

Liberty before Security: an Assessment of the Effectiveness of Racial Profiling

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The citizens of today's world are faced with a conflict between the needs of national security and the desire for freedom and personal liberty. Today's conflicts are no longer fought on a battlefield where the enemy is clearly recognizable. Instead, Americans today live in a time when citizens are told that everything from apartment buildings and malls to major bridges have become military targets. This constant fear has left many Americans looking for some way to identify the enemy clearly. One of the solutions suggested to aid in the capture of dangerous individuals such as terrorists is that of using a person's ethnicity to predict their future actions. This practice will herein be referred to as "racial profiling". It is important to distinguish racial profiling from using a suspect's ethnicity to apprehend him, rather than identify him. It is completely acceptable to identify a suspect as "a white female," or, equally, as "an Arab male." What is not acceptable is assuming that a member of a certain ethnic group will behave in a certain way because of his or her ethnicity. David Lapin wrote in *Public Management Magazine* "one individual's conduct [...] does not necessarily indicate the expected conduct of other members of that same group." This seems to be self-evident, but in a time of growing distrust and a viral nationalist mentality, this fact appears to have been lost to many Americans. The application of racial profiling can enable law enforcement officials to "get lucky" – that is, apprehend an individual on the basis of race and later learn that he or she had, or was preparing to, commit a crime. Racial profiling can be defined as stopping and searching people passing through public areas solely because of their color, race, or ethnicity. Since the 1980s, the practice of profiling has been applied to America's war on drugs. Specifically, law-enforcement officers

have detained members of minority groups in vehicles more often than whites. In conducting such stops, these officers assume that minorities commit more drug offenses, which, according to Northeastern University law professor Deborah Ramirez, is not the case (Fauchon). "In all of the published studies to date," Ramirez claims, "minorities are no more likely to be in possession of contraband than whites. Moreover, in many of these studies, minorities, especially Latinos, are less likely to be carrying contraband."(Fauchon) Upon close examination of history, current events, the U.S. Constitution, case law, and both the policy itself and its social implications, one finds that racial profiling in any environment is both counterproductive and an immoral policy to purchase an unknown degree of safety.

Too often do its proponents present racial profiling as the proper implementation of law and order, implying that to oppose racial profiling is to support criminals, or, at least, have anarchist tendencies. Thomas Gabor takes this point of view in his article "Inflammatory Rhetoric on Racial Profiling Can Undermine Police Services". "Statements to the effect that the police were engaging in the 'practice of stopping people for little reason other than their skin colour, [sic]'" writes Gabor, "can obviously [...] discredit the police and justice system." He goes on to imply that this alone is sufficient reason to discontinue the debate and allow racial profiling to spread unchecked. This is painfully untrue, as, according to The National Law Journal, racial profiling can actually hinder prosecution of real criminals. In the case of *Jones v. Sterling*, Individuals, charged with drug offenses after discovery of drugs in their cars during traffic stops, claimed that the police officers were engaging in racial profiling and that the charges should have been dismissed on that basis. The trial court granted their request for document discovery on the racial profiling issue. The court decided that data about the race

of motorists stopped by the Yavapai County Department of Public Safety (the agency by which the individuals were arrested) supports a claim of selective enforcement, which, based on the equal protection clause in the Constitution, makes for a strong criminal defense. Obviously, racial profiling is more likely to cause this type of wasteful legal conflict in the future than it is to apprehend real criminals. Since it is possible for an Arabic-looking terrorist to disguise his looks or to recruit someone who does not fit the profile, behavior, rather than ethnicity, offers a better determinant as to whether someone is a threat.

In a consideration of the practical problems of racial profiling, especially in the field of antiterrorism, it is also important to remember that people are inherently unpredictable, and that non-middle eastern people are also inclined to commit acts of terror. As long as law enforcement continues to primarily focus on Arab, Muslim and South Asian men and boys, they will overlook terrorists like Eric Rudolph, who has been charged with multiple bombings, the "Unabomber" Ted Kaczynski, convicted Oklahoma City bombers Timothy McVeigh and Terry Nichols, and convicted Washington, DC snipers Lee Boyd Malvo and John Allen. Historical precedents should also be remembered. In spite of the Supreme Court's decision in the Korematsu Case, giving President Roosevelt the power to hold thousands of Japanese Americans indefinitely, spies still penetrated our most secret facilities. The Los Alamos Nuclear Research Laboratories themselves were compromised, not by a Japanese person, but by an American traitor. Since the attack on the World Trade Center on September 11, 2001, America has had an administration determined to expand the constitutional limits of the President's war-making powers, not against a foreign enemy, but against America's citizens and residents. Despite its inefficacy and

“shameful” (Tashima) nature, the Korematsu case has still never been overruled by the Supreme Court.

Every citizen of the United States is guaranteed, by The United States Constitution, Amendment XIV, Section 1, equal treatment and protection under the law of the United States (constitution). This should be taken very seriously, because all the legitimacy of the United States government rests on the Constitution, and disregarding this clause, as racial profiling requires, means revoking the legitimacy of the entire system. The principles on which the United States has been built include the accepted wisdoms of freedom. The Fourteenth Amendment of the U.S. Constitution promotes two fundamental ideals to protect against racial profiling: equality and due process. The amendment states, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law (Wu). To single out a group of people by race violates equal protection: The law cannot protect a group of people that is being singled out for investigation. While few court cases have dealt with profiling, racial profiling is constitutionally unacceptable. Much of the justification for racial profiling is based on the notion of national security. However, in *New York Times v. United States* (1971), the U.S. Supreme Court ruled that national security cannot be placed above First Amendment rights that guarantee freedom of the press (Steinback). This can be seen in an objective light as analogous to the racial profiling debate; substitute Fourteenth Amendment rights for First Amendment rights and there it is. Constitutional rights simply cannot be sacrificed for so indefinite a concept as national security. Associate Justice Hugo Black, of the United States Supreme Court, once wrote, "The word 'security' is a broad, vague generality

whose contours should not be invoked to abrogate the fundamental law embodied in the First Amendment." (Steinback) Accordingly, national security, because it is not clearly defined, can not be placed above any of the fundamental rights provided for under the U.S. Constitution. In short, national security is not an acceptable excuse to deny rights by profiling. While the United States government has a duty to protect its citizens from physical harm, it also has a larger duty to protect the ideals upon which the nation was founded and the undeniable rights of its citizenry. Physical harm may come and go over time, but the rights of the people must be protected to the fullest extent at all times if such rights are to remain permanent.

One of the most important factors to consider in arguing against racial profiling is the policy itself and the various societal impacts associated with it. It is impossible to measure the cost of alienating an entire race of people from society, and in no way can protecting the nation be used as an excuse for doing so. No benefits have been derived by targeting one race, thus making the cost of such a policy unbearable (Steinback). In fact, many terrorists have not been Arab, as in the case of the Oklahoma City bomber, Timothy McVeigh, or Richard Reid, both of whom have already been discussed. While racism may exist in society, it is the duty of the government not to promote it. Yet, racial profiling does just that. If the doors for profiling are opened, the stage is set for future legislation that could create a police state. It is impossible to know the extent to which profiling can affect the future, but it is difficult to logically claim that any good result can come from it. Racial profiling is a system that has not worked and cannot work. It impacts more than how people feel; it compromises their rights. More troublesome, it can fuel genocide and other horrendous crimes that civilized, democratic nations deem repugnant

and should never tolerate. Benjamin Franklin reportedly said “Any society that would give up a little liberty to gain a little security will deserve neither, and lose both.” (wikipedia.com)

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