
ON TERRORISTS AND FREEDOM FIGHTERS

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The Russian invasion of Ukraine in late March of 2022 ushered in a new chapter of war on the European continent. For a Russian regime intent on actualizing its imperial vision and an accosted Ukrainian community fighting in the name of self-determination, this war is far more than a theater of war. Ukraine evolved into real-time drama for racial understandings of “terrorism” and “freedom fighter,” and their political ascription in Muslim-majority nations where parallel struggles either continue to rage or are violently crushed.

By interrogating the centrality of race within the dialectic of “freedom” and “terrorism,” this Essay examines how realpolitik driving law and its accompanying discourses is powerfully abetted by racial difference and charged by the indelible resonance of whiteness when it concerns the role of freedom fighter. The War in Ukraine, distinctly unfolding alongside similar campaigns in the “Middle East” and Muslim-majority contexts, is a powerful case study illustrating this dissonance. This dissonance colors the framing of nonwhite Muslims vying for self-determination as terrorists and white Ukrainians, engaged in the same exact acts of resistance, as freedom fighters. This racial interplay saturates media discourses and scholarly literatures, across screens on walls to the smaller ones in our palms as new wars converge with preexisting crusades.

One man’s terrorist is another man’s freedom fighter, the slogan holds; a credo that rings a broad truth, yet falls short of qualifying how race and racism dictate how these labels are politically imagined, then practically and legally assigned.

INTRODUCTION

My only consolation is that periods of colonization pass, that nations sleep only for a time, and that peoples remain.

— Aimé Césaire¹

*Journalist: The law’s often inconvenient, Colonel.
Colonel Mathieu: And those who explode bombs in public places,
do they respect the law perhaps?*

— THE BATTLE OF ALGIERS²

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¹ AIMÉ CÉSAIRE, DISCOURSE ON COLONIALISM 44 (Joan Pinkham trans., 2001).

² THE BATTLE OF ALGIERS (Igor Film & Casbah Film 1966).

The landmark film, *The Battle of Algiers*, brought the stunning drama of the Algerian Revolution to screens everywhere.³ From the winding walkways of the Casbah to the legions of foreign soldiers whirling through them, the film captured the color of imperial horror marked by 132 years of French occupation.⁴

On the silver screen, the world finally saw and understood the Algerians for who they were: a people fighting for their independence with everything they had. Through the director's subaltern lens, the film exposed the unhinged "barbarism" that loomed underneath the pristine uniform of "civilization" adorned and advanced by the colonial French.⁵ The roles of the "terrorist" and "freedom fighter" were cinematically retold, reversing the weight of law and its imprint on colonial history. As the director Gillo Pontecorvo showed and Jean-Paul Sartre wrote: "When despair drove [the Algerians] to revolt, these subhumans either had to perish or assert their humanity against us: they rejected all our values, our culture, our supposed superiority."⁶

The film, nearly six decades beyond its making, remains revolutionary theatre. It masterfully recreates the asymmetrical battle between the indigenous Algerians, most powerfully the women, who rooted anything and everything from the loins of the land they loved so much to survive the French.⁷ Only that brand of love, indigenous love, could scale odds stacked so heavily against them. They faced the limitless legions of colonial soldiers brandishing the most modern weaponry, and the blow of imperial laws crafted to steal rightful claim of soil that sheltered their ancestors and nourished their fight.⁸

As *The Battle of Algiers* made naked, the law is often the colonizer's first front. Through word, law strips the natural claim of self-governance

³ *Id.*

⁴ For a subaltern exposé of the French occupation of Algeria from one of its fiercest French critics, see ALBERT CAMUS, *ALGERIAN CHRONICLES* (Alice Kaplan ed., Arthur Goldhammer trans., Belknap Press 2014) (1958).

⁵ Aimé Césaire theorizes how colonialism degrades the colonizer and its "soul" and, through its pillaging and plundering of colonized peoples, reduces it to barbarism. CÉSAIRE, *supra* note 1, at 47–48.

⁶ JEAN-PAUL SARTRE, *COLONIALISM AND NEOCOLONIALISM* 75 (Azzedine Haddour et al. trans., Routledge 2001) (1964). "The entire project of European overseas expansion and settlement had been driven by a sense of superiority over other cultures, religions, and races." CHRISTIAN JOPPKE, *SELECTING BY ORIGIN: ETHNIC MIGRATION IN THE LIBERAL STATE* 35 (2005).

⁷ Depicting how Algerian women toppled prevailing stereotypes of "passivity" and "submissiveness" by weaponizing these qualities against the disarmed French soldiers who did not consider them threats, the film's representation of the Muslim woman freedom fighter was particularly transformative and unprecedented in cinema. For a scholarly critique of these tropes, and the gendered Islamophobia they still give rise to, see Khaled A. Beydoun & Nura A. Sedique, *Unveiling*, 111 CALIF. L. REV. (forthcoming 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4054865 [<https://perma.cc/R95P-L4AL>].

⁸ See JAMES MCDUGALL, *A HISTORY OF ALGERIA 86–129* (2017) for an analysis of the colonial laws enforced by the French to seize Algerian lands and strip the rights of the natives, from 1830 through 1944.

deriving from indigeneity, then swiftly unravels the humanity of those resisting with their bodies and being.⁹ Law enables the colonial power and his foot soldiers to carry the fight within the most intimate quarters of the natives' homes. And then, law labels the righteous resistance against it as "terrorism."¹⁰ The charge of terrorism, per its modern "War on Terror"¹¹ deployment and earlier use, is crafted powerfully along racial lines, as illustrated by the kindred realities unfolding in the Casbah then, and in accosted squares of Kyiv today.

Law converts that *very* absurdity — that a foreign force holds possessory rights over a native's home — into the manmade fiat of manifest destiny.¹² Brutal soldiers invoked this legal authority crafted by foreign men in distant capitals and cruelly imposed it on natives as their new fate. This is the law's cardinal function in settler colonial states like America and imperial experiments such as Algeria — to delegitimize self-determination and dehumanize those who resist.

"*The rule of law?*" Aimé Césaire asks rhetorically: "I look around and wherever there are colonizers and colonized face to face, I see force, brutality, cruelty, sadism, conflict . . ." ¹³ Law, in this sense, is an imperial instrument, molded and maneuvered to advance the interests of those that hold power over it and power over the machinery that translates authoritative law into ominous violence. Law is most lethal when it envisions its targets as objects of conquest rather than subjects of patronage.¹⁴

The discourse between the journalist in *The Battle of Algiers* and Lieutenant Colonel Philippe Mathieu brings this imperial expedience of law, or convenience, to vivid display. Mathieu is the cinematic embodiment of the steely French entitlement driving its colonial obsession of

⁹ See generally CÉSAIRE, *supra* note 1. "A civilization that uses its principles [laws] for trickery and deceit is a dying civilization." *Id.* at 31.

¹⁰ The term "terrorist," perhaps more than any other political or criminal indictment, is strategically ambiguous — enabling state actors to deploy it in ways that advance their specific political interest, or mandate. American law, for example, has several definitions of the term across its network of federal laws. For an analysis of these legal definitions, and what "terrorism" means according to American interests, see Keiran Hardy & George Williams, *What is "Terrorism"?: Assessing Domestic Legal Definitions*, 16 UCLA J. INT'L L. & FOREIGN AFFS. 77, 154–59 (2011).

¹¹ This Essay defines the "War on Terror" as the domestic and global campaign commenced by President George W. Bush on September 20, 2001, nine days after the 9/11 terror attacks. President Bush declared, before Congress: "Our war on terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated." President George W. Bush, Address to a Joint Session of Congress and the American People (Sept. 20, 2001).

¹² Manifest destiny is the ideologically driven belief, often steered by religion, that dispossession of another peoples' land is the intended fate of the colonial power. This belief is, in many cases, "inexorably entwined with race and racism." LAURA E. GÓMEZ, *MANIFEST DESTINIES: THE MAKING OF THE MEXICAN AMERICAN RACE* 4 (2007).

¹³ CÉSAIRE, *supra* note 1, at 42.

¹⁴ *Id.*

Algeria.¹⁵ With regard to Ukraine, the French stand as a telling archetype for the arrogant authoritarianism of President Vladimir Putin, whose obsession with power is wed to a kindred nostalgia of Soviet regional and global hegemony.¹⁶ This discourse about law and power, imperialism and indigeneity is built upon an undergirding epistemic about freedom fighters and terrorists — a timeless dialectic that screams from the screens as if from *The Battle of Algiers*.

* * *

Political reality, after all, inspires the best cinema. In a world marred by two decades of a global War on Terror, racial reckoning,¹⁷ and cold wars of the past thawing to restore bygone geopolitical rivalries, modern reality is as gripping as fiction. *Terrorism* has taken on a pointed racial and religious form.¹⁸ Muslims, transnationally, have been “raced” as terrorists as a consequence of this American-led crusade.¹⁹ Their faith is conflated with extremism and their portrayal in American media is constructed based on that conflation.²⁰ More than legitimizing this indictment, global War on Terror law and propaganda have spearheaded its construction.²¹ In turn, they unravel the humanity of Muslims in favor of a political visage that enables policing and prosecution in America and military persecution and mass punishment abroad.²² This occurs even in lands where Muslims — like the Algerian women and men in Gilo Pontecorvo’s classic film — are striving for self-determination against modern imperial actors. *Seeing* them as terrorists facilitates the *unseeing* of them for what they rightfully are: freedom fighters struggling for the very dignity that Ukrainians, taking arms in the midst of impending conquest, clench onto in the face of imposing Russian aggression.

The force of the imperial law, that simultaneously strips the land from its rightful holders and constructs them as inferior or inhuman, is

¹⁵ See THE BATTLE OF ALGIERS, *supra* note 2.

¹⁶ See Taras Kuzio, *Inside Putin’s Ukraine Obsession*, ATL. COUNCIL: UKRAINEALERT (Jan. 27, 2022), <https://www.atlanticcouncil.org/blogs/ukrainealert/inside-putins-ukraine-obsession> [<https://perma.cc/SR98-JX6Q>].

¹⁷ For an intimate analysis of the genesis and impact of Black Lives Matter, see KEEANGA-YAMAHTTA TAYLOR, *FROM #BLACKLIVESMATTER TO BLACK LIBERATION* (2016).

¹⁸ Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575, 1575–86 (2002).

¹⁹ Natsu Taylor Saito, *Symbolism Under Siege: Japanese American Redress and the “Racing” of Arab Americans as “Terrorists,”* 8 ASIAN L.J. 1, 12 (2001).

²⁰ *Id.*

²¹ See generally Khaled A. Beydoun, *Exporting Islamophobia in the Global “War on Terror,”* 95 N.Y.U. L. REV. ONLINE 82 (2020) (examining how American War on Terror policy and rhetoric facilitated the persecution of Muslim populations in nations across the world, with a specific focus on China and India).

²² Khaled A. Beydoun, *Islamophobia: Toward a Legal Definition and Framework*, 116 COLUM. L. REV. ONLINE 108, 115 (2016). In my previous work, I define “private Islamophobia” as anti-Muslim animus or violence inflicted by individual bigots or actors not tied to the state, *id.* at 111, and “structural Islamophobia” as law, policy, and action taken by a state agency or actor, *id.* at 114.

most potent when driven by a “racialized” frame.²³ Postcolonial thinkers of eras past, most trenchantly Césaire, Frantz Fanon, and Edward Said, revealed how the accompanying hand of racism expedited the plunder of nonwhite peoples.²⁴ Today, critical race theorists emphatically and incessantly affirm racism’s centrality to law,²⁵ against the political and legal tidal wave that seeks to disfigure and discredit it.²⁶ There is perhaps no theatre of law where the centrality of race is on fuller display than the War on Terror, where the unabashed demonization of Muslims remains politically palatable and culturally pervasive. Islamophobia stands, almost singularly, as a final bastion of acceptable bigotry.²⁷ This is especially apparent in the United States, and a globalized world remade through a War on Terror lens over the last twenty-one years.

The color of freedom and terror is intimately tethered to the world order remade by the War on Terror. Muslims are “presumptive terrorists,”²⁸ a charge levied on account of race, religion, and *realpolitik*, even when acting as freedom fighters. A distant, yet kindred campaign for self-determination reinforced the power of this indictment, with a racial design as its marrow. It took form in Europe, beginning on February 24, 2022, when Russian missiles “rained down on the Ukraine,” foreshadowing the thunderous military storm seeking to restore reign over the former Soviet colony.²⁹ The formidable Russian army rushing in from the east was rightfully and universally branded “imperialist[,]” while Ukrainians, from the highest rungs of political office to the deepest

²³ “Racialization” is defined as the process of extending racial meaning — itself “an unstable and ‘decentered’ complex of social meanings constantly being transformed by political struggle” assigned to identities in society. MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES* 110 (3d ed. 2015).

²⁴ See FRANTZ FANON, *WRETCHED OF THE EARTH* (1961), for a formative analysis of the psychological impact of colonization on peoples dispossessed of their lands and disconnected from their independence. See also EDWARD W. SAID, *CULTURE AND IMPERIALISM* (1993), a collection of essays examining how modern and postmodern imperial campaigns shaped the making of colonial culture and inspired the intellectual and practical resistance of its colonized subjects.

²⁵ See Devon W. Carbado, *Afterword: Critical What What?*, 43 *CONN. L. REV.* 1593 (2011), for a historical review tracking the intellectual genesis of critical race theory from its formative stages into its fifth decade. “Critical race theory expresses skepticism toward dominant legal claims of neutrality, objectivity, color blindness and meritocracy.” Charles R. Lawrence III et al., *Introduction to WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT* 1, 6 (Mari J. Matsuda et al. eds., 1993).

²⁶ Rashawn Ray & Alexandra Gibbons, *Why Are States Banning Critical Race Theory?*, *BROOKINGS: FIXGOV* (Nov. 2021), <https://www.brookings.edu/blog/fixgov/2021/07/02/why-are-states-banning-critical-race-theory> [<https://perma.cc/W5KD-T6AH>].

²⁷ See KHALED A. BEYDOUN, *AMERICAN ISLAMOPHOBIA: UNDERSTANDING THE ROOTS AND RISE OF FEAR* 28 (2018) (defining Islamophobia “as the presumption that Islam is inherently violent, alien, and unassimilable, a presumption driven by the belief that expressions of Muslim identity correlate with a propensity for terrorism”).

²⁸ *Id.* at 19.

²⁹ Natalia Zinets & Aleksandar Vasovic, *Missiles Rain Down Around Ukraine*, *REUTERS* (Feb. 24, 2022, 7:45 PM), <https://www.reuters.com/world/europe/putin-orders-military-operations-ukraine-demands-kyiv-forces-surrender-2022-02-24> [<https://perma.cc/4D32-QRXS>].

roots of lay society, were globally celebrated as “freedom fighters.”³⁰ Ukrainians embodied the indigenous fight of Algerians then, or Yemenis and Kashmiris today, against a global military power intent on crushing their hearts, homes, and everything they love beyond and in between.³¹

Unlike the accusations leveled at Ukrainians’ Muslim counterparts striving for self-determination, the Russian indictments of “terror” lacked the dehumanizing hand of race and racism. Rather, the indictments were countered and quelled by their targets’ lurid whiteness, and Ukrainians were celebrated as freedom fighters on the basis of their whiteness coupled with Western opposition to the Russian invasion. It took little for Ukrainians, whose faces monopolized the news headlines and timeline feeds, to become universal darlings and irrefutable victims. The Western world flanked alongside President Volodymyr Zelensky and the Ukrainians’ archetypal whiteness twice mooted Putin’s levied charges of terrorism from Moscow.³² Ukraine is ninety-nine percent white, and politicians and media outlets all over the world hailed its people fighting for resistance and pushed from Ukraine as refugees.³³ As Césaire wrote during the thick of the postcolonial era of the 1950s: “Europe has this capacity for raising up heroic saviors at the most critical moments.”³⁴ This heroism is monopolized by whiteness, embodied decades later by blonde-haired and blue-eyed Ukrainians at the “critical moment[.]”³⁵ of NATO expansionism clashing with Russian imperialism.

Race, far from a fringe actor, is central to the dramatic play unfolding within Ukraine and beyond it. By interrogating the centrality of race in the dialectic of freedom and terrorists, this Essay examines how the *realpolitik* driving imperial law and its accompanying discourses is powerfully abetted by racial difference, and the indelible resonance of whiteness when it occupies the role of freedom fighter. The War in Ukraine, *distinctly* unfolding alongside similar campaigns in the

³⁰ See Khaled A. Beydoun, Opinion, *The World of Inconsistencies Between Ukraine, The Middle East and Beyond*, WASH. POST. (Mar. 7, 2022, 12:57 PM), <https://www.washingtonpost.com/opinions/2022/03/07/ukraine-palestinians-kashmir-yemen> [https://perma.cc/C94N-QE98].

³¹ For an example of this framing, see Sebastian Junger, *Can Ukrainian Freedom Fighters Stand Up to the Russian Military? History Suggests They Can*, VANITY FAIR (Mar. 7, 2022), <https://www.vanityfair.com/news/2022/03/can-ukrainian-freedom-fighters-stand-up-to-the-russian-military> [https://perma.cc/NXD8-HCNJ].

³² Another angle that illustrates the resonance, and reception, of Ukrainian whiteness across Europe was the refugee crisis that instantly followed the Russian invasion. For a trenchant analysis of the role of race in this crisis, see Rashawn Ray, *The Russian Invasion of Ukraine Shows Racism Has No Boundaries*, BROOKINGS: HOW WE RISE (Mar. 3, 2022), <https://www.brookings.edu/blog/how-we-rise/2022/03/03/the-russian-invasion-of-ukraine-shows-racism-has-no-boundaries> [https://perma.cc/925V-STRT].

³³ Char Adams et al., “*Open the Door or We Die*”: *Africans Report Racism and Hostility Trying to Flee Ukraine*, NBC NEWS (Mar. 1, 2022, 5:35 PM), <https://www.nbcnews.com/news/nbcblk/open-door-die-africans-report-racism-hostility-trying-flee-ukraine-rca17953> [https://perma.cc/SMP4-7CFJ].

³⁴ CÉSZAIRE, *supra* note 1, at 68.

³⁵ *Id.*

“Middle East” and Muslim-majority contexts, is a powerful theatre illustrating this dissonance; such dissonance colors the framing of “nonwhite” Muslims vying for self-determination as terrorists and white Ukrainians, engaged in the very acts of resistance, as freedom fighters.³⁶ This racial interplay saturates media discourses, scholarly literatures, and as new wars converge with preexisting crusades, across screens drilled to walls and smaller ones held in our palms.

Through its examination of new war, this Essay builds on foundational literatures interrogating the construction of racialized threat and colonial victimhood. In doing so, it interrogates how the War on Terror creations of terror threaten to extend beyond American borders geographic and political, converging with a globalized formation of whiteness that extends presumptions of innocence and valor to those who hold it. Echoing the formative critical race baseline that racial construction is not separate from political interest, this Essay stands as the first to examine this very discourse within one of the most *consequential* wars of this era — centered as such because the white identities of its lead actors align with the geopolitical stakes of the conflict.

This Essay will proceed in three Parts. Part I analyzes the racial construction of the terrorist and the freedom fighter, examining scholarly texts and the reifying echo of mainstream news media.

Part II will interrogate the racial juxtaposition at the root of their contemporary sites — Ukraine and Muslim-majority societies — where quests for self-determination against occupying powers are conceived and covered, in dramatically opposable ways.

Part III examines the racialization of freedom fighter and terrorist from within the frame of refugee resettlement outside of Ukraine, affirming how the racial construction of both terms follows individuals from the field of battle to their search for a safe haven.

I. REIMAGINING FREEDOM, REMAKING TERROR

“[Ukraine] isn’t a place, with all due respect, like Iraq or Afghanistan, that has seen conflict raging for decades. This is a relatively civilized, relatively European — I have to choose these words

³⁶ This Essay recognizes the colonial roots of the descriptor, the “Middle East,” which is rooted in Orientalist imagining. However, I adopt it situationally in this Essay for purposes of brevity and familiarity. Second, it defines “nonwhite” along political discursive lines. This designation is not defined along American formal classifications of whiteness and nonwhiteness, but the political construction of whiteness as applied to Muslim bodies and populations. For example, Arab, Middle Eastern and North African Americans, Muslim and otherwise, are formally classified as white by controlling executive branch agencies. Yet, the political construction of these identities, before and particularly during the War on Terror, has been that of nonwhiteness. See Khaled A. Beydoun, *Boxed In: Reclassification of Arab Americans on the U.S. Census as Progress or Peril?*, 47 LOY. U. CHI. L.J. 693, 703–16 (2016) (examining how formal whiteness applied to Arab Americans diverges from their lived political experiences).

carefully, too — city, one where you wouldn't expect that, or hope that it's going to happen.”³⁷

These are the words of CBS News foreign correspondent Charlie D'Agata. He was reporting from the Ukrainian capital of Kyiv days after the Russian siege commenced,³⁸ startled by the fact that another war — on the very continent that spurred and staged two world wars — was underway in Europe. Despite the memory of World Wars I and II remaining fresh in the minds of elders and history books, a genocidal campaign unleashed on Bosnian Muslims in the nearby Balkans in the 1990s,³⁹ and the Russian takeover of nearby Crimea, the CBS News journalist viewed war as wholly foreign to Europe.

“[C]hoos[ing] [his] words carefully,” the CBS News reporter did not mince them.⁴⁰ Against the force of facts and the stark shadow of recent history, war was a foreign phenomenon to Europe, the bastion of “civiliz[ation]” for D'Agata.⁴¹ Ukraine, standing on the margins of Western Europe and claiming to join its ranks, was, in line with geographic location, “relatively civilized.”⁴² His words and face screamed that what unfolded around him was natural to Iraq or Afghanistan, “uncivilized” lands where war is the natural state of being, order, and disorder. These wars, beyond what Americans only “hope[d] [were] going to happen,” were actually waged in the name of counterterrorism for over two decades.⁴³

This Part investigates the racial construction of “freedom fighting” and “terrorism.” It examines how law forms their conceptions, driving their political and discursive imaginings along pointedly racial lines. Section I.A surveys how terrorism has been systematically ascribed to Muslim identity, while section I.B analyzes the construction of whiteness alongside virtues such as innocence and rectitude that give rise to the attendant archetype of freedom fighter.

³⁷ Ben Kessler, *CBS News' Charlie D'Agata Apologizes for Saying Ukraine More “Civilized” than Iraq, Afghanistan*, N.Y. POST (Feb. 26, 2022, 9:21 PM) (quoting D'Agata), <https://nypost.com/2022/02/26/cbs-news-charlie-dagata-apologizes-for-saying-ukraine-more-civilized-than-iraq-afghanistan> [<https://perma.cc/96D2-6DR8>]; see also Annabel Nugent, *CBS News Foreign Correspondent Apologizes for Saying Ukraine is More “Civilized” than Iraq and Afghanistan*, THE INDEP. (Feb. 27, 2022), <https://www.independent.co.uk/arts-entertainment/tv/news/charlie-dagata-cbs-apology-ukraine-iraq-b2024265.html> [<https://perma.cc/Z56C-5NLX>].

³⁸ Kessler, *supra* note 37.

³⁹ See NORMAN L. CIGAR, *GENOCIDE IN BOSNIA* (1995), for a historical account of the Serbian war crimes committed against the Muslim people of Bosnia in the 1990s.

⁴⁰ Kessler, *supra* note 37.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

A. *Islam and Terror*

Before one can speak about Islam as a bona fide religion, one must peel off the mass misrepresentations leeching onto it.⁴⁴ This is the unnatural state of affairs pronounced by the War on Terror, which — by law and its accompanying discourses — intentionally disfigured a faith followed by nearly two billion people around the world.⁴⁵ This framing was leveraged as propaganda to expand and deepen America’s footprint atop and across it. As Professor Sahar Aziz writes: “The September 11 terrorist attacks finalized a transformation of Muslim identity that had been in the making for decades and was grounded in European Orientalism.”⁴⁶

As Aziz explicates, the law and discourse of Islamophobia is by no means unfamiliar or novel.⁴⁷ In fact, the War on Terror machine revised, readapted, then “redeployed” longstanding European and American Orientalist tropes.⁴⁸ It spurred ideas that Islam, more racial civilization than religion, inspired unhinged violence through an innate, insatiable appetite for conquest.⁴⁹ It pervaded historic laws, texts and literatures, and emergent discourses that warned about a “clash of civilization” between the “west” and “Islam.”⁵⁰ This was a masculine mani-

⁴⁴ The work of Edward Said, particularly his book *Covering Islam*, delved into the misrepresentations of the faith curated by mass media outlets before 9/11 and the ensuing War on Terror. In it, he observed: “Given the present circumstances, with neither ‘Islam’ nor ‘the West’ at peace with each other or with themselves, it may seem exceptionally futile to ask whether, for members of one culture, knowledge of other cultures is even possible.” EDWARD W. SAID, *COVERING ISLAM* 127 (1981).

⁴⁵ Michael Lipka & Conrad Hackett, *Why Muslims Are the World’s Fastest-Growing Religious Group*, PEW RSCH. CTR. (Apr. 6, 2017), <https://www.pewresearch.org/fact-tank/2017/04/06/why-muslims-are-the-worlds-fastest-growing-religious-group> [<https://perma.cc/U4CA-EP2Z>] (stating that Muslims numbered 1.8 billion in 2015).

⁴⁶ SAHAR AZIZ, *THE RACIAL MUSLIM: WHEN RACISM QUASHES RELIGIOUS FREEDOM* 6 (2022).

⁴⁷ *Id.*; see also ROBERT ALLISON, *THE CRESCENT OBSCURED: THE UNITED STATES AND THE MUSLIM WORLD* 45–46 (1995) (“Americans regarded Muhammad as a dangerous false prophet and as the creator of an evil and religious political system. . . . Islam, as the Americans saw it, was against liberty, and being against liberty, it stopped progress.”). See Khaled A. Beydoun, *Between Muslim and White: The Legal Construction of Arab American Identity*, 69 N.Y.U. ANN. SURV. AM. L. 29 (2013), for an examination of how American courts denied the naturalized citizenship of Muslim immigrants from 1790 through 1944 on account of caricaturing Islam as inassimilable and uncivilized, and ultimately irreconcilable with whiteness.

⁴⁸ Volpp, *supra* note 18, at 1586.

⁴⁹ Said theorized this master discourse as a process whereby the West, or the “Occident,” defined itself as the mirror opposite image of the Muslim world, which comprised a segment of the “Orient.” See generally EDWARD SAID, *ORIENTALISM* (1978). For a critical analysis of *Orientalism*, focusing on how Said’s theoretical binary essentialized the two spheres he was invested in critiquing and undoing, see generally DANIEL MARTIN VARISCO, *READING ORIENTALISM: SAID AND THE UNSAID* (2007).

⁵⁰ The starkest example of this transnational masculine Muslim violence, or impending “clash of civilizations” pitting Islam against the West, is Professor Samuel P. Huntington’s influential book

festation of violence that, after the 9/11 terror attacks and following turbulent era, took on the visible and ominous form of the Muslim male terrorist.⁵¹

Islamophobia was and remains a deeply gendered discourse. The framing of Muslim masculinity made modern terrorism, positioning the Muslim male as a figure that simultaneously menaced Muslim women on the home front and Western civilizations afar.⁵² As Muslim feminist Fatima Mernissi writes, “The so-called modesty of [Muslim] women is in fact a war tactic.”⁵³ The strategically constructed feminine tropes of “submissiveness” and “passivity” were devised as a Trojan horse for the imperial objective of “saving Muslim women,” for colonization, for conquest and the spoils that come from it.⁵⁴ This metanarrative was extended into the modern context by Professors Saba Mahmood and Lila Abu-Lughod, anthropologists who jab at the Western feminist imperialist impulse by asking, “*Do Muslim Women Really Need Saving?*”⁵⁵ The very gendered binary that orients Muslim women as subjects in need of saving and men as tyrants on the home front and terrorists everywhere else is itself a colonial import and an imperial instrument, which erases the myriad of gendered identities within and across Muslim societies.⁵⁶

Furthermore, Islam, despite being the world’s second-largest faith practiced across every country and continent, still takes on a pointedly racialized form.⁵⁷ Despite its limitless heterogeneity, the contours of Arab or Middle Eastern, brown, and immigrant identity controlled the

THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER (1996). Professor Hamid Dabashi, a postcolonial critic, observes: “By 2000, the ideas of [Francis] Fukuyama and Huntington had so utterly stormed Washington that militant Islamism had moved to the center of its short attention span.” HAMID DABASHI, *BROWN SKIN, WHITE MASKS* 13 (2011).

⁵¹ See Beydoun & Sedique, *supra* note 7.

⁵² *Id.*

⁵³ FATIMA MERNISSI, *SHEHERAZADE GOES WEST: DIFFERENT CULTURES, DIFFERENT HAREMS* 11 (2001).

⁵⁴ Postcolonial scholar Professor Gayatri Spivak’s characterization of imperial patriarchy captures the gendered and racial essence of the War as “[w]hite men [joined by white women] saving brown women from brown men.” Gayatri Chakravorty Spivak, *Can the Subaltern Speak?*, in *CAN THE SUBALTERN SPEAK: REFLECTIONS ON THE HISTORY OF AN IDEA* 22, 50 (Rosalind Morris ed., 2010).

⁵⁵ See generally SABA MAHMOOD, *POLITICS OF PIETY: THE ISLAMIC REVIVAL AND THE FEMINIST SUBJECT* (2011); Lila Abu-Lughod, *Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and Its Others*, 104 *AM. ANTHROPOLOGIST* 783 (2002) (critiquing the War on Terror charge to “liberat[e] Muslim women,” *id.* at 785).

⁵⁶ For a rich discussion demystifying this gendered binary and illuminating the rich panoply of gendered expressions in Iran, a Shiite Muslim-majority nation, see generally AFSANEH NAJMABADI, *WOMEN WITH MUSTACHES AND MEN WITHOUT BEARDS: GENDER AND SEXUAL ANXIETIES OF IRANIAN MODERNITY* (2005).

⁵⁷ “[A]nyone who racially ‘looks Muslim’ is similarly vulnerable to Islamophobia. Many South Asian Americans are Muslim, but many others are Hindu, Sikh, Christian, Buddhist, or have no religion at all.” ERIK LOVE, *ISLAMOPHOBIA AND RACISM IN AMERICA* 3 (2017).

popular imagining and presentation of Islam.⁵⁸ Muslims became terrorists, and the enterprise of terrorism remains incessantly viewed through the linear form of Muslim men.⁵⁹ To be brown, Muslim, and male meant that the specter of terror suspicion always followed Muslim men, and those non-Muslims with the misfortune of being profiled as such.⁶⁰

As a result, the lens of terrorism and counterterrorism colored virtually everything Muslims said or did. This included religious expression, political activity, and even benign behavior. “Acting Muslim” functioned as a proxy for terror activity; it invited state suspicion or surveillance, and new regimes of self-policing among Muslim populations in the United States and wherever the War on Terror gaze persisted.⁶¹ Muslims were incentivized, if not pushed by War on Terror policy and the societal climate, to behave in line with the political strictures and “moderate” sensibilities.⁶² More often than not, “good” behavior that concealed Muslim religious expression or conformed to patriotic sensibilities was still not enough to stave off the stigma of terror suspicion.⁶³

Most pronouncedly, and ominously, the lens of terrorism invariably painted perceptions of acts of aggression. In Europe, modern Islamophobia is strongly tinged with the ever-present narrative of the Crusades, which deepens the caricaturing of Muslims as longtime rivals and violent actors.⁶⁴ The link between Islam and violence is rooted in

⁵⁸ I define “private Islamophobia” as anti-Muslim animus or violence inflicted by individual bigots or actors not tied to the state. Beydoun, *supra* note 22, at 111–19.

⁵⁹ “While violence and terror are the principal makers of Muslim masculinity, the veil and its accompanying dialectic of subordination makes it its feminine analog.” Beydoun & Sedique, *supra* note 7, at 20.

⁶⁰ It is important to note that counterterror and collateral suspicion also implicate non-Muslims discursively profiled as Muslims, including Latino, South Asian, and Sikh Americans. See Vinay Harpalani, *DesiCrit: Theorizing the Racial Ambiguity of South Asian Americans*, 69 N.Y.U. ANN. SURV. AM. L. 77, 162 (2013).

⁶¹ See generally Khaled A. Beydoun, *Acting Muslim*, 53 HARV. C.R.—C.L. L. REV. 1 (2018), for a theoretical analysis of how expressions of Muslim identity invite suspicion, and how Muslims negotiate these expressions and behaviors to stave off stigma.

⁶² See generally Karen Engle, *Constructing Good Aliens and Good Citizens: Legitimizing the War on Terror(ism)*, 75 U. COLO. L. REV. 59 (2004). Principal among “good Muslim” expressions are “denouncing terrorism, supporting the war on terror, and waving the American flag.” *Id.* at 62–63; see also MAHMOOD MAMDANI, *GOOD MUSLIM, BAD MUSLIM: AMERICA, THE COLD WAR, AND THE ROOTS OF TERROR* (2004) (examining the genesis of the good-bad Muslim binary and its global application).

⁶³ Beydoun, *supra* note 61, at 50.

⁶⁴ While memory, and misrepresentation, of the Crusades is also deployed in the United States, it has special force in Europe. This is largely attributed to the Muslim world’s immediate geographic proximity to Europe, and the continent’s longstanding engagement with the Middle East and Muslim-majority countries. Professor Erika Lee, a historian, writes:

The West’s denigration of Islam dates as far back as the Middle Ages and the Christian Crusades — a series of bloody, violent, and ruthless religious wars started by Pope Urban II to recapture the Holy Land from Muslims and distract from the problems of the Church. The Crusades promoted religious intolerance and violence, resulting in the wide-

European colonial epistemology, seeding it deeper and bolstering its prominence in contemporary policy.⁶⁵ This, many contend, makes European forms of Islamophobia more intimate, and consequently more complex than their American analogs.⁶⁶ However, intimacy breeds a distinct mode of violence, oftentimes in more piercing and disabling policies as evidenced by France's 2004 "Headscarf Ban" legislation.⁶⁷

Furthermore, even righteous acts of resistance made in the name of self-determination are stained with suspicion when performed by Muslims. The very quest for self-determination, and the heroism it demands, clashed with prevailing political constructions and popular conceptions of Muslims. This held particularly true for Muslims on the opposite side of American interests and the wrong side of its military prowess — in places such as Yemen or Iraq, Pakistan or the West Bank, and Gaza.⁶⁸ For Arabs and Muslims, flatly clothed with the uniform of terrorism, their acts have been stripped of the value of their intent or objective; and consistently assessed, and indicted, on the mere basis of the *actus reus* and the contours of their identity.⁶⁹ Terrorism was imputed even when Muslims were engaged in righteous resistance.

The campaign that ascribed terror to Muslim bodies was not merely epistemological. More pointedly, the law spearheaded it. In fact, every war, executive order, piece of legislation, and policy that dealt with terrorism — or counterterrorism — was built upon the Islamophobic baseline that expressions of Muslim identity were tied to a propensity for

spread massacre of Muslims, Jews, and other non-Christians; the lumping together of diverse peoples from the Arabian Peninsula; and categorizing them as inferior. It also helped establish a worldview in which Christianity and Islam, Christians and Muslims, and Europeans and "Saracens" were viewed as natural enemies, with Muslims being portrayed as dark and evil "others."

ERIKA LEE, *AMERICA FOR AMERICANS: A HISTORY OF XENOPHOBIA IN THE UNITED STATES* 295 (2019).

⁶⁵ The French conquest of Algeria, which prefaces this Essay in the Introduction, is replete with examples of the Islamophobic bind between racialized violence and faith. "In Algiers, in the late nineteenth century, an entire school of psychiatry had been established to explain this kind of violence. More specifically, psychiatrists sought to make a link between Islam and what they called the 'Arab mentality.'" ANDREW HUSSEY, *THE FRENCH INTIFADA: THE LONG WAR BETWEEN FRANCE AND ITS ARABS* 172–73 (2014).

⁶⁶ "[T]here developed a certain intimacy between Europe and the Arabs that in another context Germaine Tillon has referred to as complementary antagonism, a sort of hostility that also included a knowing affection, long years of mutually engrossing experience, and grudging acknowledgement of each other's actuality." EDWARD SAID, *THE POLITICS OF DISPOSSESSION* 162 (1994).

⁶⁷ Loi 2004-28 du 15 mars 2004, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics [Law 2004-28 of March 15, 2004, on application of the principle of secularism, the wearing of signs or of attire manifesting a religious affiliation in public schools, colleges and high schools]. See generally JOHN R. BOWEN, *WHY THE FRENCH DON'T LIKE HEADSCARVES: ISLAM, THE STATE, AND PUBLIC SPACE* (2007), for a comprehensive analysis of the historical and sociological factors that gave rise to the 2004 Hijab Ban, and collateral measures restricting other forms of Islamic covering in France.

⁶⁸ Beydoun, *supra* note 30.

⁶⁹ Political ideology is imputed on account of identity, even when the act is untethered to one.

terrorism.⁷⁰ This baseline sits at the center of federal policies, like the “Muslim Ban”⁷¹ and the PATRIOT Act.⁷² It sits at municipal- and state-level state action, such as Countering Violent Extremism (CVE)⁷³ and anti-Sharia bans.⁷⁴ Even the newly established Department of Homeland Security reflected the anti-Muslim fixation of the federal government, dissolving the borders between immigration regulation and surveillance.⁷⁵

Beyond law, policing “Muslim terrorism” drove the reformation of executive-branch institutions. “Structural Islamophobia” legitimized the conflation of terrorism with Muslim identity, functioning both as legal authority and a profound message to citizens to partake in the national project of policing and punishing Muslims.⁷⁶ In that vein, the War on Terror was as much a societal crusade as it was a state-sponsored campaign. As law scholar Professor Naomi Mezey theorizes, “law’s power is discursive and productive as well as coercive. Law participates in the production of meanings within the shared semiotic system of a culture, but is also a product of that culture and the practices that reproduce it.”⁷⁷ The “shared rage” of legal dictate and vigilante violence in the United States and beyond curated a unified front against Muslim communities, categorically profiled as presumptive terrorists.⁷⁸

⁷⁰ Beydoun, *supra* note 22, at 117.

⁷¹ Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Jan. 27, 2017), *revoked by* Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 6, 2017). Although the U.S. Supreme Court upheld the ban, *Trump v. Hawaii*, 138 S. Ct. 2392, 2408 (2018) (holding that “[t]he President lawfully exercised that discretion based on his findings . . . that entry of the covered aliens would be detrimental to the national interest”), President Joe Biden removed it in 2021.

⁷² See *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (PATRIOT Act)*, Pub. L. No. 107-56, 115 Stat. 272 (2001) (codified as amended in scattered sections of the U.S. Code); *see also* *Patriot Improvement and Reauthorization Act of 2005*, Pub. L. No. 109-177, 120 Stat. 192 (2006) (amending the PATRIOT Act).

⁷³ CVE, dubbed the “Mapping Muslims” program, was pioneered in the United States by the New York Police Department, whereby federal law enforcement collaborated closely with local law enforcement to surveil and collect data on Muslim subjects of interests. Beydoun, *supra* note 22, at 118–19. CVE was practically steered on a local level, whereby law enforcement issued wires and planted informants within Muslim geographies, such as mosques and community centers. *Id.* President Barack Obama elevated CVE into his signature counterterrorism program during his second term, in 2014. Samuel J. Rascoff, *Establishing Official Islam? The Law and Strategy of Counter-Radicalization*, 64 STAN. L. REV. 125, 127 (2012).

⁷⁴ See Yaser Ali, Comment, *Shariah and Citizenship — How Islamophobia Is Creating a Second-Class Citizenry in America*, 100 CALIF. L. REV. 1027, 1061–66 (2012). For a comprehensive examination of the anti-Sharia movement, see Khaled A. Beydoun, *On Sacred Land*, 105 MINN. L. REV. 1803, 1828–36 (2021).

⁷⁵ See generally Susan M. Akram & Kevin R. Johnson, *Race, Civil Rights, and Immigration Law After September 11, 2001: The Targeting of Arabs and Muslims*, 58 N.Y.U. ANN. SURV. AM. L. 295 (2002), for an analysis of the strident policies enacted to police Muslims in the immediate wake of the 9/11 terror attacks.

⁷⁶ Beydoun, *supra* note 22, at 117.

⁷⁷ Naomi Mezey, *Law as Culture*, 13 YALE J.L. & HUMAN. 35, 47 (2001).

⁷⁸ Muneer I. Ahmad, *A Rage Shared by Law: Post-September 11 Racial Violence as Crimes of Passion*, 92 CALIF. L. REV. 1259, 1318 (2004).

“September 11, 2001 was a world event but it was also a globalized event,” observed surveillance scholar David Lyon, pointing to how the ensuing War on Terror was also transnational.⁷⁹ In the words of the President leading the charge, the War on Terror was not America’s fight alone. In the immediate wake of the 9/11 terror attacks, President George W. Bush lobbied the world’s nations to join in on the “civilization[al]” war against Islamic terrorism.⁸⁰ In praxis, this encompassed Muslim-majority societies and communities across the globe.

By rhetoric and legal fiat, the Bush Administration — and the several that followed — legitimized a globalized effort cracking down on Muslim communities. Domestic counterterror laws were fused together with global policing and war, creating a landscape where “Muslimness”⁸¹ was suspicious transnationally and vulnerable to an expanding network of anti-terror policy. Instead of “sell[ing] democracy to the third world” and the broader community of nations,⁸² the United States peddled the War on Terror and its bellicose charge of standing “with us or against us” in regard to Islam and its followers. Michael Flynn, former Army lieutenant general who served as the National Security Adviser under President Trump, called the War on Terror a “world war,”⁸³ which oriented the might of America and the nations flanked alongside it against an amorphous target that took the form of any, and all, Muslims.

Through the law of counterterrorism, governments bent on persecuting their Muslim populations were granted unequivocal decree, from the world’s principal superpower, to do so with renewed impunity. The War on Terror, in short, extended *carte blanche* to governments across the world to crack down on their Muslim populations with enhanced vigor and American support.⁸⁴ This was particularly true for governments bent on crushing self-determination movements from Muslim populations. This included the disputed territory of Kashmir, which maintains a position of legal limbo while interlocked between Pakistan and India,⁸⁵ and the Uyghur in northwest China, whose quest for independence since the creation of the modern Chinese state in 1949 has been suffocated by a total surveillance state.⁸⁶

⁷⁹ DAVID LYON, *SURVEILLANCE AFTER SEPTEMBER 11*, at 109 (2003).

⁸⁰ President George W. Bush, Address to a Joint Session of Congress and the Nation (Sep. 20, 2001). President George W. Bush gave the amorphous campaign its formal name nine days after the 9/11 terror attacks, when he lobbied Congress to support full-scale war against the Taliban. *Id.*

⁸¹ The appearance or performance of Muslim identity.

⁸² Mary L. Dudziak, *Desegregation as a Cold War Imperative*, 41 STAN. L. REV. 61, 63 (1988).

⁸³ MICHAEL T. FLYNN & MICHAEL LEDEEN, *THE FIELD OF FIGHT 2* (2016).

⁸⁴ See generally Beydoun, *supra* note 21.

⁸⁵ For historic background on Kashmir and its precarious positionality, see generally Jasjit Singh, *Kashmir, Pakistan, and the War on Terror*, 13 SMALL WARS & INSURGENCIES 81 (2002).

⁸⁶ See generally DARREN BYLER, *IN THE CAMPS: CHINA’S HIGH-TECH PENAL COLONY* (2021), for a trenchant examination of the cutting-edge technologies the Chinese are currently employing to persecute the Uyghur and other ethnic Muslims in China.

Being labeled a “terrorist” before and *especially* during the War on Terror was a death blow. This held particularly true for Muslims who already carried the stain of suspicion with them as a consequence of their faith, physical complexion, lands of origin, and a matrix of these factors and more.⁸⁷ Islamophobia, adapted from its imperial roots to serve modern political aims, became the new instrument for political control and imperial domination.⁸⁸ Fighting for freedom, for Muslim communities during the global War on Terror, would garner no sympathy.

Rather, it invited scrutiny, surveillance, and the swinging sword of the state. American law, accompanied by propaganda that conflated Muslim identity and the embodiment of terrorism into an unbreakable monolith, sharpened the sword.

B. Freedom in Whiteness

Whiteness is a wand that, at once, inspires reverence and affirms innocence. Like magic, those who behold it stare in awe, while those who hold it carry enviable power. Outsiders are seduced by its pull and climb against the push of reality to reach it.⁸⁹

Beyond its magic, whiteness is synonymous with first-class citizenship.⁹⁰ It “remains a deeply entrenched property interest” that confers a range of substantive rights and societal benefits to those who possess it.⁹¹ In the United States, and settler-colonial states around the globe, displaced and relegated people are conditioned to achieve whiteness, incentivized by the formal rewards and the psychological legitimacy that come with it.⁹² In many cases, whiteness was fully conflated with formal

⁸⁷ See generally Beydoun, *supra* note 61.

⁸⁸ Islamophobia is rooted in imperialism, and namely, Orientalism. As media studies Professor Deepa Kumar observes: “[N]otions of race and of Muslims as inferior beings could come to the fore in a context where European nations were in a position to actually challenge and eventually dominate once-powerful Muslim empires.” DEEPA KUMAR, ISLAMOPHOBIA AND THE POLITICS OF EMPIRE: 20 YEARS AFTER 9/11 20 (2021).

⁸⁹ The French historian Arthur de Gobineau wrote: “The only history is white,” illustrating that beyond formal citizenship and legal status, modern epistemology is built upon histories crafted by white men that center white narratives. CÉSAIRE, *supra* note 1, at 71.

⁹⁰ See generally LINDA BOSNIAK, THE CITIZEN AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP (2006), for an articulation of the informal and formal rights attached to citizenship status, which is reshaped and stratified by race.

⁹¹ Khaled A. Beydoun & Erika Wilson, *Reverse Passing*, 64 UCLA L. REV. 282, 299 (2017). See generally Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993) (discussing the property value attached to whiteness, and the legal and de facto incentives attached to passing as white).

⁹² In the United States, for instance, whiteness was conflated with naturalized citizenship. This prevailed from 1790 until 1952, when racially restrictive legislation prohibited the naturalization of immigrants deemed nonwhite by civil courts. See IAN HANEY LOPEZ, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE 31 (1996).

citizenship.⁹³ Being white, particularly in nations where it is the standard, enables the existential expanse to “*be*” without being judged; to belong without the burden of explanation.

Whiteness, in these contexts, *is* freedom — or, at minimum, the optimal pathway toward attaining it and evading the indictments that curb it. Whiteness, in its American form and European analogs, is synonymous with both, without the necessity of hyphens. It is a unitary identity denied, if not impossible, to Afro-Britons or Muslim-Americans, among others. That extension of freedom, and its accompanying virtues, is perhaps the greatest privilege emanating from whiteness — making it as valuable a commodity as any.

As Césaire theorizes within the dialectic of colonialism and civilization, whiteness is also heroism — and that very enterprise of struggling for freedom.⁹⁴ This motif of heroism is built upon the premise that only specific peoples, white populations, are deserving of freedom and the panoply of virtues that precede and emanate from it.⁹⁵ This presumption, explicitly revealed by postcolonial thinkers, has been made clear all over again today by mainstream media narratives aligning heroism with white Ukrainians, then juxtaposing it with Muslim actors.

In his landmark text *The Fire Next Time*, James Baldwin examines the racial composition of heroism vis-à-vis the Black experience during the Civil Rights Era. Through one of the most notable Civil Rights figures, Malcolm X, Baldwin interrogates the racial anatomy of heroism in America:

The conquests of England, every single one of them bloody, are part of what Americans have in mind when they speak of England’s glory. In the United States, violence and heroism have been made synonymous except when it comes to blacks, and the only way to defeat Malcolm’s point is to concede it and then ask oneself why this is so.⁹⁶

Malcolm’s point, relayed by Baldwin and echoed in this Essay, is that violence is justified as heroic when administered by white bodies. More so, it carries with it the presumption of righteousness and “glory” regardless of whether the aim is illicit or unjust, such as the English colonization of African nations or the French experiment in Algeria.⁹⁷ Presumed heroism is built into the construction of whiteness; it is not

⁹³ “The status of intending citizen . . . was only open to whites from 1790 to 1870,” and presiding civil court judges decided who could become white — and thus, a naturalized citizen — until 1952. HIROSHI MOTOMURA, *AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES* 123 (2006).

⁹⁴ CÉSAIRE, *supra* note 1, at 67–68.

⁹⁵ “No race has a monopoly on beauty, on intelligence, on strength,” and heroism and freedom. AIMÉ CÉSAIRE, *NOTEBOOK OF A RETURN TO THE NATIVE LAND* 44 (Annette Smith ed., Clayton Eshleman trans., Wesleyan U. Press 2013) (1939).

⁹⁶ JAMES BALDWIN, *THE FIRE NEXT TIME* 58 (1963).

⁹⁷ *Id.*

only denied to Black people and Muslims on account of their racialization as irredeemably violent but also foreclosed to them *despite* pursuing just ends. Within a “racialized imperial context,” heroism is less defined by the act and more defined by the subject.⁹⁸ If the latter is white, then the title will be doled out.

Let me be emphatically clear — conceptions of whiteness are by no means uniform across global societies. When examining foreign contexts, one must be careful not to impose American understandings of race, racism, and in particular, whiteness into foreign contexts.⁹⁹ This not only disfigures or hides the distinct experiences of nonwhite and non-Black peoples, but it also forces American racial constructs into countries or case studies where they do not fit or make sense.¹⁰⁰ However, in a world inflected by the War on Terror and infected by the “barbarism” of European and American imperialisms,¹⁰¹ the conceptions of “whiteness” and “terrorism” have become more globalized than ever before.¹⁰² This simultaneously reflects American intellectual exceptionalism’s extensive reach and the global resonance of the hard and soft power of America’s War on Terror.

The racialized discourse around terrorism further illustrates how freedom and innocence are inscribed into whiteness and made inimical to Muslimness. Professor Caroline Mala Corbin writes:

It is not difficult to uncover two coexisting narratives about terrorism occurring in the United States. The first is the idea that “all terrorists are Muslim,” which sometimes even morphs into “all Muslims are terrorists.” The second is that “white people are never terrorists.” Neither are true.

⁹⁸ Every imperial project is racialized. Here, I am referring specifically to imperial interplays involving a white colonizer and nonwhite colonized populations, whereby the racial dissonance enables what Césaire calls “thingification,” or the commodification of racialized colonial subjects as tools to serve the interests of the colonizer. CÉSAIRE, *supra* note 1, at 42.

⁹⁹ For a framework of race adapted for globalized analysis, see generally Michelle Christian, *A Global Critical Race and Racism Framework: Racial Entanglements and Deep and Malleable Whiteness*, 5 SOCIO. RACE & ETHNICITY 169 (2018).

¹⁰⁰ “While the black/white paradigm has played a profound role in our nation’s history, it does not address the myriad issues related to those caught in blurry and gray portions of the divide, both in law and praxis, such as those of Japanese, Chinese, and Indian descent,” and indeed, Arab and (nonwhite and non-Black) Muslim populations. John Tehranian, *Performing Whiteness: Naturalization Litigation and the Construction of Racial Identity in America*, 109 YALE L.J. 817, 847 (2000).

¹⁰¹ “To go further, I make no secret of my opinion that at the present time the barbarism of Western Europe has reached an incredibly high level, being only surpassed — far surpassed, it is true — by the barbarism of the United States.” CÉSAIRE, *supra* note 1, at 47. Césaire drew this conclusion in 1950, a position that would be deepened by modern American War on Terror imperialism.

¹⁰² For an analysis of the global impact of the George Floyd murder and the wave of protests it inspired, see Jason Silverstein, *The Global Impact of George Floyd: How Black Lives Matter Protests Shaped Movements Around the World*, CBS NEWS (June 4, 2021, 7:39 PM), <https://www.cbsnews.com/news/george-floyd-black-lives-matter-impact> [<https://perma.cc/XC2M-SHCY>].

Despite the starkness of these summaries, they capture the general tenor of these widespread narratives.¹⁰³

The coexisting narratives Corbin interrogates transcend American borders, given their global legs and resonance from the War's legal propaganda machine. Whiteness disables the envisioning of those who are held to be terrorists, and its very construction is inimical to the racial formation of terrorism.¹⁰⁴

Terrorism, in the modern imagination, is more racial identity than political act. Echoing the formative observations of Professors Leti Volpp, Natsu Taylor Saito, and Erik Love, Corbin observes how terrorism is conflated with "Muslimness," how whiteness sources exemption from terrorism.¹⁰⁵ Furthermore, the charge of terror is naturally linked to Muslim bodies, alongside the collective guilt all observers of the religion bear when a culprit of terror is a Muslim. It disentangles the individual actor from the enterprise of terror even when engaged in its furtherance.¹⁰⁶

In short, whiteness confirms innocence even when the subject's action states and shows otherwise.¹⁰⁷ This innocence frames those who possess it, particularly when engaged in rightful resistance, as freedom fighters. On the other side of Corbin's binary, Muslim actors struggling for self-determination — already perceived through the prism of terrorism — can hardly be viewed as freedom fighters because their very being, particularly during the War, is wed to anti-Western violence.

Being white is no fault of Ukrainians. It does not curb the righteousness of their struggle, nor should it lessen the sympathy or support given to the millions of refugees pushed out of their homeland.¹⁰⁸ However, racial privilege is not a matter of placing blame or measuring sympathy. *It just is*. It provides clarity to the myth that every refugee

¹⁰³ Caroline Mala Corbin, *Terrorists Are Always Muslim but Never White: At the Intersection of Critical Race Theory and Propaganda*, 86 FORDHAM L. REV. 455, 457 (2017).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 458–62.

¹⁰⁶ See generally Khaled A. Beydoun, *Lone Wolf Terrorism: Types, Stripes and Double Standards*, 112 NW. U. L. REV. 1213 (2018).

¹⁰⁷ The January 6, 2021, insurrections were a stunning demonstration of the presumed innocence of violent white actors, who were permitted to organize and collect despite being armed and openly expressing violent aims. Policing measures applied to Black and Muslim activists would have certainly aborted the insurrection, or violently crushed it. See Chauncey De Vega, *Imagine Another America: One Where Black or Brown People Had Attacked the Capitol*, SALON (Jan. 7, 2022, 6:00 AM), <https://www.salon.com/2022/01/07/imagine-another-america-one-where-black-or-brown-people-had-attacked-the-capitol> [<https://perma.cc/SH4N-CAM2>].

¹⁰⁸ As of March 19, 2022, the refugee count outside of Ukraine had reached three million. For a data analysis explaining why Ukrainian refugees, on account of race and other factors, have been treated better than other displaced groups in Europe have been, see Youyou Zhou, Nicole Narea & Christina Animashaun, *Europe's Embrace of Ukrainian Refugees, Explained in Six Charts and One Map*, VOX (Mar. 19, 2022, 8:00 AM), <https://www.vox.com/22983230/europe-ukraine-refugees-charts-map> [<https://perma.cc/7RZW-UEBY>].

is equal, and that her upward mobility in a foreign land will be determined by her “work,” “luck,” or “drive.”¹⁰⁹ It provides crucial color and context to the global canvas of struggles that cast some as freedom fighters and others as terrorists.

The world has been conditioned to stomach Muslim death, while white suffering is pointedly aberrant and unacceptable. Governments’ rushing aid and the global media’s sympathetic lens confirm this through the scale and tenor of support. The words of a former deputy prosecutor general of Ukraine, interviewed by the BBC, articulated the global sympathy for whiteness unfolding during the Russian invasion: “It’s very emotional for me because I see European people with blue eyes and blond hair . . . being killed everyday.”¹¹⁰

This admission was unfiltered and honest. It spoke of the empathy extended because of shared race and shared appearance.¹¹¹ Even more, it is a statement that could be elevated into some grand score, spoken on behalf of a world cheering the Ukrainian fight for freedom. They cheer for a people brandishing Molotov cocktails and makeshift guns, just like Kashmiris or Palestinians bearing similar arms but bereft of the limitless prowess of whiteness.

II. IN LIVING COLOR: CLASHING THEATERS OF STRUGGLE

The reports from Ukraine in the wake of the Russian invasion were startling. Thousands of internally displaced people were pushed into makeshift bomb shelters, towns and cities were pummeled by ongoing Russian airstrikes, and refugees crowded train stations and border crossings. Most moving among the stories were those of everyday Ukrainians taking arms against one of the world’s strongest military forces to protect their loved ones and to defend their land.¹¹² The images of resistance were similar to those memorialized in *The Battle of Algiers*, and live battles for survival across the Middle East and Muslim societies unfolded in real time, in the same hemisphere.

Unlike for peoples from non-European nations, the public lauded Ukrainians’ pelting stones and whatever else they could grab hold of to

¹⁰⁹ The “bootstraps myth,” which pervades American and European rightwing and centrist narratives, holds that, “[i]n the absence of rigid social hierarchies, one is what one achieves. The horizons are open, the opportunities boundless, and the realization of them depends on an individual’s energy, system, and perseverance, in short, the capability for and willingness to work.” SAMUEL P. HUNTINGTON, WHO ARE WE? THE CHALLENGES TO AMERICA’S NATIONAL IDENTITY 71 (2004).

¹¹⁰ Arab News, “European People with Blue Eyes and Blonde Hair Being Killed” *What a BBC Interviewee Commented.*, YOUTUBE, at 0:01 (Mar. 1, 2022), https://www.youtube.com/watch?v=pU-8gKaUO_Y [https://perma.cc/948J-76N3]; see also Moustafa Bayoumi, *They Are “Civilised” and “Look Like Us”: The Racist Coverage of Ukraine*, THE GUARDIAN (Mar. 2, 2022, 10:35 AM), <https://www.theguardian.com/commentisfree/2022/mar/02/civilised-european-look-like-us-racist-coverage-ukraine> [https://perma.cc/RN2X-KGHF].

¹¹¹ Bayoumi, *supra* note 110.

¹¹² Beydoun, *supra* note 30.

defend themselves.¹¹³ Scenes of elders taking arms,¹¹⁴ millionaire athletes leaving luxury for love of land,¹¹⁵ and a president refusing evacuation invitations and declaring that “this might be the last time you see me alive”¹¹⁶ “powered a global narrative of good against evil, imperialism against sovereignty, of David vs. Goliath.”¹¹⁷ This positive coverage was nonexistent for kindred struggles for self-determination in Muslim-majority societies, and more often than not, reversed to dub the colonized as the wrongdoer and the colonizer as the victim.

This Part investigates these double standards, rooted in race and *realpolitik*, that drive the framing of Ukrainians as freedom fighters and Muslims, similarly campaigning for dignity, as terrorists. Section II.A analyzes the demonization of Muslims striving for self-determination and the lack of media coverage on them in comparison with coverage of their Ukrainian counterparts.

Section II.B investigates the role of race in *realpolitik* and how the alignment of the two uplifts struggles as worthy quests for independence while their misalignment renders such struggles as terroristic.

A. When Muslims Fight Back

Nations that came together to stand against the Russian invasion and isolate Putin were on the right side of history and the human rights divide — this time. Yet similar struggles taking place in Yemen, Palestine, Kashmir, and other countries for years in different theaters, with distinct contexts but similar dynamics, have been ignored or demonized. Yet the essence of these quests for self-determination against military actions has produced dramatically different treatments from Western governments and radically contrasting coverage from media outlets of record.¹¹⁸

As I note in the *Washington Post*:

Regular Palestinians resisting state seizure of their homes in Sheikh Jarrah and other occupied territories are conflated with armed militants, rendering them “terrorists.” The reoccurring killing of civilians in Gaza by

¹¹³ See Viacheslav Ratynskiy, Photograph of a Ukrainian Civilian Training to Throw Molotov Cocktails, in *From Molotov Cocktails to Anti-tank Barricades, Ukraine Residents Prepare to Defend Cities*, REUTERS (Mar. 6, 2022, 7:29 PM), <https://www.reuters.com/news/picture/from-molotov-cocktails-to-anti-tank-barr-idUSRTS62SIY> [<https://perma.cc/56AM-G6J2>].

¹¹⁴ See, e.g., Aleksandar Vasovic & Polina Nikolskaya, *In Ukraine Conflict, Even the Elderly Are Getting Ready to Fight*, REUTERS (Feb. 20, 2022, 11:40 AM), <https://www.reuters.com/world/europe/ukraine-conflict-even-elderly-are-getting-ready-fight-2022-02-20> [<https://perma.cc/NC5C-3DFM>].

¹¹⁵ *Wladimir Klitschko and Oleksandr Usyk Ready to Fight for Ukraine in War with Russia*, SKY SPORTS (Mar. 1, 2022, 12:56 PM), <https://www.skysports.com/boxing/news/30778/12554423/wladimir-klitschko-and-oleksandr-usyk-ready-to-fight-for-ukraine-in-war-with-russia> [<https://perma.cc/NF78-BMQB>].

¹¹⁶ Barak Ravid, *Zelensky to EU Leaders: “This Might Be the Last Time You See Me Alive,”* AXIOS (Feb. 25, 2022), <https://www.axios.com/2022/02/25/zelensky-eu-leaders-last-time-you-see-me-alive> [<https://perma.cc/D5JL-V6TK>].

¹¹⁷ Beydoun, *supra* note 30.

¹¹⁸ *Id.*

Israeli airstrikes is defended with the same excuses Putin's propaganda has adapted for Ukraine's invasion — that women and children are being used as “human shields,” and that justifies striking civilian targets.¹¹⁹

However, Palestinian lives are met with dismissal, both in life and in death, and judged through the lens of terrorism.¹²⁰

Yemen, the poorest country in the Arab world, provides a lucid case study of this double standard. For roughly seven years, a Saudi regime, flanked by the United Arab Emirates and backed by the United States, has relentlessly pummeled Yemen in its quest to broaden its regional influence against Iran.¹²¹ Moreover, as I write:

The grossly asymmetrical “war” against the Houthi rebels — who are linked to the Zaydi branch of Shiite Islam, which dominated Yemen for centuries but was repressed by the Yemeni government — has sunk Yemen into widespread famine and on the cusp of collapse. Instead of global condemnation, Yemenis struggling for their very survival have been met with silence, American-supplied weapons [for the Saudis], and the incessant indictment of terrorism. The war has caused an estimated 233,000 deaths, including 131,000 from indirect causes such as lack of food, health services, and infrastructure due to a Saudi-led blockade.¹²²

The double standards are not isolated to the Middle East or the Arabic-speaking world. In January 2019, the Indian military moved into Kashmir and fully claimed the disputed territory.¹²³ Powered by an imperial mission fueled by Hindutva goals, or Hindu supremacy, Prime Minister Narendra Modi led the legal revocation of Kashmir's autonomy and then claimed the land between India and Kashmir by

¹¹⁹ *Id.*; see also Patrick Kingsley, *Evictions in Jerusalem Become Focus of Israeli-Palestinian Conflict*, N.Y. TIMES (Nov. 2, 2021), <https://www.nytimes.com/2021/05/07/world/middleeast/evictions-jerusalem-israeli-palestinian-conflict-protest.html> [<https://perma.cc/K2KA-D5G6>]. The claim that women and children are being used as “human shields” is a common talking point used by the Israel Defense Forces. See, e.g., Michael Martinez, *Is Hamas Using Human Shields in Gaza? The Answer Is Complicated*, CNN (July 23, 2014, 8:23 AM), <https://www.cnn.com/2014/07/23/world/meast/human-shields-mideast-controversy/index> [<https://perma.cc/VEH6-DYAD>].

¹²⁰ For a recent story illustrating how labeling Palestinians “terrorists” creates the justification for their extrajudicial killings, see *Several Palestinians Killed by Israeli Forces: Ministry*, AL JAZEERA (Mar. 1, 2022), <https://www.aljazeera.com/news/2022/3/1/palestinian-killed-by-israeli-forces-in-w-bank-ministry> [<https://perma.cc/8CCB-LDW2>]. See also NOURA ERAKAT, JUSTICE FOR SOME: LAW AND THE QUESTION OF PALESTINE (2009), for an examination of human rights challenges confronted by the Palestinian people living in the West Bank, Gaza, and within the boundaries of Israel.

¹²¹ For a comprehensive analysis of the Saudi war in Yemen and the regional politics that drive it, see May Darwich, *The Saudi Intervention in Yemen: Struggling for Status*, 20 INSIGHT 125 (2018).

¹²² Beydoun, *supra* note 30; see also Lisa Schlein, *Conflict and Economic Collapse in War-Torn Yemen Worsening Hunger Crisis*, VOA NEWS (July 28, 2021, 12:32 PM), https://www.voanews.com/a/middle-east_conflict-and-economic-collapse-war-torn-yemen-worsening-hunger-crisis/6208845.html [<https://perma.cc/66ZX-RX3F>]; UN Humanitarian Office Puts Yemen War Dead at 233,000, *Mostly from “Indirect Causes,”* UN NEWS (Dec. 1, 2020), <https://news.un.org/en/story/2020/12/1078972> [<https://perma.cc/3UC9-HZHK>].

¹²³ Anchal Vohra, *Argument, Modi Took Complete Control of Kashmir Two Years Ago — And Got Away with It*, FOREIGN POL'Y (Aug. 3, 2021, 4:14 PM), <https://foreignpolicy.com/2021/08/03/modi-took-control-of-kashmir-2-years-ago-and-got-away-with-it> [<https://perma.cc/D4PF-4QG2>].

military annexation.¹²⁴ In swift action, Indian police arrested and imprisoned Kashmiri governmental leaders, jailed notable societal figures en masse, arrested activists and journalists, and classified Kashmiri Muslims as presumptive “terrorists” on account of just being Muslim — let alone for speaking up for their claims of independence from Indian military occupation.¹²⁵

These Muslim-majority and nonwhite populations face the very struggle advanced by the Ukrainian people: “They, too, put their very lives on the line against global (and regional) superpowers, some wielding rocks and other makeshift weapons to protect their land, loved ones, and way of life — a trilogy of motivations that world leaders have invoked as part of their solidarity to Ukrainian resistance.”¹²⁶ The similarities are stunning, and too stark to ignore. Yet, the universal solidarity extended to Ukrainians — by international media channels, politicians and pundits, and governments across the world — is juxtaposed with the opposition and demonization for Palestinians, Yemenis, and Kashmiris by these very same actors. Such responses contribute to the continued dehumanization of these peoples and derail their struggles for dignity.

A handful of voices, during the thick of the Russian invasion of Ukraine, make sense of the stark double standards. Writing for *Brookings*, sociology Professor Rashawn Ray observes what so many have been afraid to voice:

“European” has become a code word for white and a justification of the primary reason that people should care about the conflict, displacement, and killing. Bloody conflicts in Syria, Somalia, and other places have not received the wide-reaching international media coverage — or urgent international government action — that the invasion of Ukraine has inspired.¹²⁷

As Professor Cornel West unequivocally states, “race matters” on domestic and international issues.¹²⁸ But more than just “mattering,” race often determines which struggles are worth covering and uncovering, and dictates which peoples are worth humanizing and which people are to remain invisible. The force of race, through its humanizing and demonizing effect, functions alongside political interests — interests that determine whether a group fighting for its independence will be lionized or vindicated, demonized or ignored.

¹²⁴ *Id.*

¹²⁵ See Devjyot Ghoshal & Alasdair Pal, *Thousands Detained in Indian Kashmir Crackdown, Official Data Reveals*, REUTERS (Sept. 12, 2019, 6:57 AM), <https://www.reuters.com/article/us-india-kashmir-detentions/thousands-detained-in-indian-kashmir-crackdown-official-data-reveals-idUSKCN1VX142> [<https://perma.cc/R8J7-M5ZQ>], for a review of the mass arrests made after India’s military takeover of Kashmir in September 2019.

¹²⁶ Beydoun, *supra* note 30; see also Ray, *supra* note 32.

¹²⁷ Ray, *supra* note 32.

¹²⁸ CORNEL WEST, RACE MATTERS (1993).

B. Race and Realpolitik

In the immediate aftermath of the Russian invasion, I wrote in the *Washington Post*:

[W]hat explains the world of difference between the Ukrainian struggle and the ongoing quests for self-determination in Muslim-majority lands? Within the realm of geopolitics, race, religion, and interests still matter. The three are deeply entwined, particularly in relation to the Middle East and the Muslim world, where a protracted war on terror renders anybody Arab, Brown, or Muslim as a putative terrorist — notwithstanding the righteousness of their struggle or the unhinged imperialism of their opponents.¹²⁹

That question, months later, remains as stark as when it was when initially conceived.

Political interests, combined with the enduring effects of Islamophobia and racism, provide a guide toward sobering answers. In an illustration of the raw pull of American interests, the Biden Administration tightened its relations with Saudi Arabia and Prince Mohammed bin Salman in March 2022 to increase oil production — the very regime relentlessly pummeling Yemen.¹³⁰ The Kingdom of Saudi Arabia, the state that actively exports Wahhabism — the interpretation of Sunni Islam adopted by transnational terror networks like the Islamic State of Iraq and Syria and Al-Qaeda — continues to be the strongest American ally in the region.¹³¹ The Saudi-American bond is still strong, despite the Kingdom's leader being Prince bin Salman, a person widely regarded as the culprit behind the murder of Jamal Khashoggi, a *Washington Post* journalist living in the United States.¹³²

Race, racism, or Islamophobia alone do not dictate which groups are excused from demonization and which are met with its judgment. States are rational actors, and the salience of race is shaped alongside the shape and scale of those interests. What formative critical race theorist and Professor Derrick Bell dubbed “self-interest leverage”¹³³ characterizes American foreign policy not only at large but also with the Middle East

¹²⁹ Beydoun, *supra* note 30. There is no monolithic and integrated “Muslim world.” Rather, the global Muslim population is divided along lines of sect and confession, political identity, and nationality. Yet this Essay adopts the term as a shorthand way to describe the disparate population of Muslims across the globe.

¹³⁰ *Id.*; see also Hans Nichols, *Scoop: Biden Advisers Weigh Saudi Arabia Trip for More Oil*, AXIOS (Mar. 6, 2022), <https://www.axios.com/2022/03/06/biden-saudi-trip-oil> [<https://perma.cc/RR2B-QLS2>].

¹³¹ See Josh Rogin, *America's Allies Are Funding ISIS*, DAILY BEAST (Apr. 14, 2017, 3:37 PM), <https://www.thedailybeast.com/americas-allies-are-funding-isis> [<https://perma.cc/7B72-RR9V>]. For an excellent overview of the history, theology, and modern-day relevance of Wahhabism, see generally HAMID ALGAR, WAHHABISM: A CRITICAL ESSAY (2002).

¹³² William Roberts, *MBS Approved Operation to Capture or Kill Khashoggi*, AL JAZEERA (Nov. 16, 2021, 3:14 PM), <https://www.aljazeera.com/news/2021/2/26/mbs-oversaw-saudi-killers-of-khashoggi-us-intel-report> [<https://perma.cc/3JFD-HGGQ>].

¹³³ Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 525 (1980). Professor Derrick Bell frames “self-interest leverage” as progressive policy being pushed when it aligns with American geopolitical interests. See *id.* at 523–25.

in particular, where the policy double standards are fully exposed. Beyond casting nations, transnational groups, and political parties that conflict with its regional interests as terrorists, the United States has pounced on ethnic and sectarian rivalries to carry forward its objectives in the Middle East.¹³⁴ Racialization, thus, is central to American regional policy, is deeply abetted by exploitation of other constructions, and divides to expand its influence.

The humanitarian plight of Yemenis, for instance, does not fall in the calculus of American interests because Yemen stands as the poorest nation in the region and is Saudi Arabia's target.¹³⁵ This very assessment holds true for Palestinians, vying for some semblance of statehood. The State of Israel, alongside Saudi Arabia, is a staunch ally of the United States and the majority of European states.¹³⁶ In turn, it curates a reality on the ground where Palestinians are extended little support from international state solidarity and media coverage from mainstream media outlets — which, instead, often conflate their struggle for self-determination with terrorism.¹³⁷ The current media imbalance dedicated to Palestine and Israel transcends that of legacy media, with social media platforms, dubbed “surveillance intermediaries” by law Professor Alan Rozenshtein,¹³⁸ censoring Palestinian voices from their digital pages and timelines.¹³⁹ Mainstream media outlets erasing Muslim voices from their coverage and governments conspiring with Big Tech to censor, or shadow ban, dissidents from virtual platforms also unfold

¹³⁴ For an examination of how surveillance during the American War on Terror seizes upon sectarian division to advance its domestic footprint, see Khaled A. Beydoun, *Bisecting American Islam? Divide, Conquer, and Counter-Radicalization*, 69 HASTINGS L. J. 429, 467–85 (2018).

¹³⁵ Alongside Israel, the Kingdom of Saudi Arabia is the United States's principal ally in the Middle East. Zack Beauchamp, *Beyond Oil: The US-Saudi Alliance, Explained*, VOX (Jan. 6, 2016, 9:00 AM), <https://www.vox.com/2016/1/6/10719728/us-saudi-arabia-allies> [<https://perma.cc/Y6TR-JL3F>].

¹³⁶ These states, particularly the United States, remain invested in persistent turbulence in the Middle East, a state of disorder that Israel, as principal ally, continues by way of regional proxy: Actual American policies have been a continual source of disorder throughout the Middle East. Along with pursuing or promoting four separate regional wars (two interventions in Iraq, one in Afghanistan, and the July War between Lebanon and Israel), American actions have played critical roles in sustaining tensions in the ongoing Israeli-Palestinian conflict and in producing wild fluctuations in the oil markets.

Asli Bâli & Aziz Rana, *American Overreach: Strategic Interests and Millennial Ambitions in the Middle East*, 15 GEOPOLITICS 210, 211 (2010).

¹³⁷ Cf. Jacob Shamir & Khalil Shikaki, *Self-Serving Perceptions of Terrorism Among Israelis and Palestinians*, 23 POL. PSYCH. 537 (2002) (concluding that “the definition of terrorism by both Israeli Jews and Palestinians is self-serving,” *id.* at 546).

¹³⁸ Alan Z. Rozenshtein, *Surveillance Intermediaries*, 70 STAN. L. REV. 99, 105 (2018). Rozenshtein describes these intermediaries as “large, powerful companies that stand between the government and our data and, in the process, help constrain government surveillance.” *Id.*

¹³⁹ Tamara Kharroub, *Systematic Digital Repression: Social Media Censoring of Palestinian Voices*, ARAB CTR. WASH. D.C. (June 8, 2021), <https://arabcenterdc.org/resource/systematic-digital-repression-social-media-censoring-of-palestinian-voices> [<https://perma.cc/U4U7-SXEP>].

in India, Kashmir, and Myanmar¹⁴⁰ — places, amongst others, where Muslim factions struggle to make their voices heard and push forward independence movements.¹⁴¹

Within the matrix of political and economic interests driving state and corporate media actors, race must be figured *into* — not outside — its algorithm. The zeal of support for Ukrainians is a product of the alignment of whiteness with American and European opposition to Russian imperial interests. The two, combined, amplify the degree of rhetorical and symbolic support from governments and private actors, and accordingly, the degree of political support for Ukrainian soldiers fighting Russia and practical aid to refugees. Race and *realpolitik*, in this regard, are baked into one another.

The Syrian Revolution of 2011 — which emerged during the wave of Arab Spring movements — serves as a telling counterexample. Though the conflict had its own distinctions and complexities, the Syrian people fended against an authoritarian government backed by the very Russian regime that besieged Ukraine in March 2022.¹⁴² Sympathy for the Syrian people within the United States and Europe was fractured at best. The debate over whether to support the Syrian people was a deeply contested wedge issue among politicians and the people, riddled by the very War on Terror racialization that colored freedom-fighting Syrians as presumptive terrorists.¹⁴³ This racialization was put into sharp relief when the regime of President Bashar al-Assad and its backers in Moscow violently crushed the Syrian Revolution, after which millions of Syrian refugees poured into Europe and the United States.¹⁴⁴ Upon arrival, they were profiled as putative terrorists due to their nationality, and most fiercely, their Muslim faith.¹⁴⁵

¹⁴⁰ See Shirin Ghaffary, *A Major Battle over Free Speech on Social Media is Playing Out in India During the Pandemic*, VOX (May 1, 2021, 8:00 AM), <https://www.vox.com/recode/22410931/india-pandemic-facebook-twitter-free-speech-modi-covid-19-censorship-free-speech-takedown> [https://perma.cc/7CRS-HHNX]; Andrew Nagemson, *Why Is Myanmar's Military Blocking the Internet?*, AL JAZEERA (Mar. 4, 2021), <https://www.aljazeera.com/news/2021/3/4/myanmar-internet-blackouts> [https://perma.cc/Z5PU-Q756].

¹⁴¹ Lindsay Maizland, *India's Muslims: An Increasingly Marginalized Population*, COUNCIL ON FOREIGN RELS. (July 14, 2022, 3:00 PM), <https://www.cfr.org/backgrounder/india-muslims-marginalized-population-bjp-modi> [https://perma.cc/4Z9R-KU3L].

¹⁴² See Fiona Hill, *The Real Reason Putin Supports Assad*, FOREIGN AFFS. (Mar. 25, 2013), <https://www.foreignaffairs.com/syria/real-reason-putin-supports-assad> [https://perma.cc/8N9B-KEVD].

¹⁴³ Amina Dunn & Bradley Jones, *Americans Divided over Decision to Withdraw from Syria*, PEW RSCH. CTR. (Jan. 18, 2019), <https://www.pewresearch.org/fact-tank/2019/01/18/americans-divided-over-decision-to-withdraw-from-syria> [https://perma.cc/7BXF-85MU].

¹⁴⁴ Zoe Todd, *By the Numbers: Syrian Refugees Around the World*, PBS (Nov. 19, 2019), <https://www.pbs.org/wgbh/frontline/article/numbers-syrian-refugees-around-world> [https://perma.cc/C7NR-SBZ3].

¹⁴⁵ See Ben Jacobs, *Trump Says Syrian Refugees Aren't Just a Terrorist Threat, They'd Hurt Quality of Life*, THE GUARDIAN (Sept. 21, 2016, 4:24 PM), <https://www.theguardian.com/us-news/2016/sep/21/trump-syrian-refugees-terrorism-quality-life-bombing-attacks> [https://perma.cc/WEC6-QUCX].

Unlike Ukrainian refugees, displaced Syrians were not welcomed as (defeated) freedom fighters. Rather, they met the scrutiny of counter-terror suspicion instantly upon arrival, and when admitted into the United States, the United Kingdom, Spain, or Italy, their faith and phenotype carried that indelible marker of threat and looming fear of terrorism wherever they went.¹⁴⁶ American and European interests were invariably aligned with the Syrian Revolution. Yet the racial and religious identity of those fighting for it were misaligned with and bereft of the resonance of whiteness that Ukrainians carry.

The public's imagination of the *freedom fighter* and the *terrorist* is intensely shaped by race and racism. There is a certain envisioning, one of "lay Ukrainians taking arms and throwing molotov cocktails as heroes and Muslims engaged in the very same acts, in pursuit of the same self-determination, as extremists."¹⁴⁷ While state heads and governmental leaders demonstrate solidarity with Ukrainian people fighting for independence, Yemenis, Kashmiris, Palestinians, and other besieged peoples linger on the "uncivilized" side of the racial and geopolitical divide, "for a world of support that may never come."¹⁴⁸ Césaire rightfully observes: "Between colonizer and colonized there is room only for forced labor, intimidation, pressure, the police, taxation, theft, rape, compulsory crops, contempt, mistrust, arrogance, self-complacency, swinishness, brainless elites, degraded masses."¹⁴⁹

The praxis of this observation is accurate yet powerfully reshaped by race in two fundamental ways. First, the racial dissonance of a white imperial actor and nonwhite colonized subjects intensifies the scale of these effects. Second, if the subjects of imperialism are white, like the Ukrainians, then the world — principally the Western world — will not tolerate their subjugation. This is particularly the case for the brutal subjugation of war, where the horror of white bodies slain and spread across newsreels and virtual timelines will spur explosions of emotion seldom assigned to nonwhite victims, particularly Muslims during the War on Terror.

Finally, one cannot overlook the underbelly of anti-Soviet sentiment undergirding popular discourses around Ukraine. Russia, particularly for older generation Americans, is invariably viewed from the prism of the Cold War.¹⁵⁰ Vladimir Putin, the Russian President driving the

¹⁴⁶ See Hassan Hankir & Hams Rabah, *Arab Refugees See Double Standards in Europe's Embrace of Ukrainians*, REUTERS (Mar. 2, 2022, 10:57 AM), <https://www.reuters.com/world/arab-refugees-see-double-standards-europes-embrace-ukrainians-2022-03-02> [https://perma.cc/GC3X-4MET].

¹⁴⁷ Beydoun, *supra* note 30.

¹⁴⁸ *Id.*

¹⁴⁹ CÉSAIRE, *supra* note 1, at 42.

¹⁵⁰ For an example of this perspective, and one that interrogates whether the Cold War "ever really ended," see Robin Wright, *Does the U.S.-Russia Crisis over Ukraine Prove That the*

siege, is himself a holdover of the former Soviet Union — which tightens the conflation between modern Russia and the old Soviet regime.¹⁵¹ While the shadow of Cold War tension colors the political and popular perception of Russia and its invasion of Ukraine, the conflict remains a pointedly ideological clash. It is, unlike conflicts with Arab nations or crusades against Muslim actors, bereft of the racial and racist narratives that drive state-sponsored and societal responses.

Ukrainians are viewed as unequivocally white, which is also the case for their Russian foes, which begs the question: How much more intense would global support, and racialized sympathy, be for the Ukrainians if their adversaries were nonwhite?

III. REFUGE FROM WAR AND RACISM

‘You either open the door or we die’ He finally opened the door. We were the only three Africans in that particular train. And the train was not full.

— Orah, an African student fleeing besieged Ukraine¹⁵²

It should be no surprise that nations are willing to open the door to refugees they laud as freedom fighters. Conversely, it is no surprise when they close and lock the door to those branded as undesirables or, worse, those suspected as terrorists. Security is a fundamental *raison d’être* of the state and taking in actors that jeopardize it would undermine this state interest. Freedom fighters enrich the nation, while terrorists threaten it.

The racial formulation of “freedom fighter” has implications beyond the theater of battle. The legal and media framing follows the subject wherever she goes and, most powerfully, when the fighter becomes the refugee seeking safe haven beyond her homeland. This Part examines this existential shift from fighter to refugee and the impact of the battle-field racialization that stays with the white freedom fighter and stains the identity of the nonwhite terrorist in search of refuge. Section III.A examines the practical effects of refugee resettlement, while section III.B investigates the role of media coverage in this process.

Cold War Never Ended?, NEW YORKER (Feb. 19, 2022), <https://www.newyorker.com/news/daily-comment/does-the-us-russia-crisis-over-ukraine-prove-that-the-cold-war-never-ended> [https://perma.cc/QRS4-BP59].

¹⁵¹ Putin served seventeen years in the Soviet Union’s federal surveillance agency, the KGB. See David Hoffman, *Putin’s Career Rooted in Russia’s KGB*, WASH. POST (Jan. 30, 2000), <https://www.washingtonpost.com/wp-srv/inatl/longterm/russiagov/putin.htm> [https://perma.cc/FYL2-GSYN].

¹⁵² Adams et al., *supra* note 33.

A. *The Wedge Between Nonwhiteness and Refugee Resettlement*

Security, as scholars within and beyond the law have observed for decades, is intimately enmeshed with race and the intrusion of racism.¹⁵³ This is also the case with the converging questions around immigration and refugee resettlement, where in the United States and Europe, the standing authority of whiteness filters the desirable from the undesirable, the future patriot from the imminent pariah.¹⁵⁴ Indeed, racialized notions of “superiority and inferiority at the same time drove the new settler states toward racially exclusive immigration policies” and refugee resettlement policies.¹⁵⁵ White immigrants are seldom viewed as inferior aliens in these contexts, where their whiteness renders their status invisible and blends them into the majority.

In *Black Skin, White Masks*, the postcolonial thinker Frantz Fanon observes that the “European has a fixed concept of the Negro.”¹⁵⁶ This static understanding of Blackness, and in particular Black masculinity in Fanon’s case, is wed to tropes like violence and threat.¹⁵⁷ As he experienced as a native of Martinique in France, this understanding is also wed to lack of civility and education.¹⁵⁸ Critical scholars label this permanent frame of understanding another racial or ethnic group as “essentialism,” whereby magnificently diverse peoples are reduced to a flat and intractable essence.¹⁵⁹ As feminist scholar Professor Diana Fuss

¹⁵³ For example, national security in Western nations has been riddled with anti-Muslim animus. See Amna Akbar, *Policing “Radicalization,”* 3 U.C. IRVINE L. REV. 809 (2013), for an examination of how federal community surveillance is pointedly steered by anti-Muslim philosophies of “radicalization” and “extremism.” For an analysis of how counter-radicalization runs counter to the spirit of the First Amendment Establishment Clause because of its pointedly anti-Muslim posture, see Rascoff, *supra* note 73, at 129–30.

¹⁵⁴ For a recent treatise calling for racial justice within immigration law, see Kevin R. Johnson, *Bringing Racial Justice to Immigration Law*, 116 NW. U. L. REV. ONLINE 1 (2021).

¹⁵⁵ JOPPKE, *supra* note 6, at 36.

¹⁵⁶ FRANTZ FANON, *BLACK SKIN, WHITE MASKS* 35 (Charles Lam Markmann trans., Pluto Press 1986) (1952).

¹⁵⁷ For an examination of the hypermasculinization of Black male threat in relation to police brutality and the recent wave of Black Lives Matter protests, see D. Marvin Jones, *The “Big Black Man” and Other Stories: George Floyd, Stereotypes, and the Shape of Fear*, 75 U. MIA. L. REV. CAVEAT 97 (2021). See generally PAUL BUTLER, *CHOKEHOLD: POLICING BLACK MEN* (2017), for a trenchant analysis of police violence inflicted upon Black men essentialized as criminals and violent actors.

¹⁵⁸ “There is nothing more exasperating than to be asked: ‘How long have you been in France? You speak French so well.’” FANON, *supra* note 156, at 35.

¹⁵⁹ Essentialism holds that people, and things, can be reduced to a core set of traits that characterize their very being. These traits, collectively, make up an essence, which gives rise to positive, negative, and benign stereotypes. Law scholar Professor Angela Harris argues against essentialism in relation to feminist theory, which she defines as “a unitary, ‘essential’ women’s experience [that] can be isolated and described independently of race, class, sexual orientation, and other realities of experience.” Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990).

claims, “essentialism is classically defined as a belief in a true essence — that which is most irreducible, unchanging, and therefore constitutive of a given person or thing.”¹⁶⁰

This “fixed” essence of nonwhite refugee was on full display following the Russian invasion, offering yet another window into the racial double and triple standards emanating from Ukraine. As documented firsthand through social media, Black refugees endured horrific racism from Ukrainian officials during the evacuation process.¹⁶¹ Black people were removed from evacuation trains to make room for white Ukrainians and subjected to arbitrary drug tests.¹⁶² This maltreatment unfolded again when Black Ukrainians and nationals from other countries reached the borders of other nations and faced being denied accommodation at shelter centers or excluded from entry altogether — “we are only taking in Ukrainians.”¹⁶³ The latter meant, in practice, that *we are only taking in white people*. The anti-Black racism saturating the evacuation echoed, during a wartime moment no less, that the “undesirable” essence ascribed to Black people often superseded the humanitarian imperative to aid a people fleeing war and fending for their very survival.¹⁶⁴ As Black Twitter echoed over and over again during the Russian invasion, “even in imminent danger, racism does not rest.”¹⁶⁵

This very principle applies to Muslim refugees fleeing war-torn Ukraine and, even more so, in the waves of accosted people fleeing their native lands in the Middle East. Refugees from the Ukraine, *specifically* white refugees, were met with welcoming zeal and open arms from nations throughout and beyond Europe.¹⁶⁶ White Ukrainians fleeing their homeland were less so “immigrants,” rather “accosted neighbors” in immediate need of rescue. If they chose to stay within the nations that

¹⁶⁰ DIANA FUSS, *ESSENTIALLY SPEAKING: FEMINISM, NATURE, AND DIFFERENCE* 2 (1989).

¹⁶¹ Frank Langfitt & Eleanor Beardsley, *International Students Are Facing Challenges as They Try to Evacuate Ukraine*, NPR (Mar. 3, 2022, 1:09 PM), <https://www.npr.org/2022/03/01/1083775486/africans-and-south-asians-are-having-an-especially-difficult-time-leaving-ukrain> [https://perma.cc/REA7-KD3L].

¹⁶² *See id.*

¹⁶³ “Several buses crossing every hour and not one foreigner allowed across. We finally made it across and we’re told accommodation at the hotel is only for Ukrainians. No sleep or food in 3 days . . . Why does nationality determine who rests?” Khanyi Mlaba, *Black People in Ukraine Are Reporting Racism While Trying to Leave*, GLOB. CITIZEN (Feb. 28, 2022), <https://www.globalcitizen.org/en/content/racism-leave-ukraine-asylum-black-people-of-color> [https://perma.cc/WJK4-PNMN].

¹⁶⁴ For a critical examination of the demonization of Blackness converging with the invisibility of Black immigrants, see Karla M. McKanders, *Immigration and Racial Justice: Enforcing the Borders of Blackness*, 37 GA. ST. U. L. REV. 1139 (2021).

¹⁶⁵ *See, e.g.,* @banks_camryn, TWITTER (Mar. 1, 2022, 3:43 PM), https://twitter.com/banks_camryn/status/1498760743537283079 [https://perma.cc/KD3W-CRJD].

¹⁶⁶ For a stunning example of warmth, Germans welcomed Ukrainian refugees with parties greeting them upon arrival. Damian Grammaticas, *Germans Welcome Ukrainian Refugees by Train: “It Could Have Been Us,”* BBC (Mar. 3, 2022), <https://www.bbc.com/news/world-europe-60611188> [https://perma.cc/ND92-7HH5].

absorbed them, they were presumptive citizens, or “noncitizen citizens” — evading the stigma of perpetual foreignness that is tattooed on Muslim immigrants.¹⁶⁷ This stigma persists beyond the bounds of formal citizenship for Muslim citizens of France or the United States, where “substantive citizenship” remains defined along racial lines;¹⁶⁸ and terror suspicion “undoes” the perceived citizenship of Muslims who hold its formal status.¹⁶⁹

Muslims, in places where the War on Terror rages forward, are often cast as “alien citizens.”¹⁷⁰ As a consequence of state and societal suspicion, they possess a legal status of citizenship eroded by the societal hostility and state-sponsored suspicion converging upon their bodies and communities.¹⁷¹ For them, formal status is contrary to the psychological stigmas spurred on by racism and Islamophobia, which hold their faith and phenotype at odds with prevailing conceptions of racialized citizenships.¹⁷² European nations rushing to absorb Ukrainian refugees offer immediate “psychological membership” on account of racial concordance.¹⁷³ The process engages in what German immigration scholar Professor Christian Joppke calls the “problem of ethnic selectivity,” wherein states formally prefer and proactively resettle individuals that look like, and share traditions and values with, most of their citizens.¹⁷⁴

On the other hand, European nations closed their borders to the waves of refugee populations escaping war from Afghanistan, Syria, Yemen, and more. The “Fortress Europe,” the staunch continental opposition to refugees, was a clearly racial and racist movement building impregnable walls that deflected Muslim immigrants and refugees.¹⁷⁵ People oftentimes sought to penetrate the “Fortress” through extralegal means, only to be denied upon arrival or found dead miles from the

¹⁶⁷ “Noncitizen” refers to a status whereby people are viewed, and often treated, as full-fledged citizens despite not holding possession of formal citizenship. BOSNIAK, *supra* note 90, at 5.

¹⁶⁸ *Id.* at 31 (“[T]here is often a gap between possession of [formal] citizenship status and the enjoyment or performance of citizenship in substantive terms.”). For a close examination of how French Muslim citizens, namely youth, are cast as outsiders despite holding French citizenship, see JEAN BEAMAN, *CITIZEN OUTSIDER: CHILDREN OF NORTH AFRICAN IMMIGRANTS IN FRANCE* (2017).

¹⁶⁹ Leti Volpp, *Citizenship Undone*, 75 *FORDHAM L. REV.* 2579, 2584 (2007).

¹⁷⁰ See Leti Volpp, *Impossible Subjects: Illegal Aliens and Alien Citizens*, 103 *MICH. L. REV.* 1595, 1626 (2005) (reviewing MAE NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* (2004)) (using the term “alien citizen” to describe the dissonance between the legal status of citizenship and the political branding of Muslims as pariahs, eternal immigrants, or enemies of the state).

¹⁷¹ *Id.*

¹⁷² The substantive measures of citizenship also include “psychological membership” or marginalization. BOSNIAK, *supra* note 90, at 20.

¹⁷³ *Id.*

¹⁷⁴ JOPPKE, *supra* note 6, at 1–30.

¹⁷⁵ Renata Brito, “Fortress Europe” Opens for Ukrainian Refugees but Keeps Others Out, *CHRISTIAN SCI. MONITOR* (Mar. 1, 2022), <https://www.csmonitor.com/World/Europe/2022/0301/Fortress-Europe-opens-for-Ukrainian-refugees-but-keeps-others-out> [<https://perma.cc/F2UP-RGNN>].

seashore.¹⁷⁶ These are risks that Ukrainian refugees did not have to face.

Muslim immigration is not only a wedge issue in Europe but also a matter that has revised and currently defines the political landscape across the continent. Staunch opposition to new Muslim entrants has given rise to and emboldened preexisting populist movements and parties. Through the lenses of terrorism and “civilization,” former fringe parties have stormed the mainstream with their anti-Muslim rhetoric and policy proposals.¹⁷⁷ These same voices rose to welcome (white) Ukrainian refugees in the days following the Russian invasion, which not only illustrates the salience of race with regard to European immigration but also *admits* the supremacy of race — and indeed whiteness — within that political realm.

European nations were ready to admit Ukrainian refugees while maintaining steadfast opposition to absorbing Muslim entrants. Spain’s far-right politician Santiago Abascal revealed this, in spades, when he announced in Parliament that anyone can see the “difference” between Ukrainian refugees “and the young men of Muslim origin and military age trying to ‘colonize’ Europe.”¹⁷⁸ Abascal’s statement spewed racism. While many would condemn the explicit nature of his remarks, “[t]he world has rushed to welcome White Ukrainian refugees, yet has brutally tried to stop the waves of refugees coming from Africa, Central America, Yemen, Syria, Afghanistan[,] and Myanmar.”¹⁷⁹

A rightful tragedy and contradiction riddled the *mise-en-scène* across Europe in the midst of a new continental war. Nations, like Ireland, absorbed 100,000 Ukrainian refugees in rapid order while millions of Syrians lingered between the status of statelessness and despair, still searching for somewhere to land.¹⁸⁰ Even France, the center of anti-Muslim xenophobia and state-sponsored Islamophobia in Europe, pivoted to admit more than 10,000 Ukrainian refugees¹⁸¹ and sent a clear message to Muslims — even those from Francophone African nations — that Islam stands as the fundamental barrier to entry. The most

¹⁷⁶ “And those Third World migrants who dare risk their lives to migrate to First World countries without legal authorization are confronted with increasingly militarized border regimes negotiated by First and Third World nation-states, and which amount to multilateral projects for the regional containment of Third World persons beyond the First World.” E. Tendayi Achiume, *Migration as Decolonization*, 71 STAN. L. REV. 1509, 1515 (2019).

¹⁷⁷ See generally HUNTINGTON, *supra* note 109.

¹⁷⁸ Beydoun, *supra* note 30.

¹⁷⁹ *Id.*

¹⁸⁰ Kitty Holland, *Ireland May Take In More Than 100,000 Ukrainian Refugees, Minister Says*, IRISH TIMES (Mar. 6, 2022, 4:03 PM), <https://www.irishtimes.com/news/social-affairs/ireland-may-take-in-more-than-100-000-ukrainian-refugees-minister-says-1.4819785> [<https://perma.cc/R745-QBQX>].

¹⁸¹ Joseph Ataman & Camille Knight, *France Prepares Accommodations for 10,000 Ukrainian Refugees*, CNN (Mar. 9, 2022, 9:33 AM), https://edition.cnn.com/europe/live-news/ukraine-russia-putin-news-03-09-22/h_45a9a6b63e598e289436fe0983769d8e [<https://perma.cc/RRE7-6ZUJ>].

hostile anti-Muslim populists in France, including a right-wing presidential hopeful, lent support for the Ukrainian refugees piling into France.¹⁸² However, that candidate explicitly qualified that Arab refugees are to be denied — without exception.¹⁸³ In political parlance, Arab was an umbrella term that encompassed Muslim immigrants.

The freedom fighter, even after they flee, will be lauded. When they reach domestic shores, they will be let in with a hero's standing ovation and welcome. They will then be celebrated with the measure of care, the compassion, and the resources needed to start anew. Even when they are not a citizen, they will be treated as such and will be adorned with many of the benefits and privileges longtime residents of the nation have enjoyed¹⁸⁴ — benefits nonwhite citizens still have yet to receive.

The terrorist, however, is castigated wherever they stand. They become more of a threat when absorbed into the nation. They are to be barred, at all costs, from coming in and becoming part of the nation. Their customs, faith, and very being are emblematic of disorder and disaster, which the state and its polity must keep tabs on, keep their gaze squarely upon, and keep at a safe distance from.

B. *Media Double Standards*

For Western journalists and global audiences conditioned by wartime reporting during the past twenty years, the images of war were wed to the Middle East and not “us.”¹⁸⁵ The very people that inhabited these lands embodied the menace of war and terror.¹⁸⁶ *War* and *terror*, outside of this context and specifically within Europe, were absurd and out of place. It did not belong in Ukraine but rather belonged in Syria, Afghanistan, and Muslim-majority societies *oriented* around the Western imagination of forever war and the fixed state of disorder.¹⁸⁷ Since war was alien to Europe and indigenous to the Middle East, the immigrants spilling out of the latter were alien too, Western media seemed to say.

¹⁸² *French Far-Right Candidate Zemmour Says Ukrainians Welcome, But Not Arab Refugees*, FRANCE 24 (Mar. 9, 2022, 12:17 PM), <https://www.france24.com/en/europe/20220309-french-far-right-candidate-zemmour-says-ukrainians-welcome-but-not-arab-refugees> [https://perma.cc/NH9R-PUQF].

¹⁸³ *Id.*

¹⁸⁴ See BOSNIAK, *supra* note 90, at 5.

¹⁸⁵ “They seem so like us. That is what makes it so shocking. . . . War is no longer something visited upon impoverished and remote populations. It can happen to anyone.” Daniel Hannan, *Vladimir Putin's Monstrous Invasion Is an Attack on Civilisation Itself*, THE TELEGRAPH (Feb. 26, 2022, 5:00 PM), <https://www.telegraph.co.uk/news/2022/02/26/vladimir-putins-monstrous-invasion-attack-civilisation> [https://perma.cc/G5E7-VGQD].

¹⁸⁶ See EVELYN ALSULTANY, ARABS AND MUSLIMS IN THE MEDIA: RACE AND REPRESENTATION AFTER 9/11 (2012), for a critical examination of the most prominent stereotypes of Muslim men and women after the 9/11 terror attacks.

¹⁸⁷ See generally SAID, *supra* note 49.

The deeply racial labels of “terrorist” or “freedom fighter,” and their loaded proxies, riddled the early coverage of war in Ukraine and the refugee crisis that followed. It stained a righteous stand for self-determination with the familiar taint of whiteness and the forceful tenor of Islamophobia gripping the continent — while the world watching this pattern plummeted toward yet another war. The clasped hands of whiteness and Islamophobia also steered media coverage of the refugee crisis, which relayed rich and layered stories of Ukrainian refugees while, conversely, sidelining coverage of Afghans and Syrians who have long suffered from statelessness and media silence.¹⁸⁸ Or, they seemed to refer to Muslim or Middle Eastern refugees only as a counterpoint to the ample coverage extended to Ukrainians, a counterpoint often doused in the images from the War on Terror plaguing media representations and misrepresentations of Muslim refugees.¹⁸⁹

The recent trend to address and cover the racial double standards is an incremental step forward. However, this exposure is seldom followed with substantive analysis, and it relegates immigrants of color into mere reference points for racism. It often ceases at that point for Arab and African, Black and Muslim subjects fleeing crisis. On the other hand, “[t]here has been no shortage of stories comparing the rush of love directed at Ukrainian refugees to the xenophobia unleashed against nonwhite immigrants, by European and American media outlets.”¹⁹⁰ Furthermore, this coverage is not accompanied or met with what Afghan, Syrian, and Rohingya refugees require — humanizing and dedicated reporting, sustained attention, and the layered storytelling dedicated, in seemingly endless order, to Ukrainians.

The mere mention of nonwhite subjects of war as reference points perpetuates their objectification and essentialization as nameless victims of forever wars. What may seem a progressive step for media outlets identifying this racism is undergirded by an orientation that prioritizes white victims of war. As I write in *Anadolu*:

Non-white refugees do not simply exist to evidence racism in refugee resettlement and immigration. Nor are they a homogenous bloc that only warrants reference to gratify the liberal sensibilities of journalists, or entire

¹⁸⁸ Statelessness has been dubbed the “paradox of mobility and insecurity,” which is “a simultaneous tendency to migrate but without the protection or citizenship of a home state.” SARAH M.A. GUALTIERI, *BETWEEN ARAB AND WHITE: RACE AND ETHNICITY IN THE EARLY SYRIAN AMERICAN DIASPORA* 168 (2009).

¹⁸⁹ “[M]edia portrayals connected with events such as 9/11, the wars in Iraq and Afghanistan, the civil conflicts in Syria, and an increase in terror related activities across Europe have produced compelling images and narratives that paint Muslims . . . as violent.” NAZITA LAJEVARDI, *OUTSIDERS AT HOME: THE POLITICS OF AMERICAN ISLAMOPHOBIA* 110 (2020).

¹⁹⁰ Khaled A. Beydoun, *Analysis — When Immigration Is No Longer a Wedge Issue: Ukrainian Refugees and Journalistic Humanization of White Plight*, ANADOLU AGENCY (Mar. 25, 2022), <https://www.aa.com.tr/en/analysis/analysis-when-immigration-is-no-longer-a-wedge-issue-ukrainian-refugees-and-journalistic-humanization-of-white-plight/2545523> [<https://perma.cc/7XAW-Y5MQ>]; see also, e.g., Ray, *supra* note 32.

media outlets, keen on representing themselves as non-racists. Particularly when their media coverage, or lack thereof, shows otherwise.¹⁹¹

For decades, yellow journalism has dominated Western media coverage. Yet even more indelible is the color of whiteness, which often taints journalistic ethics and prioritizes the struggles “of those that look like the people who hold power, believe like them, and share kindred traditions.”¹⁹² Among the first to identify this was the Arab and Middle Eastern Journalists Association in Washington, D.C., which called out the racism that saturated the media coverage of Ukraine in the wake of the Russian invasion.¹⁹³ The organization stated that “[n]ewsrooms must not make comparisons that weigh the significance or imply justification of one conflict over another — civilian casualties and displacement in other countries are equally as abhorrent as they are in Ukraine.”¹⁹⁴

Journalistic ethics are founded upon a commitment to fair, balanced, and objective coverage. However, the weight of whiteness and the imprint of political interests on newsrooms have undermined this mission and exposed double standards that call their integrity into question.

CONCLUSION

[D]o not make me into that man of hatred for whom I feel only hatred

— Aimé Césaire¹⁹⁵

*If you live, live free.
Or die like the trees, standing up.*

— Mahmoud Darwish¹⁹⁶

The pursuit of freedom is a universal one. It transcends faith and race and *races* through the veins of every human. The world sees this, unfolding in real time, in nations where peoples of all shades root their boots to the soil against the march of foreign empire and the reign of foreign order. Like oaks in Europe and olive trees in the Levant, they stand, resolute, prepared to sacrifice themselves for a natural love that precedes colonial law imposed by man.

¹⁹¹ Beydoun, *supra* note 190.

¹⁹² *Id.*

¹⁹³ Press Statement, The Arab & Middle E. Journalists Ass’n, Statement in Response to Coverage of the Ukraine Crisis (Feb. 2022).

¹⁹⁴ *Id.*

¹⁹⁵ AIMÉ CÉSAIRE, NOTEBOOK OF A RETURN TO MY NATIVE LAND 38 (1939).

¹⁹⁶ MAHMOUD DARWISH, THE BUTTERFLY’S BURDEN 31 (2007).

Yet man has enmeshed racism into law. Law is manipulated, over and over, to cast nonwhites as terrorists, while those claiming the pinnacle of the racial caste often evade that indictment. This dialectic was firmly in place before the siege of Ukraine in late March 2022. However, the latest chapter of European war, which could ignite a third world war, illustrates how race, steered by *realpolitik*, drives the making of terrorists and freedom fighters and the unmaking of people clinging on to their dignity in the face of formidable military and media erasure.¹⁹⁷

In the weeks and months after the invasion, and during the thick of the protracted siege, Ukrainian flags were ubiquitous throughout the United States. The show of solidarity was sublime, and perhaps even surprising, during a moment when rights-based internationalism has plummeted within the American consciousness.¹⁹⁸ The blue and yellow flags were hung up on restaurant windows, while Americans wore them as pins and waved them in front of schools and state buildings alongside the red, white, and blue. These were not Ukrainians expressing their patriotism but rather everyday Americans demonstrating solidarity with a foreign people, a besieged people, who fell victim to an imperial power. The scale of the solidarity was staggering particularly because this was a war that did not directly involve the United States. The American government was a bystander, for once, that pulled out of a twenty-year war and occupation with Afghanistan only months before — the first global theater of its War on Terror.¹⁹⁹

After a lecture in March at the University of San Diego School of Law, I counted twelve Ukrainian flags on my fifteen-minute Uber ride from the campus to San Diego. I counted zero for the unfolding struggles for survival in Kashmir, East Turkestan, Yemen, or Palestine.²⁰⁰ These flags, draped atop businesses or hanging from residential poles, would invite suspicion, scorn, or both. Their connection to Islam, regardless of the symbols they stood for or their patent secularity, would pause even natives of those lands from waving them during a War on

¹⁹⁷ There was early discussion that events in Ukraine could lead to World War III. See, e.g., Bret Stephens, Opinion, *This Is How World War III Begins*, N.Y. TIMES (Mar. 15, 2022), <https://www.nytimes.com/2022/03/15/opinion/russia-ukraine-world-war-iii.html> [https://perma.cc/SL59-YX6H].

¹⁹⁸ See Khaled Ali Beydoun, *Islamophobia, Internationalism, and the Expanse Between*, 28 BROWN J. WORLD AFFS. 101, 103–04 (2021).

¹⁹⁹ Zeke Miller & Aamer Madhani, “Overdue”: Biden Sets Aug. 31 for US Exit from Afghanistan, AP (July 8, 2021), <https://apnews.com/article/joe-biden-afghanistan-government-and-politics-86f939c746c7bc56bb9f11f095a95366> [https://perma.cc/H8MP-UYJZ].

²⁰⁰ Before it bore the name “Xinjiang,” the northwest territory home to fourteen million Uyghurs in northwest China was called East Turkestan. It is the indigenous land for Uyghur Muslims, who have endured an ethnic cleansing campaign steered by the Communist regime in China. For a brief history of East Turkestan from a Uyghur perspective, see *East Turkestan: Brief History*, WORLD UYGHUR CONG., <https://www.uyghurcongress.org/en/east-turkestan-2> [https://perma.cc/U26K-4DX4].

Terror, let alone everyday Americans — who rushed to place Ukrainian flags front and center on their homes, automobiles, and lapels in the days after Russia’s invasion.

Flags are symbols, and they represent far more than national allegiance. In this instance, the display of Ukrainian flags represents solidarity and support, compassion and concern. Few hardly squint or hesitate when a Yemeni village is leveled by American drones or when French airstrikes rain down and “rock the Casbah.”²⁰¹ The world is desensitized to imperial violence inflicted on Muslims, who are still branded terrorists, while state-sponsored terror is relentlessly unleashed against them.

As I have written before, Muslims are only newsworthy when they are villains, not victims.²⁰² The world stands idle as Muslim bodies, fighting for freedom or buried under colonial rule, are gunned down in the name of counterterrorism. Their bodies, dehumanized in life and in death, stand as relics of a colonial past that many across Europe still doggedly cling on to with fists of rage. For the French, colonial Algeria is inextricably tied to their heritage, and for Americans, wars in Afghanistan and Iraq are core threads of their cultural conditioning.²⁰³ Instead of undoing these psychoses, the law has reproduced them. Instead of disentangling racism from humanity, the media confirms it.

For Muslims, who have endured these colonial and postcolonial wars and the tragedy of forced displacement that follows, Ukraine is a painful blow. It is another reminder that their bodies, their beings, are worth less — and too often, are *worthless*. It is difficult for them, and those cognizant of the lurid and lucid double standards emanating from Ukraine, to dream of a uniform standard applied across race, religion, and the *realpolitik* in between. It is difficult to imagine a world where the theaters of resistance in the Algerian Casbah or Kashmir receive the same light as the struggles in Ukraine. These dreams, instead, are incessantly interrupted by crashing reality. A reality delivered in songs of silence, and scores of violence, that whisper: “*Drop your bombs between the Minarets, Down the Casbah way.*”²⁰⁴

²⁰¹ THE CLASH, *Rock the Casbah*, on COMBAT ROCK (CBS Records 1982).

²⁰² Nadia El-Zein Tordova & Khaled A. Beydoun, Opinion, *Why Muslim Lives Don't Matter*, AL JAZEERA (Feb. 12, 2015), <https://www.aljazeera.com/opinions/2015/2/12/why-muslim-lives-dont-matter> [<https://perma.cc/Q9PF-UT85>].

²⁰³ “As a young [French] man said in the train the other day: ‘Me, I don’t give a damn about Algeria, and I don’t like colonization either. But it’s our heritage. And you have to hold on to your heritage, even if it doesn’t pay.’” CAMUS, *supra* note 4, at 109.

²⁰⁴ THE CLASH, *supra* note 201.