

## **Of Liberty, Security and the Human Spirit**

The faltering march of humankind out of the jungle has never been a steady or straight course. Individuals, in their quest to satisfy physical needs, to allay fears, or to dominate, had to be checked by internal as well as external restraints. Culture, religion, law, law enforcement and war are but a few examples of the devices that evolved to regulate the relation of the individual to society, and societies to one another. The panorama of human emotions, needs and rationality has unfolded in this story of survival of the species, that we call history. It reveals the obvious variation in degrees of development, organization and empowerment of various societies and cultures.

The history of Western Civilization has been distinguished by two major trends: the steady though fitful restriction of the power of the king, and the restriction of the power of the church. Fundamental to the limitation of these two major sources of control over man and society was the expanding sphere of individual rights and liberties.

The United States, a nation that was conceived with the benefits of history without being shackled by them, has enshrined the concept of liberty and codified it in the Constitution and the Bill of Rights. In 1759, thirty years before the framing of the Constitution, Benjamin Franklin said “ They that can give up essential liberty to obtain a little temporary security deserve neither liberty nor security.” The dialectic between liberty and security, stressed and contorted as it is at times, continues to be redefined. The space for liberty that this nation has afforded the individual is unparalleled in history as are this nation’s power, greatness and record of achievement across the fields of human endeavor. The beacon of dreams, it has opened its borders to people from the four corners of the world. Socialists from the Third World immigrated to America and not to the Soviet Union during the days of the Cold War. They voted with their feet as they enjoyed the freedom to criticize and vilify a system that made it possible for them to do so. The system not only survived but it prospered by holding on to the core concept of liberty codified.

The Constitution and the Bill of Rights have survived for over two centuries not because they have become sanctified and revered, which they have, but because they have served us well. They have survived slavery, internment, racism, civil wars, wars and world wars. It needs to be stated that these travesties inflicted untold suffering on millions of people while these documents were in place. The march to bridge the gap between these documents

and reality, especially over the course of the past half a century, has been steady and relentless. Men and women of courage and vision, motivated by a passion for justice and not just a polite request for it, have achieved it, at a great sacrifice.

Events since the horrendous crime of September 11 could, and should have given us all reasons to question and probe, together and with people all over the world who were appalled by the brutality of the crime, for ways out of our predicament. Understandably, the immediate and imminent danger of terror to an open society has uncovered vulnerabilities, generated fear and elicited reactions and overreactions. Security considerations played the central role in formulating foreign and domestic policies to cope with that danger. Consequently, the creative genius of constitutional lawyers working at the Department of Justice was challenged to formulate new laws and rules with a stretched and barely tenable defense of their constitutionality.

Next to the victims and their families, no single group of people is more vulnerable than Arab and Muslim Americans should a terrorist disaster strike again. In fact, according to the latest FBI Report on Hate Crimes, there was a dramatic surge in the number of hate crimes committed against Arab Americans, Muslims, and those perceived to be, following the criminal attacks of September 11. The FBI reports the rise in incidents was an incredible 1,600%. Most of these incidents involved assaults and intimidation but there are also several confirmed hate motivated murders.

The FBI also reports that this category (anti Islamic incidents) is now the second highest reported category in 2002. While the worst elements of this backlash were concentrated in the nine weeks following September 11, the community continues to suffer from increased discrimination in many fields. There are more than 700 employment discrimination cases under investigation by the Equal Employment Opportunity Commission (EEOC). In addition, the parameters of political correctness in public discourse about Arabs, Moslems and Islam itself have been erased without traces. No constraints or public censure accrues to the practitioners of blatant racist and defamatory remarks about these minorities or this faith.

September 11 has been an unmitigated disaster to the Arab and Muslim American community. As a result, it is hard to think of a greater incentive for us to prevent attacks. Any suggestion that this community is only paying lip service to security as it defends

its civil rights is simply wrong. Security of the nation and the community are one and the same.

The ever-deepening erosion of the civil rights and liberties of Arabs and Muslims, initially as visitors, students and immigrants and gradually as lawful residents and American citizens cannot go unchallenged in America. Liberties sacrificed in the name of security reflect fear not confidence. Haste and xenophobia in a charged environment make it possible to codify the very concept of guilt-by-association. It is to legitimize racism. Programs proposed and initiated by the Department of Justice since September 11, focusing on non-citizens have caught a number of U.S. citizens in a web of humiliation.

Such troubling programs include the National Entry-Exit Registration System, known as NSEERS. This program has two parts. Part one, deals with registering certain "high risk" aliens at ports of entry and unfortunately, on a number of occasions, United States citizens who were reentering the country were forced by the INS to register by having their photographs taken, being fingerprinted, and then asked additional security questions. Part two of NSEERS is what has become known as "special registration" and directs efforts to registering non-immigrants from twenty-five countries. So far twenty-four of the total are either Arab or Muslim nations.

Other grave concerns include the USA Patriot Act and what has come to be known as the USA Patriot Act II, the Domestic Security Enhancement Act of 2003. As you may know the USA Patriot Act authorized intrusive acts such as the sneak-and-peak clause which allowed for government officials to enter your home while you are away, to take pictures, to download files from your computer, and remove things from your home...all without your knowledge. It grossly violates the Fourth Amendment by invading due process rights through legalized means to listen in on attorney-client conversations.

Apparently, the Patriot Act was not enough and the slippage continues. The Domestic Security Enhancement Act of 2003 further targets citizens and allows for warrantless eavesdropping, broadens national warrants, broadens the definition of terrorism, and makes it possible for the Attorney General to expatriate citizens including those born in the U.S. It further, allows for the secret collection of genetic information on citizens.

Yet another new frightening project that will focus on airports is CAPPS II, the Computer Assisted Passenger Pre-screening System II. It promises to invade individual privacy for travelers further than ever before and is likely to create a government blacklist of travelers that will face added scrutiny, humiliation, and perhaps detention. Standards for criteria used are in a labyrinth that is not available to the public. Congressional hearings and oversight cannot be stalled about this issue. Starting this month (March), Delta Airlines is testing this program in three undisclosed airports; I am concerned to see what the results will be.

These programs, as well as the many others such as the Absconders Apprehension Initiative, the volunteer interviewing of Arab immigrants and citizens, and the mosque counting initiative all exist for the sake of added security, for the sake of national security. We are aware of no evidence to prove that any of these programs enhance security. Action, in the form of such programs, gives the illusion of a watchful government providing security. One thing we do know is that these programs breed resentment, which cannot enhance security.

Regimes in the Middle East, both Arab and Israeli, so thoroughly focused on security at the expense of rights and liberty of the minorities, must be enjoying the trends they witness in the United States. It gives them a sense of validation that some of their security measures are studied, considered or adopted by us. The sad fact is that all these regimes, without exception, offer the least security and rights to all people under their control. It is the lessons of liberty that we need to retain and preach rather than those of fear that such regimes teach.

Nearly two hundred years after Benjamin Franklin commented on liberty, President Franklin Delano Roosevelt uttered these words: "We must scrupulously guard the civil rights and civil liberties of all our citizens, whatever their background. We must remember that any oppression, any injustice, any hatred, is a wedge designed to attack our civilization."

I have confidence that our community will endure, challenge and prevail in its fight for civil liberties and rights. This is, after all, an American story that we have witnessed repeatedly. Achievements, made at great sacrifices by so many great people for the past several decades, to confront institutional racism and to secure an ever-increasing space for liberties, will not be abandoned because of terrorist threats. Collective experiences may not be mentioned often but they rarely are forgotten. The

humiliating toil of the slaves and the back- of- the- bus life of black people, the ceilings imposed on the power of the Irish and Italians, the calumny and slander heaped on the Jews, the internment of the Japanese and the relegation of the Latinos to lower echelons of all walks of life, have all been ameliorated with time and struggle. With the unshakable quest in the human spirit for justice and equality for people of all colors and creeds we, in this country, have the right and the means to see to it that the march for justice and equality does not come to a halt at our time.

With a clear understanding of the demands of the moment, we must strike a balance between the immediate need for security, and the right to liberty and pursuit of happiness for ourselves and for generations to come. We have to have the wisdom and courage to build and nourish coalitions, alliances and utterances of free spirits to achieve security as we keep the flame of liberty alive. The beacon of liberty must not become the fortress of fear.

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Speech to the conference *Confronting Racial Profiling in the 21<sup>st</sup> Century: New Challenges and Implications for Racial Justice*, at Northeastern University  
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