



**SCHOOL OF LAW**  
TEXAS A&M UNIVERSITY

Texas A&M University School of Law  
**Texas A&M Law Scholarship**

---

Faculty Scholarship

---

1-2015

## Coercing Assimilation: The Case of Muslim Women of Color

Sahar F. Aziz

Texas A&M University School of Law, saziz@law.tamu.edu

Follow this and additional works at: <https://scholarship.law.tamu.edu/facscholar>



Part of the [Feminist, Gender, and Sexuality Studies Commons](#), [Law and Gender Commons](#), and the [Transnational Law Commons](#)

---

### Recommended Citation

Sahar F. Aziz, *Coercing Assimilation: The Case of Muslim Women of Color*, 24 *Transnat'l L. & Contemp. Probs.* 341 (2015).

Available at: <https://scholarship.law.tamu.edu/facscholar/717>

This Article is brought to you for free and open access by Texas A&M Law Scholarship. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Texas A&M Law Scholarship. For more information, please contact [aretteen@law.tamu.edu](mailto:aretteen@law.tamu.edu).

## Coercing Assimilation: The Case of Muslim Women of Color<sup>†</sup>

Sahar F. Aziz\*

---

Thank you to *Transnational Law & Contemporary Problems* and the *Journal of Gender, Race & Justice* for inviting me, and a special thanks to Professor Wing for hosting us today. You all are very fortunate to have Professor Wing as an advisor and mentor here at the University of Iowa College of Law.

Today, I have been asked to address the domestic context of civil rights issues facing Muslim women in the United States. Admittedly, examining the experiences of Muslim American women is a risky endeavor because they are such a diverse group of women ethnically, racially, socio-economically, and religiously in terms of their levels of religiosity.<sup>1</sup> Hence, I acknowledge the risk of essentializing, despite my best efforts to recognize the individual agency of each Muslim woman.

This lecture is based on a larger project that examines the myriad ways Muslim women are adversely affected by their intersectional identities, and how it impacts their ability to be economically independent through gainful employment. Due to time constraints, I will be summarizing my thesis and supporting arguments on this complex topic. For those interested in delving into the details, I refer you to my article in the *Michigan Journal of Race & Law* entitled, *Coercive Assimilationism: The Perils of Muslim Women's Identity Performance in the Workplace*.<sup>2</sup> My presentation today also builds on the thesis of a prior article, *From the Oppressed to the Terrorist: Muslim-American*

---

<sup>†</sup> This Article is also featured in *Journal of Gender, Race & Justice*. Please use a string citation when referencing this Article: Sahar F. Aziz, *Coercing Assimilation: The Case of Muslim Women of Color*, 24(2) *TRANSNAT'L L. & CONTEMP. PROBS.* 341, 18(2) *J. GENDER, RACE & JUST.* 389 (2015).

\* Professor Aziz is a professor at Texas A&M University School of Law where she teaches civil rights and Middle East law. She thanks Professors Richard Delgado, Gerald Torres, Kevin Johnson, Adrien Wing, Neil Gotanda, Camille Rich, Jose "Beto" Juarez, Wendy Greene, Ben Davis Shirin Sinnar, and Xuan-Thao Nguyen for their feedback on the larger research project on which this essay is based. I also thank my co-panelists, Professors Karima Bennoune, Shafiqah Ahmadi, Seval Yildirim, and Mounira Charrad, for their insightful feedback during the conference. I also thank Texas A&M School of Law student Ben Nystrom for his excellent research assistance.

<sup>1</sup> SHAHNAZ KHAN, *MUSLIM WOMEN: CRAFTING A NORTH AMERICAN IDENTITY* 42 (2000).

<sup>2</sup> See generally Sahar F. Aziz, *Coercive Assimilationism: The Perils of Muslim Women's Identity Performance in the Workplace*, 20 *MICH. J. RACE & L.* 101 (2014) [hereinafter Aziz, *Coercive Assimilationism*].

*Women in the Crosshairs of Intersectionality*,<sup>3</sup> wherein I proffer that Muslim women are caught in the crosshairs of bias at the intersection of religion, gender, and race or ethnicity.

After September 11, 2001, the stereotype of Muslim women as terrorists, co-conspirators, or aiders and abettors to their male terrorist family members has superseded the stereotype that they are oppressed, subjugated, infantile beings, without individual agency who need to be saved by upper-middle-class white American women.<sup>4</sup> Because a woman's financial independence contributes towards her ability to defend her rights and pursue the lifestyle of her choosing, the treatment of women in the workplace is fundamental to discussions on women's rights, whether in the United States or abroad. As such, my presentation today theorizes how implicit bias, stereotyping, and assimilationist demands adversely affect Muslim women of color in employment.

Specifically, I will examine how bias at the intersection of gender and religion has affected Muslim women's identity performance at work as they struggle to receive equal opportunity in hiring, equal pay, promotions, equal professional development opportunities, and the same treatment as other similarly-situated employees. In doing so, I coin the term "coercive assimilationism" as a form of implicit and explicit bias, which adversely affects minorities in many white-collar professional workplaces—the hypothetical backdrop of my analysis.

While assimilation into a particular workplace is imposed on all employees to a certain degree, I distinguish between assimilationist demands intrinsically associated with one's race, gender, religion, or ethnicity based on negative stereotypes and those that are objectively job-related.<sup>5</sup> Because an employee's income, career trajectory, and other employment opportunities are at stake, the expectation to assimilate is inherently coercive even if consciously voluntary.

Coercive assimilation manifests itself in workplace rules that are both written and unwritten. These rules reward minority employees who behave, talk, dress, and otherwise mirror the majority group, which, in 2015, I posit is white, heterosexual, Christian, and male.<sup>6</sup> Rewards include being hired in the

---

<sup>3</sup> See Sahar F. Aziz, *From the Oppressed to the Terrorist: Muslim-American Women in the Crosshairs of Intersectionality*, 9 HASTINGS RACE & POVERTY L.J. 191 (2012).

<sup>4</sup> See Gowri Ramachandran, *Intersectionality as "Catch 22": Why Identity Performance Demands Are Neither Harmless Nor Reasonable*, 69 ALA. L. REV. 299, 302 (2006) (noting that persons of intersectional minority groups "experience a qualitatively different kind of subordination").

<sup>5</sup> See generally Mark R. Bandsuch, *Dressing Up Title VII's Analysis of Workplace Appearance Policies*, 40 COLUM. HUM. RTS. L. REV. 287, 288–89 (2009) (noting that Title VII has yet to solve a new manifestation of discrimination: "trait discrimination").

<sup>6</sup> *Id.* at 296.

first place,<sup>7</sup> equal pay, and professional development opportunities that could include training, client interaction, receiving high quality assignments, and other perks that come from being a member of “the team.”<sup>8</sup> In contrast, employees who refuse or are unable to adhere to coercive assimilationism suffer adverse employment actions ranging from a stagnant career trajectory to termination. In the end, failing to assimilate may result in intergroup discrimination based on intragroup differences rooted in implicit or explicit stereotyping.<sup>9</sup>

In the case of Muslim women, coercive assimilationism places them in a catch-twenty-two. Specifically, Muslim women suffer harm regardless of what decision they make—to accommodate or to refuse to accommodate coercive assimilationism—because the stereotypes that shape what is expected of them by the majority group contradict each other. This places Muslim women in a triple bind at the intersection of gender, religion, and race/ethnicity. For example, if she behaves like a “good Muslim woman” who is not passive, subjugated, or meek, then she may fall into the trap of being perceived as a “bad woman”—who is too assertive, overtly ambitious, and abrasive—resulting in her being labeled “a bitch.” Similarly, in her attempts to dispel stereotypes that she is unable to think critically, incapable of leading, or lacking strength of character, she may trigger stereotypes held by her coworkers that Muslims are aggressive, prone to violence, untrustworthy, and disloyal outsiders.<sup>10</sup> Thus, whether Muslim women act as their authentic selves—whatever that means for a particular woman—or if they intentionally shape their social, religious, and racial identities to accommodate the expectations of the majority group, their identity performance is ill-fated. Regardless of whether a Muslim woman chooses or refuses to accommodate coercive assimilationist demands, she is unlikely to become a member of the in-group and incur the consequent benefits.<sup>11</sup>

Contradictory stereotypes are often a product of both explicit and implicit bias. Implicit bias, in particular, plays a larger role in discriminatory behavior today than the explicit biases on full display in the 1960s when Title VII of the 1964 Civil Rights Act was passed.<sup>12</sup> Consequently, Title VII does not

---

<sup>7</sup> See generally LAUREN A. RIVERA, PEDIGREE: HOW ELITE STUDENTS GET ELITE JOBS 6–7 (2015).

<sup>8</sup> *Id.*

<sup>9</sup> Aziz, *Coercive Assimilationism*, *supra* note 2, at 105–06.

<sup>10</sup> See generally Haleh Afshar, *The Politics of Fear: What Does It Mean to Those Who Are Otherized and Feared?*, 36 ETHNIC & RACIAL STUD. 9 (2013), <http://www.tandfonline.com.proxy.lib.uiowa.edu/doi/pdf/10.1080/01419870.2013.738821> (discussing the implications of systemic and entrenched demonization of Muslims by the media and politicians).

<sup>11</sup> See Thomas M. Ostrom & Constantine Sedikides, *Out-Group Homogeneity Effects in Natural and Minimal Groups*, 112(3) PSYCHOL. BULL. 536, 536 (1992) (noting that people tend to favor, in terms of resource allocation, members of their own group than members of other groups).

<sup>12</sup> See, e.g., Bandsuch, *supra* note 5, at 317–19 (arguing for a totality of the circumstances approach to Title VII, which would scrutinize whether “certain community standards have a demeaning or

adequately remedy discrimination arising from implicit biases that produce unspoken, but nonetheless prevalent, negative stereotypes incorporated into workplace rules and professionalism discourse.

Before delving into the perils of Muslim women's identity performance in the workplace, I want to summarize the basic doctrine for a Title VII employment discrimination claim. Under Title VII, a plaintiff has the burden of proving the following: (1) she is a member of a protected class, which includes gender, race, color, ethnicity, or religion; (2) she suffered an adverse employment action, including, but not limited to, failure to hire, termination, failure to promote, or unequal pay compared to other similarly situated employees; and (3) that her protected class status was a motivating factor in the alleged adverse employment action.<sup>13</sup> If she is able to make a prima facie case of employment discrimination, the burden of production shifts to the employer to provide a legitimate nondiscriminatory reason for the adverse employment action, and if the employer is successful, then the employee has the burden of proof to demonstrate that the proffered reason was, in fact, pretext.<sup>14</sup> In proving that her protected status was a motivating factor for the adverse employment action, the plaintiff must typically rely on circumstantial evidence arising from implicit bias because evidence of explicit bias is often unavailable.<sup>15</sup>

In addition, the plaintiff must compare herself to similarly situated employees in terms of skills, experience, education, and other job qualifications in order to succeed in a Title VII employment discrimination suit.<sup>16</sup> Often this involves looking to the employer's treatment of similarly situated male, non-Muslim, or white employees. For instance, the plaintiff may point to a man who is paid more for the same work as proof that she experienced unlawful disparate treatment, or she may point to a white employee who received a promotion that she was denied. When there are other employees in the same protected class as the plaintiff, however, an employer will typically point to

---

offensive history of stereotypes or bias, the potential to force assimilation, or an adverse impact on employment opportunities").

<sup>13</sup> *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). *See also* *Rudin v. Lincoln Land Cmty. Coll.*, 420 F.3d 712, 720 (7th Cir. 2005) ("Circumstantial evidence of discrimination . . . allows the trier of fact to infer intentional discrimination by the decisionmaker." (internal quotation omitted)); Linda Hamilton Krieger & Susan T. Fiske, *Behavioral Realism in Employment Discrimination Law: Implicit Bias and Disparate Treatment*, 94 CAL. L. REV. 997, 1059 (2006) (noting that most cases rely on circumstantial evidence).

<sup>14</sup> *McDonnell Douglas Corp.*, 411 U.S. at 802-04.

<sup>15</sup> Per *McDonnell Douglas*, at the prima facie stage, when a plaintiff relies on circumstantial evidence in order to justify mandating an employer to produce a legitimate, nondiscriminatory reason for the adverse employment action, the plaintiff must produce persuasive evidence that raises a presumption of unlawful discrimination. *Id.* at 792.

<sup>16</sup> *See* *Maynard v. Bd. of Regents*, 342 F.3d 1281, 1289 (11th Cir. 2003) ("To prevail on a claim for discrimination under Title VII based on circumstantial evidence, [the plaintiff] must show that: . . . [she] was treated less favorably than a similarly-situated individual outside [her] protected class.").

such employees to counter allegations that the adverse employment action was unlawfully taken based on a protected class. For example, if there are other Muslim women in the workplace, the employer may point to a Muslim woman who has not experienced the same adverse treatment as the plaintiff as proof that the basis of the action against the plaintiff was merit-based and lawful. It is in such circumstances when coercive assimilationism can play a pernicious role in producing intergroup discrimination based on differences in identity performance among members of the same protected class(es). Muslim women willing and able to accommodate assimilationist demands may be granted better employment opportunities than Muslim women whose behavior, dress, speech, and associations do not accommodate assimilationist demands, or cause discomfort to the majority group. A fault line is thus created between the “good Muslim woman” who assimilates (voluntarily or because of pressure to do so) and the “bad Muslim woman” who performs her gender, religious, or racial identity in ways that the majority group disapproves, finds offensive, or finds discomforting.<sup>17</sup> The result is intergroup discrimination based on intragroup differences, which the judiciary often fails to recognize.

This proposition begs the question of what types of behaviors, dress, and speech might be looked upon as threatening or, by contrast, normal to the majority group? Admittedly, an attempt to answer this question risks essentializing both the majority group and the minority employees at issue. Nevertheless, I think it warrants a discussion to expose the pervasiveness of implicit bias rooted in negative stereotypes of particular groups and the myriad harms that result. Kenji Yoshino’s groundbreaking work on converting, passing, and covering of minority groups as identity performance strategies offers insights into the experiences of Muslim women of color in the workplace.<sup>18</sup>

“Converting” entails changing one’s underlying identity altogether.<sup>19</sup> A Muslim woman who decides to engage in converting her identity may do the following: convert from Islam to Christianity, legally change her ethnic-sounding name to a common American name, and marry a white Christian male. The converted woman would raise her children in a white Christian community, socialize with other white Christian families, and effectively live a life where no one knows or has reason to know that she was born and raised by a non-white Muslim family. In her mind, and in the minds of others, she is a white Christian female of European origin. In the end, she has converted out of her subordinated identity and into the majority group’s identity.

---

<sup>17</sup> Devon W. Carbado & Mitu Gulati, *The Fifth Black Woman*, 11 J. CONTEMP. LEGAL ISSUES 701, 714–19 (2001). See generally DEVON CARBADO & MITU GULATI, *ACTING WHITE?: RETHINKING RACE IN “POST-RACIAL” AMERICA* (2013).

<sup>18</sup> Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 772–73 (2002).

<sup>19</sup> *Id.* at 772.

“Passing” occurs when the underlying identity is retained, but masked.<sup>20</sup> A Muslim woman who adopts passing as an identity performance strategy keeps her underlying identity, but hides it from her employers and coworkers. She hopes her coworkers will mistakenly believe she is a white Christian woman, and thereby avoid the adverse effects of being marked as a member of a subordinated group. Accordingly, a Muslim woman of color may keep her legal non-European name, but at work go by a common nickname, like Katie instead of Khadija or Sue instead of Su’ad, such that none of her coworkers know that her real name is not an English name. She may hide her associations with other Muslims, or people of her racial or ethnic background, from her coworkers. She may marry a man that also goes by an English nickname and passes as a white non-Muslim based on his appearance, dress, and speech. She may name her children cross-over names that can be both Arabic and English, or Urdu and English, such as Sarah, Adam, Jenna, Sophia, Zack, or Sammy. She may not disclose her travels to her country of origin, so as to not trigger suspicions of divided national loyalties. Her social and professional dress is western and liberal, such that nothing about her appearance discloses her Muslim identity. If anyone were to accidentally discover her ethnic heritage or religious identity, they would surprisingly remark, “I had no idea you were Arab,” or “I had no idea you were Muslim,” to which she would dismissively point out that it is her parents’ identity and quickly change the subject.

For converting or passing to be an option for a particular Muslim woman, she must literally “look white” in terms of skin tone and phenotype. For many Muslim women of color in the United States, the majority of whom are either African American or recent immigrants from Asia, the Middle East, or Africa, converting and passing is not an option, even if it is desired by that particular woman.<sup>21</sup> This leaves covering as the predominant identity performance strategy for those seeking to accommodate assimilationist demands.

“Covering” is the adoption of appearances, associations, speech, and behaviors that allay the majority group’s discomfort with or fear of the minority group.<sup>22</sup> In covering her identity, a Muslim woman retains and discloses her underlying identity, but performs it in such a way that it makes it more palatable and more comforting to the majority group. She consciously seeks to avoid making the majority group feel threatened or uncomfortable with her Muslim and ethnic identity. As such, the identity-covering Muslim woman may do the following: refrain from wearing a headscarf; speak in unaccented English with the local vernacular accent; straighten her otherwise curly hair, wear clothes viewed as Western and liberal, as opposed to conservative and Islamic; and go out of her way to express her patriotism to

---

<sup>20</sup> *Id.*

<sup>21</sup> See Sahar F. Aziz, *Sticks and Stones, The Words That Hurt: Entrenched Stereotypes Eight Years After 9/11*, 13 N.Y. CITY L. REV. 33, 45–46 (2009) (providing a summary of the diverse races and ethnicities that comprise the Muslim community in the United States).

<sup>22</sup> Yoshino, *supra* note 18, at 772.

the United States, such as supporting the wars in Iraq and Afghanistan. Rather than criticize her coworkers when they make bigoted or Orientalist jokes about Muslims or her country of origin, the identity-covering Muslim woman either laughs along with her coworkers or refrains from challenging their prejudices. If she is a practicing Muslim, she does not publicize her religiosity or seek religious accommodation, nor does she disclose her attendance at the local mosque. Because she adheres to the dominant color-blind narrative that discrimination is an anachronistic anomaly rather than part of a systemic societal problem, she does not participate in civil rights activities in defense of Muslims, Arabs, or South Asians.

In the end, the identity-covering Muslim woman becomes the accepted “cultural Muslim” women, rather than the suspected “practicing Muslim” woman. In doing so, she seeks to be the exception to the negative stereotypes in order to avoid having to confront the adverse effects of such stereotypes. So long as she is always a pleasant and deferential woman, assimilated into the majority group’s culture, and downplays her religious and ethnic identity, her disclosed Muslim and ethnic identities are viewed as proof of the organization’s emphasis on diversity. Indeed, she becomes the exhibit to which the employer points to when it is accused of discrimination by a Muslim woman who refuses or cannot convert, hide, or cover her subordinated identities. In short, the less she “acts Muslim” or “acts Muslim female” in ways that the majority group finds threatening or discomforting, the more likely she is to receive equal employment opportunities.

Paradoxically, even if a Muslim woman is willing to accommodate coercive assimilationism, she may still find herself denied equal opportunities because of the intersectionality of her identities. In other words, she may trigger one stereotype in her attempts to counter another. For instance, the more assertive a Muslim woman is—as a means of casting off misperceptions of her passivity or inability to lead—the more likely she may trigger stereotypes of Muslims as aggressive and threatening. In addition, if she tries to counter the stereotype of the meek and oppressed Muslim woman, she may trigger gender stereotypes that disparagingly portray driven and assertive women as abrasive, arrogant, and competitive—characteristics deemed assets for men in the workplace. Thus, a Muslim woman’s assertiveness may simultaneously violate gender norms, further exposing her to discrimination based on gender stereotyping.

To offset these stereotypes, her attempts to exercise deference—to dispel suspicions of her loyalty or “civility”—reinforce stereotypes of her as submissive and unable to lead.<sup>23</sup> Furthermore, depending on her actual or perceived racial or ethnic identity, a Muslim woman’s behavior, dress, speech, and mannerisms may trigger negative stereotypes associated with African

---

<sup>23</sup> Jen’nan Ghazel Read & John Bartkowski, *To Veil or Not to Veil?: A Case Study of Identity Negotiation Among Muslim Women in Austin, Texas*, 14 GENDER & SOC’Y 395, 396 (2000); Kimberly A. Yuracko, *The Antidiscrimination Paradox: Why Sex Before Race?*, 104 NW. U. L. REV. 1, 7 (2009).



Americans, Arabs, Pakistanis, Afghanis, or other non-white groups.<sup>24</sup> If she refuses to be “the good woman,” “the good Muslim,” or “the good minority employee,” she will be stigmatized and penalized under the pretext that she is insubordinate, too aggressive, not a team player, not professional, or just not the right fit.

A strong and assertive personality may also cause the majority group to feel threatened by a Muslim, whose loyalties are quickly questioned when she shows any signs of aggression or disagreement with authority. Additionally, if the identity she is meticulously covering is exposed as too religious or too ethnic, she may be suspected of duplicity and deception. In the end she is damned if she does and damned if she doesn't, thereby leaving her to choose between the lesser of two depraved options, both of which deny her meaningful equal opportunities and control over her identity.

All of this begs the question: Who are we to judge how a Muslim woman chooses to perform her multiple identities? So what if she chooses to wear short skirts and sleeveless shirts, uncovers her hair, hides her associations with Muslims, supports American militarism in the Middle East, or uses an English nickname? Even though we may be uncomfortable making these judgments about Muslim women's identity performances, the reality is that employers do so every day; employers act on their judgments of employees' identity performance through distribution of resources and access to opportunities in the workplace based on subjective, majoritarian values and cultural norms. As a result, minority employees who fail or refuse to accommodate those values and norms, often guised under the rubric of “professionalism,” “civility,” or “collegiality,” may be overlooked for promotion, given lower quality work assignments, denied access to clients, set on a marginalized career track, or terminated.

---

<sup>24</sup> Irene Browne & Joya Misra, *The Intersection of Gender and Race in the Labor Market*, 29 ANN. REV. SOC. 487, 490 (2003); William H. Turner, *Myths and Stereotypes: The African Man in America*, in *THE BLACK MALE IN AMERICA* 123 (Doris Y. Wilkinson & Ronald L. Taylor eds., 1977). See also Floyd D. Weatherspoon, *Remedying Employment Discrimination Against African-American Males: Stereotypical Biases Engender a Case of Race Plus Sex Discrimination*, 36 WASHBURN L.J. 23, 34–35 (1996) (discussing the stereotypical perceptions of African-American men by white Americans and foreigners); Kathryn M. Neckerman & Joleen Kirschenman, *Hiring Strategies, Racial Bias, and Inner-City Workers*, 38 SOC. PROBS. 433, 440 (1991) (finding that 47.2 percent of Chicago employers surveyed felt that inner-city African-American workers in selected occupations lacked work ethic); Yaser Ali, Comment, *Shariah and Citizenship—How Islamophobia is Creating a Second-Class Citizenry in America*, 100 CAL. L. REV. 1027, 1037 (2012) (explaining that Arabs have “collectively [been] indicted . . . as public enemy #1—brutal, heartless, uncivilized religious fanatics and money-mad cultural ‘others’ bent on terrorizing civilized Westerners, especially Christians and Jews . . . Arabs are brute murderers, sleazy rapists, religious fanatics, oil-rich dimwits, and abusers of women”); Pat K. Chew, *Asian Americans: The “Reticent” Minority and Their Paradoxes*, 36 WM. & MARY L. REV. 1, 24 (1994) (explaining that Asians are stereotyped as the “model minority” implying that “Asian Americans, through their hard work, intelligence, and emphasis on education and achievement have been successful in American society”). But see Miranda Oshige McGowan & James Lindgren, *Testing the “Model Minority Myth”*, 100 NW. U.L. REV. 331, 331 (2006) (arguing that the “positive image of Asian Americans as a model minority conceals a more sinister core of beliefs about Asian Americans and other racial minorities in America”).

The potential harms of coercive assimilationism are not only economic, but also causes psychological harm to minorities—both assimilating and non-assimilating—from which members of the majority group are shielded.<sup>25</sup> For instance, social psychologists have documented that individuals who refuse or are unable to assimilate are stigmatized by the majority group.<sup>26</sup> Furthermore, minorities who choose to assimilate may be stigmatized by their own minority group, as they are derogatorily called “sellouts.” As a consequence of coercive assimilationism, minorities suffer lower self-esteem than those who feel a sense of belonging to their minority in-group, and if the majority group merely tolerates, but does not fully accept the identity-passing or covering Muslim woman as a member of the group, she may find herself emotionally and psychologically isolated. Over time, such psychological pressures affect a minority employees’ wellbeing, which, in turn, affects her work performance in ways not experienced by employees who belong to the majority group. The more an employee must focus on “fitting in,” the less time and mental energy she has to focus on performing her job—placing her at a marked disadvantage to employees whose values, norms, and cultures are the basis for written and unwritten workplace rules.

For these reasons, judges should be skeptical of catch-all terms, such as “professionalism,” “collegiality,” “civility,” and “workplace culture” as justifications for adverse employment actions. While these terms may appear neutral on their face, they are laden with values that privilege certain races, ethnicities, religions, and genders over others in ways that are not necessarily job-related.

While there is no perfect solution to this social and political problem that affects workplaces across the country, I argue that it can be mitigated by having judges understand the pernicious effects of implicit bias rooted in stereotypes. One place to start is to seriously consider plaintiffs’ arguments that their disparate treatment arises from how they perform their religious, racial, or gender identities, not simply the identity per se. In addition, purported professionalism standards should not be taken as facially neutral, but rather be examined as subjective rules based on the values of those who develop them—a group not necessarily representative of America’s diverse labor pool.

The vague behavioral components of professionalism standards can be particularly pernicious. For instance, traits such as good judgment, civility, collegiality, and effective communication are often cited as components of professionalism.<sup>27</sup> These are subjective terms, whose definitions depend on the

---

<sup>25</sup> Bandsuch, *supra* note 5, at 294–95.

<sup>26</sup> Nyla Branscombe & Naomi Ellemers, *Coping with Group-Based Discrimination: Individualistic Versus Group-Level Strategies*, in *PREJUDICE: THE TARGET’S PERSPECTIVE* 259 (Janet K. Swim & Charles Stangor eds., 1998).

<sup>27</sup> See Laura Morgan Roberts & Darryl D. Roberts, *Testing the Limits of Antidiscrimination Law: The Business, Legal, and Ethical Ramifications of Cultural Profiling at Work*, 14 *DUKE J. GENDER*

interpreter and are inherently associated with a particular set of cultural norms and values. When infected with implicit bias, professionalism codes can provide pretext for unlawful disparate treatment of minority groups.<sup>28</sup> Furthermore, implicit bias homogenizes employees within protected groups to hire, promote, and retain only those able and willing to assimilate to the majority culture with minimal regard for whether such assimilationist demands are job-related.<sup>29</sup>

Simply having a “colorful picture” of the various colors, genders, and ethnicities represented in a particular workplace does not necessarily evince a discrimination-free environment. Workplace dress codes that prohibit hair styles unique to African Americans discriminate based on racial stereotypes that dreadlocks, braids, or cornrows are dirty, disheveled, or strange.<sup>30</sup> Professionalism standards that effectively reward deferential and perpetually pleasant women, while penalizing overtly confident and assertive women discriminate based on gender stereotypes—particularly when the same standards are not applied to male employees.<sup>31</sup>

As such, judges should incorporate applicable social-psychology literature into their analysis and adjudication of employment discrimination cases, which documents the psychological, dignitary, and material harms caused by stereotyping and the disproportionate pressures to assimilate placed upon minorities.<sup>32</sup> Judges should acknowledge that minority employees must work harder and exert more mental energies than their non-minority coworkers in order to be recognized as competent and worthy of being there. All of this consumes their energy and distracts their mental focus away from performing the work, which directly contradicts formalist liberal conceptions of “equal pay for equal work” and merit-based employment. By considering the social science literature, judges will be better equipped to judiciously examine employers’ arguments that because other employees within the plaintiffs’ protected class(es) were not disparately treated, the plaintiff suffered no discrimination. As long as the minority employee is willing to convert, pass, or cover her subordinated identity, the majority group will play along with the employee and pretend the employee is not in fact Muslim, Arab, or South Asian. It is

---

L. & POL’Y 369, 377 (2007) (examining how employers engage in cultural profiling through the use of professionalism codes, among other things, to penalize employees who engage in deviant cultural behavior).

<sup>28</sup> *Id.*

<sup>29</sup> See, e.g., RIVERA, *supra* note 7, at 6–7.

<sup>30</sup> Wendy Greene, *Title VII: What’s Hair (And Other Race-Based Characteristics) Got To Do With It?*, 79 U. COLO. L. REV. 1355, 1388 (2008).

<sup>31</sup> See *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250-51 (1989).

<sup>32</sup> See Melissa Hart & Paul M. Secunda, *A Matter of Context: Social Framework Evidence in Employment Discrimination Class Actions*, 78 FORDHAM L. REV. 37, 44–45 (2009) (noting that social scientists have identified biases and stereotypes which they could “explain for legal decision makers”).

only when we can honestly declare that a Muslim woman of color has the same agency and choice as a member of the majority group in performing her multiple identities in ways that she finds authentic and non-oppressive, without being penalized in the workplace, that we can celebrate progress in civil rights. Until then, we have much work to do.