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Color Me Bad: An Indigenous & Pluralist Reclamation of Arab American Identity

Khaled A Beydoun, University of Toronto

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COLOR ME BAD
TOWARD AN INDIGENOUS & PLURALIST RECLAMATION OF ARAB AMERICAN IDENTITY

Khaled Ali Beydoun*

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INTRODUCTION

[T]hroughout the more than 100 years that Arabs have immigrated to the US, there has been the need to clarify, accommodate and reexamine their relationship to this peculiar American fixation on race. In each historical period, Arabs in American have confronted race-based challenges to their identity. Today, the constituency known as Arab American is situated at an interesting social crossroads, where issues of minority and majority affiliation demand more attention – and reflection.1

According to the formal definition constructed by the United States Office of Management and Budget (“OMB”), Arab Americans are paradoxically white, yet simultaneously among the most marginalized and discriminated against minority groups in

* The author received his J.D. from the University of California-Los Angeles School of Law, and his A.B from the University of Michigan-Ann Arbor. He has published his work in various law journals, including the Berkeley Journal of International Law, the Harvard Journal of Hispanic Policy, the Journal of Islamic & Near Eastern Law, and most recently, the Michigan Journal of Race & Law.

the United States;\(^2\) due to sweeping anti-terror legislation and the establishment of the Department of Homeland security. However, the latter designation precludes the formal classification of Arab American as “minorities,” a term that, ironically, best characterizes their experience today.

Sweeping legislation before and after 9/11 legitimated \textit{de jure} discrimination against Arab Americans, which created a sociopolitical landscape in government, and on the ground, were racism against this group was tolerated. In fact, the only brand of racism that is openly tolerated today in America is that targeted toward Arab Americans. Racism toward Arab Americans is often justified through the guise of national security or patriotism. Nevertheless, the swelling degree of racism toward Arab Americans post-9/11\(^3\) combined with the historical designation of Arabs as “other” or “Oriental,”\(^4\) evidences that the OMB’s designation as Caucasian is disingenuous and deceptive, arbitrary and non-contextual. Moreover, it is the completely opposite designation created by the OMB’s sister organization, the Department of Homeland Security. Hence, how are the two antithetical classifications of Arab America to be reconciled? Reconciliation with top-down classifications is hardly the answer. The paradoxical construction of Arab American identity affirms that the formal manufacturing of racial/ethnic identity in the United States is incoherent, unscientific, and inconsistent. An indigenously driven and pluralist reconstruction of Arab American identity, and re-narration of the Arab American experience is the most effective and democratic avenue toward not only existential self-definition and determination but formalistic coherence and uniformity.\(^5\) Formal or legal racial identification, ultimately, must be duly representative, and thus integrative of the subjects’ input

\(^2\) Salah D. Hassan, “Arabs, Race and the Post-September 11 National Security State,” Middle East Report 224, 6. “[L]inguistic, religious, and ‘ethnic’ differences play a part in the racialization of Arabs, but the hatred, suspicion and equal treatment of Arabs by the justice system is more significantly tied to the perception that ‘they’ are foreign enemies of the US.”


\(^5\) Characteristics that are considered to be the hallmarks of good law.
in order to have meaning, and ultimately, coherence. An authentic reconstruction of Arab American identity would provide additional, and perhaps more accurate, sources informing the law and process of defining racial/ethnic classification.

Until recently, leading Arab American organizations and leaders have been too complicit with the formal, yet clashing, designations of their community. Criticism of formal identity classifications (assigned from above) was fleeting at best and reactive instead of proactive, with the exception of the seminal contributions made by Edward Said and Jack Shaheen. The legal scholarship addressing this matter was non-existent. 9/11 was a crude wake-up call for Arab America at large, particularly for those members of the community most well-equipped to contest the conflicting designations advanced by the OMB and the Department of Homeland Security’s profiling of Arabs as “other”: members of the legal community. Developments in legal scholarship and praxis have furnished critics of Arab American formal identity with new platforms and devices to make strategic interventions against the status quo. Notable contributions made by Leti Volpp and John Tehranian, among others, laid the scholarly foundation for an authentic and pluralist discourse about Arab American identity and experience. This piece strives to continue this conversation, and lend additional artillery to the pluralist enterprise of deconstructing the politically constructed identities imposed on Arab Americans.

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6 Ann Griffiths, “Legal Pluralism.” in Reza Banakar and Max Travers (eds) An Introduction to Law and Social Theory (Hart Publishing, 2002). “[I]n promoting the view that only state law is law and excluding other forms of normative ordering from falling within the definition of law, the legal centralist/formalist model makes assertions about the integrity, coherence, and uniformity of state law… This kind of research [Polycentricity of Law, which is concerned with studying the use of sources of law in different sectors of state administration], by acknowledging use of differing sources of law, allows for the possibility of conflict between different state sectors.” Griffiths is addressing the occurrence of conflicting legal decisions made by different governmental agencies, or actors.

7 See generally Leti Volpp, “The Citizen and the Terrorist,” 49 UCLA L.R.

8 See John Tehranian, “Compulsory Whiteness: Toward a Middle Eastern Legal Scholarship,” 82 Indiana L.J. 1. Tehranian’s contribution is perhaps the most comprehensive and poignant discussion of the racial/ethnic classification and experience of the collective American communities that originate from the Middle East. His thesis calls for the initiation of a “Critical Middle Eastern Legal Scholarship,” which I echo. However, I do not share his calling for a creation of a consolidated Middle Eastern legal identity, a end that I believe would perpetuate the conflation of all the independent peoples that originate from the “Middle East.” Moreover, Tehranian’s approval of the geographical designation, “Middle East,” legitimizes a colonially constructed designation, which has surely been normalized in today’s colloquial but cannot be formalized as ethnic/racial identity.
In addition, much of the legal scholarship that addresses the experience of Arab Americans does so in addition to Middle Easterners and Muslims\(^9\) at large; a scope that dangerously lends itself to the stereotypical conflation of the three independent categories. This intervention is narrowly tailored to articulate the specific contestations made by Arab Americans against governmentally formalized constructions of identity - a subaltern reclamation and redefinition of community. Moreover, this piece aspires to unravel both the prevailing and oft-conflicting legal and sociopolitical constructions of Arab America specifically,\(^10\) and by doing so, dissecting problematic proxies like “Middle Eastern,” “Muslim” or “Near Easterner.” This critical historical moment requires that due attention, specifically within legal scholarship, be given to the thought-to-be culprits but most common victims of terrorism: Arabs, and those linked to, or thought to be, Arabs.\(^11\) Undertaking this challenge must be initiated by examining a number of facially simple, but rather complex, questions: First, what is the Middle East; and second, who precisely are the Arabs?

Part I of this piece glosses over the government designations of racial identity imposed on Arab Americans; Part II offers how Critical Race Theory offers the theoretical platform to contest the status quo, particularly via scholarly interventions like the narrative; Part III introduces the first Arabs to migrate to America; Part IV critiques the OMB designation as Caucasian, considering that Arab Americans are superficially labeled as white without white privilege; Part V seeks to dismantle the routine conflation of Arab with the Middle East and

\(^9\) Rachel Saloom, “I Know You Are, But What Am I? Arab-American Experiences Through the Critical Race Theory Lens,” 27 Hamline J. Pub. L. & Pol’y 55, 57. “[T]here is a popular misconception that all Arabs are Muslim… In the United States, however, a Zogby survey showed that only 23% of Arab-Americans were Muslim.”

\(^10\) Ibid at 57. “[A]nother tenet of CRT is that ‘race is not biologically determined.’ Therefore, recognizing that race is socially constructed is very important to CRT scholars. This social construction of race is particularly vital to understanding the plight of Arab Americans.”

\(^11\) Compulsory Whiteness, supra note 8, at 29. “[T]he rising tide of hate against individuals of Middle Eastern descent has grown even more pronounced in recent years. Indeed, whatever its necessary in some guide, the war on terrorism has borne severe racial undertones. As Kevin Johnson has noted, ‘many Arab Americans generally feel that the war on terrorism during the 1990’s in fact has been a war on them.’”
Islam, and highlight the peoples’ cultural, religious and normative diversity; and Part VI engages the most ubiquitous stereotypes leveled against Arab Americans, most notably the terrorist trope.

I. UNILATERAL ASSIGNMENT OF RACIAL IDENTITY

Imposed characteristics, classifications and caricatures has complicated and confused Arab American identity more than ever before. According to formal definitions, Arab Americans are simultaneously “Caucasian,” or white, yet also positioned as American’s sociopolitical and civilizational antithesis. The OMB, the agency that holds ultimate authority over setting the racial and ethnic categories in the United States, formally defines people from “Europe, the Middle East, or North Africa” as Caucasian. However, Arab Americans originating from both the Middle East and North Africa have never enjoyed a sociopolitical status similar to that of Americans of European decent, particularly today.

The formal definition of whiteness codified by the OMB diverges completely from the privileged status safeguarded for centuries by the American courts, which rigidly defined whiteness as an elite and narrow status only a select few could claim. This status, theorized as a property interest by noted Critical Race Theorist Cheryl Harris, has tangible social, political and economic benefits only archetypal whites, as sanctioned by the court, could access:

In ways so embedded that it is rarely apparent, the set of assumptions, privileges, and benefits that accompany the status of being white have become a valuable asset – on that whites sought to protect and those who passed sought to attain… Whites have come to expect and rely on these benefits, and over time these expectations have been affirmed, legitimated and protected by law.

Like other groups who did not fit the Manichean racial paradigm that existed for centuries in the United States, I will discuss later in the piece how Arab Americans generally attempted to claim either a cultural or geographical belonging to whiteness in courts, mainly as an avenue to access economic benefits only archetypal whites, as sanctioned by the court, could access.

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13 Samhan, supra note 1, at 6. “[T]he categories promulgated in 1978 by the OMB in fact did draw distinctions, but unlike earlier policies, not on skin color. Known as directive 15,” the standards identify four race categories… White: persons originating in Europe, the Middle East and North Africa.”
the privileged status of citizenship that is part and parcel of this racial designation. However, Arabs were categorically denied functional entry into whiteness, which further makes the OMB categorization more puzzling and irrelevant.

Arab Americans today, particularly after 9/11, are nothing short of “public enemy #1.” Contemporary events averse to American interests in the Arab World, or what is stereotypically perceived to be part of the Arab World, combined with domestic happenings has placed a considerable collective stigma on Arab Americans. As a result, there has been a significant depreciation of the citizenship of Arab Americans, both along symbolic and functional lines. With regard to the latter, 1996’s “Anti-Terrorism and Effective Death Penalty Act (“AEDPA”),” passed under then-President Bill Clinton, materially undermined the civil liberties and rights of Arab Americans. This act also foreshadowed the sweeping legislation that would be immediately enacted post-9/11, US PATRIOT, which markedly constrained the parameters of Arab American citizenship, and formally redefined their status during the fledgling phase of the “war on terror.” Second, Arab Americans were symbolically disassociated as full-fledged Americans by this legislation, which has reverberating consequences on the ground. Both organized and random acts of violence incited in the name of nativism and patriotism targeted Arab Americans. In addition, profiling and discrimination proliferated, as documented by the American-Arab Anti-Discrimination Committee “ADC”).

Arabs today, as classified by different governmental agencies, are formally designated as both the “other” and white. Looking to reconcile these clashing characterizations, in effect, would lend legitimacy to the irrational institution that is the American industry of defining race. Nevertheless, rejecting top-down impositions of racial identity is the initial step toward self-

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15 See Iran, Pakistan, or any part of the world that has a significant Muslim population. Arab and Islam are routinely conflated by the American media, scholars, and consequently, lay citizens.
determination, and namely, an authentic and organic portrayal of the Arab American experience. However, the OMB leaves no room for pluralism in deciding racial categories, and has demonstrated opposition to Arab American efforts to reclassify themselves, and establish a separate category:

The Interagency Committee recommended that an Arab or Middle Eastern ethnic category should not be added to the minimum standards for all reporting of Federal data on race and ethnicity. Several comments were received in support of having a separate category in order to have data viewed as necessary to monitor discrimination against this population.\(^\text{18}\)

The creation of a separate Arab or Middle Eastern category would have considerable utility after 9/11, improving the capacity for both governmental and non-governmental organizations to track discrimination, prosecute culprits of racism and profiling, protect civil rights,\(^\text{19}\) and consolidate like information to bestow benevolent programming to Arab Americans.\(^\text{20}\) For decades, organizations like the ADC,\(^\text{21}\) the Arab American Institute\(^\text{22}\) and the Arab Community Center for Economic and Social Services (“ACCESS”),\(^\text{23}\) among others, have spearheaded both political and grassroots efforts to give voice to millions of Arab Americans who have had no say about the formalization of their identity. Their efforts have effectively mobilized their constituents, but have not affected the institutional gatekeepers that continue to monopolize the formal meaning of “Arab” in America. Both the courts and the legislature have unilaterally and arbitrarily constructed Arab American identity without consulting with Arab Americans.


\(^\text{19}\) Samhan, supra note 1, at 8. “[T]he social benefits of classifying the population by race include the ability to monitor the health and welfare needs of a diverse population, protect civil rights, and attempt to narrow the socioeconomic gaps among the citizenry.”

\(^\text{20}\) Saloom, supra note 9, at 59. “[T]he official government categorization of Arab-Americans as Caucasian denies Arab-Americans of their minority status and any benefits that the government provides for minority status.”


II. **INDIGENOUS & PLURALIST RE-NARRATIONS OF IDENTITY**

Critical Race Theory scholars have championed the narrative as an innovative mechanism that furnishes historically marginalized groups with a platform to comment on the law. The narrative also adds color to its commentary, which humanizes the judicial process and legal scholarship, bringing a personal dimension to an otherwise objective realm. The increasing prominence of the narrative in legal scholarship and legal advocacy has generated much opposition, particularly in legal academy. However, the narrative’s popularity must be chiefly attributed to its capacity, as a subaltern tool, to contest skewed legal constructions long legitimized as formal or objective. A first-person, authentic reconstruction of Arab American identity injects personal experiences with group history and tradition, and ultimately, offers an authentic and organic historical account of what it means to be Arab American. The narrative is ultimately a reminder that the fluidity of the law and the law’s classification of racial identity, is perhaps its most enduring hallmark.

Advocates of the narrative are generally part of a larger intellectual movement within the law calling for the fluid adaptation of legal structures and standards. The law, from their perspective, is a social construction that is subjectively crafted and thus malleable. In order for the law to integrate groups it has historically silenced, law’s gatekeepers must allow innovative intellectual and practical interventions like the narrative. Legal scholars are not only challenging the law’s purported objectivity as yet another blockade and, consequently, impeding oppositional interventions, but also empowering previous generations of Arab Americans

24 Richard A. Posner, *Beyond All Reason: The Radical Assault on Truth In American Law*, The New Republic, October 13, 1997 at 43, “[I] do not doubt the power of literature to awaken readers to injustice. But stories told by the critical race theorists do not rise to the level of literature. They are flops as stories and, as Farber and Sherry demonstrate, flops as scholarship.

25 *Saint Francis v. Al-Khazraji* 481 U.S. 604, 610. “[T]he understanding of ‘race’ in the 19th Century, however, was different. Plainly, all those who might be deemed Caucasian today were not thought to be of the same race at the time section 1981 became law.”

marginalized by the law with a renewed opportunity to impact it today. In spirit, the narrative captures the aspirations of all marginalized peoples seeking structural reform and integration, and carves out an intellectual space to contest imposed upon constructions passed off as formality.

Prominent scholarship is often used in court as persuasive authority, and even expert evidence. Thus narratives have the capacity to influence judicial processes if deemed “worthy law scholarship.” Legal scholarship framed around oppositional narratives, exemplified by the work of Darlene Johnston, Paula Caldwell, Derek Bell and his intellectual progeny, present marginalized claimants with an alternative that captures their peoples’ story vis-à-vis the law. Inasmuch, this scholarship should not be considered aberrational but groundbreaking, bringing to the law valuable knowledge that was before intentionally unrecorded and mis-recorded. Courts routinely rely on expert testimony and narratives, hence there are institutional avenues for the integration of oppositional narratives. At the very least, these narratives give marginalized groups an opportunity to have their day in court and face off with his-story.

III. FROM THE PEN LEAGUE TO A NEW SCHOOL OF NARRATORS

“[O] my greatest enemy and benefactor in the whole world, this dumb-hearted mother, this America, I whose iron loins I have been spiritually conceived.”

- Amin Rihaini, Syrian Writer, written upon his arrival to the United States in 1911

The Arab American population is anything but a monolith. It is rather a mosaic of diverse communities that share general affinities but also divides. Arab Americans are materially linked by language, similar traditions and a common political experience in America.

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27 Surely, the role of elite learning institutions like Yale, Harvard and the University of Toronto plays a crucial role in this legitimization process.
31 A pun, or play on words, used in post-colonial discourse to refer to colonial historical accounts.
However, Arab Americans also range along lines of nationality, complexion, racial and ethnic ancestry, dialect, religion, and in regards to the latter, sectarian and confessional affiliation. To speak of Arab America in singular terms may expedite social or political convenience, a la the construction of the terrorist archetype, but it establishes a distorted image of Arab America; an image constructed upon the columns of racism, misunderstanding and the expansion of empire. This is expedited by a de-historicization of the Arab American narrative, evidenced by the routine stereotyping of Arab Americans as immigrants, rather than an established community with deep roots in America. Arabs first came to the United States during the close of the 19th Century, and the growing Diaspora’s introduction into American society was well documented by the immigrants themselves.

The collective of seminal Arab American writers, known as al-Rabita, or the “Pen League,” memorialized the initial challenges and joys the first Arabs faced when they encountered America. The experience of the original Arab immigrants to America was colorfully narrated by the hopeful words of the Pen League, or Muhajar writers, which included Rihani and his more celebrated contemporary, Kahlil Gibran. Rihani, Gibran and their contemporaries left the bustling thoroughfares of Beirut and Damascus for the immigrant magnets that were New York City and Boston. These literary icons, whose masterful works are celebrated both in the Arab World and America, represent not only the nascent experience of Arabs in America, but more importantly, an Arab claim to Americanness that took place more than a century before the

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33 Arab American Institute, “Arab American Demographics,” Arab American Institute Foundation, available at http://www.aaiusa.org/arab-americans/22/demographics. “[A]rab Americans constitute an ethnicity made of up several waves of immigrants from the Arabic-speaking countries of Southwestern Asia and North Africa that have been settling in the United States since the 1880’s... Their Arab heritage reflects a culture that is thousands of years old and includes 22 Arab countries as diverse as Egypt, Lebanon, Morocco, Yemen, Tunisia and Palestine.” Syrian and Iraqi Americans also comprise a significant percentage of the Arab American collective, but every Arab state is represented in the United States.

34 Arab American Demographics, supra note 33, at 1. “[M]ore than 80 percent are U.S. citizens.”


36 (Arabic).

37 Immigrants (Arabic)
9/11 attacks. They wrote about the racism Arabs encountered,38 but also the potential inherent in America. The poetry of Gibran and the prose of Rihani deliver a poignant message: that Arabs were citizens and integral parts of the American fabric long before the “war on terrorism” and 9/11.

The critical works of the Muhajar writers also document the first wave of Arab migration into the United States, and moreover, in part evidence the established traditions and valuable contributions the first Arabs made to American society. Not unlike the universal immigrant narrative, Arabs reluctantly fled their homelands for America’s promise of freedom, opportunity, and safe haven – yet today, are squarely positioned within the belly of a hostile environment called home, where the promises of freedom, opportunity and safe haven are slowly being stripped away. The writings of Gibran, Rihani, and their contemporaries formed the inaugural chapters of the Arab American narrative, which have been categorically redacted from the prevailing identity classification formally enacted by the US government.

IV. White without Privilege

[A]part from the dark skin of the Arabs, it is well know that they are a part of the Mohammedan world and that a wide gulf separates their culture from that of the predominantly Christian peoples of Europe. It cannot be expected that as a class they would readily intermarry with our population and be assimilated into our civilization.”39

“White huh? That’s not what they call me at the airport.”40

Not straying from the colonial tradition of establishing clear societal racial hierarchies, historically affirmed by de jure judicial declarations, the United States courts have been the most potent instrument in shaping, and reshaping, America’s racial taxonomy. The substantial influx of primarily European immigrants at the turn of the 20th Century significantly complicated this assignment, as did the gradual migration of non-European waves that followed. As a result, the classical triumvirate of racial

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38 Samhan, supra note 1, at 10. The Ku Klux Klan identified Arabs as “colored,” and racism espoused in the following handbill of an Alabama political candidate in the 1920’s manifested a ubiquitous dis-identification of Arabs as white, “[T]hey have disqualified the Negro, an American citizen, from voting in the white primary. The Greek and Syrian should also be disqualified. I don’t want their votes. If I can’t be elected by white men, I don’t want the office.”


40 See Compulsory Whiteness, supra note 8, at 2.
categories, White, Black and Mongoloid, became obsolete. The court was stumped by questions, including: where did Sikhs fit, for instance or Japanese Americans? Surely, America’s fluidly changing racial landscape exposed the sham that was this prevailing racial taxonomy, but rather than questioning its scientific merit or legal applicability, the court’s continued to employ its guide for subjectively determining a subject’s race. The racial construction of Arabs in the courts was, likewise, left to the individual imaginations of the presiding judges and ultimately, “[a]n unfortunate extension of a history of jurisprudence in which judges relied upon several flawed, arbitrary, and scientifically suspect doctrines of racial determination.”

Traversing the bounds of science and logic, a thoroughly nuanced determination was placed squarely on the laps of judges; experts trained in law, not ancestry, ethnicity, geography or world cultures.

The OMB has imposed formal whiteness onto Americans of Middle Eastern and North African descent. However, citizens of Arab ancestry are perhaps the most racialized and ethnically isolated group in the America today. Although Arab Americans are superficially white on paper, i.e., as mandated on university applications, census statistics, and other governmental data, the privileges of whiteness hardly translate on the ground. Archetypal white Americans, namely those of European descent, are deracialized. In other words, whiteness it seldom framed in racial terms. It has long been the standard in America, perpetuated by law and safeguarded by government. Thus, among the chief benefits of whiteness, and white privilege, is the benefit of transcending race or racialization. The experience for Arab Americans has been the contrary:

All the while, reality does not mesh with the bureaucratic characterization of Middle Eastern individuals as white. On the street, individuals of Middle Eastern descent suffer from the types of discrimination and racial animus endured by recognized minority groups. And, unlike minority groups, Middle Eastern individuals have endured increasing levels of vilification and demonization in recent years, especially in the wake of the war on terrorism and the 9/11 attacks.

Classifying Arab Americans as white has no practical link to what is actually transpiring on the ground in America today, and has done nothing to alleviate the seizure of civil liberties, and significant chilling effect, brought about by US PATRIOT and like legislation. An ironic consequence of the Arab Americans’ simultaneous status as white yet “national security threat” is that US PATRIOT empowers federal agents to profile, monitor, and track Arab Americans, but the formal designation as white does not allow tracking for benevolent purposes.

Passing as white is an option, particularly for light complexioned Arab Americans. However, the possibility of passing or bearing a phenotypic likeness to whites hardly merits the

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41 Tehranian, supra note 8, at 4.
42 Tehranian, supra note 8, at 3.
formal imposition of whiteness on Arabs at large, even for those who decide or are able to pass. The decision to pass is predicated on another latent determination made by the subject, that to intentionally hide one’s true identity specifically because of a socially undesirable characteristic. The stigma that sometimes triggers the decision to pass, alone confirms that even passing Arabs are not functionally white. The hallmark of white privilege is to be free of racial stigma, and moreover, to be viewed in non-racial terms. Therefore, although many Arabs are able to cosmetically blend in with Americans of Irish or German descent, the burden that follows after the decision to pass is made is not shared by quintessential whites, thus passing Arabs are continuously cognizant of their otherness. Moreover, even when passing is a possibility, the non-European sounding names of Arab Americans will tend to expose them. In turn, compelling another compromise of identity that many assimilation-minded people of color including Arabs have made. Nevertheless, a considerable segment of Arab America embraces the designation as white, which has complicated organization efforts lobbying Washington to formally create a separate Arab American.

V. DISMANTLING THE MIDDLE-EAST MONOLITH, OR “CIVILIZATION”

The Arab World stretches from the Western coast of North Africa and eastward toward the Arabian Sea. Arabs are united chiefly by a common language, Arabic, and shared cultural and normative traditions. The original Arabs are from the Arabian Peninsula, namely, from modern-day Yemen, which is located on the southeastern portion of that land mass. Namely through Islamic expansion and colonialism, and also regional trade, the Arabic language, Arab custom and Islam were spread as far west as Morocco, deep into sub-Saharan Africa.

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43 Tehranian, supra note 8, at 20, “[B]eyond covering, Middle Eastern assimilation also crosses the realm of passing and even conversion. As a matter of pride, many Middle Easterners insist on being considered white. In this regard, they are no different than prior immigrant groups.

Naturally, identity takes on new meanings and forms as it encounters different political or cultural stimuli, and is fluidly reconfigured by them. Arab identity is no exception. The postmodern political landscape in the Middle East, North Africa, and the colonized world at large, required the former colonies of Europe to organize regionally and build transnational alliances. At this moment, Arab identity was formally adopted by a host of African nation-states chiefly as a political measure. However, portions of the populations in Sudan, Somalia, Mauritania, Djibouti, and Comoros openly identify as both African and Arab after their inception into the Arab League; the transnational political union of Arab states. The transnational fluidity of Arabism, as a political manifestation of Arab affiliation, exhibits the fluidity of what it means to be Arab. Therefore, the Arab World today encompasses both Asian and African Arabs, light to dark skinned complexioned Arabs. Matching the religious and sectarian diversity of the Arab World, the phenotypical breadth of Arabs is vibrantly diverse. The rigid American racial paradigm, however, leaves no place for this brand of racial double-consciousness. Thus, an Egyptian or Sudanese American who identifies as both an African and an Arab would surely leave most Americans perplexed. I am not contending that racial hierarchy does not exist in the Arab World (this is a tall intellectual project which requires independent attention), but the Manichean racial tradition that exists in America is not followed in the Arab World. Racial status, rather, is predicated on a pigmentocracy, which is levied within the individual state societies but also broadly across the Arab World; a residual consequence of European colonialism.

The (d)evolution of the popular image of the Arab has fluidly shifted according to the prevailing political interests of the United States. Before only enemies of secondary importance, Arab from the Levant Arab countries, which includes Lebanon, Syria and Palestine, are considered to be the most attractive specifically because of their fair complexions, while darker skinned Arabs from Yemen, and the Sub-Saharan African states, are universally thought to be less desirable.
the Arab and Muslim Worlds have fully succeeded the Soviet Union as the United States’ primary dance partner. The vilification of the Arab and Muslim Worlds has been imputed onto Arab Americans, as evidenced by the racist fervor and unbridled nativism that still takes place today, six years after 9/11. A foundational axiom of Critical Race Legal Theory holds that race is socially constructed, yet in regards to Arab Americans it is more fitting to assert that race is politically constructed. Moreover, in regard to Arabs, race is strategically manufactured to maximize not only the domestic and foreign policy objectives of the United States, but also to purify its own image to its citizens to maximize today’s brand of inflexible patriotism. In other words, the more society embraces the stereotype that Arabs are generally terrorists, the more entrenched the counter-misrepresentation that the United States government is free from flaw. In turn, justifying any political or foreign policy action taken by the latter, no matter how dubious. The war on terrorism has a tangible racial bent, i.e, terrorists are almost categorically believed to be Arab, but this is only a functional racial designation of Arabs in America. Formally, Arabs are Caucasian, as codified by the Census, job applications, and most college and university applications. Thus, begging the question: If Arabs are terrorists, then how can they be considered white? Prototypical white Americans, like Timothy McVeigh or the Columbine culprits, are never associated with terrorism although their acts say otherwise. Which begs another question: So, if Arabs are white, but whites cannot be terrorists, and terrorists can only be Arabs, then how does one explain the classification of Arabs as white?

Reconciling these questions can be resolved, in part, by understanding the political enterprise of defining your foil, or menace. In examining the French and English colonial interventions in the Middle East and Africa, and deconstructing the ancillary intellectual enterprise of studying and classifying the colonized, Edward Said masterfully deconstructs the epistemological monopoly held by the hegemon, and more particularly, critiques this industry of
constructing the other (or the “Oriental”) based solely on imperialist perspective, unabashed egotism and interest:

[On the one hand there are Westerners, and on the other there are Arab-Orientals; the former are (in no particular order) rational, peaceful, liberal, logical, capable of holding real values, without natural suspicion; the latter are none of these things. What specialized skills, what imaginative pressures, what institutions and traditions, what cultural forces produce such similarity in the descriptions of the Orient to be found in Cromer, Balfour, and our contemporary statesman?]

Said’s question is no less relevant when asked in regards to the American courts’ enterprise of arbitrarily determining the racial identity of Arabs. In this instance, Said’s query is best asked in halves: First, what specialized skills do American judges possess that qualify their unfettered authority to determine racial and ethnic classifications or affiliations; and second, what institutions and traditions, cultural forces, and imaginative stimuli influence the judge’s ultimate determinations? American political and judicial leaders, like the classical Orientalists Said exposes, have assembled images of the “Middle Easterner” based purely on ideological groupthink and political rationalism, and not coincidentally, neo-Orientalist intellectuals, today pegged “Middle Eastern experts,” led by Princeton’s Bernard Lewis, Harvard’s Samuel P. Huntington, and Johns Hopkins’ Fouad Ajami.

Following September 11th, scholarship examining the Middle East, Islam, Arabs and any tangentially linked subject naturally proliferated, becoming an intellectual fad and goldmine attracting scholars with little knowledge of the areas they tackled. Ironically, this phenomenon extended the Orientalist tradition Said critiqued, and resulted in popular scholarship that only perpetuated, and oftentimes intensified, damaging stereotypes, misconceptions and tropes associated with Arabs. One realm where this has not been the case is within legal scholarship, which did not experience the scholarly production nor coverage expected after September 11th, although the implications and political aftermath were acutely legal in character. More specifically, perhaps the most alarming dearth in post-9/11 legal scholarly production is the

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51 Ibid.
examination, and deconstruction, of legal and popular representations of the Arab American: a demographic that simultaneously occupies conflicting sociopolitical positions, and is arguably the most vilified yet misunderstood community in America. Until very recently, roughly six years after the attacks on the symbolic manifestations of American economic and governmental hegemony, has comprehensive attention been given to engaging law and society’s understanding of these subjects.

John Tehranian’s seminal piece, “Compulsory Whiteness: Toward a Middle Eastern Legal Scholarship,” masterfully examines the oft conflicting and sporadic legal and social representations of Americans originating from the Middle East: 52

Individuals of Middle Eastern descent are caught in a racial catch-22. Through a bizarre fiction, the state has adopted the uniform and mandatory classification of all individuals of Middle Eastern descent as white. On paper, therefore, they appear no different than the blue-eyed, blonde-haired individual of Scandinavian descent... All the while, reality does not mesh with the bureaucratic characterizations of Middle Eastern individuals as white. On the street, individuals of Middle Eastern descent suffer from the types of discrimination and racial animus endured by recognized minority groups. Middle Eastern individuals have endured increasing levels of vilification and demonization in recent years, especially in the wake of the war on terrorism and the 9/11 attacks. 53

Tehranian’s analysis is both comprehensive and poignant, yet his fatal misstep is failing to carefully define, and present to the reader, the multitude of peoples encompassed by the broad, generic and problematic “Middle East” banner. This piece aims to take Tehranian’s work one step further, by specifically unraveling the most commonly deployed misconceptions and misconstructions of the Arab American. Tehranian, too casually, adopts the “Middle East” as his preferred ethnic or racial label, a baseline that not only legitimates the Orientalist conflation of Arabs with Turks and Iranians (and so forth), 54 but also adopts a Western geographical designation as a proxy for ethnicity, race, and culture. By doing so, Tehranian perpetuates the myth that the diverse range of ethnic groups from the Middle East are, in fact, a monolith. To

52 Tehranian, supra note 8, at 3.
53 Tehranian, supra note 8, at 3.
54 Samhan, supra note 1, at 9. This conflation was formally codified during the initial wave of Arab immigrants, “[A]ccording to nineteenth century immigration categories, the first wave of immigrants from the Ottoman provinces of Syria, Mount Lebanon and Palestine were classified along with other Ottoman subjects as originating from “Turkey in Asia.”
call or label one a “Middle Eastern” informs little besides vague geographical origin, and neglects to substantiate the individuals subject’s salient identity markers. Moreover, to adopt and engage hollow identity labels is to empower and validate them, and in turn, reify the damaging essentialization of the diverse peoples originating from the “Middle East.” Leveraging the term to indicate a geographic designation is legitimate because it has become common political and lay colloquial, but converting it into a wholesale ethnic or racial super-group disserves the very communities it encompasses.

I commend, and echo, Tehranian’s call for a Middle Eastern Legal Scholarship, but a formal initiation of that movement must be preceded by a comprehensive and candid analysis of the independent ethnic/racial identities of its subjects. Again, to posit that the “Middle Eastern” label is a racial/ethnic one is both inaccurate and epistemologically negligent, but to leverage it as a generic banner seeking to articulate a common sociopolitical narrative, post-9/11, is logical. This critique is less fueled by political correctness than it is by an engrained sensitivity shared not only by Arab Americans such as myself, but other communities of color routinely clumped up with other because of shared traits or norms. Moreover, this sensitivity is fueled by a concern that the reader of this piece specifically, and the public at large, ultimately appreciates and is able to distinguish an Arab, from a Muslim, from an Iranian, from a Turk, and from a “Middle Easterner.”

As identified by Tehranian, Americans of Turkish and Iranian descent are located within the confines of the Middle East. In addition, the region also encompasses a host of other non-Arab groupings that technically, can be identified as Middle Eastern, including Israelis.

55 Tehranian, supra note 8, at 4, “[I] appeal to the legal academy to launch a dialogue, in both its law review literature and in the classrooms, on the particular issues facing the Middle Eastern population, particularly in the post-9/11 environment… this article takes a simple, though radical, step calling for the development of a Middle Eastern legal scholarship and advocating the steps necessary to facilitate the new wave of work in critical race theory.”

56 The State of Israel was established in 1948.
Kurds, Assyrians, Chaldeans, Coptic Egyptians, and Turkmen. Although many of these groups have, to varying degrees, experienced cultural and linguistic immersion with Arabs, they generally assert their ethnic distinctness and reject being considered Arab. This tension plays out in America as well. In metro-Detroit, for instance, home to the country’s most concentrated Arab American and Chaldean communities, both groups are routinely mistaken for the other and, generally, do not welcome the association.

VI. THE ANATOMY OF THE TERRORIST, AND OTHER STEREOTYPES LEVELLED AGAINST ARAB AMERICANS

The Virginia Tech Massacre, which claimed over thirty lives and affirmed that the American college campus itself was not safe from terror, was the most significant act of terrorism on American soil since 9/11. Yet, the mainstream American media refused to frame it as an act of terrorism, and therefore, April 16th or 4-16 will, years later, be memorialized as an incident capturing neither the American consciousness nor colloquial like 9-11. On that Monday morning in April, I could not help but meticulously analyze the CNN’s or Fox News’s coverage of the murders on the Blacksburg campus, and found it both puzzling and unsettling that these violent murders were, not once, classified as act of terrorism. This was reminiscent of the media

57 The Kurds are an independent ethnic minority whom populate modern-day Turkey, Syria, Iraq, and other neighboring states. Kurds are generally Sunni Muslim, and speak Kurdish. Kurds are among the most persecuted peoples in the Middle East, particularly in Turkey and Iraq, where both governments have historically been involved in the systematic disenfranchisement and, in countless instances, mass killings, of their Kurdish communities. Nashville and San Diego boast the country’s most concentrated, Kurdish American communities.

58 Assyrians are a distinct ethnic community that come from modern-day Syria. Chaldeans are an ethnic minority group originating from modern-day Iraq. They overwhelmingly practice Catholicism, and have a native language also called Chaldean. Metro-Detroit and the greater San Diego area are both home to the United State’s most concentrated Chaldean communities.

59 Many Coptic Egyptians, who speak Arabic, do not welcome their affiliation as Arab. The United States is home to a number of considerable Coptic communities, near Detroit, Los Angeles, and New York City. Coptic Egyptians practice a brand of Orthodox Christianity, and are an established but historically persecuted minority in Egypt.

reporting around the Oklahoma City bombing in 1995, when Timothy McVeigh carried out the
design of the Michigan militia, and proceeded to murder more than eighty people. The
mainstream media hastily linked the attacks to Arab or Muslim terrorists. However, when the
culprit was identified as a young, Caucasian male from the Midwest, the terrorist rhetoric was
immediately redacted from the news coverage. Twelve years later, this phenomenon was
repeated when the Virginia gunman’s identity was unveiled.

McVeigh and Heung-Sui undeniably wrought terror on the victims that fateful day in
Oklahoma City, and also spurred further debate on the state of national security in the United
States. However, these events were not referred to, or treated as acts of terrorism. In addition,
the culprits were seldom identified not handled like terrorists. Hence, begging the questions:
When does an act of terror, in purely Websterian denotative terms, transition into today’s
formalization of terrorism? Is the latter hallmarked by an either a political motive or objective?
Does the determination hinge on the targeted victim? Or, is the identity of the culprit the salient
variable? Each is surely crucial, yet the last query is inarguably the most pivotal, as evidenced
by a string of violent acts taking place on American soil in recent years. On that Monday
morning in April, I sat in front of the television hoping to myself that the killer was not an Arab,
this time assured by the surprising absence of the words “terrorist” and “terrorism” in the news
coverage. An injection of the word terrorism, or its other variations, in the reporting formally
linked an act to a specific demographic: namely, Arabs or Muslims

The only form of racial animus openly tolerated today in the United States is racism
toward Arab Americans. America’s message today, in this post-9/11 geopolitical landscape, is
rather clear: to hate an Arab is to be patriotic, “[A]fter 9/11, people who looked Middle Eastern

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suffered a wide variety of discrimination and harassment. Before 9/11, 80% of the American population opposed racial profiling. After 9/11, 60% of the public said that racial profiling was acceptable, especially if the profiling targeted Arabs.\(^6^5\)

Popular representations of the Arab in America can be generally reduced into three primary caricatures: the West-loathing terrorist; the Islamic fundamentalist; and historically more relevant, the greedy oil sheik bent on leveraging his bounty to exploit the West’s dependence, or masterminding a plot to buy up American parcel by parcel (a conspiracy later linked to Japanese businessmen in the ‘80’s).\(^6^6\) The respective prominence and frequency of these caricatures can most easily be determined by the primary American policy objective of the day in the Arab World.

In the 1970’s, the United States’ principal rival was the transnational petroleum collective, OPEC, composed in part by several Arab and Muslim countries. Reflecting Washington’s tension with OPEC, news media and film chiefly caricatured Arabs as white-cloth garbed, greedy anti-Americans bent on squeezing every dollar out of gasoline consumers, and indiscriminately equated OPEC with Arab. In his seminal work, the “TV Arab,” Jack Shaheen wrote:

\[\text{[F]or many Americans, the acronym OPEC means Arab with a negative connotation, but in reality only about half of OPEC’s members are Arab nations. Yet, on television and in the public eye, the Organization of Petroleum Exporting Countries (OPEC) has become synonymous with Arab… Some television commercials also play upon national frustrations by citing OPEC members as the cause for inflation… When TV anchors say “OPEC,” viewers often see a bearded, robed Arab appear on the screen.}\(^6^7\)

Naturally, these caricatures constructed an Arab that embodied the perfect American foil: dressed in traditional Bedouin attire, with tanned skin, Muslim, excessively wealthy, sexist

\(^6^5\) Saloom, supra note 9, at 69.

\(^6^6\) Jack Shaheen, “The TV Arab,” Bowling Green State University Popular Press (1984). “[A] 60 Minutes segment – ‘The $600 Million Man’ – contends that Arabs, especially Saudis, are buying up America. In the January 1977 program teaser, Morley Safer remarks that ‘Arab investment (in the U.S.) has now passed twenty billion’… The Los Angeles Times and the Washington Post have printed that the leading investors in American property are the Dutch, British, Canadians, Germans, Swiss, French and Japanese, in that order.”

\(^6^7\) The TV Arab, supra note 66, at 14.
and polygamous, and utterly foreign. Following the 1970’s oil rivalry with OPEC was the decade’s powder-keg event, the Islamic Revolution in Iran, in which the Ayatollah Khomeini unseated the Shah Reza Khan, America’s then closest ally in the region. Iranians, whom speak Farsi and are culturally distinct, were nevertheless identified as “Arabs” by not only by lay Americans but also academic circles and popular media channels. Again, anything Muslim was popularly thought to be Arab, and vice-versa. Responding to its anger with the unseating of its close ally and the defiance of Iran’s new government, Washington branded Khomeini as its new arch-nemesis, and the media followed suit.

The events of the 1990’s, climaxing with the World Trade Center attack of 1993 and the Oklahoma City bombing in 1996, officially established terrorism, and the Arab, as American’s new menace. Timothy McVeigh, a blue-eyed, blond-haired fundamentalist of a different sort, wrought terror in Oklahoma City, yet the media instantly reported it a product of Arab design. After McVeigh’s conviction, however, and even several years later at Columbine, terrorism was not once linked in racial terms. Rather, these “white acts of terrorism” were pegged consequences of teenage angst, a bad childhood, or dysfunctional families. With the geopolitical shift brought about the dismemberment of the Soviet Union and the fall of communism as a

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68 Tehranian, supra note 8, at 26, where Tehranian similarly recollects, “[M]y dad, who grew up in Eisenhower’s America, often reminisces at how enthralled people used to be with his ethnic background… Harems and sheiks, Persians carpets and camels, oases and deserts constituted predominant images of the Middle East in the American mindset. No one thought of fundamentalism and terrorism back then.”

69 Shaheen, supra note 66, at 15, “[I]ranians are Arabs. No, Iranians are Persians. But nearly everyone I interviewed thought Iranians are Arabs. Iranian are primarily Aryans who moved onto the Persian plateau in the 17th Century B.C… Iranians do not speak Arabic, they speak Farsi, an Indo-European tongue that shares several common characteristics with Western European languages.”

70 Ibid at 15, “[M]any educated people confuse the Arab world with the Moslem world. Geographically, Arab countries stretch along Northern Africa and into the Middle East. But the Moslem world overlaps the Arab world and stretches far beyond to most of Africa continuing eastward through India, Indonesia and the Philippines. Not all of the Arab world’s… people are Moslem, though many, of course, are both.”

71 Tehranian, supra note 8, at 34. “[I]nterestingly, however, the response to the Oklahoma City Bombing, and the problem of domestic terrorism, had no racial bent. ‘Timothy McVeigh did not produce a discourse about good whites and bad whites, because we think of him as an individual deviant, a bad actor,” notes Leti Volpp. ‘We do not think of his actions as representative of an entire racial group. This is part and parcel of how racial subordination functions, to understand nonwhites as directed by group-based determinism but whites as individuals. For example, anti-abortion bombers are not identified on the basis of their race (often white) or their religion (often Christian), and they are certainly not billed terrorists. When a Christian individual of European descent commits a barbaric act against civilians, he is simply an outlier, a crazed lone gunman.”
competing political ideology, Islam/terrorism succeeded it the new evil empire and American antithesis.

CONCLUSION

The current American sociopolitical climate has birthed one of the most definitive elements of the Arab American narrative and identity: the collective fear experienced between those seemingly endless moments when disaster takes place and the culprits are finally unveiled. Every Arab American, regardless of nationality, religion or degree of assimilation, shares in that existential journey praying that the villain is not an Arab. There will be more of the seemingly routine mornings, interrupted by societal crisis, which will haunt Arab Americans. During those frozen moments, when Arab Americans watch news accounts of what took place at Virginia Tech or Northern Illinois University, their collective breaths will be held, hoping the act of terror was not undertaken by an Arab.

Moreover, Arab Americans exist between an alleged civilization divide bridged only by a hyphen or blank-space, fearing that at any instant the latter half can be immediately stripped, hence leaving them as only Arabs – or, in geopolitical terms, the enemy. Much of this stems directly from the conflicting and incoherent formal classifications of Arab Americans. On one hand, Arab Americans are designated as white by the OMB, while the current “war on terrorism” and the principal government agencies invested in it position Arabs Americans as the civilizational and normative antithesis of whiteness. If the federal government, whether it be legislature or the courts, are going to continually serve as the unilateral arbiters of racial identity, Arab Americans will likely continue to be colored in two radically different shades: white, yet “other.”. Considering that the OMB has routinely prohibited the participation of Arab Americans in helping craft a more accurate formal representation of themselves, and with

American investment in the “war on terror” increasing by the day, the avenues for reforming the status quo are extremely limited. Therefore, a pluralistic and authentic reclamation of determining Arab American identity must be had. Legal scholarship, particularly through the Critical Race tradition, furnishes the most fitting platform to not only critique hegemonic impositions of identity, but also organically offer authentic renditions aimed at replacing them.