

## Is Ethnic Profiling Justified Under The Threat of Terrorism?

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### Abstract

*This paper discusses the pros and cons of ethnic profiling in the United States in the fight against global terrorism, exploring the justifications for and the consequences of using race or ethnicity as a marker for criminal activity. Furthermore, the paper examines the parallels between racial profiling of blacks in light of crime deterrence, the discrimination against Japanese Americans during WWII and the ethnic profiling of Arab and Muslim men post 9/11.*

Centuries ago, the words of Greek philosopher Aristotle captured the essence of a democratic society. “The basis of a democratic state is liberty,” he wrote (Aristotle, 350 BCE). It was a sentiment shared by the founding fathers of our great nation, the United States, and the basic principle upon which our Constitution and the Declaration of Independence were established: “We hold these truths to be self evident that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”

Throughout our country’s history, however, we have found that in times of turmoil and instability, of fear and panic, the fundamental tenet of liberty is often compromised for certain groups under the pretense and ironic assertion of preserving democracy. A standard definition of democracy is “a government by the people, exercised either directly or through elected representatives” (*The American Heritage Dictionary*, 1982). This definition leads us to think that a democratic society should be an unbiased representation of its population, a collective voice reflecting all of its citizens. The laws and liberties proclaimed in the pages of its constitution should extend to every person identified as a lawful member of that community. Unfortunately, America has often been guilty of misinterpreting the word “people” to represent the rights of some while neglecting the privileges of others on the basis of race, religion or ethnicity. This can be seen in the plight of African Americans since the days of pre-Civil War slavery, the mistreatment of Japanese Americans during World War II [WWII], and more recently in the judicial prejudice faced by Arab and Muslim Americans living in the United States post 9/11.

## The Plight of African Americans

For hundreds of years, African Americans were excluded from mainstream society. They were kept as slaves in inhumane conditions, beaten and humiliated by their masters, separated from their families and denied basic “unalienable rights” simply because the U.S. government categorized them as property rather than as people. The enslavement of blacks was accepted and condoned by millions of Americans, many of whom were willing to go to war with their neighbors to ensure that such practices were not abolished because they feared the loss of vast plantations built on the sweat of slaves that had filled the bellies and pockets of wealthy white land owners for many generations. For poorer white Americans, the possibility of freed slaves was seen as an economic threat to a scarce job market (Gascoigne, 2001, p.6).

Although the North’s victory in the Civil War was seen as a triumph by many blacks, it would be several years before African Americans would achieve “equal” status in America. Changes in the law would not translate well into real life, taking blacks from the evils of slavery into the injustice of segregation. The illogical notion of “separate but equal” would expose blacks to decades more of racism and prejudice at the hands of whites.

The bigotry and prejudice of yesteryear set the standard for modern day racism against blacks and other minorities and overt assertions of discrimination were exchanged for discreet practices of racism such as racial profiling. The American Civil Liberties Union [ACLU](2005) defines racial profiling as the “discriminatory practice by law enforcement officials of targeting individuals for suspicion of crime based on the individual’s race, ethnicity, religion or national origin.”

Increased crime rates in the 1980’s led the United States government to establish and enforce harsher laws and punishments against criminals in an attempt to reduce crime, and much of the attention of law enforcement focused on crime prevention. The Bail Reform Act of 1984 justified the “pretrial detention of certain individuals based on the prediction of their future dangerousness” arguing that “preventing danger to the community was a legitimate regulatory goal” (Rose, 2002, p. 188). In pursuit of creating a secure environment for the citizens of the United States, crime deterrence required the establishment of a “face” of crime. As the thinking goes, we must seek out individuals we feel are most likely to commit crimes and we must go into the neighborhoods we feel those crimes are most likely to occur. The danger in this kind of thinking, however, is that once we designate a “face” or a “place” to crime, we risk negatively stereotyping an entire group of people based on the actions of a few. Over time, those negative stereotypes can attach themselves as inherent characteristics of the people

and places they are defining, thus becoming the identity of those people and places as a whole.

For instance, every year, hundreds of innocent African-American motorists are stopped and searched on highways by law enforcement on suspicion of drug or gun possession, an assumption of guilt based solely on the color of their skin. Proponents of racial profiling such as James Savage, former President of New York Patrolmen's Benevolent Association contend that police go to "minority, high crime neighborhoods to look for guns" because that is "where the guns are," adding that profiling "is not motivated by racist attitudes but because it works" (Rose, 2002, p. 183.)

An unfortunate consequence of discriminatory procedures such as racial profiling is that often times it misleads people into assuming that crime is a "black" issue rather than a societal problem. Neighborhoods designated as high crime areas are put under constant police surveillance, leading to the unnecessary harassment of innocent African Americans. When race becomes the key factor in identifying criminals, innocent blacks are often subjected to the fearful glares of a society that starts to blame the race rather than the criminal for the social ills of their community. A clear manifestation of the reinforcement of such beliefs can be seen in the trend of taxi drivers refusing to pick up black passengers as a result of preconceived notions about being mugged, not being paid for their services or having to drive to "bad" neighborhoods, adding to the degradation of African Americans in present day society.

When people in authority such as police officers resort to the questionable practices of racial profiling, they inadvertently foster these negative stereotypes. "By treating race as an appropriate criterion for policing decisions, the perception that crime and race are fundamentally linked is reinforced" (Durlauf, 2006, pp. 411-412). When the color of someone's skin, rather than the actual criminal behavior, is seen as the precursor to guilt by law enforcement we risk the wrongful conviction and imprisonment of hundreds of innocent people. In addition, we cannot ignore the fact that some police officers may have racist attitudes about the groups being targeted, thus increasing the possibility that those procedures become a means of demonstrating bigotry rather than deterring crime.

Prior to the September 11th attacks, perhaps as a result of decreasing crime rates and safer cities, racial profiling was "denounced by virtually everyone" including President Clinton, Attorney General John Ashcroft and even President Bush who "joined in their denunciation of use of race (alone) as a legitimate tool in policing our urban centers and highways"(Rose, 2002, p. 182). Ashcroft added that "such racially discriminatory behavior if and where it exists should be identified and the individuals responsible should

be punished" (p. 182). Ironically, just a few months later, after the September 11<sup>th</sup> attacks, the very men, President Bush and Attorney General John Ashcroft, who had publicly denounced the use of racial profiling in the fight against crime, became its strongest proponents in the fight against terrorism.

### **Japanese-American Incarceration in WWII**

African Americans have not been the only minority population in America to face racial profiling. Japanese immigrants living in America were deprived of civil rights under United States law in the early twentieth century. They were not allowed to apply for citizenship, to buy land in many states, or attend schools with "white" Americans (Miksch & Ghery, 2004, p. 212). On a societal level, many Japanese Americans faced prejudice due to their "strange" culture and "distinct" looks which seemed to contradict everything the general public considered to be "American"; they ate unfamiliar foods, wore "peculiar" clothing and even spoke in a foreign tongue, making it easier for Caucasians to make distinctions between "us" and "them".

When the Japanese army attacked Pearl Harbor on December 7, 1941, panic filled the hearts of Americans. Lieutenant General John L. Dewitt was put in charge of diverting subsequent attacks. He ordered raids on the homes of Japanese Americans to search for possible weapons, disregarding legal requirements to attain proper search warrants, considering "Japanese blood and skin enough basis for suspicion" (Hersey, 1988). Upon Dewitt's urging, President Roosevelt passed Executive Order 9066 which "removed persons of Japanese ethnicity, regardless of citizenship or age from vast military districts" leading to the relocation of over 100,000 Japanese immigrants and citizens alike, to internment camps guarded by the U.S. military (Hersey, 1998). Japanese Americans had to abandon their homes and their properties and move into "barrack-like buildings," surrounded with barbed wire, with little or no privacy and less than humane conditions (Miksch & Ghery, 2004, pp. 212-213). Names were replaced with numbers, filthy horse stalls made into homes, and law abiding Japanese Americans were left with feelings of "despair and humiliation" and a loss of "identity, privacy and dignity" (Hersey, 1988).

Several Japanese-American citizens opposed the orders as a violation of their civil rights, even taking their fight to the courts who regrettably "upheld" the Presidents' orders "as proper exercise of war powers of Congress" that did not "require a determination as to whether any particular individual actually posed a threat of sabotage or espionage" ( Miksch & Ghery, 2004, p 218). Ironically, Japanese refusal or opposition to the internment camps was viewed as unpatriotic, as seen in a letter addressed to Secretary of War by Congressman Leland Ford who wrote: "all Japanese whether citizens or not, be placed in inland concentration camps. As justification for this, I sub-

mit that if an American-born Japanese, who is a citizen, is really patriotic and wishes to make contributions to safety and welfare of this country, right here is his opportunity to do so...Millions of other native born citizens are willing to lay down their lives, which is far greater a sacrifice, of course than being placed in a concentration camp” (Hersey, 1988).

Newspapers fueled racist views against Japanese Americans, the *Los Angeles Times* stating that “Japanese citizens were just as much enemies as Japanese aliens: A viper is nonetheless a viper wherever the egg is hatched – so a Japanese American, born of Japanese parents, grows up to be a Japanese, not an American” (Hersey, 1988). “The terminology used by government officials and journalists quickly shifted from Japanese to more derogatory ‘Japs’ and inaccurate ‘enemy aliens’” (Miksch & Ghere, 2004, p. 216). The war seemed guilty of only accentuating pre-existing underlying feelings of hate and animosity towards the Japanese. “It may be a general trait of human society that fear of danger tends to strengthen lines of division in a community. If that is so, the response to a major crisis digs more deeply the cleavages that have been there all the time” (Douglas, 1990, p. 13). When racism against a specific group is reinforced by discriminatory laws and government attitudes, it becomes easier for the general public to single out those communities and blame them for the problems of that society. According to “historical accounts of Executive Order 9066, most citizens at the time thought the policy appropriate, necessary and humane. The policy was supported overwhelmingly by the American people and the few who opposed the policy were considered unpatriotic” (Miksch & Ghere, 2004, p. 211).

Although there was never any evidence of “disloyalty” to the United States government at the hands of Japanese Americans, the internment was “justified as militarily necessary and done for the protection of the Japanese Americans,” a stark contradiction to its reinterpretation several years later by the Commission on Wartime Relocation and Internment of Civilians, who rightfully described the U.S. governments’ relocation of Japanese Americans as “racial prejudice, wartime hysteria and failure of political leadership” which led to the “oppression and incarceration of Japanese Americans.” (Miksch & Ghere, 2004, p. 213). By 1944, the War Department advised the president to “dissolve the camps” and Japanese Americans were given “train fare and \$25” to return home. Unfortunately, the government’s treatment and portrayal of Japanese Americans during the war had set precedence for increased racism against Japanese Americans for many years to come. It was not until 1983 that the U.S. government publicly acknowledged its mistreatment of Japanese Americans and financially compensated the survivors of the camps, although no amount of money could have erased the humiliating ordeal from their memories (Hersey, 1988).

As the alliance between the United States and Japan strengthened after WWII and relations between the two countries became friendlier, incidences of public racism towards Japanese Americans decreased as well. Unfortunately, Japanese Americans, along with other Asian communities, would still be seen as an economic threat for several decades more and accused in times of economic instability of taking away jobs from white America.

### The Changing Face of Racial Profiling

Nearly sixty years after the incident at Pearl Harbor, the United States would suffer another devastating attack on American soil. On September 11, 2001, our country was attacked by terrorists and approximately 3,000 American civilians were killed. Osama bin Laden, leader of terrorist group Al-Qaeda, claimed responsibility for the attacks. The government “defined the attacks as an act of war rather than a domestic crime or a crime against humanity” and within weeks of 9/11, the federal government detained approximately 1,200 male non-visa immigrants of Arab and Middle Eastern descent claiming these men had possible ties to Al-Qaeda (Gould, 2002, p. 74). The Patriot Act, described by Attorney General John Ashcroft as “a package of tools urgently needed to combat terrorism,” was also passed shortly after the 9/11 attacks, in an attempt to ward off future acts of terrorism (qtd in Gould, 2002, p. 74). Under the Patriot Act, people “merely suspected of working with terrorists or spies” could be wiretapped by the FBI. It further granted the FBI increased access to internet communications and financial transactions of individuals they suspected to have terrorist ties. In addition, “non-citizens facing deportation” could be “held indefinitely if that individual was thought to be a threat to national security” (p. 74). The government assumed the right to label anyone they suspected of terrorism, including the detainees, as enemy combatants, allowing law-enforcing authorities to bypass their basic legal rights such as the right to counsel. Even “US citizens who had been designated as enemy combatants by the president, would face indefinite detention in military custody without charges” (Baker, 2002, p. 555). Terrorism was quickly associated with Islam and Muslims by the terrorists and the media alike and it was clear that most if not all the “suspects” detained by government had Arab or Muslim association.

By 2002, “tens of thousands of Muslims and Arabs had been questioned, fingerprinted and photographed by the Department of Immigration and Naturalization” (Baker, 2003, p. 557). In 2003 the United States government jailed many innocent individuals seeking political asylum from mainly Muslim countries, justifying their arrests as a precaution to weed out criminals and terrorists entering the U.S. under the guise of being politically persecuted back home. According to Baker, some of the detainees, such as Jordanian student Osama Awadallah, were subjected to “shackles, strip searches, solitary confinement, denial of family visits, and denial of family

family visits, and denial of telephone access to contact attorneys,” making it virtually impossible for them to refute their charges of challenge their imprisonment. They were no longer protected under the presumption of innocence: “the burden of proof was on them [Muslims] to establish their innocence” (p. 557). By changing the label of immigrant and citizen to enemy combatant, the U.S. government justified stripping people of basic civil rights. It gave the recipients of the newly coined term a sub-human quality much like the categorization of blacks as property pre-Civil War or the distinction of “enemy alien” given to Japanese Americans during WWII.

When the government refused to release the names of detainees, it prompted many protests, including one from the American Bar Association which “condemned the secret detentions and denial of counsel” (“ABA Opposes,” 2002). And when the ACLU documented 30 such cases between September 2001 to March 14, 2003, that “involved allegations of religious profiling, closed immigration hearings, government refusal to release names of detainees, misuse of material witness warrants and unsuccessful efforts to obtain government documents through the Freedom of Information Act” the Bush administration responded that its policies were constitutional and did not infringe on anyone’s the civil liberties (Baker, 2003, pp. 548-550).

The U.S. Department of Justice further justified their actions by stating, “we are at war facing a terrorist threat from unidentified foes who operate in covert ways and unknown places...opening sensitive immigration hearings could compromise the security of our nation and our ongoing investigations” (qtd. in Baker, 2003, p.553). The government also justified the detainment of presumably innocent people, or those guilty of minor violations, claiming that those individuals could at some point provide vital information in the fight against terrorism or serve as material witnesses in future investigations (p. 554). The government’s statements were a clear contradiction of their stance of being “fully consistent with civil liberties.” How can one justify detaining a person “innocent of any crime” on the basis that they may provide information that may be helpful in the fight against crime? How long do we justify detaining those innocent people?

In an attempt to silence future protestors, many government officials resorted to tactics reminiscent of those used during the WWII, labeling people speaking out against the unjust policies of the U.S. government as unpatriotic and un-American. In the December 2001 Senate Hearings, Attorney General John Ashcroft sent a message to those unpatriotic Americans: “To those who scare peace loving people with phantoms of lost liberty, my message is this: your tactics only aid terrorists, for they erode our national unity and diminish our resolve” (*Preserving*, 2001). Ashcroft was just

one of many government officials who used the threat of an “endangered” democracy as an excuse to take away basic constitutional rights of freedom of speech from anyone who shed light on the government’s mishandling of the war on terror.

It was an expected rebuttal to protestors considering that “during every major war, the United States government has sought to unite the country behind the war effort. This has been accomplished by curtailment of free speech through some combination of government restrictions, legal prosecutions and non-government intimidation” (qtd. in Linfield, 1990). Just as Ashcroft had hoped and perhaps anticipated, in the fear of appearing un-American, many “American Muslim political organizations found themselves on the defensive...proclaiming their loyalty to the U.S., tempering previously strong and outspoken criticisms of US foreign policy” (Leonard, 2002, p. 2294). Some Islamic leaders even urged Muslim women to take off their head scarves to appear more American and blend into society. Ashcroft succeeded in silencing many Muslims from protesting against invasions of Afghanistan and Iraq. Muslims who chose to speak out against such policies were characterized as unpatriotic, a threat to national security, and even considered as possible terrorists, no longer protected under the First Amendment right of freedom of speech.

As most Muslims tried to prove their loyalty to the United States, the general public embraced the idea of patriotism, plastering cars with God Bless America bumper stickers, raising American flags on their lawns, adorning their collars with pins of red, white and blue and criticizing anyone who questioned the intentions of the government. A civil liberties survey conducted by Davis and Silver (2004) revealed that “60% of respondents thought that schoolteachers should not criticize US terrorism policy but should promote loyalty to the country” (pp. 31-32). As Davis and Silver further observed, “Patriotism can take on chauvinistic tones and lead to a narrow definition of who and what may be considered American and the rejection of out-groups who may not fit traditional American characteristics...branding people who voice questions about government policies or practices as anti-American” (pp.31-32).

Many Americans accepted the U.S. government’s stance on the treatment of suspected terrorists including Alan Dershowitz of Harvard Law School, who argued that “every country has applied administrative or preventative detention to those who are thought to be dangerous but who might not be convictable under conventional criminal law” (qtd. in Baker, 2003, p. 558). It was clear that even many intelligent, well-educated Americans were willing to accept the government’s mistreatment of certain groups and individuals if it meant a safer country for them.

Bou-Habib (2007) points out that “the price of security is the liberty of a specific minority” and although “ethnic profiling imposes a very high risk of interference” it does so “only on members of the profiled ethnic group,” not on the majority of Americans (pp. 149, 159). “Anti-terrorist legislation may be formulated in such a way that it appears to require a loss in liberty for everyone, in fact, in practice, due to its being enforced through the use of ethnic profiling, it requires sacrifices mainly of a minority of people, most of whom are innocent Arab and South Asian men” (pp. 151-152). When most Americans say that they are willing to give up their civil rights in exchange for national security, what they are actually agreeing to is giving up someone else’s civil liberties in exchange for their security. While Bou-Habib agrees that “ethnic profiling inflicts a loss in dignity for the persons who are selected for investigation,” he argues that “harassment is not a feature that is inherent to the use of ethnic profiling: it is perfectly possible for the police to use ethnic profiling politely, without harassing the people being investigated” (p. 161). It is difficult to see how much difference politeness would have made to the detainees being told that they have no right to counsel or contact with family members and that they face the possibility of being held indefinitely by the U.S. government.

According to Davis and Silver (2004), people are more willing to give up civil liberties in the face of threat, leading to “greater support for personal security and government’s efforts to reduce risk of future terrorists attacks” (p. 30). This may explain why many people condone ethnic profiling of possible terrorists, yet oppose racial profiling of African Americans. Decreasing crime rates have reduced the fear and threat once associated with violent crimes, making it difficult for some to justify the racist practice anymore in clear conscience. However, after 9/11 and a death toll of nearly 3,000 civilians, the threat of terrorism is seen as deadlier and more unpredictable than the average murder, no longer reserved for dark alleys or “bad” neighborhoods, but aimed at crowded tourist destinations, commercial airliners and public transportation. With bombs replacing bullets, the scope of the average criminal to victimize a few pales in comparison to the terrorists’ ability to kill hundreds, even thousands of people at a time. Davis and Silver explain that when the threat is seen as serious, people are more likely to give up their civil liberties, or more accurately, sacrifice the liberties of others, to ensure their safety (p. 35).

Yet how do African Americans respond to restrictions of civil liberties considering their history of being denied basic civil rights? According to Davis and Silver (2004), African Americans were more reluctant than whites to give up their civil rights even at times of danger because they “may be reluctant to concede rights that they have worked hard to achieve or to empower a government in which they have little confidence, even for the sake

of personal security” (pp. 30-31).

After recognizing the negative effects that racial profiling has had on young black men, can we predict the social repercussions of ethnic profiling on Arab Muslim males? Have young Arab males replaced young black males as the new, deadlier face of crime? Just as criminal activity became synonymous with young black males, burdening millions of innocent young black men with what seems to be an irremovable label of juvenile delinquent, drug dealer or gangster, will millions of young Muslim men be tarnished with the stigma of terrorism?

Parallels between past instances of racial and ethnic profiling of African Americans and Japanese Americans cannot be dismissed in understanding the profiling of Arab and Muslim Americans. The constant distinctions made by the Bush administration between “us and them,” “us” being the peace-loving Americans and “them” the evil terrorists, have the danger of translating to “them” as Muslim or Arab rather than terrorist, much in the same way that “criminal” has been translated to black male rather than perpetrator in the eyes of the general public. It is very important that government officials not use blanket terms such as bad and evil and us versus them but rather more specific terms such as Al-Qaeda.

As the “face” of the terrorist keeps changing, from the Middle Eastern Arab man to Jose Padilla, the alleged shoe bomber who is Hispanic, or “Jihad Jane,” a Caucasian woman arrested for aiding terrorists, or the African male who attempted to bomb a plane Christmas Day, how do we identify the culprit once we cannot contain the crime to a specific race or ethnicity? Do we broaden our search to all Muslims? And when we find it impossible to categorize Muslims by the color of their skin or the country of their origin, finding that they come in every color, from every nation, will we force them to carry identification cards or passbooks identifying them as such, like the Jews of Germany, or the blacks of a segregated South Africa? Will we justify rounding up all Muslims and “relocating” them to internment camps until the threat is over? As Baker (2003) emphasizes, “the demands of a war on terrorism undercut the likelihood that liberties can be reasserted, because a war without a clear end will never produce the peace of mind, necessary to reflect on what we have lost” (p. 548). If the war against terrorism is a war with no end, do we keep those Muslims detained indefinitely? Throughout history, in times of fear and paranoia, we have seen our government as well the majority of the American people agreeing to do exactly this.

Hardin (2004) explains the risk of implementing such procedures in response to the fight against terrorism by comparing the probability of error in cases of murder to predicted errors in cases of suspected terrorism,

pointing out that if we convict innocent people for murder, we will likely do the same when trying alleged terrorists. "The evidence of incompetence in prosecuting supposed criminals in the U.S. should give anyone pause about the prospects for decent policing of potential terrorists. Authorities are unlikely to be perfect in their judgments of who is or is not a terrorist threat or even who has or who has not committed a horrendous terrorist attack" (pp. 81-85). How can we ensure that suspected terrorists and detainees will not suffer under the disorganization and bias of our legal system? Although we can agree that the U.S. judicial system is probably the gold standard in law when compared with much of the world, we cannot deny its shortcomings. The U.S. government has the potential of wrongfully accusing, convicting and even sentencing to death innocent people on the basis of suspicion rather than hard evidence.

Once we look at racial and ethnic profiling through the perspective of those populations who have experienced it first hand, we realize that although on the surface such procedures appear to deter criminal acts, their actual effectiveness is rather questionable. At the same time, no one can deny the negative stereotypes and social stigma that racial and ethnic profiling attach to the groups they target. In times of fear and panic, our government has had a tendency of making decisions in haste, ignoring future consequences. It is often found giving public apologies for past actions it once claimed to be in favor of democracy and the American public. Will such be the case in the fight against terrorism? Like other criminal behavior, terrorism cannot be defined by any one race, ethnicity or religion although people have often used race, ethnicity and religion as an excuse or justification to commit acts of terror against innocent people. It is essential that our nation not repeat the mistakes of yesterday in fighting the threats of today. It is of utmost importance that we as Americans find ways to strike a balance between preserving our democratic values while protecting the basic civil rights of law-abiding members of society.

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