ This textbook excludes AMW

95. Crenshaw, *supra* note 66, at 154.

96. KATHARINE T. BARTLETT, ET AL., *GENDER AND LAW THEORY, DOCTRINE, COMMENTARY* 898 (7th ed. 2016).

97. *Id.* at 829.

98. *Id.*

99. KATHARINE T. BARTLETT, <https://law.duke.edu/fac/bartlett/> [<https://perma.cc/A3ZQ-7CFM>] ("She has the leading casebook (with Deborah Rhode) in the area of gender law.").

100. West, *supra* note 2, at 4.

altogether. This book extols the virtues of self-determination, yet, denies AMW this basic right.¹⁰¹

The third textbook, *Feminist Jurisprudence Cases and Materials*, illustrates the harm of exclusion while also highlighting a remedy within reach.¹⁰² The index includes two entries for the word “Muslims,” the first is “intimate partner violence,” and the second is “reproductive technology.”¹⁰³ Overall, this book narrowly defines Muslim women in relation to two experiences: childbearing and intimate partner violence.

This textbook’s characterization of AMW is a double-edged sword. On the one hand, it is a victory that it includes first-person commentaries of AMW speaking for themselves. But, on the other hand, as a whole, it still advances the oppression narrative (though less forcefully so) when these first-person commentaries are centered around domestic violence. These inclusions alone are not problematic, but, when they are not joined by other first-person narratives on varied substantive issues they paint a narrow and incomplete picture of AMW. Although this textbook does include AMW’s first-person perspectives, it still fails to acknowledge AMW as a distinct, agentic, and intersectional group. This extra step of acknowledging our agency is a necessary shift of power that will open the door to more AMW authoring scholarship.¹⁰⁴

This text aims for inclusivity and highlights intersectionality by including first-person accounts of women of color like Crenshaw and Truylol, but, it excludes AMW.¹⁰⁵ From this one could possibly conclude that AMW are too insignificant to warrant mention. But, Truylol’s first-person narrative pushed me to publish this article. Although this textbook left me gazing into a black hole of representation, it gave me a precedent to challenge exclusion.¹⁰⁶ This is evidence that a remedy is within reach—feminist jurisprudence is inches away from including AMW as the authorities on the complexities of our own intersectional experience.

The dearth of first-person legal scholarship on AMW certainly impacts AMW’s exclusion from feminist jurisprudence. I do not believe that a calculated and malignant intent wholly underlies our exclusion. There are

101. *Id.*

102. CYNTHIA GRANT BOWMAN, LAURA A. ROSENBURY, DEBORAH TUERKHEIMER & KIMBERLY YURACKO, *FEMINIST JURISPRUDENCE CASES AND MATERIALS* (4th ed. 2010).

103. *Id.* at 1075.

104. When we are narrowly defined by feminist jurisprudence, or excluded from conversations altogether, it truly disincentives our participation in the discipline. If we are continuously objectified by the subject as a whole, then many of us would rather focus our efforts on legal scholarship elsewhere. It seems like an exercise in futility to stare down decades of marginalization and ask titans of legal scholarship to re-evaluate their work.

105. BOWMAN ET AL., *supra* 102, at 150–176.

106. I am enormously indebted to Deborah Tuerkheimer who heard my frustrations and earnestly pushed me to raise my voice. This work reflects my own personal perspectives and does not speak on her behalf.

not hundreds of articles within legal academia to choose from; but, some scholarship does exist. For example, AMW have authored works raising legal challenges against patriarchal readings of Islamic Law; this body of work illustrates AMW acting from a position of agency and self-determination.¹⁰⁷ Including these works are the first steps towards dismantling the oppression narrative.

The authors of the aforementioned textbooks hail from and teach at the most prominent law schools in America including: Yale, Duke, Cornell, Stanford, Northwestern, Georgetown, and Berkeley. These institutional affiliations are a testament to the fractured state of feminist intersectionality in legal academia. Women of color have endured a slow and painful journey pushing their way into the mainstream folds of feminist jurisprudence, and, today, intersectional feminism acknowledges the experiences of Black women, Latina women, and the LGBTQ community. But AMW only get airtime when feminists want to talk about domestic violence. Look, we are law professors, law firm partners, judges, federal court clerks, and barred attorneys. So to insist on clinging to misogynist characterizations that reduce AMW to sexual and reproductive objects is a disservice to AMW and a damning testimonial on the leading scholars of feminist jurisprudence.

b. Excluded from Intersectionality

Intersectional feminism emerged to counter essentialist feminist theories and give a voice to women of color who experienced complex multi-layered marginalization.¹⁰⁸ Crenshaw's seminal article explains how feminism's reductionist perspective discounted Black women's unique marginalization.¹⁰⁹ Intersectionality became a haven for women of color. AMW have intersectional identities, and we see glimpses of our experiences reflected in broader conversations about women of color, but we are missing from essential conversations on intersectionality.¹¹⁰ AMW, as a distinct group, have not formally entered the discourse on intersectionality. Feminist jurisprudence will continue to marginalize AMW until it expands to include first-person accounts. Classrooms on feminist jurisprudence analyze the intersectional experiences of Black and

107. ASMA BARLAS, "BELIEVING WOMEN" IN ISLAM: UNREADING PATRIARCHAL INTERPRETATIONS OF THE QURAN (1st ed. 2002) (This body of scholarship does not address AMW as a group or their distinct identity, however it is a powerful challenge to the oppression narrative, and its inclusion would begin to offer a more nuanced and real portrayal of how Muslim women have developed their own global feminist jurisprudence. This body of theory is certainly distinct from the goals of this paper, but any positive references to Muslim women as agents of change positively impacts all women including AMW).

108. Crenshaw, *supra* note 66.

109. *Id.*

110. BOWMAN ET AL., *supra* note 102.

Latina women, meanwhile, AMW are footnotes as disproportionate victims of domestic violence—this must end.

Crenshaw's explanation of Black women's marginalization closely mirrors the experiences of many AMW:

Unable to grasp the importance of Black women's intersectional experiences, not only courts, but feminist and civil rights thinkers as well have treated Black women in ways that deny both the unique compoundedness of their situation and the centrality of their experiences to the larger class of women and Blacks. Black women are regarded either as too much like women or Blacks and the compounded nature of their experience is absorbed into the collective experience of either group or as too different, in which case Black women's Blackness or femaleness sometimes has placed their needs and perspectives at the margin of the feminist and Black liberationist agendas.¹¹¹

Our Muslimness is too politically dangerous for feminist circles, and our experiences as women take a backseat to the broader overburdened Muslim agenda that is busy combatting issues like national security and surveillance. Both internally and externally, AMW get pushed to the margins to wait our turn.

Some AMW felt genuinely represented by the Women's March and its attempt to expand the circle of intersectional feminism; but others felt tokenized.¹¹² To understand intersectional feminism's phenomenon of excluding a woman and then appropriating her identity when it is politically expedient, look no further than Sojourner Truth. Crenshaw describes how feminists tokenized Black women to further their own agendas.¹¹³ For example, feminists sought to silence Sojourner Truth at the Women's Rights Conference in 1851; however, after her famous speech "*Ain't I a Woman*," the feminist movement adopted this phrase to further its agenda.¹¹⁴

AMW were largely ignored, and then we abruptly and briefly became symbols for intersectional feminism in 2017. The iconic photo of a hijabi wrapped in an American flag was plastered across posters and banners

111. Crenshaw, *supra* note 66, at 150.

112. Azzad Essa, *Why Many Muslim Women in the US Are Skipping the Women's March This Year*, MIDDLE EAST EYE (Jan. 17, 2020), <https://www.middleeasteye.net/news/why-many-muslim-women-are-skipping-womens-march-year> [<https://perma.cc/59LN-8J6X>] ("I went for the first one in 2017. And immediately, I didn't feel that my values were represented. I felt tokenized. I remember there were these posters of a Muslim woman in an American flag hijab. That is all I needed to know.").

113. Crenshaw, *supra* note 66, at 152–53.

114. Crenshaw, *supra* note 66, at 153–54.

during the Women's March on Washington.¹¹⁵ Three years later, feminist jurisprudence has failed to acknowledge AMW in classrooms on gender and the law, and intersectional feminism has yet to acknowledge issues that deeply impact AMW, like the forcible removal of hijab in booking photos.¹¹⁶

Crenshaw exposed feminism's tokenization of Black women and warned that if meaningful support did not follow, "... feminist theory [will] remain[] *white*, and its potential to broaden and deepen its analysis by addressing non-privileged women [will] remain[] unrealized."¹¹⁷ AMW's representation at the Women's March, albeit a moment of great significance, will remain pageantry until AMW speak for ourselves in intersectional discourse to declare our identity and set forth an agenda of issues that matter to us.¹¹⁸ In the meantime, images of hijabis in American flags join soundbites of Sojourner Truth's powerful voice in the annals of feminism's most iconic appropriations.

B. Call To Action

Feminist jurisprudence has an opportunity to be a forceful ally in dismantling the structures that marginalize AMW by allowing us to define our identities and priorities. Scholars must incorporate our first-person narratives in mainstream academic discourse on feminist legal theories. Banishing AMW to live squarely within the presumptions of hostile external forces renders feminist jurisprudence party to the crime that the discipline was created to abolish—stripping women of their agency. The current state of affairs for AMW in feminist jurisprudence is akin to a magazine of all male authors that now shifts, under social pressure, to allow female authors to write and publish stories so long as they only discuss cooking and cleaning. As a community, we must reimagine our textbooks, discard orientalist characterizations, and consult AMW on the best ways to empower greater participation within the discipline.¹¹⁹

115. Helmore, *supra* note 90.

116. Crenshaw, *supra* note 66, at 154 (Until feminist activism and jurisprudence formally advocates for and with AMW, the use of the hijabi image in the March remains a strategic appropriation. Crenshaw refers to Sojourner Truth's appropriation similarly, "Oddly, despite the relative inability of feminist politics and theory to address Black women substantively, feminist theory and tradition borrow considerably from Black women's history. For example, "Aint I a Woman" has come to represent a standard refrain in feminist discourse. Yet the lesson of this powerful oratory is not fully appreciated because the context of the delivery is seldom examined.").

117. *Id.*

118. *Id.*

119. I welcome questions on including AMW's first-person narratives in feminist jurisprudence. Feel free to contact me with inquiries on AMW's inclusivity in the media, the legal profession, law schools, and legal academia at large. Invite AMW to your classrooms, seminars, and institutions to spark these critical conversations. I hope to

V. CONCLUSION

It is curious how feminist jurisprudence can raise a war cry against subjugation in one breath, and, uphold the very structure it proclaims to detest in another. The paradigmatic oppressed Muslim woman is a firmly lodged fixture in feminist legal theory—she is installed, uninstalled, and moved to suit theoretical needs. Feminist jurisprudence’s failure to acknowledge AMW as a distinct and agentic group with an equal stake in constitutional liberties virtually guarantees the primacy of the oppression narrative; meanwhile, the credibility of the institution hangs in the balance. This serious problem has a simple solution—stop speaking *about* us and start listening *to* us.
