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Racial Profiling and the Fourteenth Amendment

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EQUAL PROTECTION OF THE LAW: ONLY FOR THE FEW OR FOR ALL?

The Equal Protection Clause states that the State will not deprive "any person within its [territory] the equal protection of the laws." In this light, does the practice of "racial profiling" violate the Fourteenth Amendment that mandates the impartial application of the law? Here, it seems that the framing of question does not seem to put forward a potent position; a law that would establish the creation of social classes would be extremely suspect with regards to its intentions. Nonetheless, there is no issue that is created with the practice of profiling. It can be stated that the objective of racial stereotyping is not to dispossess any individual of their right to equally protected by the tenets of the law; rather, the goal here is that criminals can be caught before these can commit their nefarious acts with the end of protecting the lives and safety of the citizens, including the people who were subjected to investigations using profiling mechanisms (Holloway, 2011).

Here, the question is asked; does racial profiling violate the Due Process Clause? The decision to profile an individual or a class of individuals is an executive jurisprudence, a method of decision making completely detached from the conventional methods in arriving at decisions. The Due Process Clause does not obligate the state to practice "due process of law" to presage every invasive action of the state. Rather, the provision mandates that the right of the person cannot be taken without "due process of law." People that are subjected to profiling are not being dispossessed of their rights, and there has been no scientific and academic finding that people should be found guilty merely on the basis of their race or religious pursuits. A methodology that is appropriately deferential in nature will find that restricted profiling infringes on the Constitution (Holloway, 2011).

Analysts opposed to racial profiling can respond by evincing the fact that when the Due Process and Equal Protection intersect, the United States Supreme Court is active in its interpretation. Here, it is noted that the High Court adopts a strictly narrow view of government policies that either assumedly or actually creates "super classifications." The Supreme Court proffers that all these actions are subjected to a "strict scrutiny" averring that all of these practices place a tremendous burden on the government to prove that these practices are constitutionally sound.

Even with this declaration, this must not be taken that the High Court will view all profiling activities and policies as in violation of the Constitution. Given that these policies undergo a narrow interpretation, the Court has been seen to uphold state polices using dubious classification processes. For example, the High Court affirmed in a 2003 ruling the 'race conscious' affirmative action policy implemented by the University of Michigan. Under the canon of "strict scrutiny," the state must be able to prove there is a "compelling interest" to uphold its policy.

The High Court ruled in favour of the school in that the policy of the state in attempting to establish a racially diverse law school student body is a "compelling interest" that is sufficient to uphold its affirmative action policy. In this light, it would be odd for the High Court to hold that "investigative profiling," which is done to safeguard the welfare of the communities against violent criminal elements, does not serve any significant state interest (Holloway, 2011).

Majority of the cases averring racial profiling and seeking damages have been anchored on the Fourth and the Fourteenth Amendments with regards to its tenet for "probable cause," and the Fourteenth for its restriction on the adoption and implementation of prejudicial policies based in the element of race. More importantly, the burden of proof in the Fourth-rationality- is lower than compared to the Fourteenth-which is the narrow

interpretation of the law for determination of whether there is racial bias. The legal comprehension for the understanding on racial bias rests on two decisions rendered by the United States Supreme Court.

The United States Supreme Court, in *Terry v Ohio*, 392 U.S. 1 (1968), ruled that to legally detain and search an individual, a police officer must only prove that there was "reasonable suspicion" that a person will pose a threat to the community or to the officer himself, even though the speculation is an insufficient reason to effect the arrest of the suspect. In a more recent case, in *Whren v United States,* 517 U.S. 806 (1996), the United States Supreme Court affirmed the decision of the District of Columbia Appeals Court in that the "subjective intentions" of the police officers were irrelevant even if the element were related to race, if there is a reason to believe that there is a graver crime about to be committed or being committed. As *Whren* afforded law enforcement officers an extensive leeway for investigatory stops, the decision effectively negates the possibility of engaging Fourth Amendment mechanisms to challenge racial profiling cases (Martin, Glaser, 2012, pp. 499-500).

The operation of the Fourteenth Amendment is designed to bar state-practiced and operated racial discriminated against African Americans. Here, it is stated that racial profiling as a practice violates the tenets of the Fourteenth Amendment both in its essence and in its text. Withal, the law that was established to protect individuals from the lopsided application and operation of the law is the same mechanism that is posing a challenge for racial profiling victims to either assail the law or the conduct of the police establishment. With regards to conflicts in lawmaking, the judiciary does not need to examine the prejudicial quality of laws or the constitutional soundness of the same (Silton, 2002).

The judiciary must only determine that the law serves a legal purpose and that the chamber did not adopt the law with a racist slant. In the areas of law and order, the complainant must be able to prove that the operation of traffic investigatory stops and "stop and frisks" were motivated by race; plaintiffs declaring that police officers infringed upon their rights with respect to the Equal Protection Clause must be able to prove that these were "purposeful and intentional acts based on their membership of a class, as opposed to discrimination on an individual basis."

Being able to successfully prove their case is often hampered by the fact that the police, in the course of combing "high-crime areas," will always be able to use the justification that the inordinate numbers of African Americans that have been arrested were due to the facts that the communities were heavily populated by African Americans and the counter-criminality implemented by the police were limited to these communities alone. Furthermore, the police are protected by a "qualified immunity" when the police are within the reasonable parameters of the discharge of their duties (Silton, 2002).

In one case, *State v Russell*, the Minnesota Supreme Court displayed the lethargic effect of the Fourteenth. In the case, the High Bench addressed the distinction between "crack" and "powdered" cocaine, ruling that the use of the distinction on decision making is unconstitutional; herewith, the High Bench anchored its decision to the supplemental protections given by the Minnesota constitution. Regrettably, majority of the court's ruling have not followed suit, but have opted to take the path of offering token protection as needed by the 14th Amendment and have also opted to affirm the unconstitutional foundations regarding the disparity between "crack" and "powder" cocaine.

In addition, "ignorant racism" is dangerous in its prevalence as well as its capacity to fall outside the scope of the 14th Amendment. The pointedness of the Fourteenth's provision against discrimination is mandatory for the lawmakers and the police. In this light, the unsubstantiated mandate on perceived racism deprives racism victims any viable remedy owing to the ignorant racism found in federal statutes (Silton, 2002).

Every police officer is mandated to be familiar with the tenets of the Fourth Amendment that criminalizes the act of an illegal "search and seizure;" police officers are well aware of the provisions of the Fifth Amendment that bars coerced "self-incrimination. However, police officers are not that familiar with the tenets of the Fourteenth Amendment and its impact on law enforcement. For example, the term "due process of law" is extremely familiar to police officers, yet not many will be able to state that the function of impartial protection of the law with regards to its holding to the State and its various agencies is found in the 14th Amendment.

Furthermore, the invocation of "due process" is done in the area of fairness in employment investigations and in the area of criminal investigations. Here, the most common areas wherein the elements of equal protection and the operations of the police cross each other's paths in the areas of racial stereotyping. The engagement of this practice is allowed when the description of the perpetrator is given using racial elements. Nonetheless, a more extensive use of the policy, as is the case in "racial profiling," infringes on the tenets of the Equal Protection Clause (Means, Miller, 2015).

The unnecessary and senseless death of Trayvon Martin at the hands of George Zimmerman stands as a strong witness against the practice of racial profiling in the United States. Here, the practice of racial profiling has proven to be an inutile law enforcement mechanism that deprives members of the minority an equal stature and standing before the law. Racial profiling is ineffective and drains scarce resources that could have been used more effectively in the fight against criminality. Members of the minority are extremely familiar with the humiliation and rage of being singled out in the society solely on the basis of one's inalienable traits-religion, ethnic

background, and race. One of the reasons that racial profiling is ineffective is that it destroys public trust which in turn will result in hostility between the members of the community and the police in their efforts to counter criminality (Cardin, 2012).

When the amendment was crafted, the immediate persons that were perceived to be the beneficiaries were the newly liberated African Americans, whose integration into the Amendment were written into the law. The background of the law is set during the time when there was widespread abuse and denial of constitutional rights and state-sanctioned deprival of rights during the Reconstruction period and the ensuing Jim Crow era as well as the period in the aftermath of the end of the Civil War. The practice of racial profiling can be considered as a form of prejudice and a violation of a person's constitutional and civil liberties that is also a tool for social control (Harison).

With regards to the impartial protection of the law, there must be a difference between stating that the perpetrator is being described by a number of racial traits, and it is a completely another thing in stating that people, owing to certain inalienable traits, are inclined to commit crimes. Though the rational motivations of police officers in criminal investigations may not be completely hinged on the tenets of the Fourth with regards to the conduct of a legal investigatory stop, the prejudicial motivations of the police officer would be integral to the assessment of the case, it will be recommended that the police be equipped in the laws that these will constantly engage in the course of discharging their duties (Means, Miller, 2015).

The Constitution bars the use of race or ethnic background in decisions in the field of law enforcement in nearly all cases. In these instances, federal security and police officers involved in preventing calamities or terrorist attacks can integrate elements of race, ethnicity, and religion, among others that fall within the parameters of the laws and the Constitution. In a similar vein, since the enforcement of the nation's laws at the US border regions may need the consideration of a person's ethnic background, the use of race in this area is governed by existing laws and policies, as noted in *United States v Brignoni-Ponce*, 422 U.S. 873,886-887 (1975).

As the US Supreme Court noted in *Adarand Constructors, Inc. v Pena*, 515 U.S. 200, 224-225 (1995), all racial categorizations committed by state agents and agencies will be subjected to the "strict judicial scrutiny" test. In this light, the legitimacy of specific race-anchored policies undertaken by the police and other federal agencies in the area of national and border protection will be dependent to a large degree on the existing circumstances. Nonetheless, there will never be an instance wherein federal actors can invoke national security or the need to protect US borders as a pretext for individualized discrimination. The very objective for the use of the "strict scrutiny standard" is the ferreting out of any instance of the illegal factoring of race in law enforcement decisions (United States Department of Justice-Civil Rights Division, 2003, pp. 8-9).

CONCLUSION

The use of race, nationality and ethnic background in the decision whether a person is predisposed to criminal activity is an extremely dangerous path to follow for US law enforcement and national security officers and policy makers to chart. It is destructive in that it creates a flawed sense of potency given the possibility that the harms that it will inflict are still not evident. The objective of policing is to advocate the protection and safety of the public; in so much that profiling harms specific sectors in the community, it can be definitively stated that racial stereotyping goes against this objective. In this light, racial profiling not only violates the Constitution, but is such an abhorrent practice, that it does not merit, and should not merit any support from the government (Martin, Glaser, 2012, p. 505).

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