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## The Islamic Influence in (Pre-)Colonial and Early America: A Historico-Legal Snapshot

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## **The Islamic Influence in (Pre-)Colonial and Early America: A Historico-Legal Snapshot**

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Nadia B. Ahmad\*

### ABSTRACT

Islam only became a focal point of the national conversation post-9/11 despite being a force in the New World for 500 years. The Muslim presence in the Americas began at least since Cristóbal Colón's maiden sea voyage, in which many Moors accompanied him in 1492. This article will consider

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how Islam impacted slave and indigenous populations along with European explorers and later settlers. Synthesizing the development of Islam and Muslims in the interplay of these relationships will illustrate how threads of Islamic thought and culture streamed into early American legal and cultural norms. Scant research on Islam in pre-US Constitution America exists, but, given the current influx of anti-Muslim sentiment, a look at this hidden history will elucidate the Islamic and Muslim influence on early American law, policy, and culture as a historico-legal counter-narrative. This article asserts a paradigmatic shift so that Islam is seen less as a foreign, marauding force and more as an early collaborator in the shaping of American notions of justice, democracy, and freedom and as a harbinger for the call to American independence, slave resistance, and revolt. The LatCrit analytical modalities offer a means for reassessing this hidden history and realigning critical Islamic legal analysis into a broader theoretical framework for coalition-building.

TABLE OF CONTENTS

Introduction.....915  
 I. What is an American Muslim? ..... 917  
 II. Updating the Academic Curriculum..... 920  
 III. Pre-Columbian Presence of Africans and Muslims ..... 922  
 IV. Slavery and Religion..... 926  
 V. Impact of Literacy among Muslims..... 930  
 VI. Influence of Shariah Law in America.....932  
 VII. Cowboys And *Vaqueros*: Imported from the Moors.....937  
 VIII. Absence of Islam in American History and Legal Texts..... 938  
 Final Remarks.....944

INTRODUCTION

*“We didn’t land on Plymouth Rock; the Rock was landed on us.”*

– *El-Hajj Malik Al-Shabazz, (Malcolm X).*<sup>1</sup>

This statement can be connected not only to the origins of African Americans, but also to the identity of American Muslims.<sup>2</sup> Plymouth Rock, which Al-Shabazz was referencing, is an American icon on par with the Statue of Liberty on New York’s Ellis Island. According to tradition, in December of 1620 the band of English Pilgrims sailed across Massachusetts Bay to anchor in Plymouth Harbor; they could not have missed seeing a huge boulder at the edge of the deep channel.<sup>3</sup> The boulder—Plymouth Rock—may even have provided their landing point.<sup>4</sup> For Native American rights activists though, Plymouth Rock serves as a symbol of the wars waged against their ancestors soon after the Pilgrims’ landing.<sup>5</sup> Native American rights activists have ceremoniously buried it twice, first in 1970 and then again in 1995, as part of the National Day of Mourning, protesting against the US celebration of Thanksgiving and against the Pilgrim’s Progress Parade.<sup>6</sup>

Al-Shabazz’s evoking a re-imagination of the Plymouth Rock narrative is apt for understanding the exegesis of Islam in America. Islam may have spread rapidly among Native American populations, particularly among the

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<sup>1</sup> MICHAEL BENSON & MARTHA COSGRAVE, *MALCOLM X* 56 (2005).

<sup>2</sup> AMINA WADUD, *American Muslim Identity: Race and Ethnicity in Progressive Islam*, in *PROGRESSIVE MUSLIMS ON JUSTICE, GENDER, AND PLURALISM* 270 (Omid Safi ed., 2003). The terms American Muslim and Muslim American can be used interchangeably. *Id.* The distinction in usage can be attributed to the emphasis on either the American or Muslim components of personal identity. *Id.*

<sup>3</sup> Sargent Bush, Jr., *America’s Origin Myth: Remembering Plymouth Rock*, 12 *AM. LITERARY HIST.* 745, 745 (2000).

<sup>4</sup> *Id.*

<sup>5</sup> WORKERS’ WORLD, *Native People Bury Racist Rock*, *THE PEOPLE’S PATH* (Dec. 7, 1995), <http://www.thepeoplespaths.net/articles/plymouth.htm>.

<sup>6</sup> *See id.*

Iroquois and the Cherokee, as African and European Muslims arrived in the New World.<sup>7</sup> Meanwhile, as many as one-fifth of all slaves introduced to the Americas from Africa in the eighteenth and nineteenth centuries were Muslim.<sup>8</sup> Despite being a force in the New World for 500 years, Islam only became a focal point of national conversation following the events of September 11, 2001.<sup>9</sup> The Muslim presence in the Americas began at least since Cristóbal Colón's 1492 maiden sea voyage, in which many Moors accompanied him.<sup>10</sup>

This article will consider how Islam impacted slave and indigenous populations in America, along with European explorers and later settlers. Synthesizing the development of Islam and Muslims between these relationships will illustrate how threads of Islamic thought and culture streamed into early American legal and cultural norms. Scant research on pre-US Constitution Islam in America exists. Given the current influx of anti-Muslim sentiment, a look at this hidden history elucidates the Islamic and Muslim influence on early American law, policy, and culture as a historico-legal counter-narrative. This article advocates a paradigmatic shift so that Islam is seen less as a foreign, marauding force and more as an early collaborator in the shaping of American notions of justice, democracy, and freedom. Islam served as a harbinger for the call to American independence and for slave resistance and revolt. The LatCrit analytical modalities for critical race studies offer a means for reassessing this hidden history and realigning critical Islamic legal analysis into a broader theoretical

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<sup>7</sup> JERALD F. DIRKS, *MUSLIMS IN AMERICAN HISTORY: A FORGOTTEN LEGACY* 195–218 (2006).

<sup>8</sup> Yvonne Y. Haddad, *A Century of Islam in America*, in *THE MUSLIM WORLD TODAY*, 1 (1986), available at <http://www.jamaat.org/new/library/Islamic%20history%20english/A%20Century%20of%20Islam%20in%20America.pdf>.

<sup>9</sup> *See id.*

<sup>10</sup> *See id.*

framework. Although seafarers from Africa and Asia also sailed to the Americas, they were never anchored into history textbooks.<sup>11</sup>

#### I. WHAT IS AN AMERICAN MUSLIM?

The terms “American” and “Muslim” are often merged together to describe the distinct community of individuals of Muslim faith in the United States.<sup>12</sup> The phrases “American Muslim” and “Muslim American” have increasingly been used in mass media and academic circles, but the phrases incorporate a wide spectrum of the ethnic, linguistic, and social strata based on changing demographics of Muslims in the United States.<sup>13</sup> Amina Wadud emphasizes this diversity among Muslim Americans:

Overwhelmingly, Americans are composed of immigrants who came to America’s shores by choice. While identifying with their previous cultural heritage, they want something here in America. They relish the possibilities of establishing a new identity within the complexity of American pluralism. This new identity integrates the dual components of previous culture and American citizenship.<sup>14</sup>

The cleavage between what constitutes a Muslim and an American is based not only on religious and national identities, but also on cultural and legal definitions. I argue that the Muslim American experience is interwoven with ethnic, sexual, immigrant, and modernist axes. The multidimensionality of the Muslim experience is not considerably different than those of other immigrant groups and individuals. It is at this

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<sup>11</sup> JAMES W. LOEWEN, *LIES MY TEACHER TOLD ME: EVERYTHING YOUR AMERICAN HISTORY TEXTBOOK GOT WRONG* 49 (2007).

<sup>12</sup> See generally Rhys H. Williams & Gira Vashi, *Hijab and American Muslim Women: Creating the Space for Autonomous Selves*, 68 *SOC. OF RELIGION* 269 (2007). The terms “American Muslims” and “Muslim Americans” are interchangeable. *Id.* at 270, n.2. However, there is a difference in implications. The connotation of the former term is that “Muslim” is the main identity, and “American” is the qualifier adjective. *Id.*

<sup>13</sup> WADUD, *supra* note 2, at 270.

<sup>14</sup> See *id.*

intersection of race and religion where LatCrit methodological approaches can add deeper discussion as a scholarly intervention to include religious identity in the critical race model. Elizabeth M. Iglesias and Francisco Valdes define multidimensionality as “the practice of interrogating sociolegal conditions with an eye toward the many overlapping constructs and dynamics that converge on particular persons, groups, settings, events or issues.”<sup>15</sup> Multidimensionality builds on prior theoretical breakthroughs, including multiplicity, intersectionality, and anti-essentialism.<sup>16</sup> Long after African slaves were brought to these shores against their will, and even after the abolition of slavery in 1865, African Americans continued to be “battered by longstanding discrimination, new methods of torture, and the installation of fear.”<sup>17</sup> The axes of race and religion have run parallel at times and at other times they have collided, since early America to the present day.

Islamic fundamentalism replaces communism as the principal perceived threat to Western reason and democracy. Based on this shift, Jane Collier argues, “sociolegal scholars may incur a special obligation to analyze the historical processes that constructed the cultural opposition between ‘our’ supposed rule of law and ‘their’ imagined religious fanaticism.”<sup>18</sup> She adds:

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<sup>15</sup> Elizabeth M. Iglesias & Francisco Valdes, *LatCrit at Five: Institutionalizing a Postsubordination Future*, 78 DENV. U. L. REV. 1249, 1267 (2001).

<sup>16</sup> *Id.* Iglesias and Valdes assert that multidimensionality “calls for a profound and far-reaching recognition (of the convergence of) particularities (like) religion, geography, ability, class, sexuality and other identity fault lines that run through, and help to configure and to interconnect, all ‘racial’ and ‘ethnic’ communities.” *Id.* They explain, “[b]y multidimensional analysis we thus mean to evoke (1) a scholarly mindset, (2) an analytical approach and (3) a programmatic commitment to anti-subordination discourse and action without boundaries or borders—including not only the borders of regions, cultures and identities but also those of discipline and perspective.” *Id.*

<sup>17</sup> Berta Esperanza Hernández-Truyol, *Narratives of Identity, Nation, and Outsiders Within Outsiders: Not Yet a Post-Anything World*, 14 HARV. LATINO L. REV. 325, 326 (2011).

<sup>18</sup> Jane F. Collier, *Intertwined Histories: Islamic Law and Western Imperialism*, 28 LAW & SOC’Y REV. 395, 395 (1994).

In the coming new world order of nationalist struggles and ethnic confrontations, sociolegal scholars may not be able to remain silent, for if we fail to explore connections between Western and Islamic legal systems, we only contribute to media stereotypes of Islamic law as regressive and feudal and of Islamic political activists as religious fanatics.<sup>19</sup>

Collier's interpretation looks at how connections between Western and Islamic legal systems can be transformative as considered in the context of LatCrit's multidisciplinary approach to law and social justice.<sup>20</sup>

The presence of Islam in the Americas goes as far back as the Europeans' landing on Americas' shores. This reality can be disconcerting to those harboring negative views of Islam. This article calls for a shift in the dominant paradigmatic understanding of Islam in America as an alien religion. Why are paradigms significant? Among other reasons, paradigms control fact-gathering and investigation. As such, data-gathering efforts and research seeking to understand the facts and circumstances of a group are important.<sup>21</sup> Juan Perea argues, "paradigms are crucial in the development of science and knowledge because, by setting boundaries within which problems can be understood, they permit detailed inquiry into these problems."<sup>22</sup>

From this perspective of why paradigms matter, LatCrit is instructive in the early Muslim American experience because of LatCrit's community building aspirations. Historically, LatCrit theory has sought to center "in legal discourse (a) Latinas/os qua Latinas/os, (b) multiple internal diversities, and (c) the schematics and dynamics of cross-group relations

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

<sup>20</sup> *See id.*

<sup>21</sup> Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 CAL. L. REV. 1213, 1216-17 (1997).

<sup>22</sup> *Id.*



and inter-group coalitions.”<sup>23</sup> For the purposes of LatCrit community-building aspirations, these efforts have encompassed “a conscious and conscientious dedication to community-building ideals and practices in both individual and structural terms. This fragile experiment has yielded promising advances to date.”<sup>24</sup> Given the track record of the LatCrit scholarly community to achieve advances in theories of multidimensionality and critical projects that theorize sociolegal identities, this discussion of early American Islamic identities ties into LatCrit community-building aspirations.

The next section addresses the historical paradigm of the European presence in the Americas and how that paradigm conflicts with the pre-Columbian presence of Africans and Muslims in the Americas. Challenging the narrative of an incomplete history of Muslims in America is crucial for evaluating Islam today. An inadequate historical narrative undermines the Muslim contributions to early America. Past events, such as those in the period of colonial conquest and control, offer insights into processes of resistance to the acceptance of Muslim Americans.<sup>25</sup>

## II. UPDATING THE ACADEMIC CURRICULUM

American history is incomplete without exploring the entire Islamic influence on it. Academic textbooks should reflect the role Muslims had in establishing this nation and its legal scholarship. Schools and universities must include Islam in their American history and law curricula to provide an objective viewpoint. The University of California at Santa Barbara,<sup>26</sup>

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<sup>23</sup> Elizabeth M. Iglesias & Francisco Valdes, *Expanding Directions, Exploding Parameters: Culture and Nation in LatCrit Coalitional Imagination*, 5 MICH. J. RACE & L. 787, 793 (2000).

<sup>24</sup> *Id.*

<sup>25</sup> Sally Engle Merry, *Law and Colonialism*, 25 LAW & SOC’Y REV. 889, 890–91 (1991).

<sup>26</sup> Prof. Kathleen M. Moore, *Islam in America RELST 140: Course Description*, UNIV. OF CAL. AT SANTA BARBARA, DEP’T OF RELIGIOUS STUDIES, <http://www.religion.ucsb.edu/syllabus/RS140E.pdf> (last visited Apr. 18, 2014) (see first paragraph).

Georgetown University,<sup>27</sup> Utah State University,<sup>28</sup> University of Illinois,<sup>29</sup> and other institutions of higher learning across the country have been offering courses on Islam in America. These types of courses can be taught elsewhere as well, but certain components of these courses must change at a fundamental level to remedy the harms caused by Islam's erasure from American history.

In the pedagogical acts on Islamic law, the reading materials assigned to the students tend towards a particular construction of "Islamic law" that ultimately produces what Lama Abu-Odeh describes as a "fantasy effect":

The fantasy is to the effect that Islamic law is a foundational category for anyone attempting to understand law in the Islamic world... Its modus operandi is a rhetorical slippage given effect to by the readings that gradually and almost imperceptibly substitutes "Islamic Law" for "Law in the Islamic countries."

The consequence? The European legal transplant in the Islamic world is never seriously explored or theorized in these materials. If referred to, it is either in its moment of arrival as a foreign import, or in its moment of fantasized departure as a thing to be displaced and replaced with something more authentic: "Islamic law." Its absence from the materials as *the positive law* of the Islamic world, that informs its codes, treatises, law reports, legal institutions, and legal curricula in law schools is striking. This produces the paradoxical phenomenon that, whereas in most other regions, scholars are typically invited to pay attention to law *outside* of positive law. In the Islamic world one has to do the opposite: call

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<sup>27</sup> Zahid Bukhari, *INAF-391 Muslims in America, 2009-2010 Course Catalog*, GEORGETOWN UNIV., DEP'T OF INT'L AFFAIRS, <http://courses.georgetown.edu/index.cfm?Action=View&CourseID=INAF391&AcademicYear=2009&AcademicTerm=FallSpring> (last visited Apr. 18, 2014) (see first paragraph).

<sup>28</sup> Nuri Tenaz, *Islam in America HIST 4910*, UTAH STATE UNIV., DEP'T OF HISTORY, (see paragraphs 1–2).

<sup>29</sup> Junaid Rana, *Muslims in America (AAS 258, LLS 258, RLST 258), Course Description (2009)*, UNIV. OF ILL. AT URBANA-CHAMPAIGN, DEP'T OF AM. ASIAN STUDIES, <http://www.eui.uiuc.edu/docs/syllabi/AAS258S09.pdf> (last visited Apr. 18, 2014) (see first paragraph).

attention to law “*in the books, in the classroom, and in the courts.*”<sup>30</sup>

The easiest way to update the curriculum to reflect the Muslim presence and influence in Early America is through a collaborative effort of American schoolteachers, university professors, and historians alongside scholars of Muslim history and Islamic law. Any changes in the curriculum should be an alternate view of history and events commemorating the contributions of these early American Muslims. These changes should not be done in order to be politically correct, but to recognize the largely ignored and forgotten roots of Islam in America.

### III. PRE-COLUMBIAN PRESENCE OF AFRICANS AND MUSLIMS

At issue is the possibility of the pre-Columbian presence of Muslims and Africans in the Americas. Multiple sources of evidence suggest that Muslims from Spain and West Africa arrived in the Americas at least five centuries before Columbus, which is plausible given their level of education and expertise in navigation.<sup>31</sup> In the 12th century, Al-Sharif al-Idrisi (1097-1155), an Arab geographer, reported on the journey of a group of North African seamen who reached the Americas:

A group of seafarers sailed into the sea of Darkness and Fog (the Atlantic Ocean) from Lisbon in order to discover what was in it and to what extent were its limit. They were a party of eight and they took a boat which was loaded with supplies to last them for months. They sailed for eleven days till they reached turbulent waters with great waves and little light. They thought that they would perish so they turned their boat southward and traveled for twenty days. They finally reached an island that had people and

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<sup>30</sup> Lama Abu-Odeh, *The Politics of (Mis)recognition: Islamic Law Pedagogy in American Academia*, 52 AM. J. COMP. L. 789, 790 (2004) (emphasis added).

<sup>31</sup> See generally John L. Sorenson & Carl L. Johannessen, *Biological Evidence for Pre-Columbian Transoceanic Voyages*, in CONTACT AND EXCHANGE IN THE ANCIENT WORLD 238 (Victor H. Mair, ed., 2005). See also Mohammed Hamidullah 11 PENSÉE CHÎTE REVUE ISLAMIQUE, CULTURELLE, RELIGIEUSE, MORALE 8, 8–14 (1962).

cultivation but they were captured and chained for three days. On the fourth day a translator came speaking the Arabic language! He translated for the King and asked them about their mission. They informed him about themselves, then they were returned to their confinement. When the westerly wind began to blow, they were put in a canoe, blindfolded and brought to land after three days' sailing. They were left on the shore with their hands tied behind their backs, when the next day came, another tribe appeared freeing them and informing them that between them and their lands war a journey of two months.<sup>32</sup>

This historical report not only suggests contact between Muslim seamen and indigenous peoples in the Americas, but also describes travel between islands, possibly the Bahamas chain or the Lesser Antilles, showing the inter-American exchange of Islamic culture and Arabic language.<sup>33</sup> The islanders had acquired the ability to speak Arabic, a language that cannot be mastered through a single contact, suggesting that Arabic-speaking Muslim merchants or adventurers must have regularly visited the locals or the locals had lived in Muslim territory.<sup>34</sup>

In addition, the discovery of coins found in the southern Caribbean region off the coast of Venezuela serves to validate reports by historians and geographers regarding the journeying of Muslim explorers across the Atlantic.<sup>35</sup> The quantity of Mediterranean coins that were discovered, along with the high number of duplicates, suggests that the coins were not part of

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<sup>32</sup> Dr. Abdullah Hakim Quick, *The History of Islam: The African, And Muslim, Discovery of America – Before Columbus*, available at <http://historyofislam.com/content/s/the-classical-period/the-african-and-muslim-discovery-of-america-before-columbus/> (last visited Apr. 18, 2014).

<sup>33</sup> See generally ABDULLAH HAKIM QUICK, *DEEPER ROOTS: MUSLIMS IN THE AMERICAS AND THE CARIBBEAN FROM BEFORE* (1996).

<sup>34</sup> See *id.*

<sup>35</sup> CYRUS H. GORDON, *BEFORE COLUMBUS: LINKS BETWEEN THE OLD WORLD AND ANCIENT AMERICA* 68–70 (1971).

a numismatist's collection—but part of a supply of cash instead.<sup>36</sup> Ample evidence suggests that people of Muslim origin accompanied Colón and subsequent Spanish explorers to the New World.<sup>37</sup>

A look at historical happenings in the Iberian Peninsula leading up to the maiden voyage of Colón points to religious tensions that contextualize the status of Muslims in Spain at the time.<sup>38</sup> At the beginning of the 16th century, a suspicion toward “New Christians,” which initially included Jewish converts, was broadened to include Muslim converts.<sup>39</sup> King Ferdinand and Queen Isabel had promised religious freedom to Muslims when Granada, the last Muslim stronghold in Iberia, fell to Christian soldiers in 1492.<sup>40</sup> Christian zeal to convert Muslims precipitated an armed rebellion and heightened tensions, culminating in 1501 with a royal decree calling for all Muslims of the kingdom of Castile to either convert to Christianity or leave their Iberian homes.<sup>41</sup> The fall of Granada constituted the final victory of the cross over Western Islam.<sup>42</sup> After seven centuries on

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<sup>36</sup> *Id.* at 68. Gordon wrote:

Nearly all the coins are Roman, from the reign of Augustus to the 4<sup>th</sup> century CE. Two of the coins however, are Arabic from the 8<sup>th</sup> century CE. It is the latter that gives us the *terminus a quo* (i.e. time after which) of the collection as a whole (which cannot be earlier than the latest coins in the collection). Roman coins continued to be used as currency into the medieval times.

*Id.*

<sup>37</sup> See generally ALLAN D. AUSTIN, *AFRICAN MUSLIMS IN ANTEBELLUM AMERICA: TRANSATLANTIC STORIES AND SPIRITUAL STRUGGLES* (1997); RONALD A.T. JUDY, *DISFORMING THE AMERICAN CANON: AFRICAN-ARABIC SLAVE NARRATIVES AND THE VERNACULAR* (1993); MICHAEL A. KOSZEGI & J. GORDON MELTON, *ISLAM IN NORTH AMERICA: A SOURCEBOOK* (1992).

<sup>38</sup> JOSEPH F. O'CALLAGHAN, *RECONQUEST AND CRUSADE IN MEDIEVAL SPAIN* 62 (2004).

<sup>39</sup> Mary Elizabeth Perry, *Finding Fatima, a Slave Woman of Early Modern Spain*, 20 *J. OF WOMEN'S HIST.* 151, 155 (2008), available at <http://humrp1.utoronto.ca/ePorte/sites/default/files/biblio/relatedfiles/2012-05-04/FindingFatima.pdf>.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Rafael Guevara Bazan, *Muslim Immigration to Spanish America*, 56 *MUSLIM WORLD* 173 (1966).

Andalusian soil, defeated Muslims traveled back along the narrow passage of the sea, which at the beginning of the eighth century the triumphant Arabo Berber army had passed.<sup>43</sup> The erroneously called reconquest came to an end, and Spain, buoyed by military enthusiasm and apostolic passion, sailed out across unknown and mysterious seas to conquer the New World for the faith of Christ.<sup>44</sup>

On October 12, 1492, Colón landed on the small island of Guanahani in the Bahamas. The island was called Guanahani by the natives, but was renamed by San Salvador.<sup>45</sup> Guanahani is derived from Mandinka and modified Arabic words where Guana (*Ikhwana*) means “brothers” and *Hani* is an Arabic name (“Hani brothers”).<sup>46</sup> Leo Weiner’s account of the discovery of America is crucial because it presents a Western perspective of Muslim culture in America.<sup>47</sup> The works of Ivan Van Sertima and Alexander Von Wuthenau represent 20th century scholarship that has stated directly or indirectly that there was a Muslim presence in the early Americas.<sup>48</sup> While it is true that there have been Muslim writers such as Clyde-Ahmad Winters and Muhammad Hamidullah who have sought to prove this point, it is more telltale that others have conceded such evidence of pre- and post-Colombian Muslims in the Americas.<sup>49</sup>

Indeed, early explorers used maps that were derived from the work of Muslim scholars who possessed advanced geographical and navigational

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Dr. Youssef Mroueh, PREPARATORY COMMITTEE FOR INT’L FESTIVALS TO CELEBRATE THE MILLENNIUM OF THE MUSLIMS ARRIVAL TO THE AMS., *Precolumbian Muslims in the Americas*, THEMODERNRELIGION.COM <http://www.themodernreligion.com/ht/precolumbus.html> (last visited Apr. 18, 2014).

<sup>46</sup> *See id.*

<sup>47</sup> *See generally* 3 LEO WIENER, *AFRICA AND THE DISCOVERY OF AMERICA* (1922).

<sup>48</sup> Jose V. Pimienta-Bey, *Muslim Legacy in Early Americas: West Africans, Moors and Amerindians*, CYBERISTAN.ORG, <http://www.cyberistan.org/islamic/africanm.htm> (last visited Apr. 18, 2014).

<sup>49</sup> Clyde-Ahmad Winter, *Islam in Early North and South America*, 14 AL-ITTIHAD 57 (1977).

techniques. The film *Amistad* recognized the Muslim presence in the early Americas, portraying Muslims aboard the slave vessel performing their daily prayers while chained together on deck during the trans-Atlantic passage. Many of the Muslim slaves were either encouraged or forced to convert to Christianity. Despite this, many of the first-generation slaves remained steadfast in preserving their Muslim identity, but due to the slave conditions at the time, this identity was largely lost among later generations.

Evidence indicating pre-Columbian travel by indigenous Americans to the islands off the western coast of Africa, including the early Portuguese descriptions of the population of the Azores and perhaps Africa itself, also adds another dimension to the culture exchange.<sup>50</sup> Insofar as travel in *both* directions may have enhanced the prospect of the trans-Atlantic exposure to Islam, West African versions of Islam might have been influenced by indigenous American concepts as well. The next section will look at the role of religion in the “peculiar institution” of slavery.

#### IV. SLAVERY AND RELIGION

Now as before, religion plays a significant role in socio-political decision-making processes. A skewed interpretation of the Bible was used to validate American slavery. For example, the Christian church’s primary justification for the concept of slavery was based on the Book of Genesis and the story of Ham.<sup>51</sup> As this story was amplified and changed in extra-Biblical interpretations, it became the ideological basis to justify the slavery

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<sup>50</sup> Bill Bigelow & Bob Peterson, *Why Rethink Columbus?*, in *RETHINKING COLUMBUS: THE NEXT 500 YEARS* 10-11 (Bill Bigelow & Bob Peterson, eds. 2d ed. 1998).

<sup>51</sup> *Genesis* 9:20–27. The Book of Genesis tells the story of Ham finding his father Noah drunk and uncovered in his tent. Ham informs his brothers Shem and Japheth. *See id.* They, walking backward so as not to see their father’s nakedness, cover Noah with a garment. *Id.* After Noah awakes from his drunkenness, he curses – not Ham, and not himself – but Ham’s son Canaan by pronouncing: “Cursed be Canaan! The lowest of slaves will he be to his brothers.” *Id.* He also said, “Blessed be the Lord, the God of Shem! May Canaan be the slave of Shem. May God extend the territory of Japheth; may Japheth live in the tents of Shem and may Canaan be his slave.” *Id.*

of Africans thousands of years afterwards.<sup>52</sup> As with any argument that is used to validate harmful social constructs such as slavery, religion can be manipulated for the benefit of the aggressor through distorted logic and ill-perceived reasoning.

The Quran did recognize slavery through multiple references to the slave, the slave woman, concubines, and the freeing of slaves.<sup>53</sup> The Quran describes slaves as *ma malakat aymanukum* (what your rights possess).<sup>54</sup> It should be noted that the term *abd*, which refers to servant in the context of Allah, is rarely used in the context of human slavery in the Quran. The Quran recognizes the basic inequality between master and slave and accounts for these differences in scriptural texts.<sup>55</sup> Even though Arabs and Muslims employ racial tropes, including the use of the word *abd*, in a derogatory fashion to describe dark-skinned peoples, the racism is more culturally constructed than justified on the basis of Islamic religion. In fact, Islam had sought to eradicate racism in the Arabian Peninsula at its advent and create a color blind and cohesive societal construct: in the Last Sermon of Prophet Muhammad, he clearly stated there was zero tolerance for racism. “All mankind is from Adam and Eve, an Arab has no superiority over a non-Arab nor a non-Arab has any superiority over an Arab; also a black has no superiority over white, nor a white has any superiority over black, except by piety and good action.”<sup>56</sup> The Quran and Prophetic tradition categorically condemn arrogance and pride in race. The Quran stresses the virtues of freeing slaves or bondsmen as a path to righteousness

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<sup>52</sup> Stirling Adams, *Noah's Curse: The Biblical Justification for American Slavery*, 44 *BYU STUDIES* 1 (2005). “There is no reference to dark skin, to any skin color, or to Africa, and Noah does not say the curse applies to Canaan’s descendants.” *Id.*

<sup>53</sup> JONATHAN BLOOM & SHEILA BLAIR, *ISLAM: A THOUSAND YEARS OF FAITH AND POWER* 48 (2002).

<sup>54</sup> *THE MEANING OF THE HOLY QUR’AN*, 1650–52 (Abdullah Yusuf Ali, trans. 1989).

<sup>55</sup> *Id.*

<sup>56</sup> Paul Halsall, *FORDHAM UNIV., The Prophet Muhammad's Last Sermon*, <http://www.fordham.edu/halsall/source/muhm-sermon.asp> (last visited Apr. 18, 2014).



in the chapter entitled *Al-Balad* (The City).<sup>57</sup> However, the Arab slave trade was rampant in East Africa in the colonial era, and modern-day slavery persists in present-day Arab nations, particularly in the Gulf region. And the same way religion was distorted by some Christians to justify slavery, the same also occurred with respect to Islam and the Arab slave trade.<sup>58</sup> Sometimes the Arabs from the north who were Muslim enslaved Africans in the south who were also Muslim, thereby violating one of the most basic customs of their faith – that no Muslims should enslave another Muslim.<sup>59</sup>

While there are numerous, and sometimes specific, slave-regulations in the Quran, commentators and writers of modern Quranic interpretations of *tafsir* agree that these provisions are “obsolete” and not to be literally applied.<sup>60</sup> Consequently, the more important Quranic provisions are those that suggest freedom is the natural condition of mankind and an objective to

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<sup>57</sup> QURAN, *supra* note 54. In chapter 90, verses 1-20, the *Quran* says, “I do call to witness This City- And thou art a freeman Of this City. And (the mystic ties Of) Parent and Child- Verily We have created Man into toil and struggle. Thinketh he, that none Hath power over him? He may say (boastfully): Wealth have I squandered In abundance! Thinketh he that none Beholdeth him? Have We not made For him a pair of eyes?- And a tongue, and a pair of lips?- And shown him The two highways? But he hath made no haste On the path that is steep. And what will explain To thee the path that is steep?- (It is:) freeing the bondman; Or the giving of food In a day of privation To the orphan With claims of relationship, Or to the indigent (Down) in the dust. Then will he be Of those who believe, And enjoin patience, (constancy, And self-restraint), and enjoin Deeds of kindness and compassion. Such are the Companions of the Right Hand. But those who reject Our Signs, they are The (unhappy) Companions Of the Left Hand. On them will be Fire Vaulted over (all round).” *Id.*

<sup>58</sup> See generally E. Ann McDougall, *Discourse and Distortion: Critical Reflections on Studying the Saharan Slave Trade*, 89 *OUTRE-MERS* 195 (2002).

<sup>59</sup> John Henrik Clarke, *Education for a New Reality in the African World*, NAT’L BLACK UNION FRONT (1994), <http://www.nbufront.org/MastersMuseums/JHClarke/EdRealityAfricanWorld/EdWorldContents.html>.

<sup>60</sup> Bernard K. Freamon, *Slavery, Freedom, and the Doctrine of Consensus in Islamic Jurisprudence*, 11 *HARV. HUM. RTS. J.* 1, 15–19 (1998).

which all God-fearing persons should aspire.<sup>61</sup> It should be noted that Islamic reformist movements extend beyond traditional methods of legal interpretation and scarcely pay heed to historical doctrines at all.<sup>62</sup> People who are not specialists in Islamic law have to be aware of this distinction between theological doctrines and legal doctrines. From the perspective of Islamic believers, legal doctrines are not something set in stone, even though Muslims believe that theological truths are immutable.<sup>63</sup>

As mentioned earlier, one-fifth of all slaves transported to the Americas from Africa were Muslim.<sup>64</sup> Alan Austin's *African Muslims in Antebellum America: Transatlantic Stories and Spiritual Struggles* was largely ignored in academic circles of African history in the Americas because the book's research constituted a paradigm shift in the way Islam was practiced and perceived in early America. Another well-written work, Sylviane Diouf's

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<sup>61</sup> *Id.* at 18–19. Freamon writes:

The famous verse in *Surat al-Hujurat* announcing the equality of all humankind is another example of a general *Qur'anic* prescription on relations between human beings that might, with the aid of modern *tafsir*, prohibit actions taken on the basis of specific slave regulations. *Surat al-Hujurat* was revealed during the time of "the deputations," that is, when many of the tribes of Arabia traveled to Medina to communicate their allegiance to the Prophet Muhammad (peace be upon him). In several instances, the Prophet Muhammad (peace be upon him) responded by releasing captives from these tribes held in slavery by the Muslims. As might be expected, his actions caused the tribes to convert to Islam *en masse*.

Maududi's *tafsir* on this *surah* acknowledges this background and bluntly declares that the verse on equality should be interpreted as a firm moral standard for all of humankind and a condemnation of slavery and other forms of domination on the basis of race, language, religion, or tribal affiliation. Thus, we see that *tafsir* can play a major role in the interpretation and application of the *Qur'anic* verses that may have a general impact upon the institution of slavery and other matters of contemporary interest, even if they do not purport to expressly regulate the practice.

*Id.* (internal citations omitted).

<sup>62</sup> Mohammad Fadel, *Islamic Law and American Law: Between Concordance and Dissonance*, 57 N.Y.L. SCH. L. REV. 231, 240 (2013).

<sup>63</sup> *See id.*

<sup>64</sup> Haddad, *supra* note 8, at 2.

*Servants of Allah: African Muslims Enslaved in the Americas*, suffered the same fate because it challenged the preexisting norms of African slaves. Knowing the true history of early American Muslim slaves alters preexisting paradigms of African slaves. That is, Muslims were educated and literate, dispelling the myth of Africans as uncivilized barbarians from the Dark Continent.<sup>65</sup> In the United States, the first converts were not to Islam, but from it, in the context of forced conversion.<sup>66</sup> Slave owners insisted that their new acquisitions, a substantial number of whom were from East and West African Muslim tribes, embraced Christianity.<sup>67</sup> While most of them did in fact become Christian, recent research has revealed that a few were able to retain their Islamic faith.<sup>68</sup>

To analyze Islam in early America, it is vital to recognize the three moments in the recent histories of Muslims and Christians: “a first moment before European imperialism, a second moment of imperialism and the development of resistances to it, particularly in the form of national liberation movements, and a third, most recent, moment of ethnic or essentialist revival.”<sup>69</sup> This Article has focused primarily on the long second period as the ramifications of colonial rule played out among Muslim populations in the East and West. The next section turns to the impact of literacy among early Muslims and how that contributed to slave resistance and rebellion.

## V. IMPACT OF LITERACY AMONG MUSLIMS

An invaluable innovation that Muslims brought was literacy, which became significant to the Muslims shipped to the New World.<sup>70</sup> In a

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<sup>65</sup> SYLVIANE A. DIOUF, *SERVANTS OF ALLAH: AFRICAN MUSLIMS ENSLAVED IN THE AMERICAS* 6–8 (1998).

<sup>66</sup> YVONNE YAZBECK HADDAD ET AL., *MUSLIM WOMEN IN AMERICA: THE CHALLENGE OF ISLAMIC IDENTITY TODAY* 43 (2006).

<sup>67</sup> *See id.*

<sup>68</sup> *See id.*

<sup>69</sup> Collier, *supra* note 18, at 397.

<sup>70</sup> *See generally* Diouf, *supra* note 65.

continent whose civilizations relied exclusively on oral tradition and where no writing system was available, the Muslims were the only literate people.<sup>71</sup> Islam emphasizes literacy because the Quran is explicit about the need to study.<sup>72</sup> Diouf writes:

Literacy in Arabic is of primary importance in Islam, because believers rely on the Koran not only to understand the religion but also to guide them in their daily life, to provide them with the right prayers for different circumstances, and to instruct them on legal matters and proper social behavior.

Contrary to the norm in Europe at the time, both peasants and girls were taught how to read and write. . .

Not only were the Koranic schools accessible to boys and girls in a coed setting, but they were also open to non-Muslims. Some parents sent their children to the *marabout* (teacher, cleric) because literacy was prestigious and useful and those schools were the only educational structures available.<sup>73</sup>

A large proportion of Muslims could read and write in Arabic, as well as in *ajami*, the generic name given to their own local Arabic dialect.<sup>74</sup> They were avid readers of the Qu'ranic scriptures, and many had memorized it by heart.<sup>75</sup> Among these Muslims were hundreds of thousands who perished as slaves in the Americas, where their literacy played a crucial part in their individual development, the shaping of their community, their relations with non-Muslims, their pursuit of freedom, and the rebellious movements they participated in or led.<sup>76</sup> The first major slave revolt in the Americas occurred in Santo Domingo in 1522, when enslaved Muslims of the Wolof nation led an uprising on the Diego Colon sugar plantation.<sup>77</sup> Many of the

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<sup>71</sup> *See id.*

<sup>72</sup> *See id.*

<sup>73</sup> *See id.* at 6–7.

<sup>74</sup> *See id.*

<sup>75</sup> *See id.*

<sup>76</sup> *See id.*

<sup>77</sup> LESLIE K. BEST, *THE AFRO-LATINO: A HISTORICAL JOURNEY* 11 (2010).

rebellious slaves managed to escape to the mountains, where they formed independent maroon communities. Large numbers of the newly imported slaves also fled to the treacherous mountain ranges in the island's interior, joining the growing number of Cimarones.<sup>78</sup> By the 1530s, Cimarron bands had become so large that in rural areas the Spaniards could only travel safely outside their plantations with armed groups.<sup>79</sup>

#### VI. INFLUENCE OF SHARIAH LAW IN AMERICA

The most crucial remnant of Islam in America is the influence of *Sharia* or Islamic jurisprudence on the democratic ideals of the Founding Fathers in creating the Union and in drafting the United States Constitution. Islamic law is one of the three major legal systems of the world following common law and civil law systems.<sup>80</sup> The greatest impact Islam had in the early Americas is the influence of Islamic legal principles on the drafting of American Constitution. Actually, Muslims in Madinah under the leadership of Prophet Muhammad made the first written constitution in the world.<sup>81</sup> The new leadership of the Islamic state recognized the significance of the policy of religious indoctrination, which they viewed as essential to achieving unity among the unruly tribal Arabs engaged in conquests.<sup>82</sup> The need for religious indoctrination was felt during the caliphate rule of Umar I for implanting an Islamic religious ethic.<sup>83</sup> To this end, the early caliphs built mosques in each garrison town, and deployed Quranic teachers and *qadis* (judges/arbiters). Their role was partly a continuation of the pre-

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<sup>78</sup> *See id.*

<sup>79</sup> *See id.*

<sup>80</sup> Hossein Esmaili, *The Nature and Development of Law in Islam and the Rule of Law Challenge in the Middle East and the Muslim World*, 26 CONN. J. INT'L L. 329, 329 (2011).

<sup>81</sup> *See generally* WAEL B. HALLAQ, *THE ORIGINS AND EVOLUTION OF ISLAMIC LAW* (2005), available at <http://www.hadith-studies.com/Hallaq-Origins-Evolution-Islamic-Law.pdf>.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

Islamic tribal practice of arbitration, since many of them had earlier functioned in this capacity, and the Arab tribes that fell under their jurisdiction were accustomed to this type of conflict resolution.<sup>84</sup>

That Islamic civilization lasted for so many centuries is significant.<sup>85</sup> Islamic civilization's success is attributable to "the existence of a rule of law that was sufficiently fixed to provide for rational calculation, yet sufficiently flexible to adapt to changing circumstances, with the balance of these factors determined outside the domain of the rulers, who had the greatest incentive and power to distort the balance to serve their own interests."<sup>86</sup>

Islamic constitutional precedents played into the American constitutional debates. When Alexander Hamilton argued for giving the federal government the right to impose taxes by referring to the example of the Ottoman Empire, he noted that the sovereign of that empire had no right to impose a new tax:

In the debates of 1787, Anti-Federalists, using what they judged to be the example of the despotic Turkish government, argued against a strong central government, and demanded guarantees of individual liberties and religious freedom. In particular, Daniel Webster, Patrick Henry and Patrick Dollard spoke of the evils of Turkish despotism. Alexander Hamilton, on the other hand, saw deeper into the Turkish example, recognizing a complex power structure. He argued that, from one perspective, the Turkish sultan was in fact weak and had limited powers. Hamilton then concluded that a strong central government would protect people from oppressive local governments.<sup>87</sup>

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<sup>84</sup> *Id.*

<sup>85</sup> Imad-ad-Dean Ahmad, *American and Muslim Perspectives on Freedom of Religion*, 8 U. PA. J. CONST. L. 355, 365 (2006).

<sup>86</sup> *See id.*

<sup>87</sup> Azizah Y. al-Hibri, *Islamic and American Constitutional Law: Borrowing Possibilities or a History of Borrowing?*, 1 U. PA. J. CONST. L. 492, 496–97 (1999).

Thomas Jefferson, George Washington, and other framers incorporated some Islamic principles into the American Constitution. The idea of religious freedom and *shura* (decision-making by consensus), along with other legal rights, were drawn up in the Charter of Madinah by Prophet Muhammad. Many European thinkers at the time of the American Revolution were incorporating the principles from the Charter of Madinah in their writings.

James Madison argued the legislative, executive, and judiciary branches should be separate and distinct; otherwise, the accumulation of these powers in the same hands would lead to tyranny.<sup>88</sup> Liberal-minded Islamic jurists such as al-Mawardi were similarly inclined to adopt separation of power principles to ensure that the executive (the ruler or president) and the legislature (the *shura* council or parliament) effectively kept each other in check.<sup>89</sup> The Constitution of Medina required the exercise of judicial authority, political rule, and religious interpretation to be subject to a consensus of the Muslim jurists.<sup>90</sup> It was ratified through a process of mutual consultation (*shura*) to ensure the interests of the community would be taken into consideration before legislation was enacted.<sup>91</sup> This process is similar to the American principle of judicial review.<sup>92</sup> Under the pact made between Muhammad and the people of Medina, non-Muslim communities were treated with respect and understanding.<sup>93</sup> They were protected and permitted to live in accordance with their own laws and customs; the community chose its own rulers so long as they acted in accordance with

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<sup>88</sup> James Madison, *The Federalist No. 47*, in *FEDERALIST PAPERS* 234 (Terence Ball ed., 2003).

<sup>89</sup> Ali Iyad Yakub, *The Islamic Roots of Democracy*, 12 U. MIAMI INT'L & COMP. L. REV. 269, 279–83 (2004).

<sup>90</sup> *See id.*

<sup>91</sup> *See id.*

<sup>92</sup> *See id.*

<sup>93</sup> *See generally* Al-Hibri, *supra* note 87.

the tenets of Islam.<sup>94</sup> The Constitution of Medina represents an early seventh century example of federalism.<sup>95</sup>

American judicial opinions about Muslims date from at least as early as the 1811 New York State Blasphemy case of *People v. Ruggles* – where Islam was called an “imposter” religion to present day.<sup>96</sup> Scholarly and popular representations of Islam and Muslims as antithetical to civil democratic society should be handled with care, as they “overgeneralize at the expense of the growing and diverse population of Muslims living in the United States.”<sup>97</sup> While many in the public arena emphasize the United States as a place of unprecedented tolerance, some find it difficult to include Islam under the same umbrella, because it is an ancient rival to the Judeo-Christian heritage.<sup>98</sup>

Asifa Qureshi asserts, “[w]hat is striking about putting Islamic and American legal discourses side by side, is that many presumptions inherent in the different interpretive methods translate across cultures quite easily.”<sup>99</sup> She adds that “when it comes to ways of thinking about textual interpretation, Muslim and American jurists following a given method often will have more in common with each other than with those of an opposite

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<sup>94</sup> ANTHONY SHADID, *LEGACY OF THE PROPHET: DESPOTS, DEMOCRATS, AND THE NEW POLITICS OF ISLAM* 248 (2001).

<sup>95</sup> Yakub, *supra* note 89, at 281. “Much like the federalists in America – among them Madison and Jefferson – who established our federal system of government, the Prophet in Medina created a sovereign nation-state with common citizenship. It consisted of a federal structure, dividing governing power between a centralized authority and each of the various communities, with autonomy in social, cultural, and religious matters reserved to the individual communities so long as their actions comported with the clear teachings of the Qur’an.” *Id.*

<sup>96</sup> KATHLEEN M. MOORE, *AL-MUGHTARIBUN: AMERICAN LAW AND THE TRANSFORMATION OF MUSLIM LIFE IN THE UNITED STATES* x (1995).

<sup>97</sup> *See id.*

<sup>98</sup> *See id.*

<sup>99</sup> Asifa Quraishi, *Interpreting the Qur’an and the Constitution: Similarities in the Use of Text, Tradition, and Reason in Islamic and American Jurisprudence*, 28 *CARDOZO L. REV.* 67, 68 (2006).



methodology in their own society.”<sup>100</sup> The issue of what constitutes Islamic law is problematized by manifestations of the Islamic legal order being replaced by hybrid legal systems in independent states within the Muslim world. These hybrid systems are a concoction of French and British codes, classical Islamic substantive law, and traditional customary law.<sup>101</sup> In these nations, foreign codes tend to replace traditional civil and criminal laws, but not aside from family law – which was constructed from Islamic and customary laws.<sup>102</sup>

Lama Abu-Odeh explains, “Islamic law should be approached as one, but only one, of the constitutive elements of law that has not only been de-centered by the [European] transplant but also transformed.”<sup>103</sup> She is concerned that, not only have its rules been transformed, but so has its modes of reasoning and its jurist class.<sup>104</sup> The conceptual organization of Islamic law “has been transformed by being reduced to a rule structure positivized in a code and dependent on state enforcement.”<sup>105</sup>

Western law contributed in significant ways (both obvious and subtle) to collateral cultural transformations of Islamic law resulting from colonialism and capitalist expansion.<sup>106</sup> European law instituted and enforced new relations of labor and land that undergirded the economic enterprises of the colonies.<sup>107</sup> Colonial authorities fostered the transformation of oral and flexible legal systems to written codes and required the construction of bureaucratic courts with formal procedures.<sup>108</sup>

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<sup>100</sup> *See id.*

<sup>101</sup> Intisar A. Rabb, “*We the Jurists*”: *Islamic Constitutionalism in Iraq*, 10 U. PA. J. CONST. L. 527, 532–33 (2008).

<sup>102</sup> *Id.* at 533.

<sup>103</sup> Abu-Odeh, *supra* note 30, at 823.

<sup>104</sup> *See id.*

<sup>105</sup> *Id.*

<sup>106</sup> Merry, *supra* note 25, at 917.

<sup>107</sup> *See id.*

<sup>108</sup> *See id.*

Beginning with the middle of the 19th century, Islamic law had undergone a process of change that led to its virtual, if not total destruction.<sup>109</sup> Happily, direct colonialism is a thing of the past (or so one hopes), and scholarship now appears somewhat freer from the cultural assumptions of domination.<sup>110</sup> It is readily acknowledged, nowadays, that Islamic law was not disjoined from the society that it served. In fact, Islamic law was linked throughout society and responded to the challenges of social and economic change until its near-total destruction in the nineteenth and early twentieth centuries.<sup>111</sup> Until recently, Western scholarship was all too ready to follow its normal pattern of disregarding Islamic history and culture.

#### VII. COWBOYS AND *VAQUEROS*: IMPORTED FROM THE MOORS

A very remarkable remainder of the Islamic influence in America is the origin of the cowboy and the *vaquero*. Long time Chicano rights activist and social worker, Donald Gilbert Y. Chavez, explains the Muslim origins of the All-American cowboy in his book, *COWBOYS – VAQUEROS: Origins of the First American Cowboys*.<sup>112</sup> The concept of the American western saddle was derived from the Spanish, the predecessors of the *vaqueros*.<sup>113</sup> By the early Middle Ages, Christian northern Spain was influenced by several riding traditions: ancient Celtic, late Roman, early Gothic European, and Muslim.<sup>114</sup> Spain is credited with inventing the rowel spur by 900 C.E.<sup>115</sup> By the time Spain had set sail for the New World in

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<sup>109</sup> Wael B. Hallaq, “Muslim Rage” and Islamic Law, 54 HASTINGS L.J. 1705, 1711 (2003).

<sup>110</sup> *Id.*

<sup>111</sup> *See id.*

<sup>112</sup> Donald Gilbert Y Chavez, *Cowboys – Vaqueros: Origins of the First American Cowboys*, N.M. HISPANIC CULTURE PRESERVATION LEAGUE (2011), available at <http://nmhcpl.org/uploads/CH6.pdf>.

<sup>113</sup> *Id.* at 2.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

1492, two basic styles had been adopted and brought to the Americas with the horse, *a la estradiota* and *la jineta*.<sup>116</sup> Not surprisingly, the Spanish incorporated the *vaquero* concept from their Muslim conquerors: “The Moors successfully invaded Spain [in] about 710 C.E. overrunning the country on light and very fast horses. The Moslem cavalymen rode *a la jineta*, with very short stirrups. . . He was lightly armored and therefore extremely fast and mobile.”<sup>117</sup> It is truly fascinating to see how much of an influence Muslims had on the Spanish as well as the Americans.

#### VIII. ABSENCE OF ISLAM IN AMERICAN HISTORY AND LEGAL TEXTS

The Muslim presence in early America and its lasting impact are ignored in United States history. The role of Muslims in the discovery of America is seldom explored.<sup>118</sup> Many of the slaves who arrived in the Americas were transported to South America.<sup>119</sup> Those who were taken to the American colonies were for the most part quickly converted to Christianity.<sup>120</sup> Very few vestiges of Islam remain from this period, with the exception of portions of the Quran apparently transcribed from memory; personal narratives passed down person-to-person; and archeological artifacts, including letters, books, and manuscripts.<sup>121</sup> The omission of the significant impact of Islam in America from history books is so out of keeping with reality that the lack of information appears to be either deliberate or negligent.

Just as the history of African Americans, Indian Americans, and many immigrant groups is absent from mainstream publications, the Muslim contribution to America is unavailable as well.

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<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> Haddad, *supra* note 8, at 2.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> For a discussion of portions transcribed from memory, *see id.*

The prejudice against Muslims in academic scholarship is tantamount to the racism against blacks and other non-whites. Why do the history textbooks fail to include the Muslim discovery of the Americas? James W. Loewen asserts:

American history textbooks promote the belief that most important developments in world history are traceable to Europe. To grant too much human potential to pre-Columbian Africans might jar European American sensibilities. As Samuel Marble puts it, “The possibility of African discovery of America has never been a tempting one for American historians.” Teachers and curricula that present African history and African Americans in a positive light are often condemned for being Afrocentric. White historians insist that the case for Afro-Phoenicians has not been proven; we must not distort history to improve black children’s self-image, they say. They are right that the case hasn’t been proven, but textbooks should include Afro-Phoenicians as a *possibility*, a controversy.<sup>122</sup>

It is educational malpractice to dismiss the claims of the Afro-Phoenician discovery of America, even if they are only possibilities.

In *Slave Religion: The “Invisible Institution” in the Antebellum South*, noted historian Albert J. Raboteau barely devotes two pages to Islam among the American slaves.<sup>123</sup> Raboteau introduces the topic of Muslim slaves by saying, “There were, moreover, a few Muslim slaves from Africa who continued, as best they could, to observe the customs of Islam.”<sup>124</sup> This limited space about Muslim slaves in America is problematic, given that Raboteau’s book is a 382-page history volume devoted solely to slave religion and one-fifth of American slaves may have been of Muslim descent.<sup>125</sup> “Even the most conservative estimates calculate that ten percent

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<sup>122</sup> LOEWEN, *supra* note 11, at 42.

<sup>123</sup> ALBERT J. RABOTEAU, *SLAVE RELIGION: THE “INVISIBLE INSTITUTION” IN THE ANTEBELLUM SOUTH* 46–47 (1978).

<sup>124</sup> *Id.*

<sup>125</sup> Haddad, *supra* note 8, at 2.

of African slaves were Muslim, placing their numbers at approximately 9.5 million,<sup>126</sup> thus, “a few Muslim slaves,” as Raboteau asserts, is a gross understatement. Raboteau did not mention the burdens the slave masters imposed on Muslims and others that prevented them from following their religions. It appears from the statement, “as best they could,” that the slaves were not capable of practicing their religious customs. There is no mention in the brief passage that the dehumanization inherent in slavery restricted the preservation of Islamic traditions.<sup>127</sup> To further emphasize the anti-Islam bias inherent in Raboteau’s scholarship, the book’s portrayal of Islam appears to be mocking Muslim religious practices from an outsider perspective:

‘Muh gran come from Africa,’ remarked Rosa Grant of Possum Point, Georgia. “Huh membuh when I wuz a chile seein muh gran Ryna pray. Ebry mawnin at sun-up she kneel on duh flo in uh ruhm an bow obuh an tech un head tuh duh flo tree time. Den she say a prayuh. I dohn membuh jis wut she say, but one wud she say use tuh make us chillun laugh. I membuh it was ‘ashanegad.’ Wen she finish prayin she say ‘Ameen, ameen, ameen.’<sup>128</sup>

Raboteau should have expounded on this narrative. It appears that the author knows no more about Islamic religious practices than the granddaughter of the slave who was praying. For the sake of informing the reader, Raboteau should have explained exactly the type of prayer that the grandmother was performing instead of glossing over it. He should also have avoided the mocking tone in describing the narrative.

Despite the slave owners’ callous efforts to convert the Muslim slaves to Christianity, many of the early African Muslims maintained their Muslim

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<sup>126</sup> PHILIP D. CURTIN, *THE ATLANTIC SLAVE TRADE: A CENSUS* 268 (1969).

<sup>127</sup> RABOTEAU, *supra* note 123.

<sup>129</sup> *Id.*

faith in secret.<sup>129</sup> Some slaves had memorized the entire Quran by heart and presumably could draw upon this knowledge, covertly if necessary.<sup>130</sup> Also, a number of slaves kept their African names, wore Islamic clothing, and prayed in the prescribed way despite the obvious risks.<sup>131</sup>

The leading casebook on race and the law, *Race and Races: Cases and Resources for a Diverse America*, addresses the issues of discrimination. This authority was amended in its second edition and included more analysis and case studies involving discrimination against Asian American. The prior edition insufficiently explored the religious tensions between the races and the religious justifications for slavery. The second edition draws attention to post-9/11 incidents of discrimination and harassment against American Muslims, but falls short in accessing religious tensions interrelated to existing racial discrimination.<sup>132</sup> To ponder race in the early American context without engaging in an exhaustive discussion of religion leads to an incomplete study. To ignore or underemphasize the positive and negative effects of religion is to cull a critical component of the psychology of prejudice. One of the questions posed by LatCrit scholars was whether a LatCrit theoretical perspective on identity politics could offer new perspectives on how to promote the recognition and enforcement of human rights.<sup>133</sup> Additionally, could the multiplicity and intersectionality of Latina/o identities and values, as well as the convergences and divergences in our histories and discourses of assimilation, independence, and revolution

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<sup>129</sup> See generally S.F. STATE UNIV., CTR. FOR INTEGRATION AND IMPROVEMENT OF JOURNALISM, *African American Muslims: 1600s–The First Muslims in the United States*, NEWSWATCH, [http://mediaguidetoislam.sfsu.edu/intheus/05a\\_muslims.htm](http://mediaguidetoislam.sfsu.edu/intheus/05a_muslims.htm) (last visited Apr. 17, 2014).

<sup>130</sup> See *id.*

<sup>131</sup> See *id.*

<sup>132</sup> See generally RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA (Juan F. Perea et al. eds., 2d ed. 2007).

<sup>133</sup> Elizabeth M. Iglesias, *International Law, Human Rights, and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177, 183 (1997).

shed light on traditional human rights concerns?<sup>134</sup> Latina/o identities intersect with Muslim identities due to shared experiences and histories as “the other.” An analysis and critique of Islam and Islamic legal concepts would mesh with ongoing LatCrit studies, which challenge hegemonic legal norms.

Despite the US being a secular country that separates church and state, religion has dictated political and legal determinations either directly or indirectly since the Declaration of Independence was drafted.<sup>135</sup> In fact, the US Supreme Court in 1892 said that America was “a Christian nation.”

If we pass beyond these matters to a view of American life, as expressed by its laws, its business, its customs, and its society, we find every where [sic] a clear recognition of the same truth. Among other matters note the following: The form of oath universally prevailing, concluding with an appeal to the Almighty; the custom of opening sessions of all deliberative bodies and most conventions with prayer; the prefatory words of all wills, ‘In the name of God, amen;’ the laws respecting the observance of the Sabbath, with the general cessation of all secular business, and the closing of courts, legislatures, and other similar public assemblies on that day; the churches and church organizations which abound in every city, town, and hamlet; the multitude of charitable organizations existing every where [sic] under Christian auspices; the gigantic missionary associations, with general support, and aiming to establish Christian missions in every quarter of the globe. These, and many other matters which might be noticed, add a volume of unofficial declarations to the mass of organic utterances that this is a Christian nation.<sup>136</sup>

Virtually every Anglo-American historian credits the Genoese sailor with the discovery of the New World, which propagates the notion of Judeo-Christian superiority. Abdullah Hakim Quick responds to the widely-held historical fallacy about Islam in America, “But the history books said,

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<sup>134</sup> *See id.*

<sup>135</sup> *Holy Trinity Church v. United States*, 143 U.S. 457, 471 (1892).

<sup>136</sup> *Id.*

‘Christopher Columbus discovered America,’ and the people are standing there! That’s intellectual genocide! You destroy people that is what has happened in the West in order to justify the system of oppression and racism established over the past 400 years.”<sup>137</sup> Scholars and educational systems propagate lies to insure the implementation of oppressive tactics, with the overall goal of preserving the colonial model of understanding regarding Islam. Quick is on the mark in saying that the history books commit intellectual genocide by simply attributing the discovery of America to Columbus because the systematic exclusion of the Muslim contribution is too overt to be accidental.<sup>138</sup> Loewen says, “Not one textbook mentions the West African . . . [voyagers to the New World.] While leaving out Columbus’s predecessors, American history books continue to make mistakes when they get to the last ‘discoverer.’ They present cut-and-dried answers, mostly glorifying Columbus, always avoiding uncertainty and controversy.”<sup>139</sup>

This omission of the Islamic impact in American history is a theft of the legacy of early American Muslims. The historical silence implies the Muslim contribution is in some way lacking or shameful. Many minority groups already suffer from marginalization.<sup>140</sup> Dominance by one racial group is detrimental to the American psyche.<sup>141</sup> The clash between Muslims and non-Muslims is evidenced in the varying viewpoints of Islamic civilization. Muslims generally believe Islamic civilization is built on divine foundations, whereas non-Muslims generally think Islamic civilization is

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<sup>137</sup> See Abdullah Hakim Quick, *Islam on Demand, Islam: Past, Present, and Future* YOUTUBE (Mar. 25, 2011), [https://www.youtube.com/watch?v=Tz0v\\_7gxIak](https://www.youtube.com/watch?v=Tz0v_7gxIak).

<sup>138</sup> See generally LOEWEN, *supra* note 11, 53–54.

<sup>139</sup> See *id.*

<sup>140</sup> See generally MOLEFI KETE ASANTE, *AFROCENTRICITY: THE THEORY OF SOCIAL CHANGE* (2003).

<sup>141</sup> See generally MOLEFI KETE ASANTE, *ERASING RACISM: THE SURVIVAL OF THE AMERICAN NATION* (2003).



grounded in ideas and practices from Judaism and Christianity.<sup>142</sup> According to Ahmet Karamustafa, both these viewpoints are accurate in describing Islamic civilization:

It is often thought that Islamic civilization . . . took its peculiar shape through a series of complicated, evasive maneuvers that enabled it to preserve its pristine purity. Muslims, it is assumed, rejected cultural influences from the outside and jealously guarded their core values from being contaminated through contact with other civilizations. An influential Muslim view, perhaps the prevalent one, is that whenever and wherever they succeeded in preserving the divine kernel, Muslims flourished; whenever and wherever they succumbed to non-Islamic “contamination,” they perished or lost power and became weak, even subjugated. The prevalent non-Muslim view seems to be the exact opposite: Muslims gained power where and when they were willing to temper the rather uncompromising, even rigid dictates of their religion with unabashed borrowing from other civilizations and lost this power where and when they turned a blind eye to the benefits that others had to offer.<sup>143</sup>

There was an obvious intermixing among Muslims, Christians, and Jews; and that dynamic encouraged the merger of cultural and religious values. Yet each religious group maintained its own distinct and unique spiritual identity. Recognizing the similarities between the Abrahamic religions of Islam, Christianity, and Judaism can help to alleviate the perception of otherness toward Muslims.

#### FINAL REMARKS

As demonstrated by the aforementioned evidence, Muslims have been part of the American landscape since pre-Columbian times. Advocates, historians, and modern actors are challenging the notion that scholarship

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<sup>142</sup> Ahmet Karamustafa, *Islam: A Civilizational Project in Progress*, in *PROGRESSIVE MUSLIMS: ON JUSTICE, GENDER, AND PLURALISM* 98, 103–104 (Omid Safi ed., 2003).

<sup>143</sup> *Id.*

must leave the disenfranchised in silent obscurity. It is crucial to analyze historical records of early Muslim American experiences and contextualize them, looking for sociolegal constructs.

Discourse in the United States can be greatly enhanced by considering the true influence of Islam to the American experience. Since 9/11, Islam has, for the most part, been viewed as a foreign and marauding force, both in the United States and on the international scene, evidenced by the recent surge of anti-Sharia law legislation in 32 US States.<sup>144</sup> A careful understanding of the Islamic influences on the New World can help combat negative stereotypes and create more thoughtful dialogue on modern substantive issues regarding Muslims and Islam. Muslims have witnessed dramatic increases in instances of harassment, bias, discrimination, and even hate crimes against them for the past decade or so.<sup>145</sup>

Education and knowledge are the best tools to ward off ignorance, hatred, and fear. The current political climate and the rapidly increasing number of American Muslims will invariably catalyze historians to reexamine the roles of Islam in developing this nation.

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<sup>144</sup> See generally FAIZA PATEL ET AL., BRENNAN CTR. FOR JUSTICE, FOREIGN LAW BANS: LEGAL UNCERTAINTIES AND PRACTICAL PROBLEMS (2013) available at <http://www.americanprogress.org/wp-content/uploads/2013/05/ForeignLawBans.pdf>.

<sup>145</sup> See *id.*