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Selective Racialization: Middle-Eastern American Identity and the Faustian Pact with Whiteness

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Drawing on Charles Lawrence's insights on the power of unconscious racism, John Tehranian examines the social mechanisms that have fueled discrimination against Middle-Eastern Americans and exacerbated their relative invisibility in the body politic and the civil rights movement. Tehranian begins by examining the continued societal relevance of the concept of whiteness, analyzing the construction of a distinct Middle-Eastern taxonomy, and charting the transformation of Middle-Eastern Americans in the public imagination from friendly foreigners to a veritable enemy race. Dissecting the negotiation of Middle-Eastern racial identity, Tehranian argues that Middle-Eastern Americans are subject to a two-fold, and frequently unconscious, process that has fostered their relative invisibility and absence from the civil rights dialogue. On one hand, society has selectively racialized individuals of Middle-Eastern descent, thereby unleashing a pernicious stereotyping feedback loop that ossifies negative connotations associated with the group and accentuates the sense of their Otherness. On the other hand, many Middle-Eastern Americans have adopted assimilatory covering measures to downplay their Otherness in the eyes of society. In the process, they have made a Faustian pact with whiteness—both as an unconscious response to and strategic tactic against the forces of racism. Taken as a whole, these forces have simultaneously enabled Middle Easterners to avoid discrimination at an individual level but lessened the ability of the community, as a whole, to systematically fight invidious discrimination and stereotyping in the long term.

ARTICLE CONTENTS

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JOHN TEHRANIAN*

I. INTRODUCTION

In his landmark article published two decades ago, civil rights scholar Charles Lawrence advanced a powerful critique of equal protection jurisprudence and its problematic immunization of unconscious racism from judicial scrutiny.[1] Under existing Supreme Court precedent, of course, plaintiffs cannot raise a cognizable equal protection claim unless they establish that the government purposefully sought to discriminate against a protected group.[2] This intent requirement, argues Lawrence, has rendered our civil rights laws wholly inadequate to fight the pernicious systemic racism that pervades our society. As Lawrence explains,

> Americans share a common historical and cultural heritage in which racism has played and still plays a dominant role. . . . [This] culture—including, for example, the media and an individual's parents, peers, and authority figures—transmits certain beliefs and preferences . . . [that] seem part of the individual's rational ordering of her perceptions of the world.[3]

Lawrence, therefore, warns us that, by limiting the remedial powers of courts to only those government policies that stem from overt animus, we ignore our broader culture of unconscious racism, its role in shaping our institutions and its profound impact on our social, political and economic lives.

The immediate thrust of Lawrence's article deals with the equal protection doctrine. However, Lawrence's core insight has wider

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[1] Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987).

[2] *See, e.g.*, Washington v. Davis, 426 U.S. 229 (1976) (setting forth the modern discriminatory intent-and-impact requirement).

[3] Lawrence, *supra* note 1, at 322–23.

implications: to truly eradicate discrimination from our society, we must remedy both intentional and unconscious racism. To accomplish this task, we must scrutinize all forms of unintentional racism, including the social processes by which stereotypes are formed, transmitted and perpetuated. This Article draws on the wisdom of Lawrence and focuses on a particular conundrum given scant attention by critical race theorists: the identification and racialization of Middle-Eastern Americans.

The Middle Eastern question lies at the heart of the most pressing issues of our time—the on-going conflicts in the region and the war on terror(ism), the delicate balancing act between preserving our national security interests and protecting our constitutional rights and civil liberties, and the debate over immigration, assimilation and our national identity. Yet, paradoxically enough, little attention is focused on our domestic middle-eastern population and its place in American society. Within our nation's racial hierarchy, individuals of Middle Eastern descent have found themselves on the dividing line. On one hand, they suffer from the types of discrimination that face minority groups. On the other hand, formally speaking, Middle Easterners are deemed white by law.[4] This dualistic and contested ontology of the Middle Eastern racial condition creates an unusual paradox. Reified as the other, Americans of Middle Eastern descent do not enjoy the benefits of white privilege. Yet, as white under the law, they are denied the fruits of remedial action. Moreover, this tack has grown increasingly untenable as public and private discrimination against Middle Easterners has increased dramatically in recent years—a fact highlighted by recent targeted immigration policies, racial profiling, a war on terrorism with a decided racialist bent, and growing rates of job discrimination and hate crime.

This Article applies Lawrence's insights on the power of unconscious

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[4] *See* 28 C.F.R. § 42.402(e)(5) (2007) (defining white as, "A person having origins in any of the original people of Europe, North Africa or the Middle East."); EQUAL EMP. OPPORTUNITY COMM'N, DIRECTIVE NO. 915.003, EEOC COMPLIANCE MANUAL, SECTION 15: RACE & COLOR DISCRIMINATION 15-3 (2006), *available at* http://www.eeoc.gov/policy/docs/race-color.pdf (adopting the Office of Management and Budget's five racial categories, which do not provide a distinct category for Middle Eastern Americans); U.S. CENSUS BUREAU, QUESTIONS AND ANSWERS FOR CENSUS 2000 DATA ON RACE (2001), *available at* http://www.census.gov/Press-Release/www/2001/raceqandas.html (not including Middle Eastern as a category for civil rights monitoring and enforcement by the Office of Management and Budget); U.S. EQUAL EMP. OPPORTUNITY COMM'N, INTRODUCTION TO RACE AND ETHNIC (HISPANIC ORIGIN) DATA FOR THE CENSUS 2000 SPECIAL EEO FILE, *available at* http://www.eeoc.gov/stats/census/race_ethnic_data.html (last visited Feb. 25, 2008) (defining the White category as not Hispanic or Latino); DEP'T OF DEF., DIRECTIVE NO. 1440.1, THE DOD CIVILIAN EQUAL EMPLOYMENT OPPORTUNITY (EEO) PROGRAM (1987), *available at* http://www.dtic.mil/whs/directives/corres/pdf/144001p.pdf (defining white as any person having origins in any of the original peoples of Europe, North Africa, or the Middle East); U.S. OFFICE OF MGMT. & BUDGET, DIRECTIVE NO. 15, RACE AND ETHNIC STANDARDS FOR FEDERAL STATISTICS AND ADMINISTRATIVE REPORTING (1977) , *available at* http://wonder.cdc.gov/wonder/help/populations/bridged-race/Directive15.html (defining white as a person having origins in any of the countries of Europe, North Africa, or the Middle East).

racism to examine the social mechanisms that have exacerbated the rising tide of discrimination against Middle-Eastern Americans, fueled their relative invisibility in the body politic and civil society, and frustrated any semblance of a civil rights movement for them. To this effect, Part II begins by examining the continued relevance of the concept of whiteness in American society. Building on this analysis, Parts III documents the invention of a distinct Middle-Eastern identity and Part IV assesses the precarious position of Middle-Eastern Americans at the periphery of whiteness and charts their transformation in the public imagination from friendly foreigners to enemy aliens, and from enemy aliens to a veritable enemy race. Part V then dissects the mechanisms at work in the negotiation of Middle-Eastern racial identity. Middle-Eastern Americans are subject to a two-fold, and frequently unconscious, process that has fostered their relative invisibility and absence from the civil rights dialogue. On one hand, society at large has selectively racialized individuals of Middle-Eastern descent, thereby unleashing a pernicious stereotyping feedback loop that ossifies the negative connotations associated with the group and the prevalent sense of their Otherness. On the other hand, many Middle-Eastern Americans have adopted assimilatory covering measures to downplay their Otherness in the eyes of society. In the process, they have made a Faustian pact with whiteness—both as an unconscious response to and strategic tactic against the forces of racism. Taken as a whole, these forces have simultaneously enabled Middle Easterners to avoid discrimination at an individual level but lessened the ability of the community, as a whole, to systematically fight invidious discrimination and stereotyping in the long term.

II. THE CONTINUING WAGES OF WHITENESS

In addressing the construction of Middle-Eastern identity, it is instructive to begin with an examination of the importance of racial hierarchy in American history, especially for those who, like Middle-Eastern Americans, fall outside of the traditional white-black paradigm. For years, the concept of whiteness has mediated the provision of rights, down to the very notion of citizenship. For example, until 1952, federal law provided naturalization rights only to individuals who were white or black, but nothing "in-between." The American legal system was forced to confront the task of defining what or who constituted the white race for the purposes of naturalization when, during the late nineteenth and early twentieth centuries, a wave of new immigration from non-Anglo-Saxon countries arrived on our shores. Litigation over the concept of whiteness resulted, yielding life-altering consequences. While the trials often grew senseless, "with judges delving into the depths of antiquity, reconstructing history, and spouting rigid ideologies in order to justify their rulings, the reification of whiteness had a profound impact on shaping the immigrant

experience in the United States."[5]

Specifically, the naturalization trials transformed whiteness into a material concept imbued with rights and privileges. Citizenship, of course, meant the franchise; whiteness, therefore, had important ramifications for the exercise of fundamental political rights. Only at the turn of the century did the inextricable nexus between citizenship and voting rights come into being. Although most of us conflate the term 'citizen' with 'voter,' the two concepts are not necessarily synonymous.[6] The Constitution itself does not prevent the enfranchisement of non-citizens in any election, be it federal, state or local. Contrary to the dominant practice today, many states routinely granted non-citizens the right to vote during the nation's infancy. As late as the nineteenth century, twenty-two states and territories extended the franchise to non-citizens.[7] With the outpouring of xenophobic fervor at the turn of the century and jingoistic sentiments during World War I, however, alien voting rights quickly disappeared.

The changing composition of the immigration pool, from northern and western Europeans to southern and eastern, precipitated a crisis of whiteness that challenged our national identity. Responding to increased anti-immigrant sentiments, Congress instituted a series of racially-grounded quotas meant to curtail the flow of these groups with dubious whiteness into the Republic.[8] Not to be outdone, state legislatures responded by revoking the right of these aliens to vote. Whiteness begat naturalization. And naturalization begat voting rights. Thus, whiteness became a virtual prerequisite for the franchise. In 1926, Arkansas became the final state to abandon alien suffrage.[9] Today, only a handful of localities, such as Takoma Park, Maryland and Cambridge, Massachusetts,

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[5] John Tehranian, *Performing Whiteness: Naturalization Litigation and the Construction of Racial Identity in America*, 109 YALE L.J. 817, 819 (2000); *see also* IAN HANEY LÓPEZ, WHITE BY LAW 7 (2006); ("[The] law does more than simply codify race in the limited sense of merely giving legal definition to pre-existing social categories. Instead, legislatures and courts have served not only to fix the boundaries of race . . . but also to define the content of racial identities and to specify their relative privilege or disadvantage in U.S. society.").

[6] Gerald M. Rosberg, *Aliens and Equal Protection: Why Not the Right to Vote?*, 75 MICH. L. REV 1092 (1977).

[7] Kiyoko Kamio Knapp, *The Rhetoric of Exclusion: The Art of Drawing a Line Between Aliens and Citizens*, 10 GEO. IMMIGR. L.J. 401, 405–06 (1996).

[8] A number of observers have questioned the decision to deny resident aliens the right to vote. Gerald Neuman, for example, highlights the fact that we continue to permit American citizens who reside in foreign countries to vote while denying that right to lawful permanent residents—individuals who pay taxes, contribute to the local economy, and actually have a physical presence within the United States borders. *See* GERALD L. NEUMAN, STRANGERS TO THE CONSTITUTION: IMMIGRANTS, BORDERS, AND FUNDAMENTAL LAW 63, 70–71 (1996). Gerald Rosberg also wonders whether there is any compelling justification to deny this fundamental right to aliens. Rosberg, *supra* note 6, at 1092–93. And, as David Cole has noted, the absence of a direct alien voice in American politics has limited the ability of aliens to challenge numerous policies of dubious constitutionality that target them. David Cole, *Enemy Aliens*, 54 STAN. L. REV. 953, 959 (2002).

[9] James B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage*, 141 U. PA. L. REV. 1391, 1397 (1993).

still grant non-citizens the right to vote.[10]

At the same time, whiteness affected social and economic rights. As Cheryl Harris argues, "[I]n the early years of the country, it was not the concept of race alone that operated to oppress Blacks and Indians; rather, it was the *interaction* between conceptions of race and property that played a critical role in establishing and maintaining racial and economic subordination."[11] Similarly, for immigrants of the late nineteenth and early twentieth centuries, the critical interaction between racial classifications (through the whiteness requirement for naturalization) and property played an instrumental part in the creation of socioeconomic hierarchies. In California, whiteness determined the limitations imposed on an immigrant's participation in the economy. The Alien Land Law, passed in 1920, and upheld as constitutional by the Supreme Court, prevented many non-citizens from owning property in the state.[12] Furthermore, other regulations restrained non-naturalized immigrants from exercising certain economic rights such as obtaining fishing or law licenses.[13] All told, the social, political and economic rights of new immigrants were intricately tied to racial definitions. Specifically, notions of whiteness affected who would be treated as property, who could own property and who would wield the social standing and power that is inextricably linked to property.

At first blush, a seemingly vestigial discussion about the relationship between whiteness and the exercise of rights may seem to lack contemporary relevance. To be sure, our reformed immigration laws no longer draw facial distinctions based on race, and the last half century has witnessed the end of many pernicious race-based practices, including segregation. Even in our more "enlightened" era, however, the concept of whiteness, and even *relative* whiteness, continues to carry tremendous

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[10] Jayanth K. Krishnan, *Mobilizing Immigrants*, 11 GEO. MASON L. REV. 695, 703 (2003).

[11] Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1716 (1993).

[12] Alien Property Initiative Act (Alien Land Law) of 1920, 1 Cal. Gen. Laws, Act 261 (Deering 1944 & Supp. 1949). *See* Porterfield v. Webb, 263 U.S. 225 (1923) (finding the California Alien Land Law classification of eligible aliens who had failed to declare their intention to become citizens of the United States not to be arbitrary or unreasonable). *See also* Morrison v. California, 291 U.S. 82 (1934) (upholding the California Alien Land Law's burden on defendants to prove citizenship once the government provides proof of race as not an impairment of immunities secured by the Constitution); Cockrill v. California, 268 U.S. 258 (1925) (finding that the California Alien Land Law and its prima facie presumptions did not violate the Constitution or the treaty obligations of the United States); Webb v. O'Brien, 263 U.S. 313 (1923) (finding it within the power of states to deny to ineligible aliens the privilege to use agricultural lands within its borders); Terrace v. Thompson, 263 U.S. 197 (1923) (finding the plaintiffs had no Fourteenth Amendment right to lease their land to aliens lawfully forbidden to take such a lease under the Washington Alien Land Law).

[13] *See* Takahashi v. Fish & Game Comm'n, 334 U.S. 410 (1948) (upholding as constitutional a California statute barring the issuance of a commercial fishing license to any person ineligible for citizenship); United States v. Pandit, 15 F.2d 285 (9th Cir. 1926) (upholding the removal of a law license from an attorney when it was learned that he had "illegally procured" citizenship since he was of Indian descent and therefore ineligible for naturalization).

weight, despite the rhetoric of race blindness that permeates public discourse. In short, whiteness still wields a profound unconscious influence in society.

To illustrate this point, I am reminded of several mock election spots from an episode of *Saturday Night Live* during the 1988 presidential race between George H.W. Bush and Michael Dukakis. In one scene, a map featuring Europe, North Africa and the Middle East appears on the screen. At the top left corner, above the Northern European countries, the heads of several presidents hover. The announcer—the omniscient voice of authority—informs us: "Franklin Delano Roosevelt was of white northern European heritage. Thomas Jefferson was of white northern European heritage. John F. Kennedy was of white northern European heritage. George Herbert Walker Bush is of white northern European heritage."[14] Then, with more than a hint of disdain, the announcer asks, "But Michael Dukakis?"[15] Dukakis's head then materializes just above the Mediterranean Sea. "Bush," concludes the spot, "He's whiter."[16] A second spot on the broadcast put another twist on the same theme by presenting a police line-up featuring various presidents: "John F. Kennedy was six-foot-one. Abraham Lincoln was six-foot-five. Franklin Delano Roosevelt was six-foot-one. George Bush is six-foot-two."[17] Then, after a pregnant pause, the announcer remarks in horror: "But Michael Dukakis is five-foot-five-and-a-half."[18] The conclusion is inevitable: "Bush. He's taller."[19]

With their wicked sarcasm, the fake advertisements highlighted a latent motif that was, in fact, embedded throughout the election campaign: our notion of what the commander-in-chief should look like and the racial subtext underlying that notion. Indeed, two pivotal moments—both imbued with the specter of racial politics—cost Dukakis the election.[20] Commentators have focused extensively on the racial dimensions of the first moment—the infamous Willie Horton attack advertisement. Under a program supported by Dukakis while he served as Massachusetts governor, Horton, a convicted African-American serving a life sentence without the possibility of parole for murder, enjoyed a weekend furlough during which he committed armed robbery and raped a woman. The advertisement, featuring Horton's dark visage, prominent Afro and unkempt beard, seized

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[14] *Saturday Night Live* (NBC television broadcast Oct. 22, 1988), *available at* http://snltranscripts.jt.org/88/88cbush3.html.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] Dukakis famously enjoyed a seventeen-point lead in the polls following the candidates respective conventions.

on Horton's menacing image—described by the advertisement's producer as "every suburban mother's greatest fear"[21]—to dramatically turn the electoral tide.

The second pivotal moment was more subtle in its racial undertones, but no less important. During a visit to the General Dynamics plant in Michigan, Dukakis took part in a photo opportunity to bolster his image on national security issues. The resulting image, which featured Dukakis atop an M1 Abrams tank donning a military helmet, resulted in an unmitigated public relations disaster and appeared to cement concerns about the fitness of Dukakis (who, ironically, was a U.S. Army veteran) to serve as the commander-in-chief. In many ways, the photographs were no less opportunistic or ridiculous than any other piece of contrived election propaganda commonly disseminated in the age of mass media. Nevertheless, something about Dukakis's image on the tank resonated with attacks on his ability to serve as our country's military leader. One cannot help but wonder whether the concerns ultimately had root in the presence of a diminutive, pileous and swarthy Mediterranean atop a military vehicle, instead of our accepted Anglo-Saxon image of leadership and might. In the end, the campaign raised serious questions about Dukakis's American-ness, patriotism (exacerbated by his Greek roots and his gubernatorial veto of a bill mandating the Pledge of Allegiance in public schools), toughness and capacity to adequately project our self-image to the world.[22] And these concerns ultimately translated into a landslide victory for the elder Bush.[23]

Besides these anecdotal tales, recent empirical evidence supports the profound and continuing salience of whiteness in our society. Quite simply, despite Panglossian assertions of its unimportance, color still matters and plays an on-going and critical role in the ability of individuals to succeed in the United States. In a groundbreaking study of the relationship between pigmentation and socioeconomic achievement among legal immigrants to the United States, Joni Hersch, a law and economics professor at Vanderbilt University, found that the average "light" skinned immigrant outearned her "dark" skinned equivalent by approximately seventeen percent, even when controlling for race, country of origin, English ability, education and occupation.[24] Perhaps most disturbingly of all, Hersch found that the detriment of a dark complexion was so significant that it sometimes wiped out any benefits accrued from educational attainment. As Hersch noted, "I thought that once we

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[21] Martin Schram, *The Making of Willie Horton*, THE NEW REPUBLIC, May 28, 1990, at 17.

[22] *Waving the Bloody Shirt*, NEWSWEEK, Nov. 21, 1988, at 116, *available at* LEXIS News Library, NWEEK File.

[23] *Id*.

[24] Joni Hersch, *Profiling the New Immigrant Worker: The Effects of Skin Color and Height* (Vanderbilt Law & Econ., Working Paper No. 07-02, 2008), *available at* http://ssrn.com/abstract=927038.

controlled for race and nationality, I expected the difference to go away, but even with people from the same country, the same race—skin color really matters."[25] The study added to a body of literature documenting the adverse impact of darker skin tone on earning rates and the continued importance of whiteness in the marketplace. For example, a 2006 study published in the *American Economic Review* found that, even among blacks, skin color had a substantial impact on wages. With all things being equal, lighter skinned black men significantly outearned their medium and darker skinned counterparts.[26]

A more recent study found profound race-based judgments taking place on a subconscious level. Vetting a vast, thirteen-year data pool capturing split-second decisions, a study of whistle-blowing in the National Basketball Association found that white referees called fouls at a greater rate against black players than against white players. The study also found that, although black officials called fouls more frequently against white players, rather than black players, the overall effect of this bias was less pronounced. All told, however, the unconscious factoring of race by referees was significant enough for the authors of the study to conclude that its impact "is large enough that the probability of a team winning is noticeably affected by the racial composition of the refereeing crew."[27]

One of the clearer examples of the psychic importance of whiteness to our society came in September 2002, when panicked headlines around the world proclaimed that the white race was headed towards extinction.[28] Citing a recently released report misattributed to the World Health Organization (WHO), the media announced that low rates of reproduction in European countries and increasing rates of intermarriage had led experts to predict that the last true blond would be born in 2022 in Finland. Blondes were, in the words of the BBC, "an endangered species."[29]

To the chagrin of the media, the study turned out to be a hoax.[30] Reports of whiteness's death were exaggerated and the disappearance of the blond gene had no proper scientific basis. While social trends may eventually render the category of whiteness meaningless, the widespread circulation of the false WHO findings and their almost alarmist resonance with the public highlight a continuing fact: the power of whiteness still

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[25] *Study: Immingrants' Skin Tone Affects Earnings*, MSNBC.COM, Jan. 26, 2007, *available at* http://www.msnbc.msn.com/id/16831909/.

[26] Arthur H. Goldsmith, Darrick Hamilton & William Darity, Jr., *Shades of Discrimination: Skin Tone and Wages*, 96 AM. ECON. REV. 242, 242–245 (2006).

[27] Joseph Price & Justin Wolfers, *Race Discrimination Among NBA Referees* 1 (Nat'l Bureau of Econ. Research, Working Paper No. 13206, 2007), *available at* http://bpp.wharton.upenn.edu/jwolfers/papers/nbarace.pdf.

[28] *Blondes 'to Die out in 200 Years'*, BBC, Sept. 27, 2002, *available at* http://news.bbc.co.uk/2/hi/health/2284783.stm.

[29] *Id.*

[30] Jo Casamento, *Disclosure*, SUNDAY TELEGRAPH, Aug. 3, 2003, at 87.

pervades our social, economic and political lives. All the while, however, the definition of whiteness remains as elusive as ever.

III. INVENTING THE MIDDLE EAST

It is within this context of racial hierarchy and social organization around a malleable concept of whiteness that the construction of Middle-Eastern racial identity has taken place. The term 'Middle East' likely emerged in the 1850s from Britain's India Office.[31] However, the term did not enjoy widespread usage in policy circles until the early twentieth century when it was used in the work of famed American naval strategist Admiral Alfred Thayer Mahan. In an article first published in September 1902, Mahan used the term 'Middle East' to refer to a region of growing strategic importance in the emerging conflict pitting Britain and the United States against Germany and Russia.[32] Mahan appeared to define that region as ranging on a north-south axis, from Turkey to the Arabian Peninsula, and, on an east-west axis, from Iran to Egypt. Thus, the designation was borne of geopolitical considerations and its construction wrought with semiotic meaning. As post-colonial theorist José Rabasa has written, a map "functions as a mirror of the world, not because the representation of the earth has the status of a natural sign, but because it aims to invoke a simulacrum of an always inaccessible totality by means of arrangement of symbols."[33] Just as race is a function of social construction, not inherent biology, the Middle East was invented from political considerations, not natural geography. This fact is made plain by the region's ostensible boundaries, which encompass at least part of the Northern coast of the African continent and typically stretch eastward as far as Iran (a non-Arab country, but one with sizeable oil reserves), but not into Afghanistan, Pakistan, and the Indian subcontinent.

The term 'Middle East,' therefore, appears to eschew the typical hallmarks of regional definitions, which are often based on continental, linguistic or perceived ethnic boundaries. Observes Sedat Laciner:

> This so-called region neighbors two oceans (Indian and Atlantic) and six seas (Mediterranean, Red Sea, Persian Gulf, Black Sea, Aegean Sea and the Caspian Sea). It extends to three continents (Africa, Asia and Europe). It consists of ten sub-regions (Southern and Northern Caucasus, Northern Africa, Arabia, Greater Palestine and Syria, Mesopotamia,

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[31] Clayton R. Koppes, *Captain Mahan, General Gordon, and the Origins of the Term 'Middle East'*, 12 MIDDLE EASTERN STUDIES 95, 95–96 (1976).

[32] A. T. Mahan, *The Persian Gulf and International Relations*, *in* RETROSPECT AND PROSPECT; STUDIES IN INTERNATIONAL RELATIONS, NAVAL AND POLITICAL 209, 237, 244–45 (1903).

[33] JOSE RABASA, INVENTING A-M-E-R-I-C-A: SPANISH HISTORIOGRAPHY AND THE FORMATION OF EUROCENTRISM 186 (1993).

> the Caspian Basin, Central Asia (Turkistan), Indian Peninsula. Three monotheistic religions (Islam, Christianity and Judaism), with their numerous sects and schools of thought, exist in this region. Thousands of religious and moral faith, including atheism and paganism, are practiced in this wide geography and thus, it is one of the largest laboratories of the world. Although viewed by the West as all-Arab, the region consists of tens of different ethnic-linguistic communities, with Turks, Arabs and Persians as the main ones.[34]

At the same time, the term is riddled in ambiguity, sometimes encompassing the entire North African coast, from Morocco to Egypt, and other parts of Africa, including the Sudan and Somalia, the former Soviet Union, Caucusus Republics of Georgia, Azerbaijan and Armenia, and occasionally Afghanistan, Pakistan and Turkistan. The Middle East is, therefore, a malleable geopolitical construct of relatively recent vintage.

Consequently, it was only in the past half century that the term began to refer to peoples of the region. For example, when the federal courts heard the racial prerequisite/naturalization cases in the first half of the twentieth century, they contemplated the whiteness of individuals of Lebanese, Syrian, Turkish, and Armenian descent. As I have documented elsewhere, the courts conducted conflicting analyses of their racial status, though, in the end, they usually judged them (just barely) white by law.[35] Yet, interestingly enough, the courts never once referred to the petitioners as Middle Easterners. Quite simply, they were never viewed as part of a Middle-Easterner collective.

A search of the Westlaw database of all reported federal and state court opinions reveals that there was not a single reference to the term 'Middle East' or 'Middle Eastern' until 1946, where a New York court referred to a "European Middle Eastern Service Medal and Victory Medal" given to veterans.[36] Other than scattered references to similar medals, the next mention of the 'Middle East' or 'Middle Eastern' came in a 1955 IRS dispute involving the taxation of an oil worker who had taken employment in numerous countries, including Saudi Arabia, Lebanon, Syria and Iraq. The Court synoptically referred to the work as having resided in "Near or Middle Eastern countries."[37] A 1956 breach-of-contract suit in which the U.S. government failed to deliver certain airplane technology to "the

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[34] Sedat Laciner, *Is There a Place Called 'the Middle East'*, TURKISH WKLY., June 2, 2006, *available at* http://www.turkishweekly.net/comments.php?id=2117#.

[35] *See* John Tehranian, *Compulsory Whiteness: Towards a Middle-Eastern Legal Scholarship*, 82 IND. L. J. 1, 11–17 (2007) (highlighting a series of cases in which the courts used varying standards in determining racial status).

[36] Fiore v. O'Connell, 66 N.Y.S.2d 173, 175 (N.Y. Sup. Ct. 1946).

[37] Larsen v. Comm'r of Internal Revenue, 23 T.C. 599, 601 (1955).

Middle East" lest it be used in regional conflicts contrary to American foreign-policy interest.[38] Finally, several federal suits in 1957 referred to "Middle Eastern oil."[39] As these cases make clear, early on, the Middle-Eastern designation arose in a geopolitical and oil-related context.

In a time-honored process, the racialization of individuals from Turkey, Iran and the Arab states as "Middle Eastern" has, therefore, served broader economic and political needs. In their influential work on the formation of race, Michael Omi and Howard Winant highlight the "sociohistorical process by which racial categories are created, inhabited, transformed, and destroyed."[40] For example, the utility of the plantation economy helped give rise to the southern hierarchy and its black-white divide based on skin color which supplanted an earlier hierarchy based on religious affiliation. As Richard Delgado reminds us, antiblack "prejudice sprang up with slavery. Previously, educated Europeans held generally positive attitudes toward Africans, recognizing the African civilization was highly advanced."[41] As slavery emerged, infantilization became commonplace in media portrayals, as blacks were stereotyped as buffoons unable to survive without the guidance of their masters. Blackface minstrelsy rose to popularity, in the guise of Sambo and other characters, conveying images of blacks as either "inept urban dandies or happy childlike slaves."[42] Following emancipation and the end of the Civil War, however, images became more ominous, with black men portrayed as rapists preying on white women and black women reduced to pliable domestic servants.[43] Stereotypes followed function, first legitimating slavery and later rationalizing lynching, segregation, imperialism and Jim Crow.

Since "conquering nations generally demonize their subjects in order to rationalize exploiting them,"[44] Latino and Asian stereotypes have undergone a similar trajectory. As Delgado notes, "Anglo settlers in California and the Southwest began to circulate notions of Mexican inferiority only when the settlers came to covet Mexican lands and mining claims."[45] Similarly, early portraits of the Chinese and Japanese cast them as comical and hapless, though they were happily tolerated for their contribution to the American workforce. As economic and assimilatory

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[38] Miller v. United States, 140 F. Supp. 789, 790, 792 (Ct. Cl. 1956).

[39] Waldron v. British Petroleum Co., 149 F. Supp. 830, 836 (S.D.N.Y. 1957); United States v. Standard Oil Co. of California, 155 F. Supp. 121, 127 (S.D.N.Y. 1957).

[40] MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES 55 (1994).

[41] Richard Delgado, *Two Ways to Think About Race: Reflections on the Id, the Ego, and Other Reformist Theories of Equal Protection,* 89 GEO. L.J. 2279, 2283 (2001).

[42] Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?* 77 CORNELL L. REV. 1258, 1262–63 (1992).

[43] *Id.*

[44] Delgado, *supra* note 41, at 2285.

[45] *Id* at 2283..

fears related to these groups heightened, however, Charlie Chan–like stereotypes transformed and gave rise to the clichéd image of the wily, scheming, and menacing "Oriental" criminal mastermind.[46]

Quite simply, concludes Delgado, "depictions vary depending on society's needs."[47] What, then, are we to make of the change in the status of Middle Easterners? It is hardly coincidence that it has occurred over the past generation—a time that has seen the Middle East rise to the forefront of global politics and economic importance due to its ample reserves of the great engine of industrialization: oil.

IV. THE MIDDLE EASTERNER AS THE OTHER: THE SLIPPERY SLOPE FROM FRIENDLY FOREIGNER TO ENEMY ALIEN, FROM ENEMY ALIEN TO ENEMY RACE

Inextricably intertwined with the rising tide of discrimination facing persons of Middle Eastern descent is the mythology surrounding racial construction and related religious and sociocultural perceptions. For prior generations, Americans of Middle Eastern descent came closer to matching our constructed notions of whiteness. They were largely Christian; they came from an exotic but friendly, romantic, and halcyon foreign land imagined to contain magic lanterns, genies, flying carpets, and belly dancers; and they served as a chief vessel of the philosophical and cultural heritage of the West.[48] Thus, in previous generations, people of (what we now call) Middle-Eastern descent were, more often than not, blended into the white category. When the Levant was perceived as a desert hinterland, irrelevant to Western interests, its people were not collectivized into a Middle-Eastern taxonomy. But once the region took upon geopolitical and economic significance, the Middle East leaped into existence as a concept imbued with social meaning. As James C. Scott has argued, the naming process is intricately related to exercise of power.[49] Specifically, the creation of synoptic categories represents an essential step in a state's nation-building process in that it advances the government's ability to track and control both its subjects and those who might pose a threat from without. Race comes into existence only when a group grows sufficiently large, in terms of both numbers and power, to become a threat.

In an era when we view the most immediate threat to our national

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[46] Delgado & Stefancic, *supra* note 42, at 1271-72.

[47] *Id.* at 2285–86.

[48] Of course, these romantic images have often served less than salutary ends, providing, as Edward Said has argued, implicit justification for colonial and imperial ambitions by the West towards the Middle East. *See* EDWARD SAID, ORIENTALISM (1978).

[49] JAMES C. SCOTT, SEEING LIKE A STATE 64–71 (1998); James C. Scott, John Tehranian & Jeremy Mathias, *The Production of Legal Identities Proper to States: The Case of the Permanent Family Surname*, 44 COMP. STUDS. IN SOC'Y & HIST. 4, 6 (2002).

security as emanating from the Middle East, it is not surprising that monolithic images of the "Middle East" and the "Middle Easterner" have come into being. Middle Easterners have been irretrievably associated with Islam; they appear to hail from a decidedly unfriendly foreign land imagined to contain nothing but terrorists, obstreperous mobs chanting "Death to America," unabashed misogynistic polygamists, and religious fundamentalists; and they seem to represent a wholly different civilization from our own—one with which the inevitable and apocalyptic clash of civilizations is unfolding.[50] Thus, they are the quintessential Other and the Middle Easterner category, imposed on them by society at large, has become their appellation.

In popular perception, where the notion of assimilability constitutes the sine qua non of the majority's acceptance of an immigrant group, it is not surprising that Middle Easterners have fared poorly in recent years. As Karen Engle has noted, the past century has witnessed a radical transformation in majority perceptions of Middle Eastern individuals: they are, in short, no longer thought capable of assimilation.[51] The changing religious composition of Middle Eastern immigrants to the United States has played a key role in this transformation. As the naturalization cases make clear, perceptions of race are frequently conflated with perceptions of religion. In 1924, about 200,000 Arabs resided in the United States; eighty percent of them were from Syria and Lebanon, of which a startling ninety percent were Christian.[52] Many of these immigrants had fled oppression and persecution under the Ottoman Empire.[53] Indeed, an early study of the emerging Syrian and Lebanese community at the turn of the century in New York City found that only two of 2482 residents were Muslim.[54] As the author of the study noted, "[t]he Moslems, Druses and Metâwely are not found in sufficient numbers to warrant more than passing mention."[55]

Given the tendency to conflate race with religious affiliation, and Christianity with assimilability, it is not surprising that, at the beginning of the twentieth century, courts declared Armenians, and even some Arabs, white by law and entitled to the privileges of whiteness, including naturalization.[56] However, the composition of the Middle-Eastern

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[50] SAMUEL P. HUNTINGTON, THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER 249 (1996).

[51] *See* Karen Engle, *Constructing Good Aliens and Good Citizens: Legitimizing the War on Terror(ism)*, 75 U. COLO. L. REV. 59, 75 (2004) (discussing the stereotyping of Middle Easterners as religious extremists and terrorists incapable of assimilation in the United States).

[52] LOUISE CAINKAR, THE HISTORY OF ARAB IMMIGRATION TO THE U.S.: AN INTRODUCTION FOR HIGH SCHOOL STUDENTS (2000), *available at* http://www.adc.org/education/AAImmigration.htm.

[53] LUCIUS HOPKINS MILLER, A STUDY OF THE SYRIAN POPULATION OF GREATER NEW YORK 5 (1904).

[54] *Id.* at 22.

[55] *Id.* at 25.

[56] *See* Tehranian, *Compulsory Whiteness*, *supra* note 37, at 11 (discussing cases of Armenians who were deemed white by law).

American population has undergone a dramatic change in recent years, especially in the public imagination. Contrary to popular perceptions, only twenty-three percent of present-day Arab-Americans are Muslim.[57] However, about sixty percent of Arab immigrants arriving in the United States since 1965 identify themselves as Muslim.[58] The Middle Eastern population of the United States is, therefore, growing less Christian. As a result, it is perceived as considerably less capable of assimilation and, consequently, less white.[59]

As faith in their assimilatory capacity has diminished, Middle Easterners have come to represent enemy aliens, and even an enemy race, in the popular imagination. In the past, the paradigmatic non-citizen was the "Mexican illegal alien, or the inscrutable, clannish Asian."[60] Today, it is the Arab terrorist, and this vision has firmly taken hold of our immigration policies. As Victor Romero argues, "post-9/11, the age-old stereotype of the foreign, Arab terrorist has been rekindled, and placing our immigration functions under the auspices of an executive department charged with 'homeland security' reinforces the idea that immigrants are terrorists."[61] The recent wave of registration and deportation policies aimed at individuals of Middle Eastern descent also highlights this trend. Take, for example, the National Security Entry-Exit Registration System (NSEERS), which was formally announced by the Attorney General on June 6, 2002, and then supplemented with a special "call-in" registration in November 2002. The NSEERS singles out a limited class of non-citizens—male, nonimmigrant visa holders over the age of sixteen who are from one of twenty-five Muslim and Middle Eastern countries—for special registration requirements. [62]

The changing perceptions of the Middle East are exemplified with a perusal through one of the earliest reflections on the Middle-Eastern population in the United States. At the turn of the twentieth century, Lucius Hopkins Miller, a Professor of Biblical Studies at Princeton University, published a study on the Arab community in New York City. His analysis—which sheds a generally positive light on these new immigrants, embraces their assimilability, and endorses their admission to the Republic—reflects certain stereotypes, both positive and negative, about Middle Easterners that seem quite ill-fitting with contemporary

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[57] Joyce Howard Price, *Census Counts 1.2 Million Arabs; Most of Them are Christians*, WASH. TIMES, Dec. 4, 2003, at A1, *available at* LEXIS, News Library, WTIMES File.

[58] Engle, *supra* note 48, at 74.

[59] *See infra* Part IV.

[60] Victor Romero, *Race, Immigration and the Department of Homeland Security*, 19 ST. JOHN'S J. LEGAL COMMENT. 51, 55 (2004).

[61] *Id.* at 52.

[62] *See* Nancy Murray, *Profiled: Arabs, Muslims, and the Post-9/11 Hunt for the "Enemy Within," in* CIVIL RIGHTS IN PERIL: THE TARGETING OF ARABS AND MUSLIMS 27, 44 (Elaine C. Hagopian ed., 2004).

perceptions. For example, Miller's strongest critique of Arabs is their allegedly well-known mendacity. Wholeheartedly acknowledging the duplicitous and perfidious ways of persons descending from the Middle East, Miller notes that:

> [A] main charge brought against the Syrian character is that of sharpness and deceit—a prevalent Oriental strain. Its existence is admitted in the Arabic proverb 'A lie is the salt of a man' and in the Arabic story of Satan's journey through the earth. With twelve packs of lies on his back, while crossing Mount Lebanon, he tripped and fell, spilling the contents of ten bags upon the land of Syria.[63]

Then, to temper the implications of this charge, Miller argues that Middle-Eastern chicanery is not inherent or congenital, but a symptom of circumstance:

> When it is remembered that in his own land the only alternative has often been 'lie or die,' it will be seen that Syrian deceitfulness has been largely nurtured by an adverse environment. In this he has shared with every downtrodden race in history. American residence should work improvement in this respect. . . . Nevertheless, the cold fact remains that the inability to tell the truth is the chief blot upon the Syrian immigrant's character.[64]

Interestingly enough, Miller also heaps a number of "positive" stereotypes—unusual by today's popular standards—on the Syrians, particularly emphasizing their law-abiding character. In remarkable language, Miller explains that:

> In his love of law and order the Syrian cannot be excelled. Personal inquiry at police stations and among patrolmen, as well as careful search in the reports of the Commissioners of Charities and Correction, failed to bring out the slightest flaw. The Syrians do not become public charges and they mind their own business. The universal testimony of the police authorities is that there is no more peaceful or law abiding race in New York [C]ity. The humane spirit is very strong among the Syrians. . . .[65]

Ironically, of course, at the turn of the next century, Middle Easterners would be perceived as the greatest threat to American

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[63] MILLER, *supra* note 48, at 41.
[64] *Id*.
[65] *Id.*

national security.

Perceptions of the humane spirit described by Miller resonated at least through the eve of the oil embargoes and the Middle-Eastern tumult of the 1970s. In an episode of the children's cartoon *Scooby Doo, Where Are You?* that aired in the late 1960s, for example, the gang takes pains to highlight the Persians' renowned for kindness, generosity and hospitality—a message scarcely conveyed by the mass media today. The Persian custom of "tarof"—an elaborate system of ceremonial politeness—was doubtlessly the inspiration for such a generalization.

Of course, events in the region have led to a dramatic change in media portrayals in recent years. The image of the Levant as an exotic and charming land has given way to a nightmarish vision of the Middle East as a dangerous and anarchic world teeming with perfidious oil sheiks, Islamic fundamentalists and maniacal terrorists.[66] We now consider the particular processes that have fueled this transformation.

V. THE NEGOTIATION OF MIDDLE-EASTERN IDENTITY: SELECTIVE RACIALIZATION AND COVERING

The negotiation of the Middle-Eastern identity is mediated by a two-fold process that moves both from the top down and from the bottom up. From the top down, society at large engages in a practice that can best be described as *selective racialization*. From the bottom up, Middle Easterners, both privileged and damned by their proximity to the white dividing line, engage in persistent (and frequently effective) covering of their ethnic background. These two social forces combine to create a pernicious stereotyping feedback loop that enervates the political strength of the Middle-Eastern community, heightens its invisibility and leaves little effective resistance to the growing assaults against its civil rights.

A. *A Theory of Selective Racialization*

With respect to individuals of Middle-Eastern descent, the act of identification and racialization is laden with tacit associations that fuel negative stereotypes. Specifically, in society at large, Middle Easterners are consistently subjected to a process of *selective racialization*. This largely undocumented and predominantly subconscious mechanism has profound ramifications. Systematically, famous individuals of Middle-Eastern descent are usually perceived as white. Meanwhile, *infamous* individuals of Middle-Eastern descent are usually categorized as Middle-Eastern. Thus, when Middle-Eastern actors conform to social norms and advance positive values and conduct, their racial identity as the Other

[66] *See* Tehranian, *Compulsory Whiteness*, *supra* note 37, at 27 (discussing changing media portrayals of the Middle East and Middle Easterners).

recedes to the background as they merge into the great white abyss. By contrast, when Middle-Eastern actors engage in transgressive behavior, their racial identity as the Other immediately becomes a central, defining characteristic of who they are. The result is an endless feedback loop that calcifies popular prejudices. Wholesome and socially redeeming activities that might otherwise subvert public misperceptions of the community do not get associated with Middle-Eastern identity. By contrast, the image of transgression is continually correlated with the Middle-Eastern racial category, serving only to reinforce negative connotations with the community.

Our country is filled with individuals of Middle-Eastern descent who have contributed constructively to American society; yet, surprisingly, few of these Americans are actually perceived of as Middle Easterners. Instead, their ethnicity is frequently whitewashed.[67] On one hand, this fact highlights the assimilability of Middle-Eastern immigrants in the United States. One the other hand, it creates a problematic signposting of Middle-Eastern identity when it becomes associated with transgressive activities.

The long list of Middle-Eastern Americans includes individuals from virtually every aspect of American life, including athletes, such as tennis player Andre Agassi (Persian/Armenian), Indy 500 champion Bobby Rahal (Lebanese), and NFL quarterbacks Doug Flutie and Jeff George (both Lebanese); entertainers, such as actresses Cher (Armenian), Kathy Najimi (Lebanese), Catherine Bell (half-Persian) and Gabrielle Anwar (half-Persian), actors Danny Thomas (Lebanese) and Tony Shalhoub (Lebanese), radio deejay Casy Kasem (Palestianian/Lebanese), and singer Paul Anka (Lebanese); prominent entrepreneurs such as hoteliers the Maloof family (Lebanese) and Apple CEO Steve Jobs (half-Syrian); and politicians and activists, such as former governor of New Hampshire and White House chief of staff John Sununu (Lebanese), former senator George Mitchell (half-Lebanese) and prominent consumer advocate and presidential candidate Ralph Nader (Lebanese/Egyptian). Even "good" Middle Easterners who are perceived as non-white are not racialized as Middle Eastern. For example, although they are both half Lebanese, neither Salma Hayek, a famous actress, nor Shakira, an internationally renowned singer, is identified as Middle Eastern. Instead, they are almost universally considered Latina.

On one hand, observers might point to the whitewashing of Americans of Middle-Eastern descent as evidence of our evolving colorblindness. But such an argument is belied by the systematic racialization of transgressive

[67] Such a tack might be innocuous if we truly lived in a race blind society where racial perceptions were unimportant and all individuals were dissolved into a single catch-all "human" category. However, the "selective" aspect of the racialization process betrays the notion of race blindness.

individuals. When individuals lie at the cusp of the white/non-white divide, we unconsciously categorize them as the Other when they engage in wrongdoing but blend them into the white when they behave within social norms. Andre Agassi is a (white) tennis player and Ralph Nader is a (white) politician. But Osama bin Laden is an Arab terrorist and the Ayatollah Khomeini was a Middle-Eastern Islamic fundamentalist. The act of selective racialization is by no means limited to geopolitical struggles. It occurs on a far more pedestrian, but nevertheless important, level. Take the case of Doti Al-Fayed, the wealthy businessman who was dating Princess Diana following her divorce from Prince Charles. The escapades of the two, rumored to be engaged at the time of their deaths, were the subject of extensive media coverage. Throughout their courtship, Al-Fayed was repeatedly portrayed as an *Arab* businessman and Middle-Eastern playboy—not merely an Englishman or a businessman without reference to his race. In other words, he was racialized. And the reason is clear: he was engaging in transgressive behavior, stealing away with the People's princess.

Other examples abound. Recently, Zenadine Zidane, a member of the French national soccer team, viciously head-butted Italian player Marco Materazzi in the finals of the 2006 World Cup. Zidane's violent outburst likely cost his team the championship and has gone down as one of the most infamous incidents in soccer history. While the incident sullied Zidane's previously untarnished reputation, it also did something else. It racialized Zidane in the United States. In the aftermath of the incident, Zidane went from simply being an otherwise ordinary native-born (white) Frenchman on the Gallican national soccer team to becoming an *Arab*. American media reports highlighted his Algerian roots. The racial subtext was all too clear—there was an implicit association of his apparent predilection for violence with his Arab background. He had brazenly violated social norms with his head-butt and, as such, had become a transgressor. Simultaneously, he went from being white to becoming the Other.

The process of selective racialization occurs with regularity in the mass media, serving to bolster existing stereotypes. Although all of the characters in the Middle-Eastern themed Disney film *Aladdin* share Arab descent, they are only selectively racialized. The chief wrongdoers—the greedy bazaar merchants, the thief Kazim and the main antagonist, Jafar—all possess exaggerated stereotypical features. Both Kazim and Jafar sport thick Arab accents, facial hair and prominent hooked noses. By contrast, the movie's sympathetic protagonists—Aladdin, Princess Jasmine and the Sultan—possess few of the features traditionally associated with Arabs. Instead, their physiognomy is quintessentially European, and they speak

with no trace of a Middle-Eastern accent.[68] In other words, the transgressive characters are Arabized, and the wholesome characters are Anglicized, thereby heightening negative stereotypes linked to Middle Easterners while simultaneously reinforcing positive associations with whiteness.

Another classic example of selective racialization comes from the sitcom *Alice*, which aired on CBS from 1976 to 1983. The show took place at a truck stop diner named after its affable proprietor, Mel Sharples, who was played by Vic Tayback, an Arab-American. Yet, Tayback's character was never racialized.[69] Quite simply, his heritage was whitewashed. Yet, this tack did not stop the show from catering to popular prejudices about Arabs during its run. In one episode, Flo, a mouthy blonde waitress, is approached by a lecherous oil sheik (played by Italian-American actor Richard Libertini) who wants to marry her in a thinly veiled attempt to add her to his harem as his fourth wife.[70] Thus, when presented with a natural opportunity to present someone of Arab descent in a normalized manner, the show demurred, selecting not to Arabize the Mel character. Nevertheless, producers did not hesitate to draw on clichéd images of the misogynistic and gluttonous Arab as a plotline. When approached by media critic Jack Shaheen as to why they never racialized Mel, the producers of the show stated that "stereotypes take a long time to wither away, and they did not want Mel to have a particular heritage."[71]

The phenomenon is not restricted to Middle Easterners, but can apply any time someone stands at the precipice of whiteness. In the world of baseball, Nomar Garciaparra, a former Boston Red Sox all-star, used to undergo a process of selective racialization with his hometown fans. Garciaparra, who is of Mexican descent, is often mistaken as Italian. Caught at the edge of the white divide, therefore, his racial affiliation remains contested and subject to unconscious public perceptions. Whenever he found himself in a particularly hot stretch of hitting, Bostonians would hail him mirthfully on the street, cheering him with the words "Hey paesano," a greeting popularized between Italian-Americans. Only when he lived up to his billing as the team captain and perennial all-star was he perceived as an Italian. When he was mired in a prolonged slump, by contrast, the public not only turned on him but also viewed him in different racial terms. All of a sudden, instead of being acknowledged

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[68] Scott J. Simon, *Arabs in Hollywood: An Undeserved Image*, LATENT IMAGE (1996), *available at* http://pages.emerson.edu/organizations/fas/latent_image/issues/1996-04/arabs.htm.

[69] *See* Narmeen El-Farra, *Arabs and the Media*, 1 J. MEDIA PSYCHOL. (1996), *available at* http://www.calstatela.edu/faculty/sfischo/Arabs.html (discussing how Tayback's Arab heritage was ignored).

[70] *Alice: Florence of Arabia* (CBS television broadcast Feb. 19, 1978).

[71] JACK G. SHAHEEN, THE TV ARAB 64–66 (1984); *see also* JACK G. SHAHEEN, REEL BAD ARABS: HOW HOLLYWOOD VILIFIES A PEOPLE (2003).

as a Paesano, he would be decried as a "stupid Mexican."[72] Through the process of selective racialization, the white continues to be imbued with positive associations, while the Other continues to endure negative connotations.

B. *Negotiating Middle Eastern Racial Status in the New America: Covering and Its Implications*

The development of a Middle-Eastern racial identity is not, however, an exclusively top down process, contrary to what the selective racialization process might suggest. Racial categorization, and the construction of its social meaning, is the result of an intricate series of negotiations spread over time and space. Definitions and associations are not only promulgated and imposed by the government or the public at-large; they are negotiated in the private sector as a part of the everyday conduct of individuals. And it is in this private arena that Middle Easterners themselves have played a critical role in actively encouraging recognition of their white status through such assimilatory behavior as covering. In the process, Middle Easterners have made a Faustian pact with whiteness—both as an unconscious response to and strategic tactic against the forces of racism. Covering has simultaneously enabled them to avoid discrimination at an individual level but lessened the ability of the community, as a whole, to systematically fight invidious discrimination and stereotyping in the long term.

Theorists have traditionally identified two forms of assimilatory behavior: conversion and passing. Conversion occurs in the act of trying to be something one is not. Passing is accomplished when one acknowledges one identity but nevertheless attempts to hide that identity. For example, in the context of sexual orientation, a gay man's adoption of a wholly straight lifestyle would constitute conversion. Passing, by contrast, might involve remaining gay but keeping one's sexual preferences entirely hidden from the outside world. In his recent work, Kenji Yoshino has added the concept of "covering" to the mix.[73]

Drawing from the work of Erving Goffman, who once observed "that persons who are ready to admit possession of a stigma . . . may nonetheless make a great effort to keep the stigma from looming large . . . ."[74] Yoshino calls attention to a rampant, though relatively unappreciated, consequence

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[72] *Jay Mohr Commentary*, Jim Rome Radio Program (2001) (Mohr commenting on his friend Nomar Garciaparra).

[73] *See* Kenji Yoshino, *Covering*, 111 YALE L. J. 769, 772–73 (2002) (examining three forms of assimilation--conversion, passing, and covering--and how assimilation can be an effect of discrimination as well as an evasion of it).

[74] ERVING GOFFMAN, STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY 12–13, 102 (1963).

of our national impulse towards assimilation—the covering of disfavored identities. Based on pressures to conform to social norms enforced by the dominant race and culture, a rational distaste for ostracism and social opprobrium can lead individuals to engage in the purposeful act of toning down traits that identify them with a stigmatized group. For example, someone who is a lesbian and says she is a lesbian engages in covering when she "makes it easy for others to disattend her orientation."[75] Specifically, she downplays aspects of her personality that may be associated with lesbianism. Yoshino then challenges the fundamental assumptions of the classic discrimination models by arguing that covering can be every bit as pernicious as two more widely recognized phenomena stemming from assimilationist demands: conversion[76] and passing.[77] Thus, he not only helps to define and assess the practice of covering, but he also calls into question our almost universal embrace of the salutary process of assimilation. Assimilation, he argues, can be both an "effect of discrimination as well as an evasion of it."[78]

Applying Yoshino's model in the Middle Eastern context is both revealing and instructive: what, after all, could be more coercively assimilationist than forcibly designating an entire population white de jure, while simultaneously treating that population as nonwhite de facto? Not surprisingly, Middle Easterners have sought refuge in covering as a strategic response to the discrimination they face.

In laying out his theory of covering, Yoshino argues that homosexuals are more able than both women and racial minorities to integrate themselves into mainstream American society. Though Yoshino eschews absolute distinctions, he nevertheless maintains that all three forms of assimilatory behavior—conversion, passing, and covering—are more available to homosexuals than racial minorities and women.[79] Although there may be general truth to this observation, this is not the case with respect to the Middle Eastern population, which lies on the cusp of the white/nonwhite divide. Like the gay population, and unlike most racial minorities and women, Middle Easterners have the "luxury" of significant covering in multiple ways, enabling them to perform whiteness and assimilate within mainstream American society, but at a cost to their identity, dignity and rights.

As with the gay population, therefore, the Middle Eastern population faces expectations that they engage in self-help to cover up or downplay their Middle Easternness. With the rising levels of intolerance and racial

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[75] Yoshino, *supra* note 73, at 772.

[76] *Id.* at 773, 776. Yoshino defines "conversion" as the alteration of one's identity. *Id.* at 772.

[77] *Id.* at 777, 781. Yoshino defines "passing" as the hiding, rather than alteration of one's underlying identity. *Id.* at 772.

[78] *Id.* at 772 (emphasis omitted).

[79] *Id.* at 926.

animus against Middle Easterners, this dramaturgical covering response constitutes a rational survival strategy. Yet, it has a pernicious side effect. The availability of covering (and passing and conversion) strategies makes organization as a group less likely. African Americans, Asian Americans and women, for example, have fewer assimilatory options and this lack of choice forces group solidarity because of their limited alternatives. By contrast, both the gay and Middle Eastern populations "enjoy" a wider breadth of potential responses to assimilatory pressures. In the short run, the promise of freedom from discrimination through mainstream performance inures to their individual benefit. In the long run, however, such responses prevent a group from coalescing around its common interests. Indeed, the much wider latitude of covering options available to both the gay and Middle Eastern populations might explain why both groups have been relative latecomers to the civil rights movement.

Largely due to the existence of distinctive phenotypic characteristics, many African Americans cannot pretend to be anything but African American and many Asian Americans cannot pretend to be anything but Asian American.[80] However, many Middle Easterners can opt out of their racial categorization. Middle Easterners are more prone to racial ambiguity because successive waves of diverse populations have passed through the Middle East, making it a veritable melting pot of racial mixing since antiquity. Since the stereotypical image of the Middle Easterner is much darker in skin, hair and eye color than the average Middle Easterner, those who naturally possess lighter skin, hair and eyes are particularly nimble in their covering. Either way, with the simple change of a revealing first or last name, many Middle Easterners can become Italian, French, Greek, Romanian, Indian, Mexican, Puerto Rican or Argentine.[81]

The gravitation toward covering is often irresistible, especially when it has such a power to simplify the lives of its purveyors. In the wake of 9/11, Middle Easterners throughout the United States felt under attack and responded with a series of rational covering responses just to survive the wave of hate surging throughout the country.[82] Lebanese and Persian restaurants conspicuously displayed "Proud to be American" signs over

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[80] There are certainly exceptions to this generalization, but I think it is fair to say that a determined individual of Middle Eastern descent would have a much easier time passing herself off as a member of a different ethnic or racial group, or engaging in the act of covering, than an individual of African or East Asian descent. It should be noted that many Latinos, because of their inextricably mixed heritage, also "enjoy" the option of passing—for better or worse.

[81] *See, e.g.*, Lorraine Ali, *Laughter's New Profile*, NEWSWEEK, Apr. 22, 2002, at 61, *available at* LEXIS, News Library, NWEEK File (quoting a line from a routine performed by an Iranian American comedian: "Since September 11, when people ask me about my ethnicity I look them straight in the eye and say, 'I'm Italian' . . . . We're all named Tony now.").

[82] Sunita Patel, *Performative Aspects of Race: "Arab, Muslim, and South Asian" Racial Formation After September 11*, 10 ASIAN PAC. AM. L.J. 61, 83–84 (2005) (describing many of the covering activities undertaken by individuals of Middle Eastern descent in the wake of 9/11).

their entrances. Cab drivers from the Middle East and South Asia decorated their vehicles with large American flags.[83] A series of hate crimes prompted many Muslim women and Sikh men to remove their head coverings out of fear of being perceived as Middle Eastern.[84]

Four paradigmic axes of covering—association, appearance, affiliation, and activism[85]—are prevalent in the Middle Eastern community. Take the phenomenon of association. As one associates more with the white, one better performs whiteness and is, therefore, perceived as more white. When I first moved to Newport Beach, California, the former hometown of John Wayne and an oceanside hamlet renowned as a bastion of wealth and white conservatism, a friend of mine joked, "Don't worry—I'll be your white sponsor." His wry comment had historical antecedents. A decade after Congress passed the Chinese Exclusion Act of 1882 prohibiting any new immigration from China, Chinese immigrants already residing in the United States had to prove up the legality of their presence by providing the testimony of "one credible *white* witness."[86] Mingling with the white is a powerful form of obtaining white bona fides.

In an illuminating passage from her essay *I Grew Up Thinking I Was White*, Iranian-American writer Gelareh Asayesh describes the associational covering that she undertakes to assimilate:

> My National Public Radio accent takes me further than my parents' voices, laden with inflections from a faraway land. The options may be limited when it comes to skin color, but it is possible to improve one's status in other ways. I think of it as race laundering: the right clothes, the right car, the right neighborhood can help compensate for that fundamental imperfection: nonwhiteness.[87]

Asayesh's reflections help to explain why Iranian-Americans—like many others trying to earn their white stripes—are so often concerned with projecting images of success and wealth. Iranian-Americans in Los Angeles are well known for making their homes in Beverly Hills, driving only a BMW or Mercedes, and dressing in the most high-priced designer fashions. For example, 1995's Alicia Silverstone vehicle *Clueless*, set in Beverly Hills, had an incisive and comical reference to the city's Persian residents. At one point, the lead character points away from the camera

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[83] *See, e.g.*, Muneer I. Ahmad, *A Rage Shared by Law: Post-September 11 Racial Violence as Crimes of Passion*, 92 CAL. L. REV. 1259, 1278–79 (2004); THE NEW YORKER, Nov. 5, 2001 (depicting on the cover a Sikh taxi driver whose cab is covered with American flags).

[84] Patel, *supra* note 82, at 84.

[85] KENJI YOSHINO, COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS 125 (2006).

[86] Geary Act of 1892, ch. 60, § 6, 27 Stat. 25 (1892) (repealed) (emphasis added).

[87] Gelareh Asayesh, *I Grew Up Thinking I Was White*, *in* MY SISTER, GUARD YOUR VEIL; MY BROTHER, GUARD YOUR EYES: UNCENSORED IRANIAN VOICES 12, 17 (Lila Azam Zanganeh, ed. 2006).

and comments, "that's the Persian mafia. You can't hang with them unless you own a BMW."[88] The camera then turns to reveal a throng of Iranian-American teenagers regaled stylishly in black.

Throughout the Middle Eastern community, the manipulation of appearance also emerges as a quintessential form of covering. Middle Eastern women frequently dye their hair blond or wear colored contact lenses to downplay their more "ethnic" features. Middle Eastern men will go by the name "Mike" for Mansour, "Mory" for Morteza, "Al" for Ali, and "Moe" for Mohammed. Such tactics may appear petty and even futile, but they can be surprisingly effective. I was recently told a story about an Iranian-American attorney who went by the name "Moe" instead of his birthname, Mohammed. One day, he was selected for extra screening at the airport. After showing his identification to the TSA workers and undergoing the additional security measures, he calmly protested, wondering out loud if he had been targeted on the basis of his ethnicity. The TSA guard looked puzzled. "It's not like your name is Mohammed or something," he guffawed. Absent the "Mohammed" stigma, Moe had become white.

We also see covering in even the most simple of choices: hair style. It has long been noted that African Americans have a variety of choices on how to wear their hair—including straightened, short, braided, Afro, cornrow or in dreadlocks—each of which ineluctably affects how society perceives them.[89] Hair style functions as a signaling device that determines the degree to which an African American will be racialized as stereotypically "black," assimilable, or something in between. As Devon Carbado and Mitu Gulati observe, coiffing choices can, therefore, serve as a disturbing marketing device:

> A black person's vulnerability to discrimination is shaped in part by her racial position on this spectrum. The less stereotypically black she is, the more palatable her identity is. The more palatable her identity is, the less vulnerable she is to discrimination. The relationship among black unconventionality, racial palatability, and vulnerability to discrimination creates an incentive for black people to signal—through identity performances—that they are

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[88] CLUELESS (Paramount Pictures 1995).

[89] *See* Devon W. Carbado & Mitu Gulati, *The Law and Economics of Critical Race Theory*, 112 YALE L.J. 1757, 1771–73 (2003) (reviewing CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY (Francisco Valdes, Jerome McCristal Culp and Angela P. Harris, eds., 2002) (explaining that racial identity is determined in part by how society perceives a person's racial projection and that especially various types of hair styles, particularly with black women, are important to how the wearer is racialized and thus perceived).

unconventionally black.[90]

For a Middle Eastern man, the issue of facial hair is similarly riddled with semiotic landmines. Since at least as far back as Tsar Peter the Great, who in 1698 mandated that all male Russian nobles shave to appear more Western and civilized,[91] facial hair has held symbolic meaning. Over the past two decades, as images of the lavishly bearded Ayatollah Khomeini and Osama bin Laden have flooded the airwaves, the beard, the Middle East and radical Islam have grown inextricably intertwined in the American imagination. In the post-9/11 world, I do not go to the airport without shaving first.

An example of the link between racial identification and facial hair comes from Sasha Baron-Cohen's brilliant mockumentary *Borat: Cultural Learnings of American for Make Benefit Glorious Nation of Kazakhstan*. In the movie, Baron-Cohen's Borat character, a purported Kazakh television personality, embarks on a road trip across the United States in search of a better understanding of American society. In one scene shot in Salem, Virginia, Borat attends a rodeo. Before delivering his rendition of the Kazakh national anthem along with some political commentary that almost gets him killed, Borat chats with the rodeo producer, Bobby Rowe.[92] In the course of their conversation, Rowe provides Borat with some unsolicited, but friendly, advice: change your look to avoid suspicions that you might be a terrorist or Islamic fundamentalist. "Shave that dadgum mustache off so you're not so conspicuous," Rowe enthusiastically recommends. "So you look like maybe an Italian or something."[93]

Affiliation also plays a potent role in covering Middle-Eastern identity. Two prevalent covering methodologies in the Middle-Eastern community exploit society's frequent conflation of religious affiliation and national origin with racial identification. Take the example of a doctor I once knew. He was born and grew up in Iran. He then received his medical training in Switzerland, after which he and his wife ultimately immigrated to the United States. When people asked where he was from, he would apparently say, "Switzerland." People consequently thought of him and his Iranian wife as European. And I suspect that is just how he wanted it.

What is particularly interesting about this example is that the doctor and his family never engaged in a wholesale rejection of their ethnicity or

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[90] *Id.* at 1772.

[91] *See* 2 READINGS IN EUROPEAN HISTORY 303–12 (James H. Robinson, ed., 1904–1906) *available at* http://www.fordham.edu/halsall/mod/petergreat.html.

[92] Declares Borat: "We support your war of terror. George W. Bush will drink the blood of every man, woman and child in Iraq." David Marchese and Willa Paskin, *What's Real in 'Borat'?*, SALON.COM, Nov. 10, 2006, http://www.salon.com/ent/feature/2006/11/10/guide_to_borat/.

[93] BORAT: CULTURAL LEARNINGS OF AMERICAN FOR MAKE BENEFIT GLORIOUS NATION OF KAZAKHSTAN (Twentieth Century Fox 2006)

cultural heritage. Their sense of identity and projection of it were far more complex than that. In fact, the doctor was a dedicated student of classical Persian literature and poetry and hosted a weekly gathering of Iranian immigrants at his house to discuss, in Farsi, works in the Persian canon. But to the outside world he was Swiss. And who could blame him for performing this act of covering? There is little doubt that it is a lot easier to be Swiss and deal with the attendant images of temporal precision, chocolate, and neutrality than to be perceived as Iranian, when people immediately associate your ethnic identity with a host of unpleasantries.

The imprecise relationship between ethnicity and nationality arises in a broader context and represents a particular difficulty in conducting affirmative action programs. Latin America has witnessed several waves of migration from Europe. Some of these immigrants have subsequently relocated to the United States. However, they sometimes draw upon their intermediate stop in Latin America as a basis for claiming "Hispanic" heritage on school and job applications. In one sense, their choice is entirely warranted. *Hispanic* is generally not characterized as a "race" at all. The University of California at Los Angeles exemplifies this idea in its definition of Hispanic/Latino as "[p]ersons of Latin American (e.g., Central American, South American, Cuban, Puerto Rican) culture or origin, regardless of race."[94] In another sense, however, if identification of Hispanic heritage is used for affirmative action purposes and is meant to offset both past and present discrimination, such a practice dilutes the means-ends fit of remedial programs.

Many Iranians or Arabs of Jewish background cover by rationally exploiting mainstream (mis)perceptions of "Jewishness" as both a religion and an ethnicity. For example, although the Jewish Iranian population is relatively large, especially in Los Angeles, the very existence of a Jewish Iranian population is a surprise to the many people who view Iran as an Islamic monolith. By identifying themselves to the world as Jewish, these Jewish Iranians to avoid any further questions about their ethnicity, as people assume their ethnicity is Jewish and that they are, therefore, white (i.e., Ashkenazi Jewish) and not Middle Eastern. A Jewish Iranian poet I once knew demonstrated her profound awareness of the way in which this popular misperception could be exploited for assimilatory purposes. Explaining the extent of her Persian pride, she pointed out that she had embraced her Iranian heritage despite the obvious covering tactic at her disposal. "Since I'm Jewish, I don't have to be Iranian," she remarked. "Yet I choose to be."

Finally, with respect to activism, we have witnessed profound covering

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[94] NON-LADDER ACADEMIC RECRUITMENT AND APPOINTMENT COMPLIANCE FORM, http://www.faculty.diversity.ucla.edu/03recruit/committee/stk/docs/NonLadderComplianceForm.dot (last visited Feb. 9, 2008) (faculty diversity recruitment form).

in the Middle-Eastern community. As Kenji Yoshino argues, many minorities are reticent to become involved in the fight to protect their civil rights, lest they be associated with militant ethnics and become racialized. In the Middle-Eastern American community, there is a profound wariness of political involvement, a fact revealed by the dearth of elected officials of Middle-Eastern descent, even in areas with large concentrations. For example, it is believed that the highest ranking Iranian-American public officeholder in the United States is Jimmy Delshad, the mayor of Beverly Hills.[95] Delshad was only elected to his post in 2007.[96]

Besides covering based on association, appearance, affiliation and activism, the downplaying of racial identity occurs in numerous other ways in the Middle-Eastern community. A classic form of covering occurs when you ask an Iranian-American about their ethnicity. Often, they will respond "Persian," not Iranian. The reason is easy to understand. Persia evokes images of an ancient empire, a proud history, magnificent rugs (and cats), and a rich culture. Iran, by contrast, evokes images of the hostage crisis, the Axis of Evil, radical fundamentalism, jihad and fatwas.

My own last name, despite its apparent in-your-face declaration of my likely ethnic origins, often creates an exploitable ambiguity. The "Tehran" seems to designate Iranian roots, but the suffix 'ian' connotes Armenian descent. Read literally, therefore, it might mean "Armenian from Tehran." And, perceptions of where I fit in someone's world view vary radically depending on whether someone chooses to focus on the first or last part of my surname. Individuals who are familiar with Armenians will highlight the 'ian' and categorize me as an Armenian. As an Armenian, I am perceived as Christian, white, and an American ethnic, much like an Italian or Greek. As an Iranian, I am perceived of as Islamic, non-white, and a perpetual foreigner. As an Armenian, I have no link to terrorism and I do not have to answer for the problems in the Middle East. For those in the know, my ancestors were the victims of the first genocide of the twentieth century, the Turks' slaughter of Armenians just after the turn of the century, and my forbearers founded the first Christian nation. As an Iranian, my roots are decidedly less sympathetic.

Recently, this striking dichotomy presented itself with disarming clarity. At an academic function, I met a fellow law professor who, upon seeing my last name, remarked, "So you're Armenian." I nodded. He proceeded to tell me about his fondness for the Armenian community, several of his friends who were of Armenian descent, and his professional

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[95] Sonya Geis, *Iran Native Becomes Mayor of Beverly Hills*, WASH. POST, April 1, 2007, at A3, *available at* LEXIS, News Library, WPOST file.

[96] Prior to that, I would like to think that my uncle, Mansour Kia, was in the running for the title of highest ranking Iranian-American elected official. He served as the Mayor of the town of Stanton, Iowa (population: 714) at the turn of the century.

ties to prominent, successful Armenians. The next day, I had an appointment with a new primary care physician. After completing the necessary paperwork, I awaited the doctor in one of the examination rooms.

After several minutes, he walked in, grabbed my file and, without missing a beat, queried, "So you're Iranian?"

He was staring at my name on the patient information form that I had filled out. I nodded and then he dropped the following curious line: "Boy, I hope *we* don't have to go to war with *you* soon."

I was speechless, though I thought about sarcastically apologizing to him (he had a Germanic surname) about how we had to go to war with him a few years back during World War II. But I was there for healthcare, not a geopolitical debate.

"I hope we don't have to go to war with *them* either," I replied. The divide could not be more pronounced: as Armenian, I am a friend; as Iranian, I am a foe.

Beyond covering, Middle Eastern assimilation also crosses into the realm of passing and even conversion. As a matter of pride, many Middle Easterners (especially those from older generations, for which the importance of whiteness was perhaps more accentuated) insist on actually being considered white. In this regard, they are no different than prior immigrant groups. For example, in all but one of the many reported racial-prerequisite naturalization cases,[97] the petitioners claimed to be white, despite the fact that it was much harder to establish white, rather than black, status. Indeed, at the time, many states had laws on the books declaring any individual with a single quantum of black blood to be black by law.[98]

There are, of course, some exceptions to the inexorable gravitation of American ethnics to seek white recognition. Where nonwhite groups dominate, performance of non-whiteness can be a condition for nonwhite privilege. For example, Italian-American teenagers in the inner-city frequently perform non-whiteness to distance themselves from the white hegemon and to facilitate their assimilation with other urban youth. Similarly, in a world where racial diversity is not only increasingly

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[97] *In re* Cruz, 23 F. Supp. 774, 774–75 (E.D.N.Y. 1938).

[98] By the early 1900s, several southern states had adopted this "one drop" rule. *See* Plessy v. Ferguson, 163 U.S. 537, 538 (1896) (assuming, without question, that the petitioner, who possessed only one-eighth African blood, was black for the purposes of segregation laws); PETER WALLENSTEIN, TELL THE COURT I LOVE MY WIFE: RACE, MARRIAGE, AND LAW—AN AMERICAN HISTORY 142 (2002) (noting that Georgia, Virginia, Alabama and Oklahoma all had laws defining as black anyone with any drop of African ancestry); Luther Wright, Jr., Note, *Who's Black, Who's White, and Who Cares: Reconceptualizing the United States's Definition of Race and Racial Classifications*, 48 VAND. L. REV. 513, 524 (1995) (explaining the progression of states toward the one-drop rule). *But see In re* Cruz, 23 F. Supp. at 775 (finding one-quarter African blood insufficient to gain someone recognition of African descent for naturalization purposes).

tolerated, but celebrated, a veritable ethnic-chic movement has emerged. One example of increasing non-white identification comes from Hawaii, where the past few decades have witnessed a remarkable surge in the percentage of individuals who claim Native Hawaiian identity—a surge that cannot statistically be explained by natural growth patterns.[99]

However, in the continental United States, white privilege still reigns supreme, and, naturally, immigrant groups still seek white recognition.[100] The example of the Iranian American population is instructive. The United States has seen a huge wave of immigration from Iran since the 1979 revolution. In 1996, it was estimated that almost 1.5 million Iranians resided in the United States, a figure that had grown from just a few thousand in the 1970s.[101] However, despite changes to the 2000 census that allowed Middle Eastern individuals, such as Iranian Americans, to identify themselves as something other than just "white," it appears that very few Iranian Americans took the opportunity to do so. In fact, a mere 338,266 identified themselves as Iranian.[102] The majority of Iranians, it seems, chose conversion. Both leading authorities on this matter and visitors to Los Angeles (often referred to as Tehrangeles or Irangeles) can attest to how grossly this figure under-represents the true population figures.

The reason for this statistical discrepancy is not too difficult to ascertain: having fled a severely repressive government in their homeland, many Iranians harbor a profound mistrust of the government. As a result, it is hardly surprising that they would balk at the chance to single themselves out conveniently to the government for identification and tracking purposes. Moreover, the community as a whole wishes to assimilate. Ask a typical Iranian American if they are white and they will say, "Of course." Then, inevitably, they will tell you that the word *Iran* comes from the Sanskrit word meaning "Land of the Aryans" and that they, not the Germans, are the original Aryans.

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[99] Recent census numbers show that, compared with a decade ago, almost fifty percent more Hawaiian residents now consider themselves descendants of Native Hawaiian stock: 162,279 in 1990 versus 239,655 in 2000. *See* Elizabeth M. Grieco, U.S. CENSUS BUREAU, THE NATIVE HAWAIIAN AND OTHER PACIFIC ISLANDER POPULATION: 2000, CENSUS 2000 BRIEF 5 (2001), *available at* http://www.census.gov/prod/2001pubs/c2kbr01-14.pdf. Of course, direct comparisons between the 1990 and 2000 statistics from the Census must be tempered with the understanding that the 2000 Census made it easier for individuals to identify themselves with multiple racial designations.

[100] This trend is, of course, not limited to recent immigrant groups, but has a long history. See, for example, the history of Irish, Greek, Italian and Slavic assimilation in the United States. *See* NOEL IGNATIEV, HOW THE IRISH BECAME WHITE 2–3 (1995) (detailing the efforts of the Irish to assimilate into white culture).

[101] WORLDWIDE PERSIAN OUTREACH, THE PERSIAN DIASPORA, http://www.farsinet.com/pwo/diaspora.html (last visited Nov. 21, 2006). Another, more conservative, estimate suggests that the Iranian-American population totaled approximately 540,000 by 2004. *See* IRANIAN STUDIES GROUP AT MIT, FACTSHEET ON THE IRANIAN-AMERICAN COMMUNITY (2003), http://isg-mit.org/projects-storage/census/Factsheet.pdf.

[102] IRANIAN STUDIES GROUP AT MIT, *supra* note 98.

When I was in grade school, my mother provided me with some good-natured but potentially disastrous advice: If anyone approaches you with racial hostility, calmly explain to them that, as a Persian, you are the true Aryan. I remember telling her that skinheads were unlikely to pause to have a discussion with me about nomadic migration patterns and racial genealogy dating back to antiquity. My mother's posture, however, was widely shared. As poet Lelah Khalili tells us, Iranian-Americans frequently:

> [P]ride [them]selves for being so closely related to the Hansels and Gretels of Europe . . . defend [their] 'Aryan' blood vociferously . . . [and] introduce [them]selves as descendants of a race of Indo-Europeans (or Indo-Aryans)—whatever that is—who came across the Eastern planes [sic] to Iran and who are the ethnic cousins of those healthy and strapping blond-and-blue-eyed Germanic people populating Central Europe.[103]

When this claim of lineage is combined with the geographical proximity of the Caucasus Mountains to the country, the ostensibly inescapable conclusion is one of whiteness. A recent Ninth Circuit case involving an asylum seeker from Iran epitomizes this mindset. In the decision, issued in 1996, the court notes that the asylum seeker designated his ethnicity as something curiously (feline or libationary?) called "White Persian."[104]

The craving for such judicial affirmation of whiteness mimics the events of a century earlier, when a federal district court held that Syrians were not white in *Ex parte Dow*.[105] Denied membership in the racial category needed for naturalization, the petitioners motioned for a rehearing, which the court sympathetically granted.[106] The request for, and acceptance of, the rehearing are particularly salient since they were not grounded in the potential economic or political injury that such a racial judgment would cause Syrian Americans. Instead, the rehearing petition and grant rested upon the profound psychological trauma that a formal designation of nonwhite status would inflict upon Syrians as a group. As the court later wrote:

> Deep feeling has been manifested on the part of the Syrian immigrants because of what has been termed by them the

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[103] Laleh Khalili, *Forgiving Salm and Tur*, THE IRANIAN, Sept. 29, 1998, http://www.iranian.com/LalehKhalili/Sept98/Race/index.html.

[104] Mostofi v. INS, No. 94-70627, 1996 WL 183740, at *1 (9th Cir. Apr. 16, 1996).

[105] *Ex parte* Dow, 211 F. 486, 490 (E.D.S.C. 1914), *aff'd on reh'g*, *In re* Dow, 213 F. 355 (E.D.S.C. 1914), *rev'd*, Dow v. United States, 226 F. 145 (4th Cir. 1915).

[106] *In re* Dow, 213 F. 355, 356 (E.D.S.C. 1914), *aff'g Ex Parte* Dow, 211 F. 486 (E.D.S.C. 1914), *rev'd*, Dow v. United States, 226 F. 145 (4th Cir. 1915).

> humiliation inflicted upon, and mortification suffered by, Syrians in America by the previous decree in this matter which they construe as deciding that they do not (as they term it) belong to the "white race."[107]

Iranian-American writer Gelareh Asayesh recalls the radical change in racial self-perception that she underwent upon coming to the United States. In Iran, she was indisputably white. In the United States, however, both friends and strangers informed her that she was not. The transformation, she candidly admits, was painful.

> If I was having trouble making the transition from one racial framework to another, it was not because I was above the fray but because I did not want to relinquish the privileges accorded me in one framework and denied me in the other. What passed for white in Iran was colored in America; and I didn't like being demoted.[108]

Not surprisingly, this appetite for whiteness is prevalent throughout Middle-Eastern culture. For example, the Egyptian royal family traditionally associated itself with Europe by claiming Albanian descent.[109] Whiteness, among Middle Easterners, is almost uniformly considered a mark of beauty. Although the college textbook by Daniel Bates and Amal Rassam, *Peoples and Cultures of the Middle East*, oddly claims that "there is no prevailing ideology of race based on color," it readily admits that "in much of the [Middle East] light skin is considered a mark of beauty and high status."[110]

Of course, not everyone seeks white recognition. For example, the younger generation of Middle-Eastern Americans is much more likely than prior generations not only to eschew covering techniques but to celebrate actively their ethnicity and even insist on their non-whiteness. Nevertheless, the gravitation towards whiteness remains a dominant social force. It is frequently so doggedly pursued that it actually serves to a group's long-term detriment.

Mexican Americans provide an instructive example of the tension between individual and collective interests, and of short- and long-term consequences. Like Middle Easterners, Latinos have suffered a problematic dualistic ontology of racial identification and a craving for whiteness that, in prior eras, has frustrated the vindication of their civil

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[107] *In re* Dow, 213 F. at 356.

[108] Asayesh, *supra* note 86, at 14.

[109] MARK PERRY, PERCEPTIONS OF RACE IN THE ARAB WORLD 11–12 (2004), http://inhouse.lau.edu.lb/bima/papers/Perry.pdf.

[110] DANIEL G. BATES & AMAL RASSAM, PEOPLE AND CULTURES OF THE MIDDLE EAST 96 (2d ed. 2001).

rights. Mexican Americans have often sought refuge in covering activities. Rodolfo Acuña, for example, notes the tendency of the Mexican American community in Los Angeles to emphasize its Spanish (i.e., European and white) roots.[111] As he argues, many Mexican Americans have internalized an "anything but Mexican" mindset, or colonial mentality, that fuels their desire for white recognition and leads them to emphasize their Spanish, Italian, or French ancestry.[112]

In prior eras, this irrepressible claim to whiteness has actually undermined civil rights efforts. In the landmark suit *Hernandez v. Texas*, Pete Hernandez challenged the systematic exclusion of Mexican Americans from juries in Jackson County, Texas.[113] In response, the State of Texas claimed, among other things, that there was no race discrimination occurring since individuals of Mexican descent were not a separate class from whites. The Supreme Court ultimately sided with Hernandez, holding that Mexicans were a distinct race from whites for equal protection purposes, and that the Equal Protection Clause applied to all forms of race discrimination, not just discrimination against blacks. Surprisingly, however, Hernandez faced strong opposition to his position from within the Mexican-American community. Gustavo Garcia, a civil rights litigator of the time, commented, "Caucasians were on the jury. Mexicans are Caucasian. So what's all the fussing about?"[114] To Mexican Americans such as Garcia, the recognition of their whiteness trumped the vindication of their legal and political rights and the preservation of equal protection under the law. This "Faustian [p]act with [w]hiteness"[115] mirrors the extant Middle Easterners hunger for judicial affirmations of whiteness, even when it inures to the group's long-term detriment.[116]

VI. CONCLUSION

Like the Irish, Slavs, Italians, Greeks and even Mexicans before them, Middle Eastern immigrants have sought to secure their position in American society through the ultimate prize of white recognition. The struggle, however, has not been easy. Indeed, formal recognition of this status by state and federal governments belies a history of discrimination

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[111] RODOLFO ACUÑA, ANYTHING BUT MEXICAN 1–2 (1996); *see also* JOHN R. CHÁVEZ, THE CHICAGO IMAGE OF THE SOUTHWEST 116 (1984).

[112] ACUÑA, *supra,* at 8.

[113] Hernandez v. Texas, 347 U.S. 475 (1954).

[114] Gustavo Garcia, *An Informal Report to the People*, *in* A COTTON PICKER FINDS JUSTICE!: THE SAGA OF THE HERNANDEZ CASE (1954).

[115] Neil Foley, *Becoming Hispanic: Mexican Americans and the Faustian Pact with Whiteness*, *in* REFLEXIONES 1997: NEW DIRECTIONS IN MEXICAN AMERICAN STUDIES 53, 53 (Neil Foley ed., 1998).

[116] Neil Foley, *Over the Rainbow:* Hernandez v. Texas*,* Brown v. Board of Education*, and Black v. Brown*, 25 CHICANO-LATINO L. REV. 139, 140 (2005) ("Mexican American commitment to a Caucasian racial identity in the 1930s through the 1950s complicated, and in some ways compromised, what at first appeared to be a promising start to interracial cooperation.").

and rising levels of discrimination against Americans of Middle-Eastern descent. Moreover, the wide range of both passing and covering activities engaged in by Middle Easterners is a sign of, and response to, this discrimination. Combined, however, with the process of selective racialization, it is a practice that has grown problematic. The rewards for effective covering are, in the short term, positive. But in the aggregate, the phenomena of covering and selective racialization have helped to perpetuate negative stereotypes about Middle Easterners while frustrating the development of an effective community response to issues of concern for Middle Eastern Americans.

Thus, in order to combat the discrimination facing Middle-Eastern Americans, we must look not only without, but within. Perhaps this is the most lasting contribution from Charles Lawrence's seminal article. Because of our shared experiences as Americans, we

> [I]nevitably share many ideas, attitudes, and beliefs that attach significance to an individual's race and induce negative feelings and opinions about nonwhites. To the extent that this cultural belief system has influenced all of us, we are all racists. At the same time, most of us are unaware of our racism.[117]

We must, therefore, all engage in vigorous analysis of the broad psychological mechanisms at work in the racialization and discrimination process. In the end, as Lawrence concluded some twenty years ago, "[a] difficult and painful exploration beats death at the hands of the disease."[118] Recognition of the unconscious dynamics at play in the race-making process is a necessary first step in dismantling racial hierarchy for all Americans, both Middle-Eastern and otherwise.

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[117] Lawrence, *supra* note 1, at 322.
[118] *Id.* at 388.