St. John's Law Review

Volume 96
Number 1 *Volume 96, Fall 2022, Number 1*

Article 4

Imperialism in the Making of U.S. Law

Nina Farina

IMPERIALISM IN THE MAKING OF U.S. LAW

NINA FARNIA[†]

INTRODUCTION

"[C]onsider the differences between the powers of the federal government in respect of foreign or external affairs and those in respect of domestic or internal affairs. That there are differences between them, and that these differences are fundamental, may not be doubted," Justice Sutherland instructed in *United States v. Curtiss-Wright Export Corp*.[1] This decision is cited so often by government attorneys briefing the foreign affairs power that it has come to be known as the " '*Curtiss-Wright*, so I'm right' cite."[2]

By the time of the *Curtiss-Wright* decision in 1936, the United States had not only colonized much of the North

---

[†] Assistant Professor, Albany Law School; A.B. University of Chicago, 2002; J.D. UCLA School of Law, 2009, specialization in Critical Race Studies; Ph.D. University of California Davis, 2022. This Article benefitted from discussions with Khader Hamide, Michel Shehadeh, Marc Van Der Hout, Camilia Odeh, Eyad Kishawi, David Cole, Judge Bruce Einhorn, Hiroshi Motomura, Omnia El Shakry, Kathy Olmsted, Sudipta Sen, Robin D.G. Kelley, Wadie Said, Catherine Fisk, George Bisharat, Aziz Rana, Angela Harris, Sunaina Maira, and Navid Farnia. Funding for this project came from the UC Davis Department of History, the Mellon Initiative on Racial Capitalism, the Mellon Initiative on Border Studies, the Reed Smith Research Fellowship at UC Davis, and the Social Science Research Fellowship at UC Davis. I am particularly grateful to Khader Hamide, Michel Shehadeh, and Marc Van Der Hout for their visionary and thoughtful leadership against all odds, and their tenacity In the struggle for justice. I am also grateful to the countless members of the National Lawyers Guild who work tirelessly to provide legal representation and political defense to those activists and organizers who organize to achieve our collective freedom dreams.

[1] 299 U.S. 304, 315 (1936); *id.* at 320 (marshalling the "plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress"). H. Jefferson Powell argues that *Curtiss-Wright* embodies "the attempt by President Franklin D. Roosevelt to implement his own approach to foreign policy without jeopardizing his domestic programs or his political base in the teeth of principled and emphatic opposition." *See* H. Jefferson Powell, *The Story of Curtiss-Wright Export Corporation*, *in* PRESIDENTIAL POWER STORIES 195–96 (Christopher H. Schroeder ed., 2009).

[2] HAROLD HONGJU KOH, THE NATIONAL SECURITY CONSTITUTION: SHARING POWER AFTER THE IRAN-CONTRA AFFAIR 94 (1990).

American continent, it also held the Philippines, Puerto Rico, Hawai'i, Alaska, the Panama Canal Zone, the U.S. Virgin Islands, Guam, and American Samoa, all counted in the census as U.S. territories.[3] Scattered throughout the globe, these territories were largely invisible to the public, even though they accounted for over ten percent of the U.S. population.[4] By the end 4of World War II, the United States also occupied parts of Korea, Germany, Austria, and all of Japan.[5]

According to Justice Sutherland, the foreign affairs power is rooted in the enduring will of the sovereign, because "[r]ulers come and go; governments end and forms of government change; but sovereignty survives."[6] Of course, Justice Sutherland was referring to a phenomenon that was both conceptually and legally distinct from the presidency. The U.S. President is elected by and ultimately accountable to the nation, but the concept of sovereignty denotes the power of the state to govern without bounds.[7] For Justice Sutherland, the foreign affairs

---

[3] DANIEL IMMERWAHR, HOW TO HIDE AN EMPIRE: A HISTORY OF THE GREATER UNITED STATES 10–11 (2019). Immerwahr also argues that the United States was the fifth-largest empire in the world in 1940, if measured by population. *Id.*

[4] *Id.*

[5] *Id.* at 17 ("Adding up the land under U.S. jurisdiction—colonies and occupations alike—by the end of 1945 the Greater United States included some 135 million people living outside the mainland.").

[6] *Curtiss-Wright*, 299 U.S. at 316.

[7] In 1995, Giorgio Agamben argued that the sovereign sphere is a sphere of power in which it is permitted to kill without committing homicide and without celebrating a sacrifice, and sacred life—that is, life that may be killed but not sacrificed—is life that is captured in this sphere. *See generally* GIORGIO AGAMBEN, HOMO SACER: SOVEREIGN POWER AND BARE LIFE (1995). He concluded that the production of bare life is the originary activity of sovereignty. *Id.* at 83. The historical example that he used to articulate this position was the Nazi camp, a sovereign sphere where one could be killed but not murdered. *See generally* GIORGIO AGAMBEN, STATE OF EXCEPTION: HOMO SACER II (Kevin Attell trans., 2003). He argued that the Nazi camp embodied the zone of exception that became the rule. *Id.* In effect, the exception—the sovereign sphere where it is permitted to kill without committing homicide or celebrating a sacrifice—usurps the rule that would prevent such activities, and becomes itself the rule. In effect, the geographic area ruled by the sovereign—namely, the colonial territories and imperial holdings—comprises the sovereign sphere, where it is permissible to kill without committing murder. Alexander Weyeliye indicts Agamben for his refusal to contend with race in his bare life discourse, and his understanding of the human and the zone of exception. *See generally* ALEXANDER WEYELIYE, HABEAS VISCUS: RACIALIZING ASSEMBLAGES, BIOPOLITICS, AND BLACK FEMINIST THEORIES OF THE HUMAN (2014). Weheliye develops a theory of racializing assemblages—partially by relying on Black feminist scholars Hortense Spillers and Sylvia Winter—to describe a process whereby race disciplines humanity into three categories: full humans, not quite humans, and nonhumans. For a more thorough historical understanding of the Holocaust, see

power emerges out of the state's sovereignty, particularly vis-à-vis other nations around the world, especially colonial holdings. Although the foreign affairs power is carried out by the executive branch, it is not limited by the parameters of the Constitution.[8]

Justice Sutherland continues to be regarded as the "architect"[9] of what Professor Curtis A. Bradley calls "foreign affairs exceptionalism."[10] In short, the term suggests that the President's power to adjudicate foreign affairs on behalf of the nation is held to a more relaxed set of constitutional restraints than other powers of the government, essentially exempting the foreign affairs power from the oversight that the U.S. Constitution mandates in other arenas of the law.[11] Although Justice Sutherland began writing about the need to free the hand of the executive from undue constraints in foreign affairs during his tenure as a Utah senator and prior to World War I, this exceptionalism took hold as the dominant ideology governing

---

AIMÉ CÉSAIRE, DISCOURSE ON COLONIALISM (1972), where he argues that the Holocaust was the violence of European colonialism turned inward onto Europe itself.

[8] Ganesh Sitaraman & Ingrid Wuerth, *The Normalization of Foreign Relations Law*, 128 HARV. L. REV. 1898, 1913 (2015).

[9] *Id. See also* Powell, *supra* note 1, at 217–18.

> Sutherland supported a Teddy Roosevelt robust approach to foreign policy and argued in the 1909 debates that the federal government's powers in that area rested on very different grounds than its domestic authority. "I deny that it is a Government of delegated powers when it comes to deal with a foreign nation. In our dealings with foreign nations, as I claim, the Government of the United States is a sovereign power dealing with foreign nations in its sovereign capacity."

Id. (citing to 44 Cong. Rec. 2506 (1909)); *see also* George Sutherland, *The Internal and External Powers of the National Government*, 191 N. AM. REV. 373, 388 (1910).

[10] Curtis A. Bradley, *A New American Foreign Affairs Law?*, 70 U. COLO. L. REV. 1089, 1096 (1999) [hereinafter *American Foreign Affairs*] (defining foreign relations exceptionalism as "the view that the federal government's foreign affairs powers are subject to a different, and generally more relaxed, set of constitutional restraints than those that govern its domestic powers").

[11] Curtis A. Bradley, *What is Foreign Relations Law?*, *in* THE OXFORD HANDBOOK OF COMPARATIVE FOREIGN RELATIONS LAW 3, 3–4 (Curtis Bradley ed., 2019) [hereinafter *Foreign Relations*] (observing that one of the central questions of foreign relations law is the extent to which it, or at least some parts or elements of it, should be treated differently than other types of domestic law—"a debate referred to in the United States as one over 'foreign affairs exceptionalism' "). Bradley defines foreign affairs law as "the domestic law of each nation that governs how that nation interacts with the rest of the world. These interactions include most centrally those that occur between nations, but they can also encompass interactions between a nation and the citizens or residents of other nations and with international institutions." *Id.* (footnote omitted); *see also* Sitaraman & Wuerth, *supra* note 8, at 1906 n.23.

foreign affairs law in the interwar period, and especially in the wake of World War II.[12] Of course, legal scholars often debate the persistence of foreign affairs exceptionalism and the mechanisms for its execution.[13] Some have effectively periodized major turning points in foreign affairs exceptionalism to parallel the most transformative moments in modern U.S. history, moments of great global conflict like World War II, the Cold War, the War on Terror, and even the Trump presidency.[14] Other scholars associate U.S. continental imperialism during the nineteenth century with the outward imperial expansion of the twentieth century.[15] But despite debates about its implementation and execution, the philosophy that the Executive is uniquely situated to represent the United States in its foreign affairs—and that as such the office requires special flexibility and discretion to carry out those affairs—persists to this day.[16] It should be of no surprise that shielding a major executive power from the limits of the Constitution would advance racial power, particularly in a settler colonial society built atop a foundation of ongoing white supremacy.[17] And yet, such discrimination remains largely unexamined by standard accounts of U.S. foreign

---

[12] *See* Sitaraman & Wuerth, *supra* note 8, at 1917.

[13] *See id.* at 1917–18; *see also* Ann C. Scales, *Midnight Train to Us*, 75 CORNELL L. REV. 710, 710 (1990) (describing Ann C. Scales, *Militarism, Male Dominance and Law: Feminist Jurisprudence as Oxymoron*?, 12 HARV. WOMEN'S L.J. 25, 65–68 (1989)); Shirin Sinnar, *Separate and Unequal: The Law of "Domestic" and "International" Terrorism*, 117 MICH. L. REV. 1333, 1395 (2019); Jide Nzelibe, *Our Partisan Foreign Affairs Constitution*, 97 MINN. L. REV. 838, 839–40 (2013); *see generally* Adrian Vermeule, *Our Schmittian Administrative Law*, 122 HARV. L. REV. 1095 (discussing black and grey holes in national security cases).

[14] *See generally* G. Edward White, *The Transformation of the Constitutional Regime of Foreign Relations,* 85 VA. L. REV., 1, 3, 6–7 (1999); MICHAEL J. HOGAN, A CROSS OF IRON: HARRY S. TRUMAN AND THE ORIGINS OF THE NATIONAL SECURITY STATE, 1945–1954 (1998).

[15] *See generally* AZIZ RANA, THE TWO FACES OF AMERICAN FREEDOM (2010); IMMERWAHR, *supra* note 3, at 11; Natsu Taylor Saito, *Crossing the Border: The Interdependence of Foreign Policy and Racial Justice in the United States*, 1 YALE HUM. RTS. & DEV. L.J. 53 (1998); Natsu Taylor Saito, *Different Paths*, 1 J.L. & POL. ECON. 46 (2020); Ruth Gordon*, Racing U.S. Foreign Policy*, 17 NAT'L BLACK L.J. 1 (2003).

[16] *American Foreign Affairs*, *supra* note 10, at 1096; *see also* PETER W. LOW ET AL., FEDERAL COURTS AND THE LAW OF FEDERAL-STATE RELATIONS 482–83 (9th ed. 2018); Jide Nzelibe, *The Uniqueness of Foreign Affairs*, 89 IOWA L. REV. 941, 943 (2004) ("[R]eports of the [political question] doctrine's demise in foreign affairs are greatly exaggerated . . . .").

[17] *See generally*, Cheryl Harris, *Whiteness as Property,* 106, HARV. L. REV. 1707 (1993); K-Sue Park, *Self-Deportation Nation*, 132 HARV. L. REV. 1878 (2019).

affairs.[18] In effect, much of the legal scholarship on U.S. foreign affairs reproduces the logic of foreign affairs exceptionalism, reifying the practice of U.S. foreign affairs as distinct from other constitutional regimes. This has the additional consequence of advancing the logic of colorblindness.[19] That is, the exclusion of other constitutional regimes from our study of foreign affairs, particularly those that imbricate racial power, obfuscates the depth and breadth of white supremacy in the U.S. legal apparatus with respect to both domestic and foreign affairs.

This Article offers an alternative vision of foreign affairs. Specifically, I argue that foreign affairs exceptionalism exacerbates the First and Fifth Amendments' already existing race problem.[20] While the race problem in these two

---

[18] In one of the casebooks most often used in law school classes on foreign affairs, there is no discussion of colonialism, race, or imperialism. *See generally* CURTIS A. BRADLEY ET AL., FOREIGN RELATIONS LAW: CASES AND MATERIALS (7th ed. 2020). The same can be said of other textbooks on foreign affairs comparing the foreign affairs of legal regimes of nations throughout the world. *See generally Foreign Relations*, *supra* note 11; LOUIS HENKIN ET AL., FOREIGN AFFAIRS AND THE U.S. CONSTITUTION (1990); QUINCY WRIGHT, THE CONTROL OF AMERICAN FOREIGN RELATIONS (1922). This is a considerable gap in legal scholarship that lags decades behind historical scholarship, which has taken account of race, colonialism, and imperialism in U.S. foreign affairs for quite some time. *See, e.g.*, GEORGE C. HERRING, FROM COLONY TO SUPERPOWER: U.S. FOREIGN RELATIONS SINCE 1776 (2008); WALTER LAFEBER, THE AMERICAN AGE: U.S. FOREIGN POLICY AT HOME AND ABROAD, 1750 TO THE PRESENT (1989). These are commonly used textbooks. Historian of U.S. foreign relations, William Appleman Williams, likewise has a vast collection of books on these topics. *See generally* WILLIAM APPLEMAN WILLIAMS, THE TRAGEDY OF AMERICAN DIPLOMACY (1959) [hereinafter WILLIAMS, THE TRAGEDY]; WILLIAM APPLEMAN WILLIAMS, EMPIRE AS A WAY OF LIFE (1980) [hereinafter WILLIAMS, EMPIRE AS A WAY OF LIFE].

[19] Neil Gotanda, *A Critique of Our Constitution is Colorblind*, 44 STAN. L. REV. 1, 2, 7 (1991) (offering a critique of our constitution as colorblind, "argu[ing] that the United States Supreme Court's" adherence to "color-blind constitutionalism" disregards the subtleties and nuances of race, ignores institutional racism and contributes to racial subjugation). For a study of the internal logics of colorblindness and its practical effects in which the authors describe how proponents of colorblindness conflate "colorblindness" with "race neutrality" and "color consciousness" with "racial preference," and expose the false-necessity and contingency of these associations and how they obscure the very racial preferences they help to produce, *see* Devin Carbado & Cheryl I. Harris, *The New Racial Preferences*, 96 CALIF. L. REV. 1139, 1199–200 (2008).

[20] *See* Gotanda, *supra* note 19, at 8–9; *see also* Richard Delgado, *Liberal McCarthyism and the Origins of Critical Race Theory*, 94 IOWA L. REV. 1505, 1507–08 (2009); MARI MATSUDA ET AL., WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH AND THE FIRST AMENDMENT 1 (2018); CRITICAL RACE THEORY: KEY WRITINGS THAT FORMED THE MOVEMENT 251 (Kimberlé Crenshaw et al. eds., 1995) [hereinafter CRITICAL RACE THEORY: KEY WRITINGS].

amendments is multi-factoral,[21] this Article focuses on only one of the problems: How does foreign affairs exceptionalism narrow the availability of First and Fifth Amendment protections to dissidents of color, especially those from regions of high interest to U.S. foreign policy, like the Middle East?

As Thomas Jefferson wrote to James Madison on April 27, 1809, "no constitution was ever before so well calculated as ours for extensive empire."[22] Jefferson aptly noted that imperialism is present in the Constitution, even if only in its spirit, and envisioned a colony that extended from the Atlantic to the Pacific.[23] Because the Constitution both explicitly and implicitly grants the Executive the power to recognize foreign nations, to engage in diplomacy and war with other nations, non-state actors, and political parties throughout the world, and to impose sanctions on other nations, thereby influencing their domestic life, the effects of the U.S. Constitution reach far beyond the confines of the nation's borders, rendering the presumed borders of domestic lawmaking far more porous than we like to think.[24] In essence, as the global footprint of the United States developed and matured over the course of the twentieth century, so too did the reach of its Constitution.[25] Thus, in making my claims, I

---

[21] *See* Gotanda, *supra* note 19, at 2; MATSUDA ET AL., *supra* note 20, at 1, 6.

[22] Thomas Jefferson, *Thomas Jefferson to James Madison, 27 April 1809*, FOUNDERS ONLINE, NAT'L ARCHIVES (Apr. 27, 1809), https://founders.archives.gov/documents/Jefferson/03-01-02-0140 [https://perma.cc/7QFY-C53N].

[23] *See id.*

[24] *See* RANA, *supra* note 15, at 223–25; *see also* MARY DUDZIAK, COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY 102–03 (2011) [hereinafter COLD WAR CIVIL RIGHTS]; MARY DUDZIAK, WAR TIME: AN IDEA, ITS HISTORY, ITS CONSEQUENCES 7–8 (2013) [hereinafter WAR TIME]; ROBERT VITALIS, WHITE WORLD ORDER, BLACK POWER POLITICS: THE BIRTH OF AMERICAN INTERNATIONAL RELATIONS 26 (2015); NIKHIL PAL SINGH, RACE AND AMERICA'S LONG WAR 29–30 (2017); AMY KAPLAN, THE ANARCHY OF EMPIRE IN THE MAKING OF U.S. CULTURE (2005).

[25] There is perhaps no better example of this than that of U.S. colonialism in the Caribbean. The cases adjudicating the rights of individuals held at Guantanamo Bay highlight U.S. control of the territory and its unwillingness to afford rights to those held there. *See, e.g.*, Rasul v. Bush, 542 U.S. 466 (2004); Hamdi v. Rumsfeld, 542 U.S. 507 (2004); Hamdan v. Rumsfeld, 548 U.S. 557 (2006); Boumedienne v. Bush, 553 U.S. 723 (2008). The Insular Cases, a series of cases adjudicating the status of territories the U.S. acquired after the Spanish-American War. *See, e.g.*, Downes v. Bidwell, 182 U.S. 244 (1901); De Lima v. Bidwell, 182 U.S. 1 (1901); Balzac v. Porto Rico, 258 U.S. 298 (1922); Dorr v. United States, 195 U.S. 138 (1904). For a description of the role of the Insular Cases in expanding U.S. colonialism and imperialism, see JUAN TORRUELLA, RULING AMERICA'S COLONIES: THE INSULAR CASES 74 (2013).

reimagine the geographies of constitutional lawmaking to include what comprises "the foreign," the land outside of continental U.S. borders. Rather than view foreign affairs as exogenous to the United States and its borders, I view the "domestic" and "foreign" terrains of lawmaking as one continuum that functions to serve the interests of U.S. imperialism.[26]

I argue that to understand U.S. foreign affairs as a source of both global and domestic racial power, we must foreground an analysis of imperialism in the making of U.S. law. In IMPERIALISM: THE HIGHEST STAGE OF CAPITALISM, V.I. Lenin defines imperialism as "an annexationist, predatory, plunderous" project for the division of the world, the partition and repartition of colonies, " 'spheres of influence' of finance capital." According to Lenin, imperialism emerged when capitalism grew to become a world system of colonial oppression, facilitating the financial strangulation of the global majority by a few nations.[27] Imperialism produces a specific kind of relational subjectivity, one requiring a subordinate population or nation that is subject to the authority of a ruling populaation or nation. Imperial subordination is characterized by foreign economic control, which requires ideological formations of race that produce racial power. Racial power is the enforcement mechanism through which imperialism justifies domination and compels subordination. The law is a vehicle for the production of those ideological formations and provides cover for their execution. Imperialism produces U.S. foreign policy, and foreign policy is the way in

---

[26] *See, e.g.*, Aziz Rana, *How We Study the Constitution: Rethinking the Insular Cases and Modern American Empire*, 130 YALE L.J.F. 312, 314–17 (2020) (identifying the failure to adequately confront the extent to which the United States, from its founding, has been a project of empire as a major lacuna in the legal academy and the study of the Constitution). Following the submission of this Article, *UCLA Law Review* published a special symposium issue entitled, "*Transnational Legal Discourse on Race and Empire*." According to the conveners of the symposium issue, E. Tendayi Achiume and Asli Bali, the objectives of the symposium were to highlight the renewed momentum among Third World Approaches to International Law (TWAIL) scholars to engage in Critical Race Theory, and to center Libya as a specific case study which highlights the relationship between international law, race, and empire. *See* E. Tendayi Achiume & Asli Bali, *Race and Empire: Legal Theory Within, Through, and Across National Borders*, 67 UCLA L. REV. 1386–1431 (2021). While this is a welcome intervention, the symposium issue largely focuses on international law as a tool of empire, and does not engage the U.S. domestic legal apparatus or provide a definition of imperialism.

[27] V.I. LENIN, *Imperialism, The Highest Stage of Capitalism*, *in* ESSENTIAL WORKS OF LENIN, 177, 178–90 (Henry M. Christman ed., 1966).

which U.S. imperialism is executed around the world. It can be executed by force, mutual collaboration, or various forms of dependence.

By foregrounding imperialism as a prism through which to study U.S. foreign affairs, I capture the relationships of power and dominance embedded in the execution of U.S. foreign policy—namely the economic and racial power that undergirds the relationships between the United States and nations around the world, and how these unequal relationships influence the sphere of domestic lawmaking.[28] Ultimately, I argue that, without foregrounding imperialism, we obscure the role of racial power in U.S. foreign affairs.[29]

I view the law as a critical site of contestation in my study of imperialism and its impacts on U.S. foreign and domestic policy. As renowned scholar Kimberlé Crenshaw noted in her introduction to *Critical Race Theory: Key Writings that Formed the Movement*, "To the extent that racial power is exercised legally and ideologically, legal scholarship about race is an important site for the construction of that power, and thus is always a factor, if 'only' ideologically, in the economy of racial power itself."[30] Racial power appears in the mutually constitutive spaces of domestic and foreign policy, as I outline in Part I, and is reinforced through the law, as I outline in Part II. Thus, the respective terrains of lawmaking and legal scholarship are significant sites for the construction of imperial power.

This Article proceeds in two parts. In Part I, "U.S. Foreign Policy as Racial Policy," I identify the four key policy pillars of

---

[28] Rubin Francis Weston's RACISM IN U.S. IMPERIALISM: THE INFLUENCE OF RACIAL ASSUMPTIONS ON AMERICAN FOREIGN POLICY, continues to be one of the most cited sources on the relationship between U.S. foreign policy and race in law review publications. RUBIN FRANCIS WESTON, RACISM IN U.S. IMPERIALISM: THE INFLUENCE OF RACIAL ASSUMPTIONS ON AMERICAN FOREIGN POLICY 1893–1946 15 (1st ed. 1972).

[29] There is a rich body of critical scholarship that identifies the impact of U.S. foreign policy in domestic legal regimes, but these scholars are not cited as scholars of foreign relations, creating a sort of conceptual segregation in the study of foreign affairs. That is, those who foreground race are race or civil rights scholars, not foreign affairs scholars. For examples from this rich body of scholarship, *see generally* Eric Yamamoto & Rachel Oyama, *Masquerading Behind a Facade of National Security*, 128 YALE L.J.F. (2019); LAURA E. GÓMEZ, INVENTING LATINOS: A NEW STORY OF AMERICAN RACISM 1, 2 (2020); LAURA E. GÓMEZ, MANIFEST DESTINIES: THE MAKING OF THE MEXICAN AMERICAN RACE (2d ed. 2007); RANA, *supra* note 15, at 3–4; Rana, *supra* note 26, at 313–14; COLD WAR CIVIL RIGHTS, *supra* note 24, at 5–8; WAR TIME, *supra* note 24, at 5–8.

[30] CRITICAL RACE THEORY: KEY WRITINGS, *supra* note 20, at xiii.

U.S. imperialism: militarism, unilateral coercive measures, foreign aid, and the deployment of the dollar. I then pivot to a brief history of U.S. imperialism in the Middle East, highlighting the geographic and racial specificities that influence the ideological and legal contours of U.S. imperialism.[31] I end this section with an analysis of *The Public Report of the Vice President's Task Force on Combatting Terrorism* (1985),[32] which was a defining document in the making of anti-terrorism law in the United States and in U.S. foreign policy. In Part II, "The Emergence of Terror as a Legal Category," I focus on what the F.B.I. has called the first terrorism prosecution, colloquially known as the Los Angeles 8 case. It is one of the longest and most significant cases in U.S. immigration law and national security policy, but has received very little attention by the academy and beyond. I end the Article with a discussion of how the L.A. 8 case influenced the passage of the Antiterrorism and Effective Death Penalty Act (1996) and the Illegal Immigration Reform and Immigration Responsibility Act (1996), thereby influencing both the First and Fifth Amendments and their respective availability to non-citizen dissidents. Ultimately, this Article reveals how imperialism has come to be both a governing and structuring influence in lawmaking, even though it may be absent from the letter of the law. To recount this legal history, I draw on interviews with the judge on the L.A. 8 case, Judge Bruce Einhorn, as well as the lawyers and their clients. I also

---

[31] There exists an excellent and rich body of legal scholarship on U.S. imperialism in Latin America, the Caribbean and Hawai'i. This Article is meant to complement these studies of imperialism by highlighting the specificities of U.S. imperialism in the Middle East, and how those specificities have influenced lawmaking, racial power, and the ideological content of U.S. imperialism. *See* Sam Erman, *Citizens of Empire: Puerto Rico, Status, and Constitutional Change*, 102 CALIF. L. REV. 1181, 1181 (2014); EDIBERTO ROMAN, THE OTHER AMERICAN COLONIES: AN INTERNATIONAL AND CONSTITUTIONAL LAW EXAMINATION OF THE UNITED STATES' NINETEENTH AND TWENTIETH CENTURY ISLAND CONQUESTS xvii, xix–xx (2006); Ediberto Roman, *Empire Forgotten: The United States's Colonization of Puerto Rico*, 42 VILL. L. REV. 1119, 1122 (1997); Christina Duffy Burnett, *"They Say I am Not an American . . . ": The Noncitizen National and the Law of American Empire*, 48 VA. J. INT'L L. 659, 663 (2008); Diane Lourdes Dick, *U.S. Tax Imperialism in Puerto Rico*, 65 AM. U. L. REV. 1, 9 (2015); James T. Campbell, Note, *Island Judges*, 129 YALE L.J. 1888, 1899 (2020); Kunal Parker, *Thinking Inside the Box: A Historian Among the Anthropologists*, 38 L. & SOC'Y REV. 851, 855 (2004); Lauren Benton, *Colonizing Hawai'i and Colonizing Elsewhere: Toward a History of U.S. Imperial Law*, 38 L. & SOC'Y REV. 835, 835 (2004).

[32] PUBLIC REPORT OF THE VICE PRESIDENT'S TASK FORCE ON COMBATTING TERRORISM 1 (1986), https://www.ojp.gov/pdffiles1/Digitization/138789NCJRS.pdf [https://perma.cc/Z6SY-BEA2] [hereinafter PUBLIC REPORT].

review the case files, depositions, briefs, and court decisions. Additionally, I conduct archival research at the Ronald Reagan Presidential Library. I also analyze the influence of international legal mechanisms and institutions and conclude with the statutory law that emerged out of the prosecution.[33]

I. U.S. FOREIGN POLICY AS RACIAL POLICY

In January 2018, then President Donald Trump rejected a bipartisan immigration bill on the basis that the United States should not accept immigrants from Haiti and "shithole countries" in Africa when it could instead accept immigrants from Europe.[34] Soon afterward, civil rights organizations filed *Ramos v. Nielsen* to stop the termination of Temporary Protective Status for all individuals from Haiti, El Salvador, Nicaragua, and Sudan.[35]

Understandably, the comments sparked uproar among the U.S. public and around the world.[36] But for U.S. Presidents, such comments are not an aberration from the norm. Throughout U.S. history, the subordination of non-white nations and peoples to U.S. imperialism has been rationalized by stereotypes and beliefs that render that subordination logical, necessary, and even historically inevitable in the U.S. imaginary.[37] For example, in July 2019, the Nixon Presidential Library released a recording of an October 1971 phone conversation between President Nixon

---

[33] My methodology involves tracing the historical genealogy of the term terrorism out of the archives, to understand how it became a legal term of art undergirded by racial power.

[34] Alan Fram & Jonathan Lemire, *Trump: Why Allow Immigrants from "Shithole Countries"?*, ASSOCIATED PRESS (Jan. 11, 2018), https://apnews.com/article/fdda2ff0b877416c8ae1c1a77a3cc425 [https://perma.cc/YGA2-UXS4]; Leighton Akio Woodhouse, *Trump's "Shithole Countries" Remark Is at the Center of a Lawsuit to Reinstate Protections for Immigrants*, INTERCEPT (June 28, 2018), https://theintercept.com/2018/06/28/trump-tps-shithole-countries-lawsuit/ [https://perma.cc/3CHD-6PC9].

[35] *Ramos v. Nielsen*, 321 F. Supp. 3d 1083, 1092–93 (N.D. Cal. 2018); *see also* Ahilan Arulanantham, *Despite Trump's Best Efforts, Hundreds of Thousands of Immigrants Earn Reprieve from Deportation*, ACLU S. CAL. (Oct. 26, 2018), https://www.aclusocal.org/en/news/despite-trumps-best-efforts-hundreds-thousands-immigrants-earn-reprieve-deportation [https://perma.cc/H3PH-TTP7].

[36] *See* Laignee Barron, *"A New Low." The World is Furious at Trump for His Remark About "Shithole Countries"*, TIME (Jan. 12, 2018), https://time.com/5100328/shithole-countries-trump-reactions/ [https://perma.cc/57E2-6RKW].

[37] *See* Kimberlé Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1370 (1988) ("Throughout American history, the subordination of Blacks was rationalized by a series of stereotypes and beliefs that made their conditions appear logical and natural.").

and then California Governor Ronald Reagan.[38] Reagan complained that "[t]o see those, those monkeys from those African countries—damn them, they're still uncomfortable wearing shoes!"[39] Nixon responded with laughter.[40]

In another example involving President Harry Truman prior to becoming president, he wrote to his wife that "one man is just as good as another so long as he's honest and decent and not a n[*****] or a Chinaman. Uncle Will says that the Lord made a white man from dust, a n[*****] from mud, then He threw up what was left and it came down a Chinaman."[41] It is noteworthy that the Truman Administration was the architect of the U.S. invasion of Korea in 1950.[42]

At the Versailles Convention in 1919, President Wilson, who once called Black people "an ignorant and inferior race," killed a proposal calling for the treaty to recognize the principle of racial equality.[43] And in discussing whether the people of the Philippines were fit for self-government, President Theodore Roosevelt once said that "[w]hat has taken us thirty generations to achieve, we cannot expect to see another race accomplish out of hand, especially when large portions of that race start very far behind the point which our ancestors had reached even thirty generations ago."[44] Thus, the subjugation of the Philippines to Spanish and then U.S. imperialism was, for Roosevelt, a historical inevitability.[45]

---

[38] Tim Naftali, *Ronald Reagan's Long-Hidden Racist Conversation With Richard Nixon*, ATLANTIC (July 30, 2019), https://www.theatlantic.com/ideas/archive/2019/07/ronald-reagans-racist-conversation-richard-nixon/595102/ [https://perma.cc/83A4-4DY9].

[39] *Id.*

[40] *Id.*

[41] Associated Press, *Truman's Racist Talk Cited By Historian*, SEATTLE TIMES (Nov. 3, 1991), https://archive.seattletimes.com/archive/?date=19911103&slug=1314805 [https://perma.cc/E9EA-QW7U].

[42] *US Enters the Korean Conflict*, NAT'L ARCHIVES (May 19, 2021), https://www.archives.gov/education/lessons/korean-conflict#background [https://perma.cc/D758-8KJC].

[43] Dylan Matthews, *Woodrow Wilson Was Extremely Racist—Even by the Standards of his Time*, VOX (Nov. 20, 2015), https://www.vox.com/policy-and-politics/2015/11/20/9766896/woodrow-wilson-racist [https://perma.cc/9Z2U-QVDX].

[44] Arturo Conde, *Teddy Roosevelt's "Racist" and "Progressive" Legacy, Historian Says, Is Part of Monument Debate*, NBC NEWS (July 20, 2020), https://www.nbcnews.com/news/latino/teddy-roosevelt-s-racist-progressive-legacy-historian-says-part-monument-n1234163 [https://perma.cc/C9DZ-TMH4].

[45] U.S. DEP'T OF STATE OFF. OF HIST., MESSAGE OF THE PRESIDENT TO THE SENATE AND HOUSE OF REPRESENTATIVES (Dec. 3, 1901), https://history.state.gov/

Of course, alongside this commentary, there is a long historical record of exclusionary domestic policy extending from the earliest days of colonization and enslavement to the twentieth century's Japanese internment and immigration quotas, and President Trump's Muslim Ban—domestic policy making that is intimately intertwined with U.S. global posture.[46] In essence, this commentary suggests that the international ascendance of historically white nations is not as a result of or at the expense of the non-white peoples of the world, but rather, a necessary step toward global progress. It obscures the violence and destruction of Western colonialism and imperialism with a sort of racialized destiny that relegates Africans, Asians, and Latin-Americans to the margins of history.

In her article entitled *Crossing the Border: The Interdependence of Foreign Policy and Racial Justice in the United States*, legal scholar Natsu Taylor Saito considers how U.S. foreign policy effects the treatment of racial, ethnic or national "others" within U.S. borders, and how in turn, the treatment of these groups impacts foreign policy.[47] She argues that it is a mistake to believe that the U.S. can remedy domestic discrimination while continuing to treat non-white nations and peoples around the world as racially inferior.[48] In this section, I

---

historicaldocuments/frus1901/message-of-the-president [https://perma.cc/KA8Z-KF9Q].

[46] *See generally supra* notes 17, 23, 25, 28 and 30. *See also* Hiroshi Motomura, *The New Migration Law: Migrants, Refugees and Citizens in an Anxious Age*, 105 CORNELL L. REV. 457, 458–59 (2020); Jerry Kang, *Thinking Through Internment*, 9 ASIAN L.J. 195, 197 (2002).

[47] Natsu Taylor Saito, *Crossing the Border: The Interdependence of Foreign Policy and Racial Justice in the United States,* 1 YALE HUM. RTS. & DEV. L.J. 53, 56 (1998) [hereinafter Saito, *Crossing the Border*]; *see also* Gordon, *supra* note 15, at 1. Natsu Taylor Saito recently published an excellent book expanding on her original argument in the article. NATSU TAYLOR SAITO, SETTLER COLONIALISM, RACE, AND LAW: WHY STRUCTURAL RACISM PERSISTS 4, 7 (2020).

[48] *See* Saito, *Crossing the Border*, *supra* note 47, at 54. *See also* Jide Nzelibe, *Strategic Globalization: International Law as an Extension of Domestic Political Conflict*, 105 NW. U. L. REV. 635, 658–82 (2011) (discussing how domestic political matters influence the making of international law). In an article by Francisco Valdes & Sumi Cho, the authors call for a materialist turn in Critical Race Theory, arguing that:

> [T]wo undeniable forces—global neoliberalism and its attendant "social structures of accumulation," combined with the decline of the U.S. as the unipolar hyperpower in the existing world-system—demand that a structural economic analysis that exceeds the boundaries of the nation-state figures more prominently alongside a structural racial/identitarian analysis in our critical assessments of law and society. Such restructuring to our analyses also requires an accompanying restructuring to agenda-

expand on Taylor Saito's intervention and assert that racial subordination at the international scale is one of the backbones of U.S. foreign policy, and remains ideologically central to the formation of U.S. imperialism. First, I identify the four policy pillars of U.S. imperialism. I then conduct a regional analysis of U.S. foreign policy, one focused on the Middle East. I recognize that over the course of the twentieth century, U.S. imperialism effectively spread throughout the world, and although the U.S. global presence continues to be geographically uneven, it persists as a worldwide phenomenon.[49] I choose to focus this study on the Middle East, however, for two reasons. First, my archival research, which I present in the second part of this section, suggests that U.S. imperialism in the region has been central to the development of "terrorism" as a legal term of art, and ultimately a bellwether of change for both foreign and domestic policy. Second, the global economy continues to be dependent on oil and gas, two resources abundantly found in the Middle East. While no nation has escaped the political consequence of our collective reliance on these two resources, those nations that have the greatest demand for energy, namely the United States, and those nations that rely on revenues from oil and gas production have developed a special relationship undergirded by imperial power.[50]

A. The Rise of the U.S. Imperial Order

In the United States, the Department of State is responsible for "diplomacy, advocacy, and assistance," while the Department of Defense, the largest Agency in the U.S. government, manages military affairs.[51] The Department of Treasury works with both

---

> setting and organizing to achieve racial and social justice in the wake of global neoliberalism."

Francisco Valdes & Sumi Cho, *Critical Race Materialism: Theorizing Justice in the Wake of Global Neoliberalism*, 43 CONN. L. REV. 1513, 1515 (2011). This Article is, in part, an answer to Valdes and Cho's call.

[49] *See* IMMERWAHR, *supra* note 3, at 11; *see generally* WILLIAMS, THE TRAGEDY, *supra* note 18; WILLIAMS, EMPIRE AS A WAY OF LIFE , *supra* note 18.

[50] *See, e.g.*, TIMOTHY MITCHELL, CARBON DEMOCRACY: POLITICAL POWER IN THE AGE OF OIL 8–9 (2011) (discussing the West's management of the new global economy and its forging of an undemocratic Middle East, with the objective of controlling the oil and gas resources in the region).

[51] *About the U.S. Department of State*, U.S. DEPT. OF STATE, https://www.state.gov/about/ [https://perma.cc/B5FW-J2W5]. Under Article II of the Constitution, U.S. foreign policy matters are handled largely by the executive branch, which oversees the National Security Council (NSC); U.S. CONST. art. II, § 2.

Agencies to execute U.S. sanctions.[52] That is to say, U.S. foreign policy is executed primarily by these three Agencies and their respective Secretaries, who all sit on the National Security Council along with the Assistant to the President for National Security Affairs, and the Vice President.[53] To note, the President chairs the NSC.[54]

Article II also empowers the President as commander-in-chief of the military. U.S. CONST. art. II, § 2, cl. 1. Article I enumerates Congress' powers with respect to military affairs: to provide for the common defense; to declare war; to raise and regulate armed forces; and to make all laws "necessary and proper" to the exercise of its powers. U.S. CONST. art. I, § 8, cl. 1, 11–14, 18. For a discussion of the expansion of Executive Power over the course of the last century, *see* Andrew P. Napolitano, *The Legal History of National Security Law and Individual Rights in the United States: The Unconstitutional Expansion of Executive Power*, 8 N.Y.U. J.L. & LIBERTY 2, 396 (2014). For a discussion of Congress's war power as it relates to the expansion of Executive Power, and how interventionist foreign policy is inconsistent with the founders' vision of foreign policy, see Christopher A. Preble, *The Founders, Executive Power, and Military Intervention*, 30 PACE L. REV. 688 (2010) and John B. Mitchell, *Preemptive War: Is It Constitutional*, 44 SANTA CLARA L. REV. 497 (2004).

[52] U.S. Department of State, *Economic Sanctions Policy and Implementation*, https://www.state.gov/economic-sanctions-policy-and-implementation/ [https://perma.cc/S92V-DDVV] (last visited Aug. 20, 2022).

[53] U.S. Dep't of State, *About the U.S. Department of State*, https://www.state.gov/about/ [https://perma.cc/MMS7-RYB3]; U.S. Dep't of Defense, *About*, https://www.defense.gov/our-story/ [https://perma.cc/4BH2-XLHV]; *see also* The White House: President Barack Obama, *National Security Council*, https://obamawhitehouse.archives.gov/administration/eop/nsc/#:~:text=The%20NSC%20is%20chaired%20by,President%20for%20National%20Security%20Affairs [https://perma.cc/23F5-347M].

> The National Security Council (NSC) is the President's principal forum for considering national security and foreign policy matters with his senior national security advisors and cabinet officials. Since its inception under President Truman, the Council's function has been to advise and assist the President on national security and foreign policies. The Council also serves as the President's principal arm for coordinating these policies among various government agencies.
>
> The NSC is chaired by the President. Its regular attendees (both statutory and non-statutory) are the Vice President, the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, and the Assistant to the President for National Security Affairs. The Chairman of the Joint Chiefs of Staff is the statutory military advisor to the Council, and the Director of National Intelligence is the intelligence advisor. The Chief of Staff to the President, Counsel to the President, and the Assistant to the President for Economic Policy are invited to attend any NSC meeting. The Attorney General and the Director of the Office of Management and Budget are invited to attend meetings pertaining to their responsibilities. The heads of other executive departments and agencies, as well as other senior officials, are invited to attend meetings of the NSC when appropriate.
>
> The National Security Council was established by the National Security Act of 1947 (PL 235 - 61 Stat. 496; U.S.C. 402), amended by the National Security Act Amendments of 1949 (63 Stat. 579; 50 U.S.C. 401 et

In this section, I outline the four primary policy tools that these Agencies, under the umbrella of the National Security Council, use to maintain and expand U.S. imperialism.[55] Each of these tools—militarism, unilateral coercive measures, the use of foreign aid, and the deployment of the dollar—contributes to creating an imperial economic order undergirded by racial hierarchy.

1. Militarism.

The United States has over 800 known military bases throughout the world[56] and an annual military budget that exceeds $1.9 trillion, and accounts for nearly 40 percent of global military expenditures.[57] According to the Council on Foreign Relations' Global Conflict Tracker, there are 26 sites of conflict throughout the world that involve the United States or its proxies.[58] And between 1947 and 1989, the United States sought regime change at least 72 times[59]; 66 were covert operations, while the remaining 6 were overt.[60] The number is surely higher if one includes the years after 1989. Notably, the overwhelming majority of these operations were conducted in non-white nations, reflecting how certain political and military techniques evolved over time to target and destabilize non-white nations.[61]

---

seq.). Later in 1949, as part of the Reorganization Plan, the Council was placed in the Executive Office of the President.

Id.

[54] *Id.*

[55] *See, e.g.*, Harold Hongju Koh & John Choon Yoo, *Dollar Diplomacy/Dollar Defense: The Fabric of Economics and National Security Law*, 26 INT'L L. 715, 731–36 (1992).

[56] *See* IMMERWAHR, *supra* note 3, at 11.

[57] Aaron Mehta, *Global Defense Spending Sees Biggest Spike in a Decade*, DEFENSE NEWS (Apr. 27, 2020), https://www.defensenews.com/global/2020/04/27/global-defense-spending-sees-biggest-spike-in-a-decade/ [https://perma.cc/98K4-KRUH] (noting that in 2019, the annual military budget was at $1.9 trillion; the second-largest, China, is only at $261 billion).

[58] *Global Conflict Tracker*, COUNCIL ON FOREIGN RELATIONS, https://www.cfr.org/global-conflict-tracker/?category=us [https://perma.cc/HZ6E-HTU3 (Nov. 5, 2021).

[59] Lindsey A. O'Rourke, *The U.S. Tried to Change Other Countries' Governments 72 Times During the Cold War*, WASH. POST (Dec. 23, 2016), https://www.washingtonpost.com/news/monkey-cage/wp/2016/12/23/the-cia-says-russia-hacked-the-u-s-election-here-are-6-things-to-learn-from-cold-war-attempts-to-change-regimes/ [https://perma.cc/6ZNE-94WW].

[60] *Id.*

[61] *See generally* Mahmood Mamdani, GOOD MUSLIM, BAD MUSLIM: AMERICA, THE COLD WAR, AND THE ROOTS OF TERROR (Three Leaves Press ed., Random House,

Militarism, in the variegated forms of warfare, regime change, coups d'état, geographically disbursed military installations, proxy governments that execute U.S. foreign policy, and island holdings is key to the maintenance and expansion of U.S. imperialism. In *Soft on Defense: The Failure to Confront Militarism,* a keynote presentation delivered at the 2004 Boalt Hall conference entitled "Women and War: A Critical Discourse," legal scholar Ann Scales defines militarism:

> [A]s the manifestation at every level of policy—military and otherwise—of the logic of war. In the classic logic, for war to be a useful part of politics, it cannot be half-hearted. Every policy, including every domestic policy, must be measured by its effect on military capability and readiness, lest some rival gain any small advantage. Cost is no object. Disproportionality is part of the expectedly exorbitant price. If militarism is working its magic, all of this is largely invisible; it is treasonous to notice it, much less question it.[62]

In her presentation, given against the backdrop of the second U.S. invasion of Iraq, she called for "a radical critique of militarism," especially and most urgently in situations and areas of law where the influence of militarism is not immediately obvious.[63] By way of example, she explicated the ways in which militarism had infiltrated the law school curriculum; she called this exercise "mental disarmament."[64]

As Scales notes, militarism pervades every aspect of U.S. social, legal and economic life.[65] She describes in detail how the courts deploy the political question doctrine to avoid government oversight of military activities or corporate accountability when some aspect of militarism, like the arms industry, is at issue.[66]

Inc. 2005) (describing how different techniques of war and violence evolved over the course of the twentieth century to subject or destroy formerly colonized people).

[62] Ann Scales, *Soft on Defense: The Failure to Confront Militarism*, 20 BERKELEY J. GENDER, L. & JUST. 369, 371–72 (2005) [hereinafter Scales, *Soft on Defense*] (footnote omitted) (citing Ann Scales, *Militarism, Male Dominance and Law: Feminist Jurisprudence as Oxymoron?*, 12 HARV. WOMEN'S L.J. 25, 26 (1989) (elaborating a different definition of feminism)); Jennifer Chacon, *Feminists at the Border*, 91 DENV. U. L. REV. 85, 86–87 (2013) (memorializing Scales at the Boalt Hall conference honoring her legacy).

[63] *See* Scales, *Soft on Defense*, *supra* note 62, at 392; Chacon*, supra* note 62*,* at 89.

[64] *See* Scales, *Soft on Defense*, *supra* note 62, at 373–88, 392.

[65] *See id. passim* (discussing how militarism has influenced the direction of social policy and legal scholarship, particularly after the events of September 11, 2001).

[66] *Id*. at 374–75.

Scales' analysis largely looks inward to the inner workings of the United States, but her analysis is all the more relevant to what historian Daniel Immerwahr calls the Greater United States as well, the areas beyond the contiguous borders of the nation that include U.S. colonies and military bases.[67] In *How to Hide an Empire: A History of the Greater United States*, he describes how U.S. imperialism is largely hidden from sight, but continues to be ever present, especially for its subject beyond the borders of the contiguous U.S.[68]

Militarism is a very expensive tool at the disposal of the executive branch. The expense comes not just in the form of dollars, but also in human life and political capital. For these reasons, it cannot be used without other key foreign policy tools, on which militarism often relies for its success. More often than not, it is buttressed by the power of the dollar, the inducement of foreign aid, and the early imposition of sanctions.[69] There is a metaphor often used in politics of the carrot and the stick.[70] If militarism is the stick, the dollar and foreign aid are the carrots. Unilateral coercive measures are a critical tool that lay the groundwork for all three.

2. Unilateral Coercive Measures.

The United Nations Office of the High Commissioner on Human Rights (OHCHR) describes unilateral coercive measures,

---

> When military matters come before courts, from the internment of Japanese Americans in World War II to the present day, courts will not intervene. Usually, this is in the form of application of the "political question" doctrine. According to this doctrine, matters are not susceptible to judicial review if they satisfy a test devised by the Supreme Court in *Baker v. Carr* in 1962. The factors set forth for consideration under that test speak largely to the need to respect the political branches of government and the comparative expertise of those branches on matters involving the military and/or foreign affairs. For example, after the Ohio National Guard killed four students at Kent State University during an anti-Vietnam War rally in 1970, students brought an action challenging both the training and the command of the Guard.

Id. (footnotes omitted). The Supreme Court declined to hear the matter. *Id.* at 375.

[67] *See* IMMERWAHR, *supra* note 3, at 16.

[68] I would argue that it is also perceptible and has far reaching impacts on indigenous peoples, the descendants of slaves, and those who arrive at its shores as a result of U.S. imperialism. *See, e.g.*, Alyosha Goldstein, *Toward a Genealogy of the U.S. Colonial Present*, *in* FORMATIONS OF UNITED STATES COLONIALISM (Alyosha Goldstein ed., 2014); *see also infra* Part II.

[69] *See generally* Scales, *Soft on Defense*, *supra* note 62.

[70] *Carrot and Stick*, EDUCALINGO, https://educalingo.com/en/dic-en/carrot-and-stick [https://perma.cc/NFB8-FANH] (last visited Aug. 20, 2022).

the legal term denoting sanctions and embargoes, as "economic measures taken by one State to compel a change in the policy of another State."[71] This definition encompasses "the interruption of financial and investment flows between sender and target" nations, in addition to what are now called "smart" sanctions, asset freezes and travel bans targeting individuals.[72] Sanctions, by their very nature, target civilian populations both directly or indirectly.[73] Because sanctions affect one third of the global population, U.N. member states are increasingly concerned about the consequences of such measures on "the full enjoyment of human rights."[74] Direct targeting includes lack of access to

---

[71] U.N. High Commissioner for Human Rights, *Human Rights and Unilateral Coercive Measures*, https://www.ohchr.org/EN/NewsEvents/Seminars/Pages/WorkshopCoerciveMeasures.aspx [https://perma.cc/WQ73-C2XU]; *see also* Alena Douhan, *Unilateral Coercive Measures: Criteria and Characteristics*, https://www.ohchr.org/Documents/Events/WCM/AlenaDouhan.doc [https://perma.cc/A8NE-XDLF].

[72] *See* U.N. High Commissioner for Human Rights, *supra* note 71.

[73] U.N. High Commissioner for Human Rights, *Thematic Study of the Office of the United Nations High Commissioner for Human Rights on the Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, Including Recommendations on Actions Aimed at Ending Such Measures*, ¶ 33, U.N. Doc. A/HRC/19/33 (Jan. 12, 2012), https://www.ohchr.org/en/documents/thematic-reports/ahrc1933-thematic-study-office-united-nations-high-commissioner-human [https://perma.cc/Z5L7-FSLZ] (click "See available official languages" hyperlink; then choose "English").

[74] U.N. High Commissioner for Human Rights, *One Third of Humanity Lives in Countries Subjected to Unilateral Coercive Measures, UN Rights Expert Says* (Oct. 26, 2015), https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16652&LangID=E [https://perma.cc/QFF4-DVUL]; *see also* U.N. High Commissioner for Human Rights, *supra* note 71.

> The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993 called upon States to "refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among States and impede the full realization of the human rights set forth in the Universal Declaration of Human Rights and in international human rights instruments, in particular the rights of everyone to a standard of living adequate for their health and well-being, including food and medical care, housing and the necessary social services". [sic]
>
> Numerous United Nations studies have also been carried out on unilateral coercive measures and human rights including the issue of legality of such measures. For instance, . . . "The Adverse consequences of economic sanctions on the enjoyment of human rights" (E/CN.4/Sub.2/2000/33); Human Rights Impacts of Sanctions on Iraq, Background Paper prepared by OHCHR for the meeting of the Executive Committee on Humanitarian Affairs of 5 September 2000 (A/HRC/19/33); OHCHR thematic study on the impact of unilateral coercive measures on the enjoyment of human rights, including recommendations on actions aimed at ending such measures, 11 January 2012; and Committee on

critical supplies such as medical equipment, pharmaceuticals, and foodstuffs, while indirect targeting includes access to industrial equipment, the isolation of central banks, and the enforced poverty that results from disrupting trade relations.[75] While it is difficult to ascertain the legality of sanctions under international law, most U.N. member states "agree[ ] that unilateral coercive measures infringe on sovereignty, defy international law and impede a nation's efforts to achieve the Sustainable Development Goals" outlined by the United Nations.[76] As a result, unilateral coercive measures are in direct violation of the U.N. Charter and other related principles governing international humanitarian law.[77] Notably, women, children and other vulnerable groups disproportionately bear the consequences of sanctions regimes.[78]

In effect, if the objective of foreign aid regimes is to expand consumer markets and open developing nations to foreign investment, as I argue in the next section, the purpose of sanctions is to exclude them from the global economy.[79] One of the purported goals of U.S. sanctions against Iran and Venezuela is to destabilize their "regimes"—isolate their respective populations to such an extent that they rebel against their own governments, and potentially overthrow them.[80] But it is

---

> Economic, Social and Cultural Rights, general comment No. 8 of 1997 on the relationship between economic sanctions and respect for economic, social and cultural rights (E/C.12/1997/8).

Id.

[75] *See, e.g.*, SASAN FAYAZMANESH, CONTAINING IRAN: OBAMA'S POLICY OF TOUGH DIPLOMACY 37, 295, 403 (2013) [hereinafter FAYAZMANESH, CONTAINING IRAN]; SASAN FAYAZMANESH, THE UNITED STATES AND IRAN: SANCTIONS, WARS AND THE POLICY OF DUAL CONTAINMENT 12, 30, 229 (2008) [hereinafter FAYAZMANESH, SANCTIONS].

[76] Press Release, U.N. Gen. Assembly, Second Committee Approves Resolutions Condemning Unilateral Economic Measures, Promoting Benefits of Natural Plant Fibres for Sustainable Development, U.N. Press Release GA/EF/3527 (Nov. 21, 2019), https://www.un.org/press/en/2019/gaef3527.doc.htm [https://perma.cc/SAR2-GENF]; *see* Alexandra Hofer, *The Developed/Developing Divide on Unilateral Coercive Measures: Legitimate Enforcement or Illegitimate Intervention?*, 16 CHINESE J. INT'L L. 175, 195–96 (2017). For articles in favor of sanctions, *see*, *e.g.*, Barry E. Carter, *International Economic Sanctions: Improving the Haphazard U.S. Legal Regime,* 75 CALIF. L. REV. 1159, 1163 (1987).

[77] *See* Hofer, *supra* note 76, at 176, 183–85. *See* U.N. Gen. Assembly, *supra* note 76.

[78] *See* U.N. Gen. Assembly, *supra* note 76.

[79] *See infra* pp. 151–53.

[80] *See* FAYAZMANESH, CONTAINING IRAN, *supra* note 75 at 81, 226–27, 445. For a humorous problematization of the use of the term "regime" in characterizing foreign governments, *see* Ladane Nasseri, *How to Write About Iran: A Guide for Journalists,*

significant that isolating both nations from the global economy has had the consequence of reshaping the international oil market. Both countries, previously the highest exporters of oil in the world, have now been outpaced by the United States, which emerged as the primary exporter of oil in the world only after it expanded its sanctions regime against both countries.[81] According to indigenous activist organization Red Nation, recent disputes over the Dakota Access Pipeline and the Keystone XL Pipeline are reflections of this shift in the global market.[82] After the Obama Administration deregulated domestic drilling, U.S. oil and gas companies have expanded their markets into indigenous territory, which, indigenous nations argue, is a violation of their sovereignty.[83] Thus, in addition to exploiting oil in the imperial peripheries, the U.S. has opted to exploit oil within its colonial frontiers as well.[84]

Ninety percent of the nation-states currently subject to U.S. sanctions regimes are located in Africa, Asia and Latin America, and are either former colonies or continue to be subject to Western imperialism in forms other than sanctions.[85] Alexandra Hofer, author of *The Developed/Developing Divide on Unilateral Coercive Measures: Legitimate Enforcement or Illegitimate Intervention?*, describes how the Global South is both

---

Analysts and Policymakers, MCSWEENEY'S INTERNET TENDENCY (Feb. 16, 2021), https://www.mcsweeneys.net/articles/how-to-write-about-iran-a-guide-for-journalists-analysts-and-policymakers [https://perma.cc/4VCC-7GWS].

[81] *See, e.g.*, Scott Neuman, *U.S. Seizes Iranian Fuel from Four Tankers Bound for Venezuela*, NPR (Aug. 14, 2020), https://www.npr.org/2020/08/14/902532689/u-s-seizes-iranian-fuel-from-4-tankers-bound-for-venezuela [https://perma.cc/E25L-NEZH].

[82] *Sanctions on Iran*, CTR. POL. EDUC. (May 7, 2020), https://political education.org/resources/sanctions-on-iran/ [https://perma.cc/7BMT-EPLS].

[83] *Id. See also* NICK ESTES, OUR HISTORY IS THE FUTURE: STANDING ROCK VERSUS THE DAKOTA ACCESS PIPELINE, AND THE LONG TRADITION OF INDIGENOUS RESISTANCE 1–4 (2019); JENNIFER NEZ DENETDALE, DAVID CORREIA, NICK ESTES, MELANIE K. YAZZIE, RED NATION RISING: FROM BORDERTOWN VIOLENCE TO NATIVE LIBERATION 79 (2021).

[84] *Sanctions on Iran*, *supra* note 82; *see also* ESTES, *supra* note 83, at 1–4; DENETDALE ET AL., *supra* note 83, at 79.

[85] The European nations or territories include Belarus, Bosnia and Herzegovina, Crimea, Moldova and Montenegro. *Sanctions Kill,* SANCTIONED COUNTRIES https://sanctionskill.org/wp-content/uploads/2020/03/39SanctionedCountries3.pdf [https://perma.cc/5FJM-Z794] (last visited Aug. 24, 2022). It is notable that, while these areas are located in Europe, their people have historically been racialized as non-white. Bosnia and Herzogovina are Muslim nations, and the others are comprised of Slavic peoples. *See also supra* note 31 and accompanying text; Hofer, *supra* note 76, at 204–07.

overrepresented among nations subject to sanctions and has taken a clear stance against sanctions.[86] In this sense, U.S. sanctions are racialized foreign policy designed to punish deviant or rogue nations that challenge U.S. global supremacy, or that fall under the orbit of those who do.[87] And the consequences of these policies are similarly racialized—they enforce the wealth gaps, development divides and unequal market dynamics that colonialism left behind. Thus, the logics of white supremacy guide both the form and function of U.S. sanctions.

3. How Foreign Aid Creates Subordinate Nations.

Foreign aid continues to be one of the main pillars of U.S. foreign policy.[88] According to the U.S. Agency for International Development's (USAID) Office of Food for Peace's most recent annual report, the promise of food security is a critical tool in defeating global terrorism.[89] The Food for Peace program is notably used for promoting U.S. foreign policy interests under the guise of aid and trade, a soft method for enforcing the "compliance of states over which Washington [needs] to exert influence."[90] In effect, aid is a means of disciplining states or opposition movements into enforcing the military objectives of

---

[86] Hofer, *supra* note 76, at 204–05.

[87] *See generally* FAYAZMANESH, SANCTIONS, *supra* note 75.

[88] *See, e.g.*, DOUGLAS A. IRWIN, CLASHING OVER COMMERCE: A HISTORY OF US TRADE POLICY 498, 518–19 (2017) (noting broad acceptance in the United States during the 1950s that free trade and foreign aid were essential to the fight against communism); *see* ROBERT GILPIN, GLOBAL POLITICAL ECONOMY: UNDERSTANDING THE INTERNATIONAL ECONOMIC ORDER 14–23 (2001) (noting, from a realist perspective, the foundational role of power-based and security concerns underpinning international economic institutions); JEFFREY F. TAFFET, FOREIGN AID AS FOREIGN POLICY: THE ALLIANCE FOR PROGRESS IN LATIN AMERICA 1–4 (2007); TERESA HAYTER, AID AS IMPERIALISM 15 (1971) (stating that U.S. foreign aid "has never been an unconditional transfer of financial resources" and noting the impact of such aid on developing countries); Gustav Ranis, *Giving Up on Foreign Aid*, 31 CATO J. 75, 76 (2011) ("The source of the earlier revival of U.S. interest in foreign aid can be located primarily in the reaction to 9/11, as reflected in the U.S. National Security Strategy Memorandum of 2002, listing foreign aid as one of the three main pillars of U.S. foreign policy."); *see also* Koh & Yoo, *supra* note 55, at 731–32.

[89] *See* USAID, OFFICE OF FOOD FOR PEACE 5 (2018) [hereinafter FOOD FOR PEACE], https://www.usaid.gov/sites/default/files/documents/1866/FY2018_FFP_Annual_Report_508_compliant.pdf [https://perma.cc/ZY78-9QME]. Notably, the letter focuses on the conflicts in regions critical to U.S. foreign policy and the defeat of terrorism, Syria, Yemen, South Sudan etc. *See generally id.; see also* Ranis, *supra* note 88, at 76 (referencing the centrality of aid in disciplining nations that host terrorism).

[90] Ray Bush, *Crisis in Egypt: Structural Adjustment, Food Security and the Politics of USAID*, 18 CAP. & CLASS 15, 23 (1994).

U.S. imperialism, particularly in so-called hot zones like Syria, South Sudan, and Venezuela, all mentioned in the aforementioned Food for Peace report.[91]

Such programs have another critical role. They enforce a bias for U.S.-based companies and foreign direct investment. Food for Peace, for example, at one time required that all food imports provided to aid nations come from the United States, creating a market for U.S. goods in perpetuity.[92] Because aid recipients are often undergoing some sort of national crisis like war or a natural disaster, they are particularly vulnerable to these aid regimes, which are designed to create dependence on imperial metropoles so that the peripheries remain exploitable markets.[93] Institutions like the International Monetary Fund and the World Bank, for example, in providing large loans with high interest rates, also create a system of dependence, where the borrower nation often becomes incapable of paying back the loan.[94] It is then forced to negotiate over the potential cancellation of the loan or a reduction in the balance, and bargains away national sovereignty as a result, opening up domestic markets to U.S. investment or airspace and land to the U.S. military.[95]

---

[91] *See* FOOD FOR PEACE, *supra* note 89, at 5, 18; *see also* ROAPE, *Reflections on Aid and Regime Change in Africa: A Response to Cheeseman*, REV. AFR. POL. ECON. (Jan. 19, 2021), https://roape.net/2021/01/19/reflections-on-aid-and-regime-change-in-africa-a-response-to-cheeseman/ [https://perma.cc/Q5LV-NSQM]; Bill Gates, *How Foreign Aid Helps Americans*, GATESNOTES (Mar. 17, 2017), https://www.gatesnotes.com/development/how-foreign-aid-helps-americans [https://perma.cc/TLW9-48F3]; COUNCIL ON FOREIGN RELATIONS, *How Does the U.S. Spend its Foreign Aid* (2020), https://www.cfr.org/backgrounder/how-does-us-spend-its-foreign-aid [https://perma.cc/8GT3-79XW] (Oct. 1, 2018, 8:00 AM EST).

[92] Raymond F. Hopkins, *Reform In The International Food Aid Regime: The Role Of Consensual Knowledge*, 46 INT'L ORG. 225, 230 (1992); *see generally*, Nathan Nunn & Nancy Qian, *US Food Aid and Civil Conflict*, 104 AM. ECON. REV. 1630 (2014).

[93] This is a historical dynamic that dates back to European colonialism. *See, e.g.*, ANNE MCCLINTOCK, IMPERIAL LEATHER: RACE, GENDER AND SEXUALITY IN THE COLONIAL CONTEXT (Routledge eds., 1995); ARCHIVES OF EMPIRE: VOLUME I. FROM THE EAST INDIA COMPANY TO THE SUEZ CANAL xxi–xxiii, 1–5 (Barbara Harlow and Mia Carter eds., 2003); ARCHIVES OF EMPIRE: VOLUME II. THE SCRAMBLE FOR AFRICA 1–5 (Barbara Harlow and Mia Carter eds., 2003).

[94] *See, e.g.*, Sohan Sharma & Surinder Kumar, *Debt Relief: Indentured Servitude for the Third World,* 43 RACE & CLASS 45 (2002).

[95] J. Benton Heath, *The New National Security Challenge to the Economic Order*, 129 YALE L.J. 1020, 1033 (2020).

> The period from 1945 to 1989 saw the rise of perpetual states of emergency and a concomitant expansion of executive power, the increasing use of discretionary economic tools such as sanctions and embargoes as a means

The subordinate status of the borrower nation is then reified not just through the aid regime, which creates perpetual dependence on the lender nation, but also through an attendant weakening of national sovereignty, both financial and geographic.[96] It is notable that the formerly colonized nations of Africa, Asia, and Latin America are overrepresented as borrower nations.[97] This is no historical accident; rather, it is the contemporary legacy of the colonial relationship of dependence.[98] Like colonialism, which subjected the non-white regions of the world to racial and economic subordination through legal mechanisms enforced by imperial armies,[99] aid regimes do so through financial arrangements buttressed by the law.[100]

A. The Deployment of the Dollar

International trade is largely conducted in U.S. dollars, and the dollar continues to be the reserve currency for most central banks throughout the world.[101] The dollar became critical to the global financial order as a result of the Bretton-Woods Conference in 1944.[102] The conference was held in the wake of World War II, as many nations in Africa, Asia, and Latin America were embracing the promise of sovereignty through

---

> of foreign policy, the use of economic tools such as foreign aid and trade to influence interstate conflicts, and the emergence of national security as a predominant theme in domestic discourse on areas from the military to education and civil rights.

Id. (footnotes omitted).

[96] Aid is also used to enforce Christianity and other aspects of Western culture. *See, e.g.*, Samantha Lalisan, *Policing the Wombs of the World's Women: The Mexico City Policy*, 95 IND. L.J. 977, 1003 (2020); *see also* Nina J. Crimm, *The Global Gag Rule: Undermining National Interests by Doing Unto Foreign Women and NGOs What Cannot Be Done at Home*, 40 CORNELL INT'L L.J. 587, 588 (2007) ("[E]lected politicians intentionally have inculcated foreign policy and foreign assistance policy with their own religious moral values.").

[97] *See* William Brown, *Sovereignty Matters: Africa, Donors, and the Aid Relationship*, 112 AFR. AFF. 262, 262 (2013); Jeffry A. Frieden, International Investment and Colonial Control: A New Interpretation, 48 INT'L ORG. 559, 580–84 (1994).

[98] *See* EDWARD W. SAID, CULTURE AND IMPERIALISM 9 (1993); *see generally* IMMANUEL WALLERSTEIN, THE CAPITALIST WORLD ECONOMY (1993).

[99] *See generally* SAMERA ESMEIR, JURIDICAL HUMANITY: A COLONIAL HISTORY (2012); MAHMOOD MAMDANI, NEITHER SETTLER NOR NATIVE: THE MAKING AND UNMAKING OF PERMANENT MINORITIES (2020); MAHMOOD MAMDANI, CITIZEN AND SUBJECT: CONTEMPORARY AFRICA AND THE LEGACY OF LATE COLONIALISM (1996).

[100] *See* Brown, *supra* note 97, at 279.

[101] Joel Slawotsky, *U.S. Financial Hegemony: The Digital Yuan and Risks of Dollar De-Weaponization*, 44 FORDHAM INT'L L. J. 39, 41 (2020).

[102] *Id.* at 54.

decolonization.[103] In an effort to create a new global financial order that would withstand the end of European imperialism, delegates from forty-four nations around the world mapped a plan to align national economic systems and incentivize the participation of decolonizing nations in a global capitalist financial market through aid, thereby stemming the rising tide of socialism.[104] After Bretton Woods, the U.S. dollar was pegged to gold, and other currencies throughout the world were pegged to the U.S. dollar.[105] This financial relationship both implicitly and explicitly created a subordinate class of nations largely inhabited by non-white and formerly colonized peoples. They relied on access to the U.S. dollar for internal development, growth and stability to correct for the underdevelopment imposed on them by colonialism.[106]

The agreement established that the dollar would become the primary currency for global trade and created the International Monetary Fund and the International Bank for Reconstruction and Development to manage and disburse international aid in the form of the dollar.[107] By the late 1960s, the Vietnam War and U.S. military expenditures needed to sustain the war caused the value of the dollar to destabilize and decline.[108] In 1971, several nations withdrew their participation from the Bretton Woods system and redeemed their dollars for gold.[109] The United States responded strategically by precluding the exchange of dollars for gold, and in so doing withdrawing from Bretton Woods.[110]

Although the dollar had cemented itself as the leading global currency by then, withdrawal from Bretton Woods signified concerns about the future of the U.S. dollar and the global

---

[103] *See, e.g.*, JAN C. JANSEN, DECOLONIZATION: A SHORT HISTORY 71–73 (Jeremiah Riemer trans., 2017); FRANTZ FANON, A DYING COLONIALISM 3–4 (Haakon Chevalier trans., 1967); *see generally* ALBERT MEMMI, THE COLONIZER AND THE COLONIZED (Howard Greenfeld trans.,1957).

[104] The Soviet Union actively advocated for socialism as a viable alternative to capitalism, especially to recently decolonized nations. The US viewed this as a threat not just to its own national security but to the global financial order. *See* COLD WAR CIVIL RIGHTS, *supra* note 24, at 12.

[105] *The Bretton Woods System*, WORLD GOLD COUNCIL, https://www.gold.org/about-gold/history-of-gold/bretton-woods-system [https://perma.cc/B82L-WGU3] (last visited Aug. 20, 2022).

[106] *See* WALLERSTEIN, *supra* note 98, at 199; *see also* SAID, *supra* note 98, at 283–84.

[107] Slawotsky, *supra* note 101, at 54.

[108] *Id.* at 55.

[109] *Id*.

[110] *Id.*

financial market.[111] In 1979, the United States and Saudi Arabia entered an agreement to maintain the price of Saudi oil exports exclusively in U.S. dollars, called the U.S.-Saudi Arabian Joint Commission on Economic Cooperation.[112] In exchange, the U.S. would defend the Saudi monarchy and provide arms and other military equipment to the regime as well.[113]

This agreement is still in effect today, creating a "near universal need to pay for oil in USD."[114] Today, most Middle East nations, the primary exporters of oil in the world, maintain the price of oil in dollars,[115] which means that nations that import oil from them must maintain large stockpiles of the currency. For this reason, most central banks around the world continue to maintain their reserves in U.S. dollars and the IMF and World Bank continue to lend in U.S. dollars. Even the Chinese-led Asia Infrastructure Investment Bank lends in U.S. dollars.[116]

Thus, despite the end of Bretton Woods, " 'the US dollar remains as important as when Bretton Woods collapsed' in 1971," and continues to be used as a tool of U.S. economic dominance.[117]

---

[111] *Id.*

[112] *Id.* at 56. In *Crossroads and Blind Alleys: A Critical Examination of Recent Writing About Race*, a book review of CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY, Richard Delgado argues that interest convergence analysis should be used as an analytical tool to understand U.S. foreign policy in the Middle East, and that it highlights how imperialism operates in the region. Richard Delgado, *Crossroads and Blind Alleys: A Critical Examination of Recent Writing About Race*, 82 TEX. L. REV. 121, 121, 138–39 (2003); CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY (Francisco Valdes, Jerome McCristal Culp & Angela P. Harris eds., 2002). Other aspects of this article have been extensively critiqued. For a thorough accounting of the critiques, see Kevin R. Johnson, *Roll Over Beethoven: "A Critical Examination of Recent Writing About Race"*, 82 TEX. L. REV. 717 (2004).

[113] Slawotsky, *supra* note 101, at 56.

[114] *Id.* at 57. Notwithstanding the history of Bretton Woods, recent events have prompted a shift In the use of the petro dollar. *See* Summer Said & Stephen Kalin, *Saudi Arabia Considers Accepting Yuan Instead of Dollars for Chinese Oil Sales*, WALL ST. J. (Mar. 15, 2022, 11:48 AM), https://www.wsj.com/articles/saudi-arabia-considers-accepting-yuan-instead-of-dollars-for-chinese-oil-sales-11647351541 [https://perma.cc/A5ZH-HD7R].

[115] Anshu Siripurapu, *The Dollar: The World's Currency*, COUNCIL ON FOREIGN RELATIONS (Sept. 29, 2020, 10:00 AM), https://www.cfr.org/backgrounder/dollar-worlds-currency [https://perma.cc/2ELY-9FRU].

[116] Slawotsky, *supra* note 101, at 60.

[117] *Id.* at 58 (emphasis omitted) (footnote omitted). Although this remains true, "the dollar's share of global foreign-exchange reserves fell below 59 percent in the final quarter of last year, extending a two-decade decline, according to the IMF's Currency Composition of Official Foreign Exchange Reserves data." *See* Serkan Arslanalp, Barry Eichengreen, & Chima Simpson-Bell, *Dollar Dominance and the Rise of Nontraditional Reserve Currencies*, IMF BLOG: INSIGHTS & ANALYSIS ON

While the Euro has emerged to become the second most traded currency in the world, currencies of formerly colonized, non-white nations continue to be pegged to the U.S. dollar,[118] creating a subordinate financial relationship between these nations and the United States. This subordination is undergirded by stereotypes of oil-producing nations as incapable "petrostates" whose economic survival depends on the over-exploitation of their resources.[119] "Petrostates" are by nature corrupt and dictatory, incapable of managing their own resources and wealth without the support and backing of imperial metropoles like the United States. In effect, the relationships between oil-exporting nations in the Middle East and the United States hinge on the racialized relationship between oil and the dollar.[120] Where that relationship is threatened, so too is the very existence of the subordinate nation-state in question.[121]

ECON. & FIN. (June 1, 2022), https://www.imf.org/en/Blogs/Articles/2022/06/01/blog-dollar-dominance-and-the-rise-of-nontraditional-reserve-currencies.

[118] Siripurapu, *supra* note 115; *see* Scott Shpak, *What Currencies Are Pegged to the Dollar?*, SAPLING, https://www.sapling.com/4675892/what-currencies-pegged-dollar (last visited Aug. 19, 2022).

[119] Emma Ashford, *Petrostates in a Changing World*, CATO INST. (Oct. 7, 2015), https://www.cato.org/commentary/petrostates-changing-world [https://perma.cc/V83C-NR87].

[120] *See, e.g.*, Ali Kadri, *Articulation from the Barrel of a Gun: Permanent War in the Arab World* 1 (Int'l Dev. Econ. Assocs. Working Papers Series, Paper No. 01/2015, 2015).

> Oil in its raw form, in the way it is priced in the dollar, in being the commodity whose control backs the dollar, in the numerous contributions of its derivatives to production, and foremost, in the value of imperial rents wrought from its strategic control at source, represents a decisive constituent of the global accumulation process. US-led capital control of oil by means of violence sustains its rate expropriation and the stature of US empire. . . . As the crisis of capital deepens, US-led imperialism heightens the rates of dispossession *cum* devalorisation of Arab resources by bellicosity . . . . What the necessity of war to imperialism implies for Arab development is that military aggression or the serious threat thereof could result in the collapse of the state. So far, where war is not ravaging society, poor development outcomes of the neoliberal genre characterise the process of Arab development.

Id.

[121] Iraq, Iran, Libya, and Syria are all examples of this. *See, e.g.*, RASHID KHALIDI, RESURRECTING EMPIRE: WESTERN FOOTPRINTS AND AMERICA'S PERILOUS PATH IN THE MIDDLE EAST 5–6 (2004) [hereinafter KHALIDI, RESURRECTING EMPIRE]; *see also* RASHID KHALIDI, SOWING CRISIS: THE COLD WAR AND AMERICAN DOMINANCE IN THE MIDDLE EAST 9–11 (2009) [hereinafter KHALIDI, SOWING CRISIS].

B. The U.S. in the Middle East

The Middle East is geographically situated at the "intersection of . . . three continents," Africa, Asia, and Europe.[122] It borders four major bodies of water, the Black Sea, Mediterranean Sea, Caspian Sea, and Persian Gulf, that serve as critical global sea lanes used for trade.[123] At the end of 2018, the region accounted for nearly fifty percent of the total proven oil reserves[124] and forty percent of the total proven gas preserves on the planet.[125] While the United States and Europe both expressed interest in the region prior to the twentieth century, it was only after World War II that the United States began executing an overt foreign policy to expand its role there under the Truman Doctrine.[126]

---

[122] NADER ENTESSAR & KAVEH L. AFRASIABI, IRAN NUCLEAR ACCORD AND THE REMAKING OF THE MIDDLE EAST 5 (2018).

[123] *See generally* KHALIDI, RESURRECTING EMPIRE, *supra* note 121; KHALIDI, SOWING CRISIS, *supra* note 121; *see also* LALEH KHALILI, SINEWS OF WAR AND TRADE: SHIPPING AND CAPITALISM IN THE ARABIAN PENINSULA 33–34, 144 (2020).

[124] *Top Five Countries with the Largest Oil Reserves in the Middle East*, NS ENERGY (Oct. 11, 2019), https://www.nsenergybusiness.com/features/countries-oil-reserves-middle-east/ [https://perma.cc/WQ9M-CP7Q].

> As of the end of 2018, the Middle East holds 836.1 thousand million barrels out of the world's total proved reserves of 1729.7 thousand million barrels of oil, according to the BP Statistical Review of World Energy 2019.
>
> The region holds 48.3% of the total proved reserves on the planet. It hosts five of the world's largest oil fields that include the Ghawar and the Safaniya fields in Saudi Arabia, the Burgan field in Kuwait, and Iraq's West Qurna-2 and Rumaila oil fields.
>
> Some of the Middle East's companies are also among the world's biggest oil and [gas] producers . . . . Industry giants include Saudi Arabia's national oil company, Saudi Aramco . . . , Kuwait's national oil company Kuwait Petroleum Corporation and National Iranian Oil Co (NIOC).

Id. (emphasis omitted) (citations omitted).

[125] *Countries with Largest Natural Gas Reserves in the Middle East*, NS ENERGY (Nov. 29, 2019), https://www.nsenergybusiness.com/features/largest-natural-gas-reserves-middle-east/#:~:text=Besides%20holding%20nearly%20half%20of,feet%20(tcf)%20in%202018 [https://perma.cc/NH8G-EK52].

> The Middle East is also home to some of the world's biggest natural gas fields. Located in the Persian Gulf, the South Pars/North Dome field is the world's largest natural gas field, co-owned by Iran and Qatar. North Pars, Kish, and Golshan are the other major gas fields in the region.
>
> The Middle East holds the largest proved natural gas reserves by region in the world.

Id.

[126] *See* Nzelibe, *supra* note 13, at 881. The first coup orchestrated by the Central Intelligence Agency occurred in Iran in 1953, after democratically elected Prime Minister Mohammad Mosaddegh replaced a foreign-back dictator and nationalized the oil industry. *See generally* ERVAND ABRAHAMIAN, THE COUP: 1953, THE CIA, AND THE ROOTS OF MODERN U.S.-IRANIAN RELATIONS (2013). The United States and

The establishment of Israel in 1948 provided both the United States and Europe with a key partner in the region, one often used to execute U.S. foreign policy objectives.[127] By 1948, nearly one million Palestinians had lost their homes and were expelled by European settlers.[128] Over 500 Palestinian villages were destroyed, never to be seen again, and Palestinian life became subject to a foreign occupier backed by European and later U.S. weaponry and financing.[129]

The October War of 1973 occurred in response to the increasing expansion of Israel and the United States in the Middle East.[130] A reflection of transnational Arab solidarity, Arab countries throughout the region united in an effort to end the imperialist occupation of Palestine and the expansion of U.S. influence in the Middle East.[131] Egypt and Syria simultaneously attacked at the Suez Canal and the Golan Heights.[132] While Iraq dispatched 20,000 troops to assist the Syrian Army, Jordan and Morocco sent smaller forces.[133] On the other hand, Algerian and Kuwaiti units supported the Egyptian army.[134] The Palestinian Liberation Organization ("PLO") fought on both the Syrian and

---

Great Britain promptly replaced Mosaddegh with another brutal dictator who would stay in office until the Iranian Revolution of 1979. *See generally id.*; KHALIDI, RESURRECTING EMPIRE, *supra* note 121.

[127] *See, e.g.*, RASHID KHALIDI, THE HUNDRED YEARS' WAR ON PALESTINE: A HISTORY OF SETTLER COLONIALISM AND RESISTANCE, 1917–2017 101–02 (2020) [hereinafter KAHLIDI, 100 YEARS WAR ON PALESTINE]; *see generally* RASHID KHALIDI, BROKERS OF DECEIT: HOW THE US HAS UNDERMINED PEACE IN THE MIDDLE EAST (2013); KHALIDI, RESURRECTING EMPIRE, *supra* note 121; JOSEPH MASSAD, THE PERSISTENCE OF THE PALESTINIAN QUESTION (2006); HAGGAI RAM, IRANOPHOBIA: THE LOGIC OF AN ISRAELI OBSESSION (2009).

[128] KHALIDI, 100 YEARS WAR ON PALESTINE, *supra* note 127, at 58.

[129] William Booth & Ruth Eglash, *With iNakba, Palestinians delve into their history*, WASH. POST (May 14, 2014), https://www.washingtonpost.com/world/middle_east/with-inakba-palestinians-delve-into-their-history/2014/05/14/7c2a8026-db8d-11e3-a837-8835df6c12c4_story.html [https://perma.cc/T4RP-JRVD]; MASSAD, *supra* note 127; Emma Green, *Why Does the United States Give So Much Money to Israel?*, ATLANTIC (Sept. 15, 2016), https://www.theatlantic.com/international/archive/2016/09/united-states-israel-memorandum-of-understanding-military-aid/500192/ [https://perma.cc/PVW8-YNQ2].

[130] *The October Arab-Israeli War of 1973: What Happened?*, AL JAZEERA (Oct. 8, 2018), https://www.aljazeera.com/features/2018/10/8/the-october-arab-israeli-war-of-1973-what-happened [https://perma.cc/SDZ6-YVFB].

[131] YEZID SAYIGH, ARMED STRUGGLE AND THE SEARCH FOR STATE: THE PALESTINIAN NATIONAL MOVEMENT, 1949-1993, 319 (1997).

[132] *Id.*

[133] *Id.*

[134] *Id.*

Egyptian fronts, mounting attacks into Israel from Lebanon.[135] 2,800 Israelis died in the conflict, and an estimated 109 aircraft and 840 tanks were destroyed.[136] At the same time, the Arab oil-producing countries decided to cut production by five percent until Israel relinquished the territories occupied in 1967, and Saudi Arabia imposed a ten percent production cut and an embargo on sales to the U.S. following Nixon's request to Congress for $2.2 billion in aid to Israel.[137]

Kissinger had become Secretary of State in August 1973 and understood that this newly formed transnational Arab coalition would be destructive to the American agenda in the region.[138] His aggressive approach would ultimately destroy the broad Arab coalition, "leading by the end of the 1970s to a level of fragmentation not seen" in decades.[139] First, Kissinger dramatically increased funding to Israel, but the death knell to the Arab coalition's cohesion was to convince Egypt to seek peace with Israel.[140] Kissinger brokered agreements between Egypt and Israel and "committed the US not to deal with the PLO until it recognized Israel's right to exist."[141]

The result of the October War was the Israeli occupation of the Sinai Peninsula, an Egyptian land bridge between Asia and Africa that provides access to the Suez Canal, another critical sea lane which connects the Mediterranean Sea to the Red Sea.[142] Over the next several decades, the U.S. would come to view Israel as a vital proxy in the region that could execute the U.S. agenda without great loss of American life.[143] The relationship between the U.S. and Israel embodies a sort of geopolitical convergence of interests.[144] Israel's continued existence depends

---

[135] *Id.*

[136] *Id.*

[137] *Id.*

[138] GREG GRANDIN, KISSINGER'S SHADOW: THE LONG REACH OF AMERICA'S MOST CONTROVERSIAL STATESMAN, 133, 222 (2015).

[139] *See* SAYIGH, *supra* note 131, at 319. The alliance between the United States and Saudi Arabia, described in Part I.A., *supra* notes 111–112 and accompanying text, was critical to undermining the Arab coalition.

[140] SAYIGH, *supra* note 131, at 320.

[141] *Id*. at 321.

[142] *See* KHALIDI, 100 YEARS WAR ON PALESTINE, *supra* note 127.

[143] *See* SAYIGH, *supra* note 131, Parts III & IV.

[144] *See* KHALIDI, RESURRECTING EMPIRE, *supra* note 121; *Contra* MEARSHEIMER & WALT, THE ISRAEL LOBBY AND U.S. FOREIGN POLICY 5–6 (2007) (arguing that Zionists exert control over U.S. foreign policy).

on U.S. financial and military support, thereby guaranteeing U.S. influence over the region as a whole.[145]

By the 1980s, the Cold War between the United States and the U.S.S.R. was winding down, but the U.S. was suffering significant losses in Central America and the Middle East.[146] After the Israeli invasion of Lebanon in 1972 resulting in the Lebanese Civil War, and just prior to the Iranian Revolution of 1979, the Palestinian Liberation Organization had effectively developed what Yezid Sayigh calls "The State-in-Exile," a political system based in exile in Beirut that combined governance of the Palestinian people along with a vehicle for resistance, in the form of armed struggle.[147] This alliance's objective was to seek an end to U.S. imperialism in the Middle East.[148] With the support of Libya and later Iran after the 1979 revolution, the PLO developed significant influence in Lebanon,

---

[145] Emma Green, *Why Does the United States Give So Much Money to Israel?*, ATLANTIC (Sept. 15, 2016), https://www.theatlantic.com/international/archive/2016/09/united-states-israel-memorandum-of-understanding-military-aid/500192/ [https://perma.cc/PD79-MM62] (describing a $38 billion pledge from the U.S. to Israel over the course of ten years).

[146] The most notorious of the losses suffered in the Middle East, according to files recently declassified by the Reagan Presidential Library, was the Beirut marine barracks bombing of October 23, 1983, which resulted in the death of 241 U.S. service personnel. Micah Zenko*, When Reagan Cut and Run*, FOREIGN POL'Y (Feb. 7, 2014, 10:36 PM), https://foreignpolicy.com/2014/02/07/when-reagan-cut-and-run/ [https://perma.cc/4PDG-YWSK]; Memorandum on Improving Security Training Readiness and Visibility of the MNF (on file with author). In 2003, a U.S. court held that this bombing was orchestrated by Hezbollah, at the direction of Iran, allowing families of the deceased to sue the Islamic Republic of Iran in U.S. federal court. Fain v. Islamic Republic of Iran, 885 F. Supp.2d 78 (D.D.C. 2012). *See also Beirut Marine Barracks Bombing Fast Facts,* CNN (Oct. 6, 2020), https://www.cnn.com/2013/06/13/world/meast/beirut-marine-barracks-bombing-fast-facts/index.html [https://perma.cc/DK34-XGBQ]. Other significant events noted in the Reagan Library's files include the April 1983 bombing of the U.S. embassy in Lebanon, killing 63 people, including 17 Americans (some of whom were CIA officers) and the December 1983 bombing of the U.S. embassy in Kuwait, resulting in 2 deaths and significant injuries; and the hijacking of TWA Flight 847 in summer 1985. *See id.*

[147] *See* SAYIGH, *supra* note 131, at vii, ix (arguing that "armed struggle provided the political impulse and organizational dynamic in the evolution of Palestinian national identity and in the formation of parastatal institutions and a bureaucratic elite, the nucleus of government" and "[t]hat the PLO lacked sovereign authority over a distinct territory and population is obvious. . . . That said, it was precisely in terms of its political framework that the PLO was most identifiable as a statist actor.").

[148] *See Palestinian Liberation Organisation.*, PALESTINE REMIX, https://interactive.aljazeera.com/aje/palestineremix/plo.html [https://perma.cc/SW4K-TLXP] (last visited Aug. 20, 2022).

an influence the U.S. viewed as a major threat to its agenda.[149] While the Reagan Administration also expressed concerns about Israel's continued settlement expansions, which it believed further destabilized the Middle East and hindered the American agenda, the United States identified its primary threat as the PLO and sought its ultimate exit from Lebanon.[150] Without a stronghold in Lebanon, the U.S. believed the Palestinian struggle would be significantly weakened, thereby eliminating one of the main challenges to U.S. imperialism in the Middle East.[151]

Thus, the United States and Israel determined that the PLO must be expelled from Lebanon.[152] In 1982, Israel invaded Lebanon with the express objective of destroying the PLO presence in the country, but the United States continued to suffer great losses during this period.[153] The 1983 Beirut marine barracks bombing, which caused the deaths of 241 American personnel, was a significant turning point for the Americans, such that soon after that event they resolved to withdraw troops from Lebanon.[154]

In light of the emerging strength of the PLO and the many losses suffered by the United States in the Middle East during the early 1980s, the Reagan Administration resolved to develop a clear, focused anti-terrorism policy that would streamline its international and domestic agendas into one well-coordinated plan, a plan led largely by U.S. military officials.[155] On July 20, 1985, President Ronald Reagan issued a confidential document, National Security Decision Directive 179, appointing then Vice President George H.W. Bush to convene a "government-wide task

---

[149] *See generally* SAYIGH, *supra* note 131, at 373–77.

[150] *See id.* at 373–91.

[151] *See, e.g.*, FRANCESCO SAVERIO LEOPARDI, THE PALESTINIAN LEFT AND ITS DECLINE 31 (2020).

[152] *See, e.g.*, REAGAN AND THE WORLD: LEADERSHIP AND NATIONAL SECURITY, 1981-1989 257–60, 264–65, 271–72 (Bradley Lynn Coleman & Kyle Longley eds., 2017); *see generally* NUBAR HOVSEPIAN, WAR ON LEBANON: A READER (2008). For a history of targeted assassinations conducted by Israel in Lebanon from 1979 to 1983 against the PLO, see generally RONEN BERGMAN, RISE AND KILL FIRST: THE SECRET HISTORY OF ISRAEL'S TARGETED ASSASSINATIONS (2019).

[153] *See generally* HOVSEPIAN, *supra* note 152.

[154] *See* Zenko, *supra* note 146; Memorandum on Improving Security Training Readiness and Visibility of the MNF (on file with author).

[155] Matthew Frakes, *Reagan, Rogue States, and the Problem of Terrorism*, WILSON CENTER (Sept. 17, 2020), https://www.wilsoncenter.org/blog-post/reagan-rogue-states-and-problem-terrorism [https://perma.cc/A6PP-YSY5]. On the problems of differentiating between the foreign and domestic spheres of U.S. influence, see generally KAPLAN, *supra* note 24, and MICHAEL MANN, INCOHERENT EMPIRE (2003).

force on combating terrorism."[156] The members of this exclusively executive branch task force included the highest ranking officials of the government: the Secretary of State, Secretary of Treasury, Secretary of Defense, Secretary of Transportation, the director of the Federal Bureau of Investigation, the director of the Central Intelligence Agency, the Chairman of the Joint Chiefs of Staff, the Chiefs of Staff to both President Reagan and Vice President Bush, and many others.[157] The President appointed decorated U.S. Navy Admiral James L. Holloway III as executive director of the Task Force; the rest of the Task Force's leadership was largely composed of military officials as well.[158] U.S. Marine Corps Lieutenant Colonel Oliver North, Deputy Director to the National Security Council for political-military affairs, was also a noteworthy member of the Task Force.[159]

C. The Public Report of the Vice President's Task Force on Combatting Terrorism (1985)

The Public Report of the Vice President's Task Force on Combatting Terrorism begins with a letter to the American people from Vice President Bush. In this letter, Vice President Bush outlines a long list of significant terrorist incidents involving U.S. citizens in 1985, revealing what he called a "growing threat" to the American people.[160] The report then defines terrorism, though the Reagan Library archives reveal significant debate between the various agencies involved in the Task Force about this particular issue.[161] The State Department and several other agencies argued that there should not be any clearly outlined definition of terrorism, for no matter what

---

[156] *Terrorism & Bush I: Assessing the Vice President's Task Force on Combating Terrorism*, VEEP CRITIQUE (Oct. 18, 2010), http://veepcritique.blogspot.com/2010/10/terrorism-bush-i-assessing-vice.html [https://perma.cc/8XXE-QFQU]; *See, e.g.*, DAVID WILLS, FIRST WAR ON TERRORISM: COUNTER-TERRORISM POLICY DURING THE REAGAN ADMINISTRATION 250 (2004).

[157] *Terrorism & Bush I: Assessing the Vice President's Task Force on Combating Terrorism*, *supra* note 156.

[158] *Id.*

[159] Many of the Reagan Administration files used in this Article come from Oliver North's declassified files, housed at the Reagan Presidential Library in Simi Valley, and on file with author. List of Participants for The Third Meeting of the Vice President's Task Force on Combatting Terrorism, Office of the Vice President (Jan. 7, 1986) (unpublished) (on file with author).

[160] PUBLIC REPORT, *supra* note 32, at i–ii, 1.

[161] *Id.* at 1.

language is used in that definition, the U.S. could become subject to accusations of committing terror as well.[162] Ultimately, in discussions that are not reflected in the archives, the Task Force decided to operationalize an unofficial definition of terror.

> Terrorism . . . . is the unlawful use or threat of violence against persons or property to further political or social objectives. It is generally intended to intimidate or coerce a government, individuals or groups to modify their behavior or policies.
>
> The terrorist's methods may include hostage-taking, aircraft piracy or sabotage, assassination, threats, hoaxes, indiscriminate bombings or shootings. Yet, most victims of terrorism seldom have a role in either causing or affecting the terrorist's grievances.
>
> Some experts see terrorism as the lower end of the warfare spectrum, a form of low-intensity, unconventional aggression. Others, however, believe that referring to it as war rather than criminal activity lends dignity to terrorists and places their acts in the context of accepted international behavior.[163]

It is notable that the definition suggests that terrorism is rarely directed at people who have caused others harm, it is most often directed at "civilians."[164] This statement is in spite of the historical record, which reveals that several of the incidents occurring in the Middle East during this period targeted U.S. government and military officials.[165] The report goes on to say that "[t]he most deadly terrorists . . . operate in and from the Middle East. . . . [T]hey were involved in roughly 50 percent of the total worldwide terrorist incidents."[166] The two main sources of terrorists, according to the Task Force, were Lebanon and the PLO, with direct support from Libya, Syria or Iran.[167]

---

[162] Issue Paper, Fred F. Fielding, Definition of Terrorism (on file with author); *see also* Remy Brulin, *Le Discours Americain Sur Le Terrorisme: Constitution, évolution et contexts d'énonciation 1972-1992* [The American Discourse on Terrorism: Constitution, Evolution and Contexts of Enunciation (1972-1992)] (Nov. 19, 2011), 91–95 (Doctorate thesis, Université de La Sarbonne Nouvelle) (on file with the Université de La Sarbonne Nouvelle) (describing two international conferences held by Israel and led by Benjamin Netanyahu in the 1970s and early 1980s urging world leaders to create a definition of terrorism).

[163] PUBLIC REPORT, *supra* note 32, at 1.

[164] *Id.* at 2.

[165] *See id.* at 4–5.

[166] *Id*. at 2.

[167] *Id.* at 4–5.

The end result of the Task Force was a final report to President Reagan valuating the strengths and weaknesses of the national program for combatting terrorism, and proposing recommendations that would transform natonal policy..[168] This report is still classified, but the Task Force created a shorter, public report, which was issued in February 1986, a mere six months after the initial creation of the body.[169] Ultimately, the Task Force produced 54 recommendations, many of which continue to guide U.S. national security policy today.[170] One of the recommendations called for the immediate deportation of all Palestinians, Iranians and Libyans in the United States who were deportable by law—people whose visas had expired or who had violated the terms of their residency in the country.[171] In the next section of the Article, I discuss how these recommendations were implemented and the statutory law they produced.

II. THE EMERGENCE OF TERROR AS A LEGAL CATEGORY

In *The Material Support Prosecution and Foreign Policy*, Wadie E. Said describes the relationship between U.S. foreign policy needs and the material support laws enacted in the Antiterrorism and Effective Death Penalty Act of 1996.[172] In criminal prosecutions alleging material support of terrorism, Said argues that where there is little or no link between the defendant and the violent acts of an organization with which the defendant is accused of being affiliated, the prosecution's arguments do not have a strong footing.[173] The consequence, according to Said's study of the relevant cases, is that "the further the relationship is from violence, the greater the possibility that the prosecution will be transformed into a debate on foreign policy."[174]

In this section, I focus on a case that long predates the passage of the material support laws and § 2339B, but still

---

[168] *Id.*

[169] *See generally id.*

[170] PUBLIC REPORT, *supra* note 32, at 21–27.

[171] *Id.*

[172] Wadie Said, *The Material Support Prosecution and Foreign Policy*, 86 IND. L.J. 543, 556 (1964).

[173] *Id.* at 545–46 (describing a divergence between terrorism enforcement as a matter of direct national security and its enforcement as a foreign policy tool that is geared at prosecuting individuals connected to organizations targeting foreign individuals and entities).

[174] *Id.* at 545.

reflects the very dynamics that Said notes in his study of terrorism prosecutions after 1996 and then again after September 11, 2001. *Reno v. American-Arab Anti-Discrimination Committee*,[175] colloquially called the Los Angeles 8 case, was the incubator for the development of the anti-terror proposals in *The Public Report of the Vice President's Task Force on Combatting Terrorism* (1986) and *Alien Terrorists and Alien Undesirables: A Contingency Plan* (1986).[176]

I trace how the various tactics and strategies used by the prosecution in the Los Angeles 8 ("L.A. 8") case reproduce the legal and policy language and the racial logics of both the Task Force Report and the Contingency Plan, and then enter into the law in the form of two significant statutes signed by President Clinton in 1996, the Antiterrorism and Effective Death Penalty Act and the Illegal Immigration Reform and Immigrant Responsibility Act. In essence, I conduct a genealogy of the term terrorism, tracing it out of the Reagan administration's policy documents through the prosecution of the L.A. 8 to the Antiterrorism Act and the Immigration Act, and finally to *Humanitarian Law Project v. Holder*.[177] That is to say, it is through the concept of terrorism, which later becomes a legal term of art, that imperialism enters into the law.

Ultimately, I show how imperialism, though absent from the letter of the law, is a governing and structuring influence undergirding not just foreign affairs, as I showed in Part I, but also domestic lawmaking. Thus, U.S. imperialism has come to imbricate not just national security policy and criminal law, but the First and Fifth Amendments as well, limiting the availability of First and Fifth Amendment protections to dissidents of color, especially those from regions of high interest to U.S. foreign policy, like the Middle East.[178]

---

[175] 525 U.S. 471 (1999).

[176] PUBLIC REPORT, *supra* note 32; Memorandum from the U.S. Dep't of Just. on Immigration and Naturalization Service, Alien Terrorists and Undesirables: A Contingency Plan (Nov. 18, 1986) (on file with author).

[177] 561 U.S. 1 (2010); *see generally Reno*, 525 U.S. at 471; Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No.104-132, 110 Stat. 1214 (1996); Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996).

[178] There are many law review articles that mention imperialism as it relates to other systems of power and domination, including racial power. *See, e.g.*, Dorothy E. Roberts, *Abolition Constitutionalism*, 133 HARV. L. REV. 1 (2019); Natsu Taylor Saito, *Border Constructions: Immigration Enforcement and Territorial Presumptions*, 10 J. GENDER RACE & JUST. 193 (2007); Dean Spade, *Under the Cover*

A. The First Terrorism Prosecution (1987-2007)

Within less than one year of the release of the task force report, the recommendation to deport Palestinians was implemented in a manner that can only be described as spectacular. On January 26, 1987, Michel Shehadeh, a Palestinian activist living in Southern California, was home sleeping with his 3-year-old son Ibrahim, when he heard a loud knock at his front door.[179] He was greeted by two FBI agents;

> They shoved me against the door and sent me flying back. About 10 more of them came out. They were hiding behind plants. Their guns were drawn and they were screaming, saying, "Where are the weapons? Where are the weapons?" . . . The street was blocked from both ways. There were three local police cars. There was a helicopter hovering, aimed at the house.[180]

Shehadeh was arrested along with seven other individuals who collectively would come to be known as the L.A. 8.[181] One hundred federal, state and local law enforcement officials were involved in the arrests, and headlines appeared in major papers across the nation about a terrorist nest in Los Angeles.[182] The L.A. 8 were arrested under a 1952 law, the McCarran Walter Act, which provided for "the deportation of aliens who

---

of Gay Rights, 37 N.Y.U. REV. L. & SOC. CHANGE 79 (2013); Laura Nader, *Rethinking Salvation Mentality and Counterterrorism*, 21 TRANSNAT'L L. & CONTEMP. PROBS. 99 (2012); Mary Dudziak, *Law, War, and the History of Time*, 98 CALIF. L. REV. 1669 (2010); Dennis Schmelzer, *Historically Unappealing:* Boumediene v. Bush*, Appellate Avoidance Mechanisms, and Black Holes Extending Beyond Guantanamo Bay*, 23 WM. & MARY BILL RTS. J. 965 (2015); Andrew Kent, *Boumediene, Munaf, and the Supreme Court's Misreading of the Insular Cases*, 97 IOWA L. REV. 101 (2011); Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575 (2001); Daniel R. Williams, *After the Gold Rush - Part II: Hamdi, the Jury Trial, and Our Degraded Public Sphere*, 113 PA. ST. L. REV. 55 (2008); David Abraham, *The Bush Regime from Elections to Detentions: A Moral Economy of Carl Schmitt and Human Rights*, 62 U. MIAMI L. REV. 249 (2007); Dorothy E. Roberts, *Torture and the Biopolitics of Race,* 62 U. MIAMI L. REV. 229 (2007); Nancy Ehrenreich, *Disguising Empire: Racialized Masculinity and the Civilizing of Iraq*, 52 CLEV. ST. L. REV. 131 (2004).

[179] Adrien K. Wing, Reno v. American-Arab Anti-Discrimination Committee*: A Critical Race Perspective*, 31 COLUM. HUM. RTS. L. REV. 561, 561 (2000).

[180] *Id.*

[181] *Id.* at 561–62.

[182] Ben Wofford, *The Forgotten Government Plan to Round Up Muslims*, POLITICO (Aug. 19, 2016), https://www.politico.com/magazine/story/2016/08/secret-plans-detention-internment-camps-1980s-deportation-arab-muslim-immigrants-214177/ [https://perma.cc/DQ92-UJDY].

'advocate . . . world communism.' "[183] The arrests launched one of the longest and most controversial immigration cases in U.S. history. According to FBI investigator Frank Knight, it was believed "that this trial [wa]s the first time any country has attempted to utilize terrorism laws to proactively curtail the efforts of a terrorist organization."[184]

The individuals, seven Palestinians and one Kenyan, were accused of being members of the Popular Front for the Liberation of Palestine ("PFLP"), a political party which represented a significant segment of the Palestinian left and was a member of the Palestinian Liberation Organization ("PLO").[185] The U.S. government considered the organization a terrorist group, as it did many national liberation movements and left political parties throughout the world.[186] At the time, Nelson Mandela's African National Congress was the most prominent example.[187] According to FBI Director William Webster and the regional counsel of the Immigration and Naturalization Service ("INS"), the objective of the case was to deport the eight activists because of their alleged ties to Palestinian Marxism.[188] One unspecified, high-ranking FBI official believed that "if these deportation procedures are successful, it [would] be a singular accomplishment for PFLP investigations FBI field-wide," reflecting the FBI's laser focus on the Palestinian community that emerged out of the Vice President's Task Force.[189]

---

[183] Reno v. Am.-Arab Anti-Discrim. Comm., 525 U.S. 471, 473 (1999) (quoting 8 U.S.C. §§ 1251(a)(6)(D), (G)(v), and (H) (1982 ed.)).

[184] Frank Knight Deposition Transcript, Vol. 4, p. 60 (Feb. 25, 1991) (on file with author).

[185] *See* Wing, *supra* note 179, at 562.

[186] National liberation movements generally seek to expel colonial and imperial powers, or overthrow governments that subjugate a certain group of peoples on the base of race, ethnicity or religion. *See generally*, FRANTZ FANON, THE WRETCHED OF THE EARTH (1963); AIMÉ CÉSAIRE, DISCOURSE ON COLONIALISM (1972).

[187] For a discussion of Nelson Mandela's placement and removal from the list, see *Nelson Mandela Removed from US Terror List*, TELEGRAPH (July 2, 2008), http://www.telegraph.co.uk/news/worldnews/africaandindianocean/southafrica/2233256/Nelson-Mandela-removed-from-US-terror-list.html [https://perma.cc/97TG-DAD9]; *see also* Caitlin Dewey, *Why Nelson Mandela Was on a Terrorism Watch List in 2008*, WASH. POST (Dec. 7, 2013), http://www.washingtonpost.com/blogs/the-fix/wp/2013/12/07/why-nelson-mandela-was-on-a-terrorism-watch-list-in-2008/ [https://perma.cc/M4Q8-D2H5].

[188] CYRA AKILA CHOUDHURY & KHALED A. BEYDOUN, ISLAMOPHOBIA AND THE LAW 44 (2020).

[189] *See* Frank Knight Deposition Chronological Index, Vol. 4, p. 25 (Dec. 29, 1986) (on file with author). Incidentally, after Knight retired he was hired by a

The L.A. 8 were promptly taken into custody and held in maximum security units for three weeks.[190] They were denied visits for the first few days, and when they were finally allowed to visit with attorneys and family, they were shackled.[191] Their medical needs were ignored while they were in custody and they were continuously subject to racial epithets from the guards.[192] Notably, the arrest documents had been filed in December 1986, one month before the arrests, but the arrests were delayed until the end of January to accommodate the agents' holiday plans, casting doubt on the L.A. 8's propensity toward violence.[193] At the time the case was filed, six of the defendants were on student or nonimmigrant visas, and two—Khader Hamide and Michel Shehadeh—were permanent residents.[194]

In February, the court held a bail hearing, at which time the government's attorneys argued that they were "under direct orders from Reagan administration Attorney General Edwin Meese to present the government's case only in secret; [the government attorney told] the judge she will whisper the evidence in his ear."[195] The judge responded that there would be no whispering in his courtroom, and that all evidence must be disclosed in open court.[196] The government's attorneys refused, and the judge released the L.A. 8 on bail.[197] Initially, neither the L.A. 8 nor their attorneys understood why they had been arrested, until a confidential federal document discussed in the next section was leaked to the press.[198]

1. The Internment Camp: A Contingency Plan to Detain Arabs and Iranians.

On February 3, 1987, *Alien Terrorists and Undesirables: A Contingency Plan,* was leaked to the press and LA. 8 attorneys

private security firm to work in Iraq after the United States invaded in 2003. Previously, he had served in Europe and Vietnam. *Id.* at *6*.

[190] *See* Wofford, *supra* note 182; David Cole, Case Chronology of the Los Angeles 8 Case (on file with author) [hereinafter Case Chronology]

[191] *See* Wofford, *supra* note 182; Case Chronology, *supra* note 190.

[192] *See* Wofford, *supra* note 182; Case Chronology, *supra* note 190.

[193] *See* Wofford, *supra* note 182; Case Chronology, *supra* note 190.

[194] *See* Wofford, *supra* note 182; Case Chronology, *supra* note 190.

[195] *See* Wofford, *supra* note 182; Case Chronology, *supra* note 190.

[196] *See* Wofford, *supra* note 182; Case Chronology, *supra* note 190.

[197] *See* Wofford, *supra* note 182; Case Chronology, *supra* note 190.

[198] Case Chronology, *supra* note 190.

Marc Van Der Hout and Leonard Weinglass.[199] It was a confidential plan created by an inter-agency task force under the auspices of the Justice Department that included the FBI, the CIA, the State Department and the U.S. Customs Service.[200] The objective of the plan was to "expedite deportation proceedings against Libyan, Iranian, and PLO activists who have violated their visa status."[201]

The leaked report indicated that an internment camp had already been built on 100 acres in Oakdale, Louisiana to detain up to 5,000 individuals from the targeted countries.[202] These individuals would not have the right to bond, the public would be excluded from deportation hearings, and the government would rely on confidential evidence that would not be available to the public or to the individuals under prosecution.[203]

The plan outlines a shift in the objectives of multiple federal agencies, including those already charged with criminal matters in addition to more administrative agencies like the Office of Management and Budget and the Department of Transportation, to take on an anti-terrorist agenda.[204] This new approach also included the INS, which, for the first time, would now become an agency central to the anti-terrorism effort.[205] The plan also includes recommendations to deport non-immigrant aliens by charging them with "destruction of property," something later done in the L.A. 8 case against respondents Ibrahim Khader and Michel Shehadeh, expanding the legal definitions of terrorism, streamlining intelligence sharing among government agencies charged with domestic and foreign intelligence gathering, and banning all immigration from the countries listed in the plan.[206] The contingency plan echoes much of the content in *The Public*

---

[199] *See* Wofford, *supra* note 182. For news articles describing the plan and the internment camp, see Ronald L. Soble, *INS Labels Terrorist Emergency Proposal Just 'an Option Paper'*, L.A. TIMES (Feb. 7, 1987), https://www.latimes.com/archives/la-xpm-1987-02-07-mn-1779-story.html [https://perma.cc/2PET-KKFG].

[200] *Id.*

[201] *See* Case Chronology, *supra* note 190.

[202] *See* Wofford, *supra* note 182.

[203] *Id.*; *see also* Soble, *supra* note 199; Peter J. Tanous, *The FBI and Arab Americans*, WASH. POST (Jan. 22, 1991), https://www.washingtonpost.com/archive/opinions/1991/01/22/the-fbi-and-arab-americans/236a1b1f-1a05-4d92-858d-37d4554cf606/ [https://perma.cc/MF2E-FV39].

[204] *See* Wofford, *supra* note 182; Soble, *supra* note 199.

[205] *See* Wofford, *supra* note 182; Soble, *supra* note 199.

[206] Philip Monrad, *Ideological Exclusion, Plenary Power and the PLO*, 77 CALIF. L. REV. 831, 835 (1989); *see* Wofford, *supra* note 182.

Report on the Vice President's Task Force on Combatting Terrorism and reflects the foreign policy exceptionalism that Justice Sutherland outlined fifty years earlier in *Curtiss-Wright*.[207] But this exceptionalism was no longer exogenous to the borders of the nation, it had now begun to enter into the administrative agencies of the executive branch, which sought to limit the availability of Due Process and Freedom of Speech protections to immigrants.[208] It would only be a matter of time before this exceptionalism entered into the domestic criminal and civil legal apparatus.[209]

2. Reno v. American-Arab Anti-Discrimination Committee (1999).

On April 3, 1987, the activists, along with a coalition of Arab, Irish, Japanese and immigrants' rights organizations and peace groups filed a civil rights lawsuit against the government, challenging its use of the world communism provision in the McCarran-Walter Act.[210] The activists were represented by the National Lawyers Guild, the Center for Constitutional Rights and the American Civil Liberties Union.[211] They argued that the provision violated the First Amendment right to Freedom of Speech and Association.[212] The day before the hearing on April 24, 1987, the INS dropped the McCarran-Walter charges against six of the eight members of the L.A. 8 and announced plans to charge them with minor immigration violations.[213] These violations included working at a convenience store without work permits, overstaying visas, and not attending college courses while on a student visa.[214] The McCarran-Walter Act charges were brought against Ibrahim Khader and Michel Shahadeh

---

[207] *See* PUBLIC REPORT, *supra* note 32; United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 319–20 (1936).

[208] Philip Monrad, *Ideological Exclusion, Plenary Power and the PLO*, 77 CALIF. L. REV. 831, 832–33 (1989).

[209] For a discussion of the law's treatment of organizations in the Palestinian Liberation Organization (PLO), see *id.* at 831–32.

[210] Am.-Arab Anti-Discrim. Comm. v. Meese, 714 F. Supp. 1060, 1062–63 (C.D. Cal. 1989) [hereinafter *ADC 1*].

[211] *Id.* at 1061.

[212] *Id.* at 1063.

[213] Ronald L. Soble, *U.S. Drops Subversion Counts Against 6 of 8 Accused in PLO Case*, L.A. TIMES (Apr. 24, 1987), https://www.latimes.com/archives/la-xpm-1987-04-24-mn-658-story.html [https://perma.cc/C9JX-A93G].

[214] Reno v. Am.-Arab Anti-Discrim. Comm., 525 U.S. 471, 473 (1999).

only, characterizing the PFLP as advocating for the destruction of property.[215]

On January 26, 1989, U.S. District Judge Stephen V. Wilson ruled that immigrants have the same First Amendment rights as citizens and that the world communist provision in the McCarran-Walter Act was unconstitutional.[216] As a result of this decision, Congress repealed the McCarran-Walter Act in 1990.[217] In its place, it enacted a new law making it a deportable offense to "engage[ ] in . . . terrorist activity."[218] This led to the filing of new charges against Hamide and Shehadeh under the terrorism provisions of the 1990 Immigration Act.[219] The government did not charge them with actually engaging in or supporting any terrorist acts, however.[220] Rather, it charged them with providing material support to the PFLP, which it said was a "terrorist organization," and argued that such support, even for humanitarian and other lawful purposes, was a deportable offense.[221]

The deportation hearing against Hamide and Shehadeh under the 1990 Act charges began before Los Angeles Immigration Judge Bruce Einhorn in 1992.[222] The INS first

---

[215] Case Chronology, *supra* note 190 ("INS Regional General Counsel, William Odencrantz, [held] a press conference and announce[d] that the changes [were] tactical only, and that the real reason the INS [sought] their deportation [was] because of their alleged PFLP ties."). In April 1987, during his confirmation hearings for CIA director, then FBI Director William Webster testified in Congress that the FBI had investigated the eight respondents because of suspected ties to the PFLP, but had found no evidence of criminal or terrorist activity. He testified that the information on the eight was given to the INS to try to deport them for being members in a "world-wide Communist organization." He also admitted that "if these individuals had been United States citizens, there would not have been a basis for their arrest." Case Chronology, *supra* note 190.

[216] *See ADC 1,* 714 F. Supp. 1060, 1063 (C.D. Cal. 1989). During the hearing, Judge Wilson said that the case, which will determine whether immigrants have equal rights under the U.S. Constitution, is the most important case of his career. Case Chronology, *supra* note 190.

[217] David Cole, *McCarran-Walter Act Reborn?*, WASH. POST (Nov. 18, 1990), https://www.washingtonpost.com/archive/opinions/1990/11/18/mccarran-walter-act-reborn/389a81bf-00ac-434b-b869-3d3e29b13eae/ [https://perma.cc/X2UE-H4E9].

[218] Immigration Act of 1990, Pub. L. No. 101-649, § 601, 104 Stat. 4978, 5069 (1990).

[219] *See* Am.-Arab Anti-Discrim. Comm. v. Reno*,* 70 F.3d 1045, 1054 (9th Cir. 1995).

[220] Henry Weinstein, *Final Two L.A. 8 Defendants Cleared*, L.A. TIMES (Nov. 1, 2007, 12:00 AM), https://www.latimes.com/archives/la-xpm-2007-nov-01-me-palestinian1-story.html [https://perma.cc/4GNS-9T5C].

[221] *Id.*

[222] *Id.*

sought to establish that the PFLP was a "terrorist organization" by putting on the stand two professors who read news articles and books about the PFLP, but testified that they had no direct experience with the PFLP.[223] The witnesses routinely stated that the Popular Front for the Liberation of Palestine was involved in a whole host of incidents, from hijackings to bombings, throughout the Middle East.[224] They used this approach after the repeal of the world communist provision and the fall of the Soviet Union, attempting to tie the PFLP with Islamist organizations instead.[225] Most of these incidents, the government argued, were done in concert with Islamic organizations, eliding the ideological and political differences between these groups in order to suggest that they were all terrorists.[226] It cited terrorist events organized by a variety of different forces, some affiliated with the PFLP and some not; it repeatedly mentioned ties to Iran and Libya.[227] In sum, it appears from the court records that the government believed its case would be strengthened by the strategic deployment of an imperial ideology that blended anti-Communism and anti-Islamism, with the castigation of an emerging, post-Cold War Middle Eastern Third World nationalist bloc formed by Libya, Iran, and Syria.[228] These witnesses made clear, however, that Fatah—the most centrist organization in the PLO, today working collaboratively with both Israel and the United States—was not responsible for many incidents and favored diplomacy.[229] This proceeding lasted for six total weeks over the course of two and a half years.[230] At the close of that part of the proceeding, the INS had not introduced a single piece of direct testimony about the PFLP, but had relied entirely on the "expert" opinions of the professors' reading of news articles and books.[231]

In January 1994, the district court found that the L.A. 8 had made a preliminary showing that they had been selectively

---

[223] Case Chronology, *supra* note 190.

[224] *Id.*

[225] *Id.*

[226] *Id.*

[227] Transcript of Record at vol. 7, 63, Matters of Hamide & Shehadeh, Case Nos. A 19 262 560 & A 30 660 528, Immig. Ct. slip op. (E.O.I.R.) (Jan. 29, 2007) (on file with author).

[228] NICK FISCHER, SPIDER WEB: BIRTH OF AMERICAN ANTI-COMMUNISM 256 (2016) (explaining how anti-communism is a critical tenet of U.S. foreign policy).

[229] Transcript of Record, *supra* note 227, at 74.

[230] Case Chronology, *supra* note 190.

[231] *Id.*

targeted for deportation based on their First Amendment activities.[232] The eight's attorneys argued that their clients had been targeted for both their activism in defense of Palestinians and for being Palestinian, while members and supporters of the Nicaraguan Contras, Afghanistan Mujahedin, and anti-Castro Cuban groups, all supported by the U.S. government, had not been prosecuted let alone deported.[233] The court granted a preliminary injunction against deportation proceedings against six of the eight immigrants, but declined to do so against Hamide and Shehadeh, finding that it lacked jurisdiction over their claims.[234] It would be on this discrete procedural matter, several years later, that the case would reach the Supreme Court.[235] Hamide and Shehadeh appealed the court's decision that it lacked jurisdiction to hear their selective prosecution claims.[236]

In April 1996, the district court extended the preliminary injunction against deportation proceedings to Hamide and Shehadeh.[237] But after the Ninth Circuit decision upholding the district court, the INS submitted 10,000 pages of evidence to the court, much of it FBI surveillance of the L.A. 8, and argued that this evidence showed that it was justified in targeting the respondents for deportation.[238] The judge ruled that all of the activities revealed in the documents were protected by the First Amendment.[239] The government appealed again and argued that neither citizens nor non-citizens have a First Amendment right to support the lawful activities of organizations that the U.S. government considers foreign terrorist organizations, opening up the official legal regime that exists today, and that will be discussed in the next section.[240]

In August 1997, the Ninth Circuit unanimously affirmed the district court's decisions to extend the injunction against

---

[232] Phyllis Bennis, *Ten Years of the Los Angeles Eight Deportation Case*, MIDDLE E. RSCH. & INFO. PROJECT, https://merip.org/1997/03/ten-years-of-the-los-angeles-eight-deportation-case/ [https://perma.cc/3TKW-H7T2] (last visited Aug. 20, 2022).

[233] Case Chronology, *supra* note 190.

[234] For relevant decisions, see Am.-Arab Anti-Discrim. Comm. v. Thornburgh, 970 F.2d 501, 505, 512 (1991); Am.-Arab Anti-Discrim. Comm. v. Reno, 70 F.3d 1045, 1071 (1995).

[235] *See* Reno v. Am.-Arab Anti-Discrim. Comm., 525 U.S. 471, 473 (1999).

[236] *Id.*

[237] Case Chronology, *supra* note 190. Am.-Arab Anti-Discrim. Comm.v. Reno, 883 F. Supp. 1365, 1379 (C.D. Cal. 1995) (No. 87-cv-02107).

[238] Am.-Arab Anti-Discrim. Comm. v. Reno, 119 F.3d 1367 (1997).

[239] *Id.*

[240] *See infra* pp. 177–84.

deportation to Hamide and Shehadeh, finding that federal courts have jurisdiction over constitutional selective enforcement challenges to INS actions, and that the First Amendment protects the right to provide support to the PFLP, unless the government shows that the defendants had *specific intent* to further the PFLP's unlawful activities.[241]

The government sought certiorari in the Supreme Court, appealing the August 1997 decision of the Ninth Circuit and requesting review of both the jurisdictional issues and the merits of the selective prosecution injunction. [242] The Supreme Court granted certiorary, only allowing review of the jurisdictional issues, not the merits of the selective prosecution claim.[243] But by then, the Clinton Administration had signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and the Anti-Terrorism and Effective Death Penalty Act of 1996 into law.[244] The Immigration Act stripped courts of hearing selective enforcement claims until a final deportation order had been issued, and the Anti-Terrorism Act codified material support laws, limiting immigrants' access to the First Amendment.[245] When the L.A. 8 case reached the Supreme Court in 1998, these acts had already gone into effect.[246]

Oral arguments were held on November 4, 1998 and for the first and only time in the twenty-year history of the case, the Court found in favor of the government.[247] In February 1999, the Supreme Court issued what attorney and legal scholar David Cole called "a devastating decision for immigrants, [that] revers[ed] the Ninth Circuit's decision."[248] The Court decided the merits of the selective enforcement claims even though these issues had not been briefed, ruling for the first time that aliens have no right to object to being targeted for deportation based on their political affiliations and that federal courts have no

---

[241] *Reno*, 119 F.3d at 1376–77.

[242] *See* Reno v. Am.-Arab Anti-Discrim. Comm., 525 U.S. 471, 475–76 (1999).

[243] *Id.* at 473.

[244] Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996); Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996).

[245] Illegal Immigration Reform and Immigrant Responsibility Act § 306(a); Antiterrorism and Effective Death Penalty Act § 323.

[246] *See Reno*, 525 U.S. at 472–73; *see also* Antiterrorism and Effective Death Penalty Act of 1996 § 2266.

[247] *Reno*, 525 U.S. at 492.

[248] Case Chronology, *supra* note 190.

jurisdiction to hear such claims.[249] The injunction against the deportation hearings of Hamide and Shehadeh was overturned as a result.[250] Their case was sent back to the district court.[251]

After the Supreme Court decision, the activists still had several layers of administrative review available to them, even though they could not get immediate judicial review in a court of law.[252] They exhausted all those options, and while the case was pending, in 2003, the Bush Administration was notified by the Justice Department that it could continue the prosecution of the L.A. 8 case under the newly-instituted Patriot Act.[253] The Bush Administration responded affirmatively, and continued the nearly twenty-year-old prosecution until 2007.[254] In effect, each time the L.A. 8 won in court, the government refiled the lawsuit under new allegations.[255]

On January 30, 2007, almost exactly twenty years after the original arrest, Los Angeles-based Immigration Judge Bruce Einhorn dismissed the deportation case against the last remaining defendants, including Michel Shehadeh, calling the dragged-out deportation effort "an embarrassment to the rule of law."[256] Judge Einhorn terminated deportation proceedings due to the government's failure to produce exculpatory evidence and

---

[249] *Id.* For an extensive analysis of this ruling as it relates to immigration law, see Hiroshi Motomura, *Judicial Review in Immigration Cases After AADC: Lessons from Civil Procedure*, 14 GEO. IMMIGR. L.J. 385, 405–08 (2000). *See also* Wing, *supra* note 179, at 567–70; William C. Banks, *The "L.A. Eight" and Investigation of Terrorist Threats in the United States*, 31 COLUM. HUM. RTS. L. REV. 479, 485–86 (2000); Monrad, *supra* note 208, at 837–40; Maryam Kamali Miyamoto, *The First Amendment After* Reno v. American-Arab Anti-Discrimination Committee*: A Different Bill of Rights for Aliens?*, 35 HARV. C.R.-C.L. L. REV (2015) 183, 202–08.

[250] *See Reno,* 525 U.S. at 492.

[251] *Id.*

[252] *See, e.g.*, *Avoiding Removal,* FINDLAW (May 13, 2020), https://www.findlaw.com/immigration/deportation-removal/forms-of-relief-from-removal.html [https://perma.cc/WDA6-5EJU].

[253] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001, Pub. L. No. 107–56, 115 Stat. 272 (2001).

[254] *See* Matters of Hamide & Shehadeh, Case Nos. A 19 262 560 & A 30 660 528, Immig. Ct. slip op. 11 (E.O.I.R.) (Jan. 29, 2007).

[255] *See generally* Docket Report, Am. Arab Anti Discr. Comm. v. Meese (C.D. Cal. Apr. 3, 1987) (No. 2:87-cv-02107-SVW).

[256] Matters of Hamide & Shehadeh, Case Nos. A 19 262 560 & A 30 660 528, Immig. Ct. 10 (slip op.) (Jan. 29, 2007).

other documents ordered by the judge.[257] For the first time, the government did not appeal, and the case was complete. [258]

By the time the case was dismissed in 2007, the L.A. 8 had been prevented from having jobs and maintaining livelihoods, their parents and relatives had died abroad but the activists could not visit them because they were unable to leave the country, and they lived the whole of their adult lives in fear of going to jail or being deported.[259] They had been in and out of courts for twenty years, and although they had won nearly every court battle, the government instituted new policies that would get the case back into the courtroom.[260]

While this was still a great victory for the L.A. 8, the Palestinian movement, and the coalition of peace and civil rights groups invested in the outcome, the government used the case as an incubator for the development of the anti-terror proposals in *The Public Report of the Vice President's Task Force on Combatting Terrorism* (1985)[261] and *Alien Terrorists and Undesirables: A Contingency Plan* (1987);[262] the most notorious of these are the material support laws, enacted by the Clinton administration and still in effect today.[263]

Today, the idea of terrorist has become a colloquialism in U.S. culture, and the Patriot Act, alongside a variety of other acts discussed in the next section, have codified anti-terrorism into U.S. law. What began as resistance to U.S. imperialism abroad entered into the law in the form of a legal concept called terrorism, a concept now commonly used to narrow the First and Fifth Amendment rights of dissidents, especially dissidents from the Middle East.

---

[257] *Id.* at 4–5.

[258] *See Judge Throws Out Charges in "Los Angeles Eight" Case*, CTR. FOR CONST. RTS. (Oct. 23, 2007), https://ccrjustice.org/home/press-center/press-releases/judge-throws-out-charges-los-angeles-eight-case [https://perma.cc/94RN-CK8N]; *see also* Michel Shehadeh, *Free Speech Prevails for the L.A. 8*, L.A. TIMES (Feb. 6, 2007), https://www.latimes.com/news/la-oe-shehadeh6feb06-story.html [https://perma.cc/M5WF-WPTM]; *U.S. Drops 20-Year Effort to Deport 2 Palestinians*, N.Y. TIMES (Nov. 1, 2007), https://www.nytimes.com/2007/11/01/world/americas/01iht-deport.1.8140261.html [https://perma.cc/FF5V-2ZXV].

[259] *Hamide & Shehadeh*, slip op. at 9 & n.11.

[260] *See* discussion *infra* Section II.A.2.

[261] *See generally* PUBLIC REPORT, *supra* note 32, at 1.

[262] *See generally* Memorandum from the U.S. Dep't of Just. Immigr. & Naturalization Serv. on Alien Terrorists and Undesirables: A Contingency Plan (Nov. 18, 1986).

[263] 18 U.S.C. § 2339A(a) (2019); 18 U.S.C. § 2339B(a)(1) (2019).

B. The Impact of Imperialism on Domestic Law

Although imperialism is not a term we often see in significant legal decisions regarding U.S. foreign policy, national security policy or civil rights law, this Article has exposed how it has come to be a governing and structuring influence in lawmaking in the United States. As U.S. imperialism has expanded throughout the world, it has come to impact domestic lawmaking as well, influencing both the administrative and legislative states. As a result, individuals continue to be targeted as criminals and denied First and Fifth Amendment rights with little recognition of the prosecution's relationship to the contingencies of U.S. imperialism.[264] In this final section of the Article, I discuss the statutes that execute U.S. imperialism in the domestic sphere and the Supreme Court precedent that resulted from those statutes.

1. The Antiterrorism and Effective Death Penalty Act of 1996.

The Antiterrorism and Effective Death Penalty Act (Antiterrorism Act) was signed into law on April 24, 1996.[265] At the time, the Clinton Administration framed the Act as a necessary intervention meant to protect the nation from terrorism after the Oklahoma City bombing of April 19, 1995.[266]

---

[264] *See* Said, *supra* note 172, at 544; Miyamoto, *supra* note 249, at 186–87. For a discussion of the interplay between race and class as they impact the treatment of immigrants, see Kevin R. Johnson, *The Intersection of Race and Class in U.S. Immigration Law and Enforcement*, 72 L. & CONTEMP. PROBS. 1, 1–2 (2009). For extensive commentary on the relationship between First Amendment rights and national security policy, see John Fee, *Speech Discrimination*, 85 B.U. L. REV. 1103, 1146 (2005). For a discussion of double standards in civil rights law for aliens and non-citizens, see David Cole, *Enemy Aliens*, 54 STAN. L. REV. 953, 954–55 (2002). For a discussion of the erosion of Brandenburg's protections over time, see Thomas Healy, *Brandenburg in a Time of Terror*, 84 NOTRE DAME L. REV. 655, 659–60 (2009); Leslie Kendrick, *Free Speech and Guilty Minds*, 114 COLUM. L. REV. 1255, 1258 (2014); Michal Buchhandler Raphael, *Overcriminalizing Speech*, 36 CARDOZO L. REV. 1667, 1670–71 (2015). For a discussion of how the First Amendment is impacted by more than just legal doctrine or ideals about the Freedom of Speech, see Frederick Schauer, *The Boundaries of the First Amendment: A Preliminary Exploration of Constitutional Salience,* 117 HARV. L. REV. 1765, 1768 (2004), and Timothy Zick, *Territoriality and the First Amendment: Free Speech at - and beyond - Our Borders*, 85 NOTRE DAME L. REV. 1543, 1545 (2010).

[265] Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No.104-132, 110 Stat. 1214 (1996).

[266] Press Release, Off. Press Sec'y, Statement by the President (Apr. 24, 1996) [hereinafter Off. Press Sec'y], https://clintonwhitehouse6.archives.gov/1996/04/1996-04-24-president-statement-on-antiterrorism-bill-signing.html [https://perma.cc/SSH4-X5EB].

The Antiterrorism Act addresses a variety of issues including habeas corpus, making it much more difficult for prisoners to challenge their imprisonment in court.[267] But despite the Clinton Administration's description of the Act as focused on domestic terror, one of its greatest impacts was to classify international organizations that the U.S. government did not approve of as terrorist organizations.[268] To that end, the Antiterrorism Act made members of those organizations excludable on political grounds, and made it illegal to provide any kind of support, monetary or otherwise, for these organizations, even if they were doing otherwise lawful work.[269] Many of the organizations the Act identified as terroristic were those challenging U.S. or European imperialism, including the Irish Republican Army and the Popular Front for the Liberation of Palestine.[270] They key move in the Act was to make it much easier to designate organizations as terrorists through the administrative state, thereby shielding the process from public scrutiny.[271] With regard to the L.A. 8, this meant that, all of a sudden, the government no longer had to argue that the PFLP was a terrorist organization, and it was no longer subject to First Amendment challenges when it sought to deport Palestinian activists. It could now claim, without challenge, that those activists were members of the PFLP, and deport them merely on that basis.

Title III of the Act addresses international terrorism. It begins by creating the "foreign terrorist organization" designation:

> The Secretary [of State] is authorized to designate an organization as a foreign terrorist organization in accordance with this subsection if the secretary finds that—(A) the organization is a foreign organization; (B) the organization engages in terrorist activity . . . ; and (C) the terrorist

---

[267] *See* Hon. Lynn Adelman, *Repeal the Antiterrorism and Effective Death Penalty Act to Restore Habeas Corpus*, 47 LITIG. 6, 6–7 (2020).

[268] *See* Off. Press Sec'y, *supra* note 266; 8 U.S.C. § 1189 (2004).

[269] 8 U.S.C. § 1182(a)(3)(B)(i) (2013); 18 U.S.C. § 2339B(a)(1) (2015).

[270] *See Foreign Terrorist Organizations*, U.S. DEP'T OF STATE, https://www.state.gov/foreign-terrorist-organizations/ [https://perma.cc/KR4E-9C5G] (last visited Aug. 21, 2022).

[271] *See* Comment, *Obstructing Justice: The Rise and Fall of the AEDPA*, 41 SAN DIEGO L. REV. 839, 852–54 (2004); Sahar F. Aziz, Note, *The Laws on Providing Material Support to Terrorist Organizations: The Erosion of Constitutional Rights or a Legitimate Tool for Preventing Terrorism?*, 9 TEX. J.C.L. & C.R. 45, 69 (2003).

> activity . . . of the organization threatens the security of United States nationals or the national security of the United States.[272]

An individual member of the organization cannot choose to challenge its designation during a criminal hearing as a defense because "a defendant in a criminal action shall not be permitted to raise any question concerning the validity of the issuance of such designation as a defense or an objection at any trial or hearing."[273] The organization itself may seek appeal of its designation within thirty days after the designation,[274] but it is very rare to win such appeals.[275] In essence, the Antiterrorism Act circumscribes distinct kinds of political activity, including mere membership in an organization. A noncitizen does not have to do anything but be a member of an organization to be deportable under the Act.[276]

One might argue that such a statute is important in preventing terrorism in the United States. But although the Act was allegedly passed as a result of the Oklahoma City bombing, which was perpetrated by U.S. citizens, the Act does not target domestic organizations and instead focuses on foreign terrorist organizations.[277] Additionally, it is important to recall that U.S. presidents and diplomats have a history of classifying organizations that challenge, or even rhetorically disagree with U.S. foreign policy, as terrorist organizations.[278] Such was the case with the African National Congress, which challenged the American-backed apartheid regime of South Africa, and the Irish Republican Army, which challenged British colonialism in Ireland, and was an ally of the Palestinians.[279]

---

[272] 8 U.S.C. § 1189(a)(1) (2004) (footnote omitted).

[273] Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No.104-132, § 302, 110 Stat. 1214, 1249 (1996).

[274] *Id.* § 1189(c)(1) (2004).

[275] *The "Foreign Terrorist Organization" Designation Scheme*, ACLU, https://www.aclu.org/sites/default/files/field_document/fto_designation_briefer_final.pdf [https://perma.cc/48Z9-HP3P] (last visited Aug. 20, 2022).

[276] *See, e.g.*, Lisa C. Solbakken, *The Anti-Terrorism and Effective Death Penalty Act: Anti-Immigration Legislation Veiled in an Anti-Terrorism Pretext*, 63 BROOK. L. REV. 1381, 1382 n.7 (1997).

[277] Robin C. Trueworthy, Note, *Retroactive Application of the Anti-Terrorism and Effective Death Penalty Act of 1996 to Pending Cases: Rewriting a Poorly Written Congressional Statute*, 75 WASH. U. L.Q., 1707, 1707 (1997); 18 U.S.C. § 2339B(a)(1).

[278] *See generally* SAYIGH, *supra* note 131.

[279] Robert Windrem, *US Government Considered Nelson Mandela a Terrorist Until 2008,* NBC NEWS (Dec. 7, 2013, 4:55 AM), https://www.nbcnews.com/news/world/us-government-considered-nelson-mandela-terrorist-until-2008-flna2d11708787 [https://perma.cc/M74P-TC7A]; Press Statement, Richard Boucher,

The Antiterrorism Act had another significant dimension—the material support provisions. According to these provisions, "Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 20 years, or both . . . ."[280] The Act specifies that "the term 'material support or resources' means . . . currency . . . or financial securities, financial services, lodging, training, . . . safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel . . . , and transportation," and other physical assets.[281] With this provision, the government essentially criminalized any support for organizations deemed foreign terrorist organizations. This meant, for example, that had this law been in effect during the 1980s, the U.S. anti-apartheid movement could have been prosecuted for providing material support to terrorism when it hosted ANC members for speaking engagements, or distributed fliers about the work of the ANC.[282]

Essentially, the Antiterrorism Act accomplished what the government failed to do in its prosecution of the L.A. 8 activists.[283] It institutionalized all the arguments that the government brought in the case: it developed an official list of terrorist organizations that is not subject to any significant judicial or public scrutiny, it made it illegal for naturalized citizens and non-citizens to be a member of any organization on that list, it made individuals who the government classified as members retroactively criminalizable and deportable, and it made it illegal to provide any kind of support, rhetorical or

---

Spokesman, Foreign Terrorist Organization: Designation of Continuity Irish Republican Army and Aliases (July 13, 2004), https://2001-2009.state.gov/r/pa/prs/ps/2004/34345.htm [https://perma.cc/H9M8-WNCL].

[280] 18 U.S.C. § 2339B(a)(1).

[281] 18 U.S.C. § 2339A(b)(1).

[282] *Anti-Apartheid Movement*, AFR. ACTIVIST ARCHIVE, https://africanactivist.msu.edu/organization.php?name=Anti-Apartheid+Movement [https://perma.cc/BER9-TENR] (last visited Aug. 20, 2022).

[283] The Foreign Terrorist Organization list is reminiscent of the Attorney General's List of Subversive Organizations from the Red Scare era. Versions of it began to be circulated in 1903, but it was officially implemented in 1947 by President Truman. *See* ROBERT JUSTIN GOLDSTEIN, AMERICAN BLACKLIST: ATTORNEY GENERAL'S LIST OF SUBVERSIVE ORGANIZATIONS 1 (2008); Geoffrey Stone, PERILOUS TIMES: FREE SPEECH IN WARTIME FROM THE SEDITION ACT OF 1798 TO THE WAR ON TERRORISM 327 (2004); THOMAS J. REED, AMERICA'S TWO CONSTITUTIONS: A STUDY OF THE TREATMENT OF DISSENTERS IN TIME OF WAR 220 (2017).

material, for the organizations on that list.[284] In one fell swoop, the government criminalized Americans' support for many anti-imperialist and national liberation movements across the world, thereby destroying the ability of Americans to meaningfully engage in anti-imperialist struggles and other political activity that is otherwise lawful and protected by the First Amendment, especially when such struggles implicated the role of the United States around the world.

2. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

During the government's appeals in the L.A. 8 case, the Clinton Administration advanced the Illegal Immigration Reform and Immigrant Responsibility Act (Immigration Act) through Congress; it passed on September 30, 1996, just a few months after the Antiterrorism Act.[285] One of the objectives of the Immigration Act was to reduce the population of immigrants in the United States by targeting individuals with criminal records.[286] As a result of the Act, individuals could be deported for misdemeanors and other minor offenses.[287] The legislation was made retroactive—even people who had lived in the country for years, had families in the United States, and had served time for their offenses, could be deported.[288] This was also a court-stripping bill, since it limited judicial independence and scrutiny of federal legislation while strengthening the power of the Executive Branch.[289]

There was one provision that was especially significant to the L.A. 8 case, the provision which stripped the authority of federal courts to review immigration cases except under very limited and specific circumstances.[290] According to the Immigration Act:

---

[284] *See* Humanitarian L. Project v. Reno, No. CV 98-1971) WL 36105333 *2–3 (C.D. Cal. 2001); *see generally* Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No.104-132, 110 Stat. 1214 (1996).

[285] Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104–208, 110 Stat. 3009 (1996).

[286] *See* Wing, *supra* note 179, at 567.

[287] *Id.*

[288] *Id.*

[289] *See id.* at 568.

[290] *See id.* at 568–69; *see generally* Motomura, *supra* note 46; Banks, *supra* note 249, at 485.

> [N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act.[291]

In essence, the provision meant that the L.A. 8 activists could not challenge their deportation until a final deportation order was issued. Since the Act applied retroactively and was passed immediately after the government appealed the case to the Supreme Court, the Act applied to the case, basically stripping the courts of jurisdiction to hear the case.[292]

> After the passage of [the Immigration Act], the INS in the L.A. 8 case argued that not only did it have the right to deport the L.A. 8 because of their political beliefs, but also that [the Act] prohibited the courts from reviewing that decision before their final deportation order. Thus, the February 1999 Supreme Court decision gave a victory to the INS when it upheld its arguments."[293]

3. Humanitarian Law Project v. Holder (2010).

In 1998, the attorneys who defended the L.A. 8 brought a civil rights suit against the U.S. government, challenging the constitutionality of the material support provisions in the Antiterrorism and Effective Death Penalty Act of 1996.[294] The plaintiffs in the litigation were two U.S. citizens and six organizations: the Humanitarian Law Project, a human rights organization with consultative status to the United Nations; Ralph Fertig, the Humanitarian Law Project's president and a retired administrative law judge; Nagalingam Jeyalingam, a

---

[291] Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 306, 110 Stat. 3009-546, 3009-612 (1996).

[292] *See* Wing, *supra* note 179, at 567, 569.

[293] *See id.* at 569 (footnote omitted). According to Professor David Cole of Georgetown Law School, who argued the case before the Supreme Court:

> We were blindsided . . . . The court has denied to all immigrants in this country the right to engage in the same political activities that citizens have an unquestioned First Amendment right to engage in; and it did so after telling us not to address the question. The Court has denied immigrants the right to speak without even allowing them to be heard on that question.

See Jim Lobe, *Rights-U.S.: Immigrants' Free Speech Rights Threatened*, INTER PRESS SERV. NEWS AGENCY (Feb. 26, 1999), https://www.ipsnews.net/1999/02/repeat-rights-us-immigrants-free-speech-rights-threatened/ [https://perma.cc/AZ4V-C9TC].

[294] Humanitarian L. Project v. Reno, 9 F. Supp.2d 1176, 1181 (C.D. Cal. 1998).

Tamil physician born in Sri Lanka and a naturalized U.S. citizen; and five non-profit organizations dedicated to the interests of people of Tamil descent.[295] The plaintiffs filed the lawsuit because they wanted to provide support for the humanitarian and political activities of the Kurdistan Worker's Party (the Partiya Karkeran Kurdistan, or PKK) and the Liberation Tigers of Tamil Eelam (the LTTE).[296] The PKK was founded in 1974 with the aim of establishing an independent Kurdish state in southern Turkey; similarly, the LTTE was founded in 1976 with the goal of establishing an independent Tamil state in Sri Lanka.[297] Both communities are minorities of these respective countries, and have undergone severe government repression and they started these organizations in order to advance their liberation movements.[298]

The plaintiffs in the case claimed that the material support law is vague, in violation of the Due Process Clause of the Fifth Amendment, and that it infringes on their First Amendment rights to freedom of speech and association.[299] They argued that they wanted to support the "legitimate [political] activities" of the PKK and the LTTE: conflict-resolution in the United Nations, education about their respective causes, and more.[300] The conservative Supreme Court ruled in favor of the government, that the plaintiffs' First and Fifth Amendment rights would not be violated by the material support laws, and that such laws were necessary in order to protect the nation and its allies against terrorism.[301]

In effect, the *Humanitarian Law Project* case officially codified the material support provisions into U.S. law, and continues to be significant precedent in the prosecution of

---

[295] Humanitarian L. Project v. Holder, 561 U.S. 1, 10 (2010).

[296] *See id.*

[297] *See id.* at 9.

[298] *See Group Denial Repression of Kurdish Political and Cultural Rights in Syria*, HUM. RTS. WATCH (Nov. 26, 2009), https://www.hrw.org/report/2009/11/26/group-denial/repression-kurdish-political-and-cultural-rights-syria# [https://perma.cc/9JES-QZKG]; *see also* Priavi Joshi, *Repression, Identity and the Promise of Eelam*, E-INT'L RELS. (Oct. 21, 2021), https://www.e-ir.info/2021/10/12/repression-identity-and-the-promise-of-eelam/ [https://perma.cc/MKU3-YDUQ].

[299] *Humanitarian L. Project,* 561 U.S. at 10–11, 29.

[300] *See id.* at 29.

[301] *Id.* at 39–40.

criminal defendants accused of terrorism.[302] Shortly after the decision, the homes and offices of twelve Palestinian and Palestinian solidarity activists were raided by the FBI in Minneapolis and Chicago.[303] The search warrants alleged that the activists had provided material support for the PFLP and Hamas, both of which, notwithstanding their acute political differences, were designated as Foreign Terrorist Organizations.[304] Although the government has since been unable to prosecute these activists, the case remains open and most recently, Rasmea Odeh, an elderly woman and well-known Palestinian activist, was deported to Jordan as a result of these laws.[305]

CONCLUSION

Although recounting the full doctrinal scope of U.S. imperialism as it pertains to domestic and foreign affairs law falls well beyond the parameters of this Article, I will conclude by outlining several key concerns. This legal history challenges several of the normative assumptions underlying the study of foreign affairs law, namely that U.S. foreign affairs operate independently from other forms of racial power endemic to the United States, and that the legal regime of U.S. foreign affairs law does not touch and concern other regimes of constitutional lawmaking imbricating racial power. It also highlights the mutually constitutive roles of both the law and legal scholarship as critical sites of contestation in the making of U.S. imperialism. That is to say, both the law and legal scholarship are vehicles for

---

[302] U.S. v. Mehanna, 735 F.3d 32, 42 (1st Cir. 2013), Stagg P.C. v. U.S. Dep't of State, 673 Fed. Appx. 93, 96 (2d Cir. 2016), Hosseini v. Nielsen, 911 F.3d 366, 376 (6th Cir. 2018), Jabateh v. Lynch, 845 F.3d 332, 341 (7th Cir. 2017).

[303] *See* David Schaper, *FBI Targets Peace Activists for Alleged Terrorism Support*, NAT'L PUB. RADIO (Oct. 2, 2010), https://www.npr.org/2010/10/02/130274688/fbi-targets-peace-activists-for-alleged-terrorism-support [https://perma.cc/V2W3-3G2T]; Colin Moynihan, *F.B.I. Searches Antiwar Activists' Homes*, N.Y. TIMES (Sept. 24, 2010), https://www.nytimes.com/2010/09/25/us/politics/25search.html [https://perma.cc/46TQ-DYUF].

[304] *FBI Raids Home of Antiwar and Pro-Palenstian Activists in Chicago and Minneapolis*, DEMOCRACY NOW! (Sept. 27, 2010), https://www.democracynow.org/2010/9/27/fbi_raids_homes_of_anti_war [https://perma.cc/Z8TX-XSPX].

[305] *See* Teresa Crawford, *Palestinian Activist Deported to Jordan from Chicago*, CHI. TRIB. (Sept. 19, 2017), https://www.chicagotribune.com/news/breaking/ct-palestinian-activist-deported-chicago-20170919-story.html; *see also* Asraa Mustufa, *Rasmea Odeh: Deported But Not Defeated*, CHI. REP. (Oct. 1. 2018), https://www.chicagoreporter.com/rasmea-odeh-deported-but-not-defeated/ [https://perma.cc/L423-N2EY].

the production of ideological formations that reinforce U.S. racial power and provide cover for its execution, not just in the domestic sphere, as many Critical Race Theorists have eloquently argued, but in the international sphere as well.