

*Coercive Assimilationism: The Triple Bind of Muslim Women in the Workplace*¹

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Should employees have the legal right to “be themselves” at work? Most Americans would answer in the negative because work is a privilege, not an entitlement. But what if being oneself entails behaviors, mannerisms, and values integrally linked to the employee’s gender, race, or religion? And what if the basis for the employer’s workplace rules is based on negative racial, ethnic or gender stereotypes that disparately impact some employees over others?

Currently, Title VII fails to take into account such forms of second generation discrimination, thereby limiting statutory protections to phenotypical or morphological bases. Drawing on social psychology and antidiscrimination literature, this Article argues that courts must keep up with discrimination by expansively interpreting Title VII to address identity-based discrimination rooted in negative implicit stereotypes of low status groups. In doing so, the Article brings to the forefront Muslim women’s identity performance at the intersection of religion, race, gender, and ethnicity – a topic marginalized in the performativity literature.

Specifically, I argue that employees at the intersection of conflicting stereotypes and contradictory identity performance pressures associated with gender, race, and religion are caught in a triple bind that leaves them worse off irrespective of their efforts to accommodate or reject coercive assimilationism at work. As a result, an employer’s alleged disparate treatment of the plaintiff should be compared not only with similarly situated employees outside of her protected class, but also include employees within her protected class whose identity performance accommodates coercive assimilationism.

When Title VII of the 1964 Civil Rights Act was passed, victims often experienced explicit bias against their protected group. The law’s immediate effect was to ban overt prejudice causing disparate intergroup discrimination on the basis of race, ethnicity, color, gender, or religion. As a result, Title VII has been relatively successful in rooting out explicit bias in employment. Today, employers are more likely to refrain from overtly treating employees disparately on account of a protected trait. But, as the data show, the absence of discriminatory policies on paper does not always translate into a discrimination free workplace in practice.

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Rather, it pushes bias into more covert manifestations wherein facially neutral factors become proxies for unlawful discrimination.

Consequently, Title VII is ill equipped to prevent two increasingly prevalent forms of discrimination: 1) disparate impact arising from implicit bias rooted in negative stereotypes of protected classes; and 2) disparate treatment of subgroups of protected classes who do not conform to coercive assimilationist pressures. Female employees who fall under multiple protected classes face an intersection of identity performance pressures as women, racial or ethnic minorities, and religious minorities. The dominant group's expectations of how women or members of minority groups should behave, dress, and communicate in order to be "professional" are often contradictory due to conflicting stereotypes. A Black woman, for example, who is assertive, ambitious, and exhibits leadership qualities associated as masculine characteristics, risks being stigmatized as aggressive, insubordinate, and threatening because of negative stereotypes of Blacks. Simultaneously, her behavior contradicts gender conformity norms that women should be deferential, gentle, soft spoken, and pleasant. And if she is a Muslim, then her behavior triggers stereotypes of Muslims as terrorists, disloyal, foreign, and suspect. As a result, I argue that courts should not exclude intra-group comparative evidence or singularly focus on inter- group comparative evidence in ascertaining whether unlawful discrimination was the motivating factor for the adverse employment action.

Pressures to perform one's identity in accordance with the high status groups' norms, what I call "coercive assimilationism," exact a high toll. Coercive assimilationism disproportionately burdens members of non- dominant social groups wherein facially neutral rules mask a bias towards the needs, interests, and inherited circumstances of the dominant group. Minority employees find themselves expected to behave, talk, and dress in ways that emulate the dominant group, or at the very least do not threaten their power to define professional norms. By the same token, subjective aesthetic values determine who and what is valued and entitled to control the workplace, and by extension the distribution of wealth. Racial or ethnic minorities who engage in cultural displays and exhibit behaviors disfavored or out of sync with the dominant Anglo-Saxon, Protestant, heterosexual male culture find themselves deemed unprofessional or incompetent, and thus warrant exclusion or marginalization in the workplace. While members of the dominant group are able to live and work without feeling pressured to compromise their cultural values and norms, those deemed outsiders are forced to relinquish or at the very least hide their foreign languages, clothing, cultural practices, hairstyles, and associations with other outsiders to obtain gainful employment.

While the antidiscrimination literature is replete with articles on African Americans, African American women, and LGBTQ communities, little is written on Muslim women of color. Accordingly, this Article makes a scholarly intervention through an examination of the complexities of Muslim women's experiences through the lens of identity performance theory. I examine the identity performance challenges and contradictions faced by Muslim women of color as "intersectionals" facing stereotypes against 1) Muslims as terrorists, violent, and disloyal; 2) Muslim women as meek, oppressed, and lacking individual agency; 3) women as sexualized, terminally second best to men, and uncommitted to their careers; 4) immigrants as forever foreign and undeserving of equal treatment; and 5) ethnic minorities from the Middle East and South Asia as barbaric, misogynist, and anti-American. I conclude that Muslim women of color are at risk of falling between the cracks of Title VII jurisprudence due to courts' unwillingness to recognize the triple bind imposed by coercive assimilationist pressures to conform one's identity to comport to high status group norms, irrespective of the relevance to work performance.