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Constructing the Perception of Imminent Threat: How Islamophobia Legitimizes Preemptive Self-Defense, Targeted Killings, and the Erosion of Due Process

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Abstract

The terrorist attacks launched on September 11, 2001, in the U.S. have reflected the strongest shift in the representation of Muslims. “War on Terror” reinforced the social prejudice against Muslims and also shaped the applicable domestic and international living law for them. This war’s influence still goes on. The post-9/11 global landscape has also been profoundly shaped by Islamophobia, influencing both security policies and legal frameworks. This article explores the role of Islamophobia in constructing the perception of an imminent threat, particularly in justifying preemptive self-defense, targeted killings, and the erosion of legal due process. Drawing from constructivist, critical security, sociolegal, and postcolonial perspectives, it argues that Islamophobia functions as a discursive mechanism that frames Muslims as inherent threats, thereby legitimizing extraordinary security measures. The analysis highlights how this manufactured fear normalizes preemptive military actions, reinforces discriminatory domestic policies, and facilitates the manipulation of international legal principles. By linking historical and contemporary discourses, the study demonstrates how Islamophobia shapes “living law,” privileging security imperatives over legal norms. The article concludes by emphasizing the need to challenge securitized narratives and advocate for equitable policies that uphold human rights and the rule of law.

Keywords: Law, Islamophobia, Imminent Threat, Preventive Self-Defense, Targeted Killing.

Yakın Tehdit Algısının İnşası: İslamofobi, Önleyici Meşru Müdafaaayı, Hedefli Öldürmeleri ve Usuli Sürecin Aşınmasını Nasıl Meşrulaştırır

Öz

11 Eylül 2001’de ABD’ye düzenlenen terör saldırıları, Müslümanların temsilindeki en güçlü değişimi yansıtmıştır. “Teröre Karşı Savaş” Müslümanlara yönelik toplumsal önyargıyı pekiştirirken, aynı zamanda onlar için geçerli olan yaşayan iç ve uluslararası hukuku da şekillendirmiştir. Bu savaşın etkisi hala devam etmektedir. 11 Eylül sonrasındaki küresel saha da hem güvenlik politikalarını hem de hukukî

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çerçeveleri etkileyen İslamofobi tarafından derinden şekillendirilmiştir. Bu makale, İslamofobinin yakın tehdit algısının inşasındaki rolünü, özellikle de önleyici meşru müdafaayı, hedefli öldürmeleri ve hukukî usulün aşınmasını meşrulaştırmada nasıl kullanıldığını araştırmaktadır. İnşacı, eleştirel güvenlik, sosyohukukî ve postkolonyal perspektiflerden yararlanarak, İslamofobinin Müslümanları içsel tehditler olarak çerçeveleyen bir söylemsel mekanizma olarak işlev gördüğünü ve böylece olağanüstü güvenlik önlemlerini meşrulaştırdığını savunmaktadır. Analiz, bu üretilmiş korkunun nasıl önleyici askerî eylemleri normalleştirdiğini, ayrımcı iç politikaları pekiştirdiğini ve uluslararası hukukun ilkelerinin manipülasyonunu kolaylaştırdığını vurgulamaktadır. Tarihsel ve çağdaş söylemleri birleştirerek, çalışma İslamofobinin güvenlik kaygılarını hukukî normların önünde tutan "yaşayan hukuk"u nasıl şekillendirdiğini göstermektedir. Makale, güvenlikçi anlatılara meydan okuma ve insan hakları ile hukukun üstünlüğünü koruyan adil politikaları savunma ihtiyacını vurgulayarak sona ermektedir.

Anahtar Kelimeler: Hukuk, İslamofobi, Yakın Tehdit, Önleyici Meşru Müdafa, Hedefli Öldürme.

Introduction

The terrorist attacks on September 11, 2001, in the United States have instigated the most substantial transformation in the perception of Islam and Muslims. The 'War on Terror' subsequent to those acts has profoundly impacted the lives of Muslims globally, exacerbated social prejudices against them, and influenced the relevant domestic and international 'law in action' pertaining to them. However, the global security landscape also experienced a profound upheaval after the 9/11 attacks, resulting in the pervasive acceptance of Islamophobic narratives that influenced legal and political responses to perceived threats. The notion of "imminent threat" has been employed to rationalize preemptive self-defense, targeted killings, and the erosion of due process within domestic legal frameworks. These trends provoke essential inquiries regarding the convergence of security, law, and prejudice.

Islamophobia, characterized as the irrational fear, animosity, or bias toward Islam and Muslims (European Monitoring Centre on Racism and Xenophobia [EUMC], 2006: 61), has emerged as a significant influence in defining global socio-political and security narratives. The core purpose involves portraying Muslims as a homogeneous group and a constant "other," frequently associated with violence, extremism, and threats to both international and national security. The problem at concern is that this constructed picture of Muslims as an imminent risk significantly impacts international relations, both international and domestic laws, and the ethical frameworks of governance. It promotes preemptive self-defense, legitimizes targeted killings, and facilitates the exploitation of legal frameworks, frequently under the guise of countering terrorism.

Thomas Franck's metaphor of "The Martian investigating the normativity of behavior on Earth" serves as an effective story to articulate the purpose of this study. In Thomas Franck's metaphor, the Martian seeks to comprehend how to regard the law globally while aboard a spacecraft en route to Earth. During the constrained reading time afforded by his travels, he contemplates if certain legal texts hold greater significance than others or if others are superfluous. He wonders which legal writings align more closely with the forecasts and descriptions of the reality he will soon encounter. The Martian is indifferent to whether the writings we provide adhere to Austin's legal criteria. They are significant in demonstrating the methods by which events occur globally and in correctly reflecting the true nature of the world (Franck, 1990: 42).

Let's imagine for a moment that this Martian wants to learn what kind of law Muslims living in the world are subject to and wants to understand not the law in texts but the living law for them. For this reason, this article aims to analyze the role of Islamophobia in influencing perceptions of imminent threats and its wider consequences for both international and domestic security measures. The current body of literature on Islamophobia predominantly emphasizes its sociopolitical and media aspects. Research by Chris Allen (2010), Arun Kundnani (2014), and Deepa Kumar (2012) investigates Islamophobia as a racialized discourse that perpetuates Western dominance. Additionally, Buzan, Waever, and de Wilde (1998) analyze securitization without directly connecting it to the legal frameworks surrounding preemptive self-defense and due process. A notable drawback of these studies is their disregard for sociolegal viewpoints, especially the influence of "living law" on the formation of legal norms for Muslims. Although constructivist and critical security studies examine the influence of Islamophobia on threat perception, they frequently neglect to consider how these perceptions manifest

in the living law and routine discrimination. This study fills the gap by combining sociolegal analysis with security studies to investigate how Islamophobia influences preemptive security measures and undermines due process.

Therefore, the primary research question is: “In what manner can Islamophobia influence legal and security discourses to rationalize preemptive measures, including targeted killings and the erosion of due process within domestic legal frameworks, and thereby form ‘a living law’ for Muslims?” Utilizing constructivist, critical security, and postcolonial theoretical frameworks, it contends that Islamophobia functions as a discursive mechanism that characterizes Muslims as intrinsic risks, hence legitimate preemptive actions and extraordinary measures. The article examines how this constructed fear legitimizes preemptive self-defense, targeted killings, and the exploitation of domestic legal frameworks under the pretext of counterterrorism. An analysis of these processes illustrates how Islamophobia undermines international law, human rights, and civil liberties, and constructs a ‘living law’ for Muslims.

The study utilizes a qualitative analysis of legal texts, policy papers, media discourse, and security policies, informed by critical analysis and legal sociology. This analysis evaluates the gap between formal legal assurances and the actual experiences of Muslims by scrutinizing both official legal frameworks and their practical application. It also argues that Islamophobia constructs a legal reality wherein Muslims are systematically denied the protections of due process and sovereignty. It highlights how securitization and moral panic drama justifies preemptive self-defense, extending military interventions under the assumption of an inevitable attack; targeted killings, particularly through drone strikes, eroding legal protections against extrajudicial executions; and abuse of domestic legal systems, where counterterrorism laws disproportionately target Muslim individuals and communities. By analyzing these mechanisms, this study reveals how Islamophobia normalizes legal exceptionalism, eroding the foundations of international law and civil liberties.

This research is organized into four sections. Firstly, the conceptual and theoretical framework investigates the influence of constructivism, realism, postcolonialism, and sociolegal studies in the analysis of Islamophobia and securitization. Secondly, historical context delineates the progression of Islamophobia within Western discourse, especially in legal and security narratives. Thirdly, framing an imminent threat examines how Islamophobia shapes the feeling of a constant and intensifying danger. Fourthly, preemptive self-defense and targeted killings examine the utilization of the preemptive war ideology to rationalize military interventions and targeted killings. Furthermore, domestic legal systems and Islamophobia examine the unequal effects of counterterrorism measures on Muslim populations. The conclusion encapsulates the findings and proposes policy solutions for mitigating Islamophobia within legal and security contexts.

1. A Conceptual and Theoretical Framework

The conceptual framework revolves around three interconnected processes: framing of an imminent threat, normalization of preemptive action, and manipulation of international and domestic legal systems. Firstly, Islamophobia portrays Islam as inherently violent and Muslims as predisposed to terrorism. This framing leverages media narratives, political rhetoric, and policy documents to perpetuate the idea of an ever-present and escalating danger, often without concrete evidence. Secondly, by positioning Muslims as threats, Islamophobia enables the justification of preemptive security measures, such as targeted killings and restrictive domestic legal applications. The logic of “striking before being struck” becomes normalized. Thirdly, the legal apparatus is instrumentalized to institutionalize Islamophobia, using counterterrorism to disproportionately target Muslims. These legal-like applications often undermine civil liberties and due process, perpetuating systemic discrimination. Thus, Islamophobia functions as an informational operational variable, an independent variable that affects the perception of an ‘imminent threat’ (intervening variable), which in turn alters collective understandings and reinforces social prejudice, thereby legitimizing (dependent variable) operational conduct.

The term “Islamophobia” has been widely utilized across numerous contexts. It may denote the vilification of refugees or, more commonly, the cynicism over the foreign policy of Western nations (Yilmaz, 2009: 24). The term ‘Islamophobia’ was initially employed in France in 1925. The term ‘Islamophobic delirium’ was introduced by authors Etienne Dinet and Slima Ben Ibrahim to characterize

the Western perception of Islam and Muslims (Bakali, 2016: 16-17). Islamophobia is defined as a predominantly unjustified social apprehension regarding Islam and Muslims (Ernst, 2013: 23). A Council of Europe publication referred to Islamophobia as “*the fear of or prejudiced viewpoint towards Islam, Muslims, and matters pertaining to them.*” (EUMC, 2006: 61). However, a report named “*Islamophobia: A Challenge for Us All*” by the Runnymede Trust in 1997 appeared as the most influential work characterized Islamophobia by the following aspects (EUMC, 2006: 61):

1. Islam is seen as a monolithic bloc, static and unresponsive to change.
2. Islam is perceived as distinct and “other.” It does not share, be impacted by, or have any effect over the values of other cultures.
3. Islam is seen as inferior to the West. It is seen as barbaric, irrational, primitive, and sexist.
4. Islam is perceived as being involved in a conflict of civilizations, violent, confrontational, menacing, and supportive of terrorism.
5. People view Islam as a political doctrine that may be exploited for military or political ends.
6. Islamic criticisms of 'the West' are dismissed out of hand.
7. Discrimination against Muslims and their exclusion from mainstream society are justified by hatred toward Islam.
8. Anti-Muslim hostility is seen as natural and normal.

The norms and standards of civilization differ based on feelings of inferiority, barbarism, illogic, primitiveness, violence, aggression, and peril. For this reason, the analysis of Islamophobia as a functional tool draws on four theoretical perspectives: constructivism in international relations, critical security studies, postcolonial theory, and sociolegal studies. Constructivism explains how threats are socially constructed rather than objectively defined, emphasizing the role of discourse in shaping legal and security frameworks. Realism accounts for the power-driven justifications behind preemptive military interventions, particularly in maintaining global hegemony. Postcolonial theory highlights the continuity of Orientalist narratives that depict Muslims as irrational and violent, enabling the erosion of their legal protections. Sociolegal studies focus on the concept of “living law” and how informal legal norms shape the actual experiences of Muslims worldwide, often contradicting formal legal texts.

To detail, constructivist theory highlights how shared beliefs, social norms, and discourses shape perceptions of identity and security. The constructionists' perception of threats differs from the realist assumptions. On the contrary, constructivists argue that the threat is constructed. While traditional security studies focus on threats, constructivism positions security as a political construct and prioritizes social interaction, identity, rules, and norms. For constructivists, security and threats are not objective but socially constructed (Karacasulu and Uzgören, 2007: 36-39).

Furthermore, although discourses are recognized in mainstream law as components of hegemonic activities rather than as endeavors to formulate or establish law (Beckett, 2012: 145), constructivists perceive law as a forum for identity representation and norm creation (Armstrong, Farrell and Lambert, 2012: 111-112). In parallel, Ian Johnstone characterizes law as a ‘justifiable discourse’ generated through arguments that are either substantiated or contested by various actors, articulated during the interaction process (Chesterman, Johnstone and Malone, 2016: xxxii). Eugen Ehrlich also asserts that to understand law, one must examine the prevalent collective mentality (Antonov, 2016: 12). Islamophobic discourses serves as a socially constructed narrative that informs security policies, positioning Muslims as threats and justifying preemptive action.

Critical Security Studies challenges traditional notions of security as state-centric and military-focused. Studies that use critical analysis are considered interdisciplinary and focus on social problems. It analyzes and resists the misuse of social power and how dominant discourse and inequality are created (Suttle, 2016: 15-16). Islamophobia is viewed as a discursive strategy that securitizes Islam, creating an existential threat that justifies extraordinary measures. Moreover, postcolonial frameworks reveal the continuity of Orientalist depictions of Muslims as barbaric and irrational, enabling neo-imperial policies in the Global South. Islamophobia reaffirms these colonial binaries and legitimizes violence against Muslim-majority states or communities.

In legal sociological thinking on which this study is based, if we want to learn what law is or living law, we need to look at how the prevailing collective mentality expresses itself in customs, rituals, cultural habits, and other informal arrangements (Antonov, 2016: 12). Therefore, the legal system,

whether national or international, is not an impartial entity operating autonomously from society. For this reason, Eugen Ehrlich differentiates between what he termed ‘positive law’ and ‘living law.’ He posited that beneath all formal statutes, particularly positive law, there resided a ‘living law,’ which represented the legal norms adhered to by individuals within society. Roscoe Pound referred to it as ‘law in action’ (Grana and Ollenburger, 1999: 34–35). The law in action not only reflects social bias but also sustains it. Perceptions of inferiority, barbarism, irrationality, primitiveness, violence, aggression, or menace influence the social application of law, regardless of the legislation's textual conformity to modern principles and its claimed equality for all individuals.

Based on Eugen Ehrlich’s sociology of law, Gunther Teubner has also pointed to the subsystems of global society that create their own normative orders. He argues that global law will primarily develop from social environments and cannot develop from the political centers of nation-states and international institutions (Venzke, 2012: 36). Informal legal norms shape the actual experiences of Muslims worldwide, often contradicting formal legal texts.

2. A Concise Overview of the Contentious Relationship Between the West and Muslims

In discussions of the foreign policy of Western states, the terms “Western” or “West” denote the countries of Western Europe and North America, characterized by market economies and bourgeois liberal democracies that historically originated in Europe. There exists a robust and persistent association between political conservatism on both sides of the Atlantic and adverse Western opinions of Muslims and Islam (Ogan, Willnat, Pennington, and Bashir, 2014: 40).

The Western perception of Muslims and Islam dates back to the 7th century, coinciding with Islam's challenge to the Byzantine Empire. Until the 16th century, Europe constituted a cohesive Christian community and had a shared framework for diplomatic interaction (Branch, 2014: 23-28). During this age, the Christian and Islamic realms have collaboratively established their respective laws of nations. Both the Christian and Islamic realms in conflict had established comprehensive doctrines concerning the normative framework applicable to their co-religionists and interactions with non-believers. Christian ethical guidelines were primarily formulated for warfare and encompassed notions of ‘Just War.’ Simultaneously, the Islamic world established the notion of ‘Jihad’, which parallels the just war theory (Amstrong et al., 2012: 50).

Nonetheless, the paradigm of steadfast friend/enemy relationships rooted in religion was observed to be transposed onto the battle between nation-states following the transfer of sovereignty from divine authority to the state. However, given international law originates from Christian civilization, the non-European globe has consistently been viewed as a target for colonization by Western civilization. The practical implementation of this perception encompassed formal rationalizations spanning from religious to secular concepts, or a harsh contempt for other societies and their values (Koskenniemi, 2012: 54).

By the conclusion of the 19th century, the oil reserves and resources of the Islamic world started to garner Western interest. The primary sequence of events that altered the course of history was initiated by World War I and culminated in the disintegration of the Ottoman Empire (Engdahl, 2012: 23). Post-1914, Middle Easterners experienced a profound upheaval in their circumstances. The European powers governed these societies through the suppression of dissent while also integrating them into imperial commercial networks. Colonial control, created at the conclusion of World War I through state-owned Anglo-Persian Oil (BP) and Royal Dutch Shell, further reinforced British supremacy in the oil sector (Engdahl, 2012: 38).

Following World War II, only four of the 42 recognized Muslim nations remained uncolonized (Allen, 2010: 33). The United States seized the flag and emerged as a global champion. Subsequently, the U.S. or Rockefeller’s dominance over world oil became a fundamental aspect of postwar U.S. policy (Engdahl, 2012: 38). The Office of Petroleum Coordinator was established by the Roosevelt administration in May 1940, and in 1942 it was transformed into the Petroleum Administration for War (PAW). All principal topics and policies related to the worldwide oil crisis were deliberated during meetings between PAW executives and the subsequently formed Petroleum Industry War Council (PIWC). (Gendzier, 2015: 24). Every gallon of petroleum products utilized or produced globally has come under their jurisdiction (Gendzier, 2015: 22,25). Subsequent to the United States’ recognition of Israel’s statehood after its 1948 independence declaration, the two nations aligned their interests,

primarily aimed at thwarting Soviet influence over Arab and Muslim leaders and ensuring Western dominance over oil resources. (Cook, 2008: 116).

Iran also experienced its proportionate involvement in the oil conflict. In 1953, the United States and Britain collaborated to depose Muhammad Mosaddeq, the elected prime minister of Iran. Both were oblivious to the fact that by deposing a popular nationalist and installing a monarch, they were sowing the seeds of animosity toward the West, culminating in the Islamic revolution of 1979 two and a half decades later (Hardy, n.d.: 121). The Six-Day War between Israel and Arabs in 1967 significantly transformed US relations with the Arab world. A number of Arab nations reacted by terminating diplomatic relations with Washington. Several Arab states threatened to curtail oil exports in retribution against the United States. (Ashton, 2007: 16). In late September 1972, with the assassination of two Israeli Olympic athletes and the abduction of nine hostages by Palestinian insurgents at the Munich Olympic Games, the phrase "Middle East terrorism" entered the American lexicon (Amanat and Bernhardsson, 2007: 208).

Despite occasional conflicts, over the majority of the Cold War, the United States emerged as the political patron of the Middle East. (Rubin, 2002: 229–230). Both Republican and Democratic administrations have pursued U.S. strategy in the Middle East with three primary objectives: the stability of allied regimes, the security of Israel, and the uninterrupted flow of affordable oil to the West (Cook, 2008: 139). During the Cold War's bipolar power structure, it is presumed that international law played a significant role. The balance of power facilitated a *modus vivendi* between two adversarial factions and established external constraints on confrontational engagements (Hsiung, 1997: 23). The principles of sovereignty of political entities, territorial integrity, and non-intervention constituted the essential elements of the framework underpinning international law (Chan, 2013: 403).

Nonetheless, the conclusion of the Cold War also manifested a shift in the balance of power within the discourse of international law. This alteration was perceived by some as the advent of a new regime, while others viewed it as the obliteration of international law (Amstrong et al., 2012: 27). The so-called "War on Terror," which was initiated immediately following September 11, 2001, greatly exacerbated Islamophobia and created the perception that nations with a majority of Muslims were dangerous in the eyes of both the American political right and the general public. "*This nation [the United States] is at war with Islamic fascists,*" Bush said in August 2006. The assertion that the United States was engaged in a 'crusade' in the Middle East was among the rare instances since its declaration in 2001 (Lean, 2012: 142).

Due to the alteration in the power dynamics of the post-Cold War era, the United States and its allies have ascended as an unchallenged superpower. To maintain hierarchy within the international system, an imperial discourse utilizing 19th-century epithets and justifications began to be utilized. Many politicians and authors in the days after the terrorist attacks implied that the massacre's perpetrators had renounced their humanity (Lean, 2012: 17). This is an imperial discourse that neglects to acknowledge unique or fair boundaries; it treats its domestic law as universal law; it predicates the autonomy of other societies on its endorsement; it conflates its own interests with those of the international community; and it views it as its duty to uphold justice and human security for the international community (Cohen, 2006: 495). Parallel to this comprehension, the "War on Terror's" unique and distinct features led to its basic ramifications. It was presented as a war against terrorism that needed to be waged on all fronts and called for a different strategy and mindset. Former Vice President Richard Cheney clarified that the conflict might not be over, at least not in this lifetime (McAlister, 2007: 206): 'A permanent war' (Cook, 2008: 117).

In addition to the assertion that this struggle would be perpetual, the U.S. contended that the war on terror encompassed two factions: the terrorists and the United States. The challenge lies in the difficulty of formally and technically discussing a war on terrorism, as combating a nebulous group lacking a territorial base is inherently unfeasible (Kolb and Hyde, 2008: 27) The discourse has remained unchanged since that time. Israeli Defense Minister Yoav Gallant announced the implementation of a total siege on the Gaza Strip, which has a population including over fifty percent minors, in response to the Hamas onslaught on October 7, 2023. He continued, "*There will be no electricity, no food, no fuel. Everything is closed. . . We are fighting human animals, and we act accordingly.*" ("What have Israeli officials," 2024).

The United States, its allies, and Israel have employed a similar dehumanization tactic to rationalize their assaults on predominantly Muslim regions. The assertion that adversaries are barbarians, beasts, or merciless killers has been employed to contend that they are exempt from their responsibilities under domestic law, the U.N. Charter, or International Humanitarian Law (IHL) about their conduct. Through the utilization of dehumanizing terms, they have created a lexicon that undermines a state or society's national sovereignty, equal standing within the international community, and the safeguarding of due process of law. As a matter of fact, engaging with a nebulous entity has signified and facilitated the extension of conflict to any location globally. To operationalize her non-territorial and enduring initiative, Operational planning necessitated a legitimizing factor, specifically the cultivation of the idea of an imminent threat: Islamophobia. The assertion that law has supplanted religion as a secular regulatory framework is a historical construct that fails to represent contemporary reality. Indeed, religion has consistently been present in various facets (Bianchi, 2016: 146), undoubtedly, latent to be triggered and employed as an information operation variable in consolidating and sustaining societal bias and also constructing 'living law.'

As a result, neglecting the West's influence in the region's failings would require considerable effort. Its impulsive and ill-conceived operations, endorsement of autocratic regimes, and duplicity concerning democracy and human rights have intensified regional instability and frayed relations between the Middle East and the West (Hardy, n.d.: 236). However, as Maalouf highlighted, it was also challenging for Muslims to acknowledge that their practices were antiquated, their military prowess had become a mere reminiscence, and their faith was perceived as barbaric (Maalouf, 2003: 74–75). Consequently, there are assertions and rebuttals regarding Islamophobia at polar extremes. Some denounce any critique of Muslims and Islam, while others overtly express animosity. Each side possesses its own rationale.

3. Framing an Imminent Threat: Securitization and Moral Panic Drama

Islamophobia depicts Islam as inherently violent and Muslims as predisposed to terrorism. This framing employs media narratives, political discourse, and policy documents to perpetuate the idea of a persistent and escalating threat, sometimes devoid of substantial proof. The essential inquiry in this context pertains to the existence of an endeavor to demonize Muslims. The solution resides inside the informational realm of contemporary conflict. According to the formation domain of contemporary warfare, there are presently six (6) recognized domains under the PMESII framework inside an engagement space. The categories are (1) political, (2) military, (3) economic, (4) social, (5) infrastructural, and (6) information (SHAPE, 2013: 1-8). The information domain examines the influence of individuals, organizations, and systems on their operational environment. It is presumed that, irrespective of the operation, there are countless advantages to regulating the information flow to both the military and the public. Public communication media, intelligence, information warfare, and information management are subcategories of information (Solano, 2017: 46).

All constructive efforts making use of these sub-variables always assume an audience. Chaim Perelman defines the audience as a group of people whom the speaker wishes to impress with his argumentation (Perelman and Olbrecht-Tyteca, 1969: 19). The goal of any speaker is to influence the audience's beliefs in order to gain the audience's loyalty to his arguments and influence his behavior (Bianchi, 2016: 297). The international and domestic community constitute the primary audience in the discourse surrounding security, humanitarian action, and human rights. A compelling story about the principles of the sovereignty game is necessary to persuade the audience, as the concept of sovereign equality and non-intervention is a deeply ingrained principle in international law, making it difficult to challenge (Byers, 2015: 123-124). Naturally, in the international community, where the paramount concern is the preservation of sovereignty, the inconsistent or uneven application of a regulation calls its legality into question (Franck, 1990: 153).

Here we need a concept that can replace legality: legitimacy. Moral panic generated by Islamophobia furnishes necessary legitimacy, though not legality, for both intervention and operational activities, as well as for combating the domestic adversary. Cohen's original explanation specifies a minimum of five categories of social actors involved in a moral panic narrative. These comprise: (1) folk devils, (2) rule or law enforcers, (3) the media, (4) politicians, and (5) the public (Morgan and Poynting, 2012: 85-86). In a moral panic narrative, the perceived or actual threat is ascribed to folk devils. They represent the quintessence of malevolence. (Morgan and Poynting, 2012: 85-86).

Identifying an existential threat is crucial, as legitimacy derives its potency from external dangers and adversarial perceptions. Arguments are presented to emancipate, safeguard, and uphold a jeopardized society (Schlichte and Schneckener, 2015: 415-418).

Arguments with rhetorical and semiotic frameworks exert sufficient effect on the audience to foster tolerance for the breach of rules that are often expected to be followed. When the securitizing agent employs an argument emphasizing the significance and immediacy of an existential threat to bypass the requisite processes or regulations, it exemplifies an instance of securitization (Buzan, Waever, and Wilde, 1998: 25). Specially created language is arranged into discourses to incite moral panic. Here, discourse implies a collection of meanings, metaphors, representations, images, tales, and utterances. When amalgamated in a specific manner, they provide a distinct rendition and a unique depiction of an event (Burr, 1995: 31-41). The audience internalizes the storylines over time. When the narrative becomes routine, it transforms into a standard, and this widely recognized narrative becomes unquestionable, influencing our perceptions (Bianchi, 2016: 293).

Law enforcement agencies, including police and military, serve as guardians of society in this drama, preventing potential turmoil. Moral panic legitimizes and enables their actions (Morgan and Poynting, 2012: 85-86). The discourse seeks to cultivate allegiance and depicts violent actions as necessary, justifiable, and comparatively less harmful by depicting the adversary as harsh, ruthless, and malevolent (Schlichte and Schneckener, 2015: 415-418). On the other hand, public anxiety is heightened due to media exaggerations that depict folk monsters as more perilous to society (Morgan and Poynting, 2012: 85-86). Newscasts employ charged rhetoric with headlines such as 'War on America', 'America Under Attack', and 'America's New War' (Bakali, 2016: 70). The terms 'extremists, fanatics, fundamentalists, and militants' employed by media networks exemplify another othering technique. (Baker, Gabrielatos, and McEnery, 2013: 148). When someone's beliefs are labeled with a term like "fanatic," it implies that they have become the sum of their convictions, that their identity is the same as their beliefs, and that they are nothing more than fanatics or extremists (Baker et al., 2013: 150).

Research on biased news coverage among television journalists indicates that reporters from prominent media outlets, including CNN, ABC, NBC, CBS, MSNBC, and FOX, deliberately opted for unfairness and endorsed anti-Muslim sentiments by partnering with certain terrorism experts. These experts often disseminated misinformation regarding Muslims in the United States, including the assertion that Muslim extremists dominated the majority of mosques nationwide (Bakali, 2016: 70). Moreover, several films, news broadcasts, and television programs employ Islamophobic images. Depictions of Muslim males as violent and threatening, Muslim women as oppressed, and Western nations as inherently more civilized than Muslim nations have been consistently portrayed in *The Kingdom*, *Iron Man*, *Body of Lies*, and the television series *24* (Bakali, 2016: 78).

In this scenario, politicians depict themselves as protectors of society and often provoke moral panic, instigating a moral crusade against perceived malevolence. The capacity of politicians to adeptly incite public hatred and fear over adversaries dictates their success. An illustration of this can be observed in the Bush administration's designation of an 'axis of evil' after 9/11. (Morgan and Poynting, 2012: 88-89). The portrayal of the opponent establishes the political-psychological conditions to rationalize action if required (Poole, 2009: 37).

Simply put, islamophobia presented by aforementioned actors within a drama aims to keep public opinion at home and abroad in a state of continual danger or imminent threat in order to create a perception that extraordinary circumstances make a meaningful due process of law unnecessary. At this point, when society finds itself in a drama of moral panic, it feels that a paradigm shift is needed for combating the securitized entities. When the narratives are internalized by the audience, and establish the loyalty of the audience to which the proposition and argument is directed, it shapes perceptions and behaviors, constitutes new shared understandings, the patterned behavior and the living law. The idea of living law is predicated on the idea that laws are not only found in written documents but also in actual behavior.

4. Islamophobic Contexts

4.1. Application to Pre-emptive Self Defense

Historically, philosophers, statesmen, and soldiers have consistently endeavored to establish and maintain constraints on the employment of military force as a policy tool, a pursuit evident in the evolution of the just war doctrine within Western thought. Traditionally, mainstream Western philosophy has methodically segmented the notion of just war into two components. The initial component is *jus ad bellum*, which pertains to the criteria under which aggressors may legitimately employ military force to resolve disputes. The second part, however, is *jus in bello*, which pertains to the criteria for the legitimate use of military force at the strategic, operational, and tactical levels during armed conflict (Hensel, 2008: 5).

Articles 2(4) and 39-51 of the United Nations Charter delineate the primary provisions concerning *jus ad bellum*. According to Article 2(4), which outlines one of the tenets of the UN,

“All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”

Article 51 of the UN Charter regarding the right to self-defense stipulates:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security . . .”

This conventional and legalistic perspective views sovereignty and non-intervention as the essential tenets of the international system. This approach delineates sovereignty in spatial terms, rejecting rationales for interventions predicated on governmental form, while overlooking the religious and anti-democratic characteristics of the regime. Secondly, it asserts that fragile states should be protected from neo-imperialist or neo-colonial interventions; lastly, it considers this concept vital for maintaining the right of political societies to self-determination (Powers, 2014: 119-120). This interpretation posits that intervention is permissible solely for self-defense or through a resolution by the United Nations Security Council in accordance with Section VII of the United Nations Charter. Consequently, legal discussions regarding intervention typically assert that legitimacy is unrelated to legality, emphasizing that the legality of an intervention is determined not by its potential to improve global conditions, but by the fulfillment of specified legal criteria (Powers, 2014: 119-120).

Alongside the self-defense definition specified in Article 51 of the U.N. Charter, the concept of preemptive self-defense also exists. Preemptive self-defense, a controversial idea in international law, has been increasingly legitimized through Islamophobic narratives. States rationalize unilateral military interventions by associating Muslim-majority nations or communities with terrorism. The 2003 invasion of Iraq was predicated on the fallacious assumption of weapons of mass destruction and the purported link between Islam and terrorism (Cramer and Thrall, 2012: 1-25). The idea permits governments to respond to perceived threats without requiring reliable evidence or international supervision.

Since 1990, the right to self-defense has progressively included armed engagement against states that openly support or shelter terrorists. For these interventions to be considered permissible under the principle of self-defense, the states involved must have previously engaged in terrorist operations against the state asserting self-defense. There is a clear distinction between preventive self-defense and anticipatory self-defense. Anticipated self-defense refers to the use of force in the absence of a current armed assault, but under conditions when such an assault is highly expected or imminent. Conversely, preventative self-defense refers to the use of force to avert the possibility of an attack by another state, even when there is insufficient evidence indicating that an armed assault is probable or imminent (Meiertöns, 2010: 200-201).

Significant disagreement exists regarding the validity of preemptive military actions under international law. With rare exceptions, the responses regarding their legality are negative. Self-defense against an actual or imminent armed attack is recognized as justified; but, military actions aimed at preventing a remote or potential attack lack legal standing under international law (Bzostek, 2008: 55). While certain remarks by Australian Prime Minister John Howard in December 2002 are interpreted as

an endorsement of preemptive and unilateral force, the international community opposes the legalization of such actions (Council of the European Union, n.d.: 3). Countries within the European Union likewise denounced the preemptive use of war in the Strategic Declaration issued in June 2003 (Council of the European Union, n.d.: 3). Kofi Annan, the United Nations Secretary-General, has also explicitly denounced the unilateral application of preventive action ("Secretary-General Address," 2003).

It is a prevalent idea that self-defense is permissible solely when a hostile assault is imminent, if it is permissible at all (Anghie, 2004: 277). An instance of this scenario is the 'involuntary sovereignty waiver' idea advanced by Richard Haass, a high-ranking official in the George W. Bush administration. This theory posits that whenever a state undertakes one of three specific activities, it invites interference from other actors and inadvertently relinquishes its sovereignty. These actions are deemed as fostering terrorism, concealing weapons of mass destruction, and violating human rights (Sterio, 2009: 222).

At this point, Islamophobia functions as an informational operational variable that aims to evoke the idea of an imminent danger through a moral panic narrative. The pervasive fear of 'Islamic terrorism' served as a convenient rationale for American imperial aspirations (Kumar, 2012: 141). Several neocons were ready to present Islamic terrorism as the new post-Cold War enemy. Daniel Pipes stated this point: *"Like communism during the Cold War, Islam is a threat to the West."* (Kumar, 2012: 145).

Fueling islamophobia increases not only the fear of Islam within the West but also reticence towards the Islamic world (Al-Rodhan, Herd, and Watanabe, 2011: 206). *"This is an enemy who hides in the shadows and has no regard for human life,"* on September 12, 2001, one day following the attacks, President George W. Bush stated (Lean, 2012: 17). Many authors and politicians in the days that followed implied that the massacre's perpetrators had renounced their humanity (Lean, 2012: 17). Were they merely perpetrators of the assault who had renounced their humanity? It was considered a relinquishment of both human and statehood status. According to one of America's most vocal right-wing columnists, Ann Coulter:

"Not all Muslims are terrorists but all terrorists are Muslims—at least all terrorists capable of assembling a murderous plot against America . . . We should invade their countries, kill their leaders and convert them to Christianity." (Bakali, 2016: 69).

Furthermore, in a statement from the U.S. Department of Defense following the September 11, 2001 terrorist attacks, General Jay Bybee asserted that the Taliban and Al-Qaeda were exempt from the Geneva Conventions (Bybee, 2002). This understanding results in the fighters on the battlefield being in a lawless zone (Jensen, 2012: 686). Furthermore, White House adviser Alberto Gonzales unequivocally characterized the Geneva Conventions as outmoded (Jensen, 2012: 686). It has been argued that individuals detained during military operations in Afghanistan, suspected of ties to the Taliban or Al-Qaeda, are not entitled to protections under the Geneva Conventions because Afghanistan's status as a failed state prevents it from being a signatory to these conventions (ETH Zurich, n.d.)

In April 2016, Brian Egan, Legal Adviser to the U.S. Department of State, argued that the U.S. relied solely on the "unable or unwilling state" test in interventions, specifically the "unable state" criterion; due to the Syrian government's lack of capability against ISIS, the need to obtain the Syrian government's consent when deploying military forces against ISIS in Syrian territory was eliminated. The U.S. theory here has begun to blend two interventionist logics, using humanity and reluctance when dealing with a dictator, and the failed state doctrine when dealing with weak state authority. In the 'unwilling or unable' test, the principle of "inability obviates consent" is applied (Benjamin, 2018: 1-24).

These legal-like discourses were additionally bolstered by moral arguments. A further appeal to garner support for the War on Terror was the protection of oppressed Muslim women from perilous Muslim men. The grounds for the War on Terror's freedom of Muslim women in Afghanistan warrant meticulous scrutiny, as their plight was only deemed relevant when aligned with a strategic political purpose (Bakali, 2016: 71). Consequently, examples can be multiplied. However, the legitimacy and moral arguments produced through discourse on Islamic terrorism and the measures to be taken against it can take on a form that justifies any kind of intervention.

4.2. Targeted Killings and the Role of Islamophobia

The phenomenon of islamophobia extends beyond the confines of *jus ad bellum*. The laws of armed conflict, regulated by International Humanitarian Law (IHL), are crucial in limiting violence in armed conflicts to what is necessary for achieving their aims (Kolb and Hyde, 2008: 16). The notion of 'imminent threat' is reintroduced to facilitate the circumvention of established targeting regulations. Targeted killings, especially via drone operations, represent another expression of Islamophobia. These operations are frequently rationalized as precision tactics against terrorism; however, they disproportionately take place in Muslim-majority areas such as Pakistan, Yemen, and Somalia. The dehumanization of Muslim individuals facilitates the trivialization of collateral damage, as civilian losses are often regarded as unavoidable sacrifices. The extrajudicial nature of these killings subverts international law and human rights standards, diminishing global accountability norms.

The legal justification for targeted killings put forth by the U.S. Department of Justice states that if 'an informed, high-level official' determines that the target is a high-ranking member of a terrorist organization or an affiliated group who poses an imminent threat of violent attack against the United States, the government may lawfully kill the individual. The phrase 'imminent threat' is used broadly enough to cover anyone who can be presented as active with terrorists and affiliated organizations. A necessary condition for such killings to be considered permissible under international law is that they take place on a battlefield, but the war on terror is seen as involving, in principle, a global battlefield, and drone strikes have taken place in Pakistan, Yemen, and Somalia, all places where the U.S. is not formally at war (Kundnani, 2014: 172).

In 2009, President Obama intensified the drone strike operations in Pakistan. In 2009, U.S. drones resulted in the deaths of ninety-eight innocent civilians in Pakistan, as reported by the London-based Bureau of Investigative Journalism. Faisal Shahzad, a Pakistani immigrant residing in New York, attempted to detonate a car bomb in Times Square. During his arraignment, he informed the court that his attempted assault was a reaction to the United States' occupation of Iraq and Afghanistan, as well as its drone strikes in Somalia, Yemen, and Pakistan. The judge stated that his intended targets were not soldiers encroaching into foreign nations, but rather civilians. Shahzad said: *"Well, the drone hits in Afghanistan and Iraq, they don't see children, they don't see anybody. They kill women, children, they kill everybody."* (Kundnani, 2014: 174).

The dehumanization facilitated the trivialization of civilian tragedies, as these losses are often regarded as unavoidable sacrifices. In both settings of *jus ad bellum* and *jus in bello*, Islamophobia has been employed as an informational operational variable to legitimize the use of force against any Muslim state or target. Each faction developed, fortified, and upheld its own rationale through binary oppositions.

4.3. Erosion of the Domestic Due Process

Domestically, Islamophobia influences the creation and application of counterterrorism laws. These laws disproportionately target Muslim communities through surveillance, entrapment, and prosecution. In the United States, programs have been criticized for stigmatizing Muslims and reinforcing stereotypes of inherent radicalization. The exploitation of the legal system encompasses immigration and asylum policies, wherein Islamophobia influences stringent measures like travel bans, detention of asylum seekers, and deportations. These policies are frequently rationalized by overstated assertions of security threats, disregarding humanitarian concerns and international obligations. During conflicts, a nation typically targets those it views as domestic representatives of the foreign enemy. The law enforcement system addresses domestic threats while the foreign policy establishment manages the conflict with external adversaries.

Following the Runnymede Report, Halliday determined that while Islam was historically viewed as an enemy during the Crusades of the Reconquista, it is no longer seen in that light; contemporary hostility is directed towards Muslims as individuals rather than Islam as a religion (Allen, 2010: 135). There has been a rise in fear toward Islam and its Muslim population in both North America and Europe (Bakali, 2016: 14–15). When an African, Syrian, or Egyptian commits a crime, the media links it to a Muslim identity rather than mentioning their nationality. No individual identified as Catholic, Methodist, Baptist, or Christian is accused of committing a crime in the United States if the perpetrator is of Irish, Italian, Spanish, or German descent (Gottschalk and Greenberg, 2013: 21–22).

On February 18, 2010, Joseph Stack, a software consultant, intentionally collided his airplane with a federal facility in Austin, Texas. Stack engaged in this aggressive behavior due to his disputes with the government. Over twelve individuals were either killed or injured as a result of Stack. Nevertheless, news organizations exerted significant effort to avoid classifying this act as terrorism, despite its resemblances to the 9/11 terrorist attacks (Bakali, 2016: 2). In another example, Canadian Justice Minister Peter McKay declared that a February 2015 Valentine's Day shooting attempt was definitively not a terrorist act due to the lack of cultural connections among the victims. Mr. McKay did not specifically mention Muslim cultures. Nonetheless, when he addressed the possible categorization of such an activity as terrorism, he cited organizations like ISIS (Bakali, 2016: 3).

The bomb plot devised by the Hutaree Militia constitutes another notable example, in addition to those already referenced. Nine Christian radicals in Michigan formed the Hutaree militia, which plotted to murder a police officer. In May 2010, they planned to utilize roadside explosives and landmines to carry out bomb assaults. They identified as Christian Warriors and were motivated by religious convictions in their actions. Nonetheless, the media did not classify this assault as terrorism. The attempted bombing of a mosque in Jacksonville, Florida, on May 10, 2010, exemplifies the media's reluctance to label acts of violence perpetrated by non-Muslims as "terrorism." A pipe bomb detonated at a nearby mosque during evening prayers attended by Muslims. The media did not classify this occurrence as a terrorist act (Bakali, 2016: 72).

The fundamental contention regarding the torture of Muslim detainees at locations like Abu Ghraib and Guantanamo Bay is that these abhorrent actions would not transpire if Guantanamo inmates were tried in federal tribunals inside American jurisdiction (Kumar, 2012: 177). This assumption is, in reality, erroneous. In 2011, the Center for Human Rights and Global Justice at New York University Law School published a report titled 'Under the Radar: Muslims Deported, Detained, and Denied on Unsubstantiated Terrorism Allegations,' which clarifies the legal framework portraying Muslims as substantial national security threats. The research suggests that Muslims' political, cultural, and religious affiliations, together with their legal activities, are being interpreted as dangerous terrorism-related characteristics to rationalize their imprisonment, expulsion, and denial of immigration privileges (Kumar, 2012: 177).

Following the explosion of TWA Flight 800 over the Atlantic Ocean in 1996, law enforcement officials promptly asserted—seemingly without substantiation—that Middle Eastern terrorists were accountable for the aircraft's obliteration. A significant number of Arab Americans, Muslim Americans, and individuals seen as Middle Eastern experienced intense interrogation, humiliation, and invasive searches of their bodies and personal possessions. Certain individuals were notified that they would undergo more rigorous interrogation due to their alignment with a specific profile. The catastrophe was subsequently attributed to faulty wiring (Peek, 2011: 24).

Furthermore, some Westerners have acted imprudently by publicly supporting the denigration of Islam. In 2005, the Danish tabloid *Jyllands-Posten* published cartoons that ridiculed the Prophet Mohammed, intensifying Islamophobia in Europe and promoting the spread of violent extremist narratives within Islam in both the Middle East and Europe (Al-Rodhan et al., 2011: 205). The French government's 2004 prohibition of the hijab, or headscarf, in public schools highlights this trend across Europe. The Swiss constitutional amendment banning minaret construction, approved in a national referendum in November 2009, exemplifies this persistent trend. Discriminatory actions against Muslim communities engender feelings of rejection, frustration, and rage (Al-Rodhan et al., 2011: 206).

Israeli leaders have also long promoted ethnic cleansing, euphemistically referred to as 'transfer,' using language that paints Palestinians as a false people with no significant past. Netanyahu criticized Israel in 1989 for failing to take advantage of the international spotlight on China's suppression of pro-democracy demonstrations in Tiananmen Square "*to carry out mass expulsions among the Arabs of the (occupied) territories.*" (Chris McGreal, 2023).

A significant segment of Israelis, as indicated by opinion polls, perceives Arabs as 'primitive,' 'dirty,' and lacking an appreciation for human life. For years, Israeli children have been instructed that Arabs are intruders who should only be endured due to Israel's benevolence (Chris McGreal, 2023). A 2003 study of Israeli textbooks by the Hebrew University in Jerusalem showed Arabs are principally depicted "*with a camel, in an Ali Baba dress.*" The study said:

“They describe Arabs as vile and deviant and criminal, people who don’t pay taxes, people who live off the state, people who don’t want to develop. The only representation is as refugees, primitive farmers and terrorists. You never see a Palestinian child or doctor or teacher or engineer or modern farmer,”(Chris McGreal, 2023).

These examples show how the cultural and religious affiliations of the perpetrators, rather than the inherent nature of the crimes themselves, have influenced the concept of terrorism or terrorist activities. The classification of an individual's activities as terrorism or mere acts of violence depends on their affiliation with Islam. Faced with such an association and qualifier, persons inevitably deduce that the legal due process afforded to Muslims is no process at all.

Discussion, Conclusion and Recommendations

This study analyzed the role of Islamophobia in influencing perceptions of imminent threat and its wider consequences for both international and domestic security and legal measures. Utilizing constructivist, critical security, and postcolonial theoretical frameworks, it contends that Islamophobia functions as a discursive mechanism that characterizes Muslims as intrinsic risks, hence legitimate preemptive actions and extraordinary measures.

The constructivist approach elucidated how collective ideas, societal norms, and discourses influence conceptions of identity and security. Islamophobia has been proposed as a socially constructed narrative that shapes security strategies, portraying Muslims as threats and legitimizing preventative measures. Furthermore, postcolonial frameworks have exposed the persistence of Orientalist portrayals of Muslims as barbarous and illogical, so facilitating Islamophobia that reinforces these colonial dichotomies and legitimizes violence against Muslim-majority nations or groups. This study, grounded in legal sociological thought, demonstrates that norms regarding perceptions of inferiority, barbarism, irrationality, primitiveness, violence, aggression, or threat stemming from Islamophobia vary significantly, despite the law's textual alignment with contemporary values and its professed equality for all individuals.

The article also examined how this constructed fear legitimizes preemptive self-defense, targeted killings, and the exploitation of domestic legal frameworks under the pretext of counterterrorism. An analysis of these processes illustrates how Islamophobia undermines positive international law, human rights, and civil liberties and forms a different ‘living law’ for the Muslims. In contrast to legal positivism, which posits that law exists solely in written texts, the subjective variant of legal sociological theory asserts that the definitive criterion of law is legal consciousness within social dynamics and actions. This study aimed to discover social phenomena that transcend national boundaries and to examine the due process of law as experienced by Muslims.

This study also examined the prevalent collective mindset and its manifestation in actual international and domestic contexts, given that law is presumed to be equivalent with normativity. In the realms of preemptive self-defense, targeted killings, and the misuse of the domestic legal system, it was concluded that Islamophobia serves as a legitimizing factor that fosters the perception of an imminent threat. In these settings, Islam is depicted as violent, aggressive, threatening, and supportive of terrorism to contend that law enforcement or military personnel are exempt from their responsibilities under domestic law, the U.N. Charter, or International Humanitarian Law (IHL) about their acts.

By framing Muslims as existential threats, Islamophobia perpetuates cycles of violence, discrimination, and injustice, undermining global stability and human rights. Addressing this phenomenon requires a concerted effort to deconstruct Islamophobic narratives, challenge securitized discourses, and advocate for inclusive and equitable policies. The incitement of Islamophobia has placed both domestic and international society in a perpetual state of fear and peril, serving to justify and legitimize the enduring and non-territorial nature of the so-called war on terror. Applicable law varies according to perceptions of inferiority, barbarism, irrationality, primitiveness, violence, aggression, and threat, as determined by the process of securitization.

Consequently, facing Islamophobia, people have concluded that the process due for Muslims is no process at all. When public perception reaches this conclusion, it may be asserted that Islamophobia has effectively fulfilled its purpose both internationally and domestically(!) Through a critical lens, we must question not only the legitimacy of actions justified by Islamophobia but also the systemic biases

that enable their persistence. The fight against Islamophobia is not just about protecting Muslims but about preserving the principles of justice, equality, and the rule of law in a deeply interconnected world.

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