

Backlash 9/11

Middle Eastern and Muslim Americans Respond

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The Post-9/11 Backlash in Comparative and Historical Perspectives

President Bush declared the September 11, 2001, terrorist attacks to be an act of war against the United States. Whether the terrorist attacks qualify as war will no doubt be debated for years to come, but it is clear that the government effectively treated them as such, waging a "War on Terror" not only internationally, by invading Afghanistan and Iraq, but also domestically.³ Historian Gary Gerstle has written on the remarkable similarity between the Red Scare of 1919–20 and the War on Terror. He argues, "Both campaigns crystallized around terrorist acts. . . . Both acts were the work of revolutionists. . . . The terrorists in both instances belonged to small cells. . . . Both acts of terrorism occasioned frenzied roundups by U.S. government authorities of thousands of immigrant suspects who were held for a long time, often without access to bail, attorneys, or decent conditions. Both of these roundups yielded remarkably little information about those who had been involved in terrorist acts while spreading fear in America at large about those populations of immigrants with whom the terrorists shared a nationality or religion" (2004, 106–7).

Government abuses of civil rights after 9/11 are not without historical precedent. In *All Laws but One: Civil Liberties in Wartime*, Chief Justice William Rehnquist shows how U.S. presidents have pushed the limits of the law during periods of war or political and ideological crisis (cited in Mark, Masters, and Metha 2002). On several occasions the U.S. government has targeted immigrant and ethnic populations who originated from the country with which the United States was either at war or in a warlike situation. The Japanese internment during World War II stands out as the most egregious case. Others include the mandatory registration and detention of German immigrants and citizens during World War I; the harassment and deportation of communist sympathizers after the Palmer raids (1919–20); the witch-hunt against suspected Communist Party members during McCarthyism; and the mandatory registration and threatened deportation of Iranian students in the United States during the hostage crisis in 1979–81.

In March 2002, Operation TTPS (Terrorism Information and Prevention System; see chapter 6) proposed that service personnel, such as mail carriers, "spy" on fellow citizens, but this initiative was defeated by American grassroots opposition. The TTPS project's historical precedent was Iowa's American Protective Association a century ago; it charged 250,000 volunteers to keep an eye on fellow Americans who had been born in Germany and Austria-Hungary and was supported

For American historians the post-9/11 situation must seem like *déjà vu*. When France opposed the United States' invasion of Iraq, the congressional cafeteria replaced French fries with "freedom fries." David Kennedy reminds us that during World War I a hamburger was called a "liberty sandwich" and sauerkraut was dubbed "liberty cabbage" (1980, 68). Today, the "Bolshevik menace" has been replaced by the "Islamic menace." Some twenty books published within one year after 9/11 depict Muslims as a threat. According to the *Los Angeles Times* journalist Teresa Watanabe, "Two of those books are the best-selling titles among 7,219 books on Islam at Amazon.com: 'American Jihad: The Terrorists among Us,' by Steven Emerson, and 'Militant Islam Reaches America,' by Daniel Pipes."¹ During McCarthyism, communists were not granted fishing permits lest they contaminate New York City's reservoir (Schrecker 1998, 154). After September 11, a young Pakistani who delivered pizza for Domino's near Albany was accused of terrorism and detained. He was "caught" taking photos of a picturesque vista overlooking a water reservoir.² Sociologist Neil Smelser observes that "the impulse to blame is quick to spread symbolically to other groups believed to be related to or sympathetic with the identified perpetrator" (2007, 146).

with \$250,000 from the Department of Justice (Painter 1987, 335). In this chapter, we compare these historical precedents to the post-9/11 government initiatives, highlighting their similarities and differences and accounting for the observed disparities.

Nativist backlash following a major national crisis has rarely been studied while still unfolding. Attempts to carry out impartial research were deemed imprudent since scholar-tran the risk of being labeled unpatriotic. Historians will surely examine the 9/11 backlash in due course, and they have cautioned us from jumping to conclusions. Roger Daniels, the foremost historian of the Japanese internment, writes, "Historical analogies are always tricky, particularly when one of the things being compared is a current event. Contemporary history is, after all, a contradiction in terms. Nevertheless, the ways in which our memory of what was done to Japanese Americans has evolved over six decades can shed some light on our contemporary situation."⁴ In the next section, we explore each of the historical precedents, including the stereotypes, discrimination, and scapegoating suffered by Middle Eastern and Muslim immigrants in America. Then we develop a typology of the scope of minority targeting in times of war or political/ideological crisis.

PRECEDENTS IN U.S. HISTORY

GERMAN AMERICANS DURING WORLD WAR I

Xenophobia reached unprecedented levels by the time the United States entered the Great War, and the Espionage Act of 1917 gave the government the tools to turn prejudice into policy. Those who obstructed military operations during wartime were threatened with fines of \$10,000 and twenty years in jail. The U.S. government cited the anti-immigrant Aliens Act of 1798 as justification for the arrest of German Americans. Over 250,000 German immigrants, called "enemy aliens," were required to register at their local post office and carry their identity card at all times. German men over the age of fourteen were not allowed to own guns, radios, or explosives or to live near munitions factories or military areas. Fifteen states passed laws making English the official language, and the governor of Iowa banned the German language in public places such as streetcars and telephone booths (Kennedy 1980). Teachers and other school personnel had to take an oath of loyalty to continue their employment. History books deemed to be "pro-German" were banned. Such measures encouraged zealous groups to spy on and harass German Amer-

icans. Altogether, during the Great War, over six thousand Germans were arrested and over two thousand Germans were interned without charge (Luebke 1974).

As David Reimers (1998, 19) aptly says, "It seemed as if the war against Germany in Europe had degenerated into a 'War against German America.'" Past admiration for Germans' scientific and artistic accomplishments soon turned into hostility and race-based vilification of "Huns" or barbarians (Gerstle 2004). German ethnic organizations were attacked, and nativist anger was aimed at all things German. The hysteria led to the banning of Beethoven's music in Boston and the burning of German books in Lima, Ohio. Many German American institutions and organizations conformed to the demands of superpatriots. For example, Lutheran churches switched their service to English, and many German Americans anglicized their names (Gerstle 2004; Luebke 1974; Reimers 1998). The declaration of war led to the development of an ideology of "unhyphenated Americanism," including the 100 Per Cent Americanism movement.

THE PALMER RAIDS

As World War I came to a close, Americans' new fear became the "Red Scare," shorthand for communism. In April 1919, thirty-two mail bombs were sent to the mayor of Seattle, a U.S. senator in Atlanta, and prominent businessmen and government officials (Gerstle 2004). Next, on June 2, 1919, bombs exploded in eight cities, including Washington, D.C., where the house of A. Mitchell Palmer, the attorney general, was partially destroyed. The culprit, who died in the blast, was an Italian anarchist. Palmer attributed the country's problems of economic recession and labor militancy to the "Bolshevik menace."

Under the Espionage Act of 1917 and the Sedition Act of 1918, Palmer and his young assistant J. Edgar Hoover compiled a list of supposedly subversive elements and proceeded, without search warrants, to raid a large number of labor union offices and headquarters of communist clubs and organizations.⁵ Over 1,500 persons were imprisoned under the wartime statutes of the Espionage Act of 1917 (for obstructing the draft), the Sedition Act of 1918 (for any harsh criticism of the government and its war effort), and the Immigration Act of 1918 (the deportation of any alien who was an anarchist or "believed in the violent overthrow of the American government or advocated the assassination of public officials") (Camp 1995, 100).

Several thousand aliens were rounded up in the Palmer raids of late 1919, but only 591 were deported (Camp 1995, 102). The immigrants of the 1920s were Catholics, Orthodox Christians, and Jews from Russia and eastern Europe. The prominent radicals Emma Goldman and Alexander Berkman were among those extradited to the Soviet Union (Schrecker 1998). The arrests continued, and in January 1920 over four thousand radicals, many from the Industrial Workers of the World union, were caught in a sweep that spanned thirty-three cities in twenty-three states. "Meant to expose the extent of revolutionary activity, these raids netted exactly three pistols, no rifles, no explosives, and no plans for insurrection. Nevertheless, those arrested were jailed for weeks and, in some cases, for months without being charged with a crime and often under harsh conditions. Of these, 591 would be deported by the spring of 1920 and the rest would be released" (Gerstle 2004, 99). Unmistakably, Palmer used public hysteria to target revolutionaries and anarchists whom he deemed enemies of the United States.

THE JAPANESE INTERNMENT

Following the bombing of Pearl Harbor, President Roosevelt issued Executive Order 9066 on February 19, 1942, directing the U.S. military to designate areas "from which any or all persons may be excluded." All Japanese Americans, including the U.S. born, were removed from western coastal regions and "relocated" to guarded camps in isolated regions of the country. They were forced to liquidate their property and were transported to ten detention camps in California, Idaho, Wyoming, Utah, Colorado, Arizona, and Arkansas. The War Relocation Authority records indicate that 120,313 Japanese Americans were held in custody between 1942 and 1946 (Daniels 1988, 241). Of these, over 70,000 were U.S. citizens (187). The camp population comprised the young and the old—77.4 percent were under twenty-five years old, but among the foreign born 57.2 percent were over fifty (Daniels 1993, 104). Camp conditions were poor because of overcrowding, the cost of food was rationed at forty-eight cents per internee, and there was a limited supply of coal for heating. Later in the war, even when American-born Japanese men joined the U.S. armed forces, the government was slow in freeing their families. President Roosevelt rescinded his order after two and a half years, but the last camp was shut down in 1945 (Daniels 1988). The right to become a U.S. citizen was not granted to Japanese immigrants until the McCarran-Walter Act of 1952 repealed the blanket exclusion laws.

Executive Order 9066 was also responsible for the arrest of 3,200 resident aliens from Italy and some 11,000 Germans, including naturalized citizens. Of these, over 300 Italians and 5,000 Germans were interned during World War II (Daniels 1972). There was no mass internment, even though the German American Bund was "a dangerous pro-Nazi organization" and "German submarines regularly prowled the Atlantic coastline . . . [and] debark[ed] saboteurs . . . to blow up key American army, munitions and communications facilities" (Gerstle 2004, 104).

The Japanese, and other Asians, had been denied a right that whites had always enjoyed and that freed slaves had received after the Civil War.⁶ What explains the massive removal of Japanese men, women, and children from the Pacific Coast region? Some have blamed special interest groups, but this does not explain why the Japanese were unpopular throughout the nation. There is also little support for the hypothesis that military purposes required evacuation. If the Japanese were indeed a threat to security in California, where they constituted less than 2 percent of the population, why were fewer than 2,000 Japanese rounded up out of the 158,000 living in Hawaii, where they constituted 35 percent of the population? Moreover, the evacuation was deemed a "military necessity" by politicians, not by the military. Historians have argued that if generals had been the decision makers they would have acted differently, knowing quite well that the Japanese military did not have the capacity for a full invasion of the United States. Harry Kitano notes that wartime exigency trumped constitutional guarantees as the Supreme Court turned down several cases. Eventually in 1944, in *Endo v. United States*, it found the detention and relocation of loyal Japanese Americans unlawful. Kitano concludes, "The incarceration of an entire ethnic group without any hearing or any formal charge having been brought against a single member has been described as the worst assault on civil rights in American history" (1980, 567).

MCCARTHYISM

Joseph McCarthy, Republican senator from Wisconsin, was the point man of the anticommunist crusade after World War II. Even though he gave his name to the movement, historian Ellen Schrecker argues that it would have been more accurate to call it "Hooverism" (1998, 203). Between 1950 and 1954, the FBI's Security Index of purportedly dangerous individuals grew from twelve thousand to twenty-six thousand. Moreover, the FBI "checked out two million federal employees and

conducted 20,000 full-field investigations. Its roster of agents increased from 3,559 in 1946 to 7,029⁶ in 1952 (211). Communist Party members could not apply for a passport, and radio and television broadcasts and mailings by suspect organizations were heavily restricted. Though an estimated 74,000 individuals were officially registered with the Communist Party in 1947, Hoover calculated that another 486,000 were "fellow travelers" (Navasky 1980, 24). Ironically, "there was no realistic need for this kind of surveillance," as the Communist Party's power had dissipated by 1952 (Schrecker 1998).

Immigrants were also considered dangerous. Victor Navasky explains that the 1952 Immigration and Nationality Act was used to arrest aliens without a warrant, hold them without bail, and deport them: "Among the grounds for deportation was membership in any subversive organization as defined by the Internal Security Act. Information from anonymous informers could be invoked at the deportation hearings, and no hearing needed to be granted to deportees if the disclosure of evidence was found 'incompatible with national security'" (1980, 23). Mere allegations of communist sympathies were enough to ruin immigrants' careers and reputations.⁷

The House Un-American Activities Committee (HUAC) is best known for its investigation of communism in Hollywood in 1947 (Navasky 1980). It pioneered many of the methods that have become the trademark of McCarthyism—accusations with little evidence, hearings where those questioned or even mentioned were automatically assumed to be guilty, and witnesses strong-armed to implicate their colleagues. Joseph McCarthy was not a member, but the senator and the committee had similar goals and tactics.

THE IRANIAN HOSTAGE CRISIS

After the Iranian Revolution of 1978–79, relations between the United States and Iran became strained, as Washington was a longtime supporter of Mohammad Reza Shah Pahlavi. When the exiled shah entered the United States in October for medical care, many Iranians feared a repetition of the U.S.-assisted coup that had put the shah back on the throne in 1953. This concern instigated the "Iranian Hostage Crisis," which began when a crowd of about five hundred militants stormed the U.S. Embassy in Tehran on November 4, 1979, and captured about ninety employees who were inside. Fifty-two Americans were held hostage for 444 days. In retaliation, the federal government and several

states enacted measures that specifically targeted Iranian students in the United States. In November 1979, the attorney general, at the direction of President Carter, required all Iranian nationals who were in the United States on student visas to report to the Immigration and Naturalization Service (INS) for registration by mid-December. Each nonimmigrant alien was required to provide proof of residence and full-time school enrollment and a passport with a valid visa (Bozorgmehr 2000). The regulation implied that noncompliance would be considered a violation of the conditions of the alien's stay in the United States and thus grounds for deportation under the Immigration and Nationality Act.

The hostage crisis prompted a presidential order known as the Iranian Control Program, which screened almost fifty-seven thousand Iranian students, the single largest group of foreign students in the United States at the time. However, the program was not aimed at students only. According to the INS Annual Report, the new policy "effectively prohibited the entry of most Iranians into this country" (1980, 7). Because of the permanent closure of the American Embassy in Iran, Iranians, even over a quarter of a century later, must still first travel to a transit country to obtain a U.S. visa.

PRECEDENTS OF BACKLASH AGAINST MIDDLE EASTERNERS AND MUSLIMS STEREOTYPES AND SCAPEGOATING

As anti-Japanese racism provided the backdrop for Japanese Americans' internment during World War II, so too did anti-Arab, anti-Muslim, and anti-Middle Eastern stereotypes in American popular culture facilitate the backlash after 9/11. At the turn of the twentieth century, early immigrants suffered from prejudice and discrimination. With their "olive skin, dark eyes, large mustaches, and shabby clothes," the new immigrants were unable to "pass" as white (Naff 1985, 247). In Birmingham, Alabama, the local congressman called these immigrants "the most undesirable of the undesirable peoples of Asia Minor" (quoted in Naff 1985, 250). In the 1920s, Syrian peoples of Asia Minor Muslims, were called "camel jockeys," "black," "dirty Syrians," and most often "Turks" (Naff 1985, 252). The word *Turk* was particularly offensive because these groups had emigrated to escape the Ottoman Turks. A century later, Arab and Muslim Americans continue to be taunted "with epithets such as *sandnigger*, *dune coon*, *camel jockey*, *towelhead*, and *raghead*" (Salaita 2006, 13).

According to Jack Shaheen's *Reel Bad Arabs* (2001), between 1896 and 2001 Hollywood produced more than nine hundred movies depicting Arabs as terrorists, rapists, con men, and other unsavory characters—without one positive portrayal.⁸ Many of these films, such as *The Sheik* (1921), starring Rudolph Valentino, have entered mainstream iconography as classics. Shaheen has also documented stereotypes in television (1984) and comic books (1994). Iconic images vilifying Middle Easterners continue to appear insidiously in American popular culture.⁹ Therefore, stereotypes of Arabs have been not only perpetuated but also reinforced.¹⁰

Nabeel Abraham has argued that anti-Arab racism is not only tolerated but manipulated by the government and political figures “to garner public support for domestic or foreign policy objectives” (1994, 195). Michael Suleiman explains that after the 1967 Arab-Israeli war, “Arabs in America, both newcomers and third-generation descendants of the early pioneers, deeply resented the extreme partisanship . . . America . . . showed toward Israel and the occasional hostility toward Arabs” (1999, 13). They started to organize in order to counter the stereotypes and offer alternative perspectives to American foreign policy in the Middle East (see Shain 1999 and chapter 4 of this book).

During the last decades of the twentieth century, newsworthy incidents involving or affecting Americans in the Middle East resulted in increased anti-Arab/Muslim backlash in the United States.¹¹ These included the 1973 oil embargo,¹² the Iranian Hostage Crisis, the 1983 bombing of a U.S. Marine barracks and the U.S. Embassy in Beirut,¹³ the hijacking of TWA flight 847 to Beirut,¹⁴ the killing of passenger Leon Kinghoffer on the *Achille Lauro* cruise ship,¹⁵ the First Gulf War (1990–91), and the 1993 World Trade Center bombing.¹⁶ With each incident, Middle Eastern and Muslim Americans were scapegoated and the terrorist stereotype was reinforced. The most extreme backlash incident was the murder of Alex Odeh in the wake of the *Achille Lauro*. At the age of forty-one, Odeh, the regional director of ADC, was blown up by a booby-trap bomb attached to his office door in Los Angeles on October 11, 1985 (Abraham 1994, 163). It was not surprising that when the terrorists bombed the federal building in Oklahoma City on April 19, 1995, killing 168 innocent people, some Americans were quick to blame Middle Easterners.¹⁷ Understandably, when news of 9/11 broke out, Middle Eastern Americans immediately feared for their lives.

Public opinion polls have consistently reflected the American people's negative stereotypes of Middle Easterners and Muslims. Here we offer a

sample. A national survey of a random sample of 2,910 Americans, conducted between September 18, 2002, and February 25, 2003, for the Religion and Diversity Survey found that 5 percent said they were very familiar with Islam while 33 percent said they were somewhat familiar with it. Only 8 percent of sampled Christians had ever attended a service at a mosque, in contrast to 25 percent who had attended a synagogue (Wuthnow 2005, 206). Remarkably, 32 percent of the sample had had no contact with Muslims. Of those who had had a “fair amount of contact” (24 percent), almost two-thirds found Muslims “mostly pleasant” (213). Additionally, this survey showed that 47 percent of the sample considered Muslims fanatical, 40 percent violent, 34 percent backward, 57 percent closed-minded, and 44 percent strange (the percentage exceeds 100 because of multiple responses). While 38 percent of respondents wanted to make it harder for Muslims to settle in the United States, 71 percent said they would “not object at all” if their child wanted to marry a Muslim. When asked how they would feel if a mosque were built in their community, 40 percent of the sample said they would not be bothered, and 16 percent said they actually would welcome it (216–17, 219). As can be seen, there are discrepancies in the findings. The polls show that an acquaintance with a Muslim enabled respondents to debunk some of the most egregious stereotypes.

A national opinion poll conducted by Cornell University in November 2004 revealed increasing bias and anti-Islamic prejudice among the American public (Nisbet and Shanahan 2004). Nearly half (47 percent) of the 715 individuals who participated in the survey agreed that “Islam is more likely to encourage violence compared to other religions.” Only 27 percent agreed that “Islamic values and beliefs are similar to Western/Christian values and beliefs.” Respondents who described themselves as highly religious Christians tended to have more negative views of Islam and Muslims. More specifically, 42 percent said Muslim Americans should register their whereabouts with the government, 29 percent said the government should profile Muslim citizens, and 40 percent said Muslim civic and volunteer organizations should be infiltrated.

Right after the London bombings in July 2005, the Pew Research Center for the People and the Press and the Pew Forum on Religion and Public Life commissioned a national opinion poll (N = 2,000) on Islam and Muslim Americans, which they then compared to previous surveys conducted in July 2003 and March 2002. While they found an increase in Americans' positive attitudes toward Muslim Americans (55 percent, up from 50 percent in 2003 and 45 percent in 2002), opinions about

Islam as a religion were stagnant. More than half of those surveyed believed that Islam was very different from their religion—59 percent in 2005 versus 60 percent in 2003 (see Pew Research Center 2005).

The Genesis Research survey commissioned by CAIR (2006a) used random-digit sampling to generate one thousand telephone interviews in June/July 2004 and again in November 2005. The results indicate that negative comments about Muslims had decreased slightly between 2004 and 2005 (32 percent vs. 26 percent) and that positive comments had slightly increased (from 2 percent to 6 percent). There was a statistically significant decline in the percentage of respondents who believed that all Arabs were Muslims (from 25 percent to 18 percent between 2004 and 2005). Likewise, there was a drop in the proportion of people who believed that Muslims should be locked up (from 21 percent to 17 percent). It was ironic that while the majority of Americans admitted that they did not know much about Islam (CAIR 2006a) they still had strong opinions about this religion and its practitioners.

A national sample of 1,007 adults conducted in July 2006 by *USA Today*/Gallup Poll reiterated the results of previous surveys. Americans harbor stereotypes against Muslims, with only 39 percent acknowledging their prejudice. More specifically, 49 percent do not think Muslims are loyal to the United States; 31 percent get nervous when they realize that a Muslim man is flying on the same airplane as they are; 57 percent favor Muslims' undergoing more intensive security measures at airports; and 59 percent think Muslims should be required to carry an identity card. A personal acquaintance with a Muslim made respondents less likely to favor ID cards for Muslims, more willing to have a Muslim neighbor, and slightly less approving of airport profiling.¹⁸ In summary, anti-Muslim racism or Islamophobia persists in the United States.¹⁹

THE "L.A. 8"

One of the noteworthy legal cases of pre-9/11 government harassment of Arab Americans is that of the "L.A. 8." Six Palestinian men and the Kenyan wife of one of these men were arrested in their homes in Los Angeles on January 26, 1987. A week later, an eighth person was detained while taking an exam in a community college. When prosecutors were unable to prove subversion, six of the members were indicted for visa violations. The two permanent residents, Michel Ibrahim Shehadeh and Khader Musa Hamide, were charged with circulating and distributing material endorsing the overthrow of the U.S. government

and with preaching world communism because of their association with the Marxist Popular Front for the Liberation of Palestine (PFLP) (Abraham 1994; Moore 1999; Motomura 2006).

Arguing that they were merely engaged in lawful political activities protected by the First Amendment, ADC defended the case of the L.A. 8. In *American Arab Anti-Discrimination Committee (ADC) v. Reno*, the Court of Appeals of the Ninth Circuit affirmed in 1997 the rights of noncitizens to free speech and association, stating: "Aliens, who often have different cultures and languages, have been subjected to intolerant and harassing conduct in our past, particularly in times of crises. . . . It is thus especially appropriate that the First Amendment principle of tolerance for different voices restrain our decisions to expel a participant in that community from our midst" (quoted in Moore 1999, 93).²⁰ However, the U.S. Supreme Court's 1999 ruling in *Reno v. American Arab Anti-Discrimination Committee (ADC)* argued for prohibiting access to courts during deportation proceedings and allowing only one appeal at the conclusion of the process, thereby further limiting the rights of noncitizens (Moore 1999, 94).

Two decades after the arrest of the L.A. 8, Bruce E. Einhorn, an immigration judge in Los Angeles, dismissed the case of Hamide and Shehadeh, ruling that the government had failed to show evidence of their membership in PFLP and that it could not deport permanent residents just because they advocated for Palestinians' right to a homeland. None of the L.A. 8 had been accused of criminal wrongdoing. Ironically, one of them, Aiad Barakat, had been sworn in as a U.S. citizen in 2006, three others were permanent residents, and one had an application for permanent residency pending. The *Los Angeles Times* reported that while the "Constitution does not permit 'guilt by association'" the government had "twice persuaded Congress to change laws and make them retroactive in an effort to be able to deport the two men." In October 2007, the United States dropped its charges against the remaining two defendants, finally bringing the case of the L.A. 8 to a close.²¹

LEGAL DISCRIMINATION IN THE 1990S: SECRET EVIDENCE

President Clinton signed into law the Antiterrorism and Effective Death Penalty Act of 1996 to alleviate heightened anxieties about illegal immigrants.²² It allowed INS to arrest, detain, and deport noncitizens on secret evidence if they were deemed to be national security threats. The defendant and his lawyer would be denied access to documents revealing

the nature of the charges and their provenance. Additionally, the 1996 Illegal Immigration Reform and Immigrant Responsibility Act allowed courts to deny bond to noncitizens facing criminal charges and deportation based on secret evidence. Thus not only was the accused incarcerated and unable to post bail, but the defense was handicapped in preparing its case adequately.

Secret evidence clearly violates the due process rights of defendants guaranteed by the Fifth Amendment. According to AAI, secret evidence in deportation hearings was used in the 1990s almost exclusively against about two dozen Arab and Muslim men. In most cases the government attorney, using undisclosed documents, persuaded the immigration courts that the defendant was associated with an enemy of the United States. An ADC Action Alert elaborates: "Secret evidence has included rumors, innuendo, racist stereotyping, faulty translations, and the testimony of a vindictive ex-spouse or girlfriend."²³

We were fortunate to interview a leader charged with secret evidence.²⁴ He told us:

Secret evidence means it is classified information; it cannot be shared with the defendant or the defense attorney. It can only be presented to the court and also can be shared with the judge. And the judge even cannot view these matters before he or she obtains a security clearance. In order for this evidence to be presented and accepted as secret evidence, it has to have an executive order signed by the INS commissioner. . . .

At that time, me and my attorney were stunned because I was simply waiting to receive my adjustment of status, my green card. All of a sudden, I received a letter stating, "You are to be at the INS office at this date with luggage, and you will be deported." When I called my attorney, I said, "What's going on here?" He said, "Beats me. I don't know." . . . My case was supposedly processed and reviewed by the immigration judge, and the BIA [Board of Immigration Appeals], and there were no problems. . . . The first round . . . took place in [date]. This was where the judge was stunned. The judge said, "I assume this case is over in fifteen or twenty minutes if all documents are in order," simply because the BIA overruled the INS, canceled the deportation, restored my work permit, and sent my files to the immigration judge reopening my case for adjustment of status. So the judge . . . was smiling. He had no idea about what was going on. . . .

Then the INS attorney said, "No, your honor. It is not ten or fifteen minutes. We have evidence to present to argue against adjustment of status." The judge said, "What kind of new evidence? This case was reviewed by the BIA and sent to reopen. I don't see anything here." They said, "It's secret." The judge said, "What do you mean, secret?" They said, "Secret in that we cannot share it with the defendant, or the attorney. We can only share it with you. And even you, sir. Your Honor, you need to check with

the court about the procedures." He said, "What do you mean, I have to check?" They said, "Well, there are certain procedures." The judge was in disbelief about what he was hearing, because it was the first time for him to hear about it. . . .

I had a ruling in my favor. So what happened here is that the judge put the court in recess. And then he came back half an hour later, smiling again. He said, "Guess what, I learned something new. I never knew that I needed a security clearance even to see this evidence." My attorney said, "Your Honor, I would like the court to order the INS to give us a brief about this secret evidence." He did, but the INS, as usual, never did tell you what is this. They give you maybe a sentence or two words, just saying, "linked to terrorism," or "membership in a terrorist group," or something.

So we had to go through the full-course hearing. That was held on [date]. We went through a five-hour hearing. They went to the judge's chambers and discussed the secret evidence. At the end of the day, the judge came and he asked my attorney to put his final argument against the secret evidence. My attorney said, "Your Honor, I don't know what is the secret evidence. So how do you expect me to put an argument against evidence you only saw and debated with the government?" He said, "I understand, Mr. [name], but you have to say something." He said, "What should I say?" He said, "Say something. You have been doing a good job of speculation." The judge was even confused, so he was telling my attorney, "Say anything. Just go along with what you were saying. Just put the final argument."

At the end of the day, he ruled in my favor. He stated clearly that he had reviewed the evidence. He didn't see it as of a nature to incriminate me and to pluck my adjustment of status. He granted me to become a permanent resident. We thought that was the end of it.

However, the respondent's saga took over five years to be resolved. Even after the Board of Immigration Appeals ruled in his favor in 1999, his citizenship papers were put on hold, and he did not get his citizenship until 2001. When we asked him, "What was the evidence against you?" he replied:

It stated that I had been working at places that I never worked at. One of the evidences was that I was working in a [name] shop that is located in [place], and this [name] shop is operated and owned by the Popular Front for the Liberation of Palestine. We brought [in] the owner. The owner is an engineer in [name] who worked with the most sensitive military authorization. He testified that I [had] never worked there. He had never heard of me. And it was stated that I was part of this [name] shop. Another thing was that it was stated, "Subject wearing a T-shirt." They circled the T-shirt by saying I was wearing the PFLP logo. It was obvious to whoever saw the photo that it was the Lebanese and the Palestinian flag. And it was like from [date] and said, "Unity is strength." It had nothing to do with that specific group.

Though INS made his "life miserable" for many years, this respondent remained gracious and forgiving. Like many other respondents whose voices resonate in this book, he survived his ordeal with an even stronger faith in the American Constitution and the sense of fairness and justice of the American people. He vouched, "I trust always that justice will prevail and the true fabric of this nation will prevail. The other thing that helped me is that if I were to face this ordeal in any other part of this world, I might not have a chance even to speak about it." Our respondent acknowledged that being a community leader "only helps, because it gives you the visibility and opportunity to present your case to all of these people involved and who care about justice, and to deal with injustices."

A TYPOLOGY OF MISTREATMENT OF MINORITIES (OUTGROUPS)

We draw on Michael Mann's controversial and provocative book *The Dark Side of Democracy: Explaining Ethnic Cleansing* (2005) to explain how the state may be an instrument of repression, even murder. Drawing on the history of the development of democracy in the twentieth century, Mann asserts that "democracy has always carried with it the possibility that the majority might tyrannize minorities, and this possibility carries more ominous consequences in certain types of multiethnic environments" (2). Stable democracies in North America, Europe, and Australia have had murderous episodes in their history, though now minority populations are relatively more protected by law. Mann is convinced that it is futile to stop most ethno-nationalist movements from claiming their people's autonomy because the "nation-state is too strongly entrenched in the modern world for them to be simply repressed or ignored" (2005, 523). Yet he is careful not to suggest that ethnic cleansing is necessary or a fundamental element of human nature.

To clarify the "types of violence and cleansing in intergroup relations," Mann develops a sophisticated typology with two axes (2005, table 1.1). The first axis deals with the degree of an ethnic group's purging or "cleansing" from society: "none," "partial," or "total." The second axis focuses on the degree of violence used to reach this end, ranging from "none," to "institutional coercion," to "policed repression," to "violent repression," to "unpremeditated mass deaths," and finally to "premeditated mass killing." Thus, when there is no violence and no cleansing, ethnic groups are tolerated or allowed to coexist in a multicultural society. At times the ethnic group will negotiate with the

TABLE 1. TYPOLOGY OF STATE POLICIES TOWARD MINORITIES (OUTGROUPS) IN TIMES OF WAR OR POLITICAL/IDEOLOGICAL CRISIS

Characteristics of Crisis	Times of War or Political/Ideological Crisis					
	<i>World War I</i>	<i>Palmer Raids</i>	<i>Japanese Internment</i>	<i>McCarthyism</i>	<i>Iranian Hostage Crisis</i>	<i>Post-9/11 Backlash</i>
Cause of crisis	U.S. entry into the war in 1917	"Bolshevik menace"	Foreign attack on Pearl Harbor	Cold War (Fear of Soviet invasion)	Taking of American hostages in Iran	Terrorism on U.S. soil
Targeted ethnic minorities (outgroups)	German Americans	Communist Party members (many Jews and Italians)	Japanese Americans	Communist Party members and sympathizers	Iranian students	Middle Eastern and South Asian immigrants
Legal status of targeted population	Naturalized citizens and immigrants	Citizens, naturalized citizens, and immigrants	Citizens and naturalized citizens	Citizens and naturalized citizens	Foreign nationals	Noncitizens and immigrants
U.S. government policy	Internment, cultural suppression, involuntary assimilation	Expulsion to Soviet Union	Internment	Detentions, loss of livelihood, becoming a pariah	Deportation	Detention, deportation
Yield from government investigations	None	Minimal	None	Minimal	None	Minimal
Response of affected groups	Rapid assimilation	Limited challenge	Short-term acquiescence, long-term redress	Limited challenge	Few lawsuits, no response	Mobilization and political integration

host society a "consociational" agreement or confederation. At the other extreme, the highest level of violence ("premediated mass killing") combined with total cleansing leads to genocide.²⁵

Mann's less severe forms of violence, "institutional coercion" and "policed repression," illustrate the mistreatment of minorities (or what Mann calls "outgroups") during periods of crisis or war. The mildest form of institutional coercion is "discrimination." However, if there is partial cleansing, the outcomes are "official language restriction" and "segregation," measures that remind us of the Japanese experience during World War II. Total cleansing at this level implies "cultural suppression" of an ethnic group, as in Germany during World War I. The combination of no cleansing with a more severe form of violence, "selective police repression," applies to the deportations of Middle Easterners and Muslims after 9/11. But the combination of "partial cleansing" with "selective police repression" could involve partial repression of the minority group's language and culture through policing. More ruthless forms of cleansing result in total police suppression of the group's language and culture, as well as deportations and pressure to emigrate. As Mann argues, and we attest in the case of the 9/11 backlash, the presence of civil rights laws can prevent implementation of the more ruthless measures of state repression.

Next we develop a similar typology of the historical watershed events we discussed above by focusing on (1) the cause of the crisis; (2) who was the target; (3) the legal status of the targeted group(s); (4) the U.S. government's reaction; (5) the yield from the investigations; and (6) the response of affected groups (see table 1). Then we delve into a more extensive comparison of the Japanese internment and the post-9/11 backlash. We conclude this chapter with a discussion of the legality of the governmental measures taken in the 9/11 backlash and the factors that have restrained the post-9/11 governmental response.

THE CAUSE OF THE CRISIS

In the historical precedents that we analyzed above, identifiable sovereign states attacked American interests, and the United States targeted persons of those nationalities or their sympathizers in retribution. The treatment of Germans during World War I, the Japanese internment during World War II, and the Iranian Hostage Crisis in 1979-81 followed the belligerent actions of specific foreign nations. On the other hand, the Palmer raids and McCarthyism were responses to alleged threats of com-

munist to national security and as such targeted communist sympathizers of all stripes. In contrast, the 9/11 attacks were masterminded by a terrorist network extending beyond national boundaries. Bin Laden, the assumed 9/11 mastermind, was born in Yemen, became a Saudi national, and operated Al Qaeda out of Afghanistan. Al Qaeda leaders and members hailed from a variety of Arab and Muslim countries, and some were studying or working in Europe and the United States. Given the mix of the terrorists' nationalities, all Arabs and Muslims in the United States became the target of retribution.

TARGETED GROUPS

During World War I, German Americans were under attack. Though the Japanese were the prime targets during World War II, some Italians and Germans were also apprehended. During the Red Scare, Bolshevik sympathizers and anarchists were suspected of sedition. Many were immigrants from Russia and eastern Europe, and a sizable number were Jewish. McCarthyism most severely affected former Communist Party members, who again were largely of immigrant stock. Iranian students in the United States were targeted during the hostage crisis. Since the 9/11 hijackers were young Arab/Muslim men, the government profiled immigrants with these personal characteristics.

Estimates of the size of the Arab population in the United States range from 1.2 to 3 million, and those of the Muslim population range from 2 million to 6 million (see chapter 3). Even if one excludes African Americans, who make up about one-third of Muslim Americans, the residual figure is still substantial. Clearly, even the low estimates make the post-9/11 targets more numerous than the historical precedents. Their case might best be compared to that of the two million Germans in the United States in 1917 (Higham 1988).²⁶

CITIZENSHIP STATUS

Perhaps the most outstanding difference among all these cases is that the German and Japanese victims, as well as the communist sympathizers, included *citizens* as well as *aliens* or *noncitizens*. The Iranian foreign students who were subject to deportation were noncitizens. The post-9/11 government initiatives almost exclusively targeted noncitizen men from twenty-five Arab or Muslim countries. Only the 9/11 backlash and the Iranian Hostage Crisis have targeted overwhelming noncitizens.

The only person in the United States to be charged in connection with the 9/11 terrorist attacks, Zacarias Moussaoui, is a French citizen of Moroccan descent. He was indicted on six terrorism conspiracy charges and pled guilty even though he was in prison on an immigration violation at the time of the attacks. Though the prosecutor asked a federal jury to sentence Moussaoui to death for concealing knowledge of the 9/11 plot, he was sentenced to life in prison in May 2006.²⁷

Most of the detainees charged with terrorism have been noncitizens, but a handful, including John Walker Lindh, Jose Padilla, Yaser Hamdi, Hamid Hayat, and the Lackawanna Six, have been U.S. citizens. Lindh, "the American Taliban," was born in California and captured in Afghanistan. He was charged with "conspiring to kill Americans and aiding Al Qaeda" (D. Cole 2003, 1, 3). His trial in criminal courts in the United States was settled when he pled guilty to minor charges (D. Cole 2003). Padilla, a Puerto Rican convert to Islam, was detained in 2003, but his trial did not begin until April 2007 because the Bush administration repeatedly changed its accusations. Padilla was incriminated for planning to detonate a "dirty bomb," for planning to blow up an apartment complex, and, finally, for conspiring to support terrorism as an Al Qaeda operative.²⁸ In August 2007, he was found guilty of conspiracy to murder and kidnap overseas.²⁹ Hamdi is a U.S.-born Saudi who was captured in Afghanistan in November 2001 and subsequently indicted for fighting with the Taliban, though his family claimed he was on a humanitarian mission. In June 2004, the U.S. Supreme Court ruled that even terrorism suspects like Hamdi have the right to appeal to the U.S. courts to challenge their imprisonment. They affirmed, however, that the administration has the authority from Congress to hold U.S.-born citizens as enemy combatants. On September 15, 2004, Hamdi was released from military prison without facing any allegations of terrorist-related activity and was allowed to fly to Saudi Arabia.³⁰ Hamid Hayat, a U.S. citizen of Pakistani descent from Lodi, California, was convicted for aiding terrorists and providing false statements to the FBI and was sentenced to twenty-four years in prison. An informer who received \$200,000 from the FBI testified that Hayat had attended a training camp in Pakistan and had a connection with Al Qaeda. Hayat's lawyer has questioned the validity of the government's case to no avail.³¹ In the case of the Lackawanna Six, which involved U.S.-born Yemenis, the FBI postponed its arrests until a witness testified that the men had been trained by Al Qaeda.³²

That post-9/11 government policies have been directed against noncitizens cannot be attributed to the nature of the threat. Terrorism can easily be carried out by citizens: we need only recall that the bombing of the Murrah Federal Building in downtown Oklahoma City on April 19, 1995, was carried out by Timothy McVeigh, a U.S.-born white supremacist.³³ Thus the focus on noncitizens is a very significant and sharp departure from the historical patterns in this chapter.

The governmental backlash against foreign nationals is clearly demonstrated by its actions at Guantánamo Bay, in Abu Ghraib, and in rendition cases. These have been widely publicized as examples of the Bush administration's disregard for human rights. Some may contend that Guantánamo Bay, Abu Ghraib, and rendition practices should be considered part of the backlash.³⁴ Although these fall outside the framework of our U.S.-focused arguments, we will briefly describe them to make an analytical distinction.

Shortly after 9/11, the U.S. naval base in Guantánamo Bay, Cuba, began holding "enemy combatants" (D. Cole 2003; D. Cole and Lobel 2007), foreign nationals captured abroad (Amnesty International 2005). Most had been seized during the war in Afghanistan, allegedly for involvement with the Taliban or Al Qaeda.³⁵ The Guantánamo detainment center quickly gained media attention when allegations of unfair treatment and abuses of justice surfaced. On December 30, 2005, President Bush signed the Detainee Treatment Act, prohibiting cruel treatment of detainees but limiting their right to judicial review of their detention conditions. In October 2006 he authorized the Military Commissions Act, further subjecting Guantánamo Bay detainees to laws significantly deviating from traditional U.S. standards of justice.³⁶ By December 2006, over 750 individuals, all labeled "enemy combatants," were being held at the base without having been tried or even formally charged (Amnesty International 2006). The mishandling of detainees in Guantánamo has led to both domestic and international protests. Citing "arbitrary detention" and human rights abuses, a United Nations report called for the closure of the detention facilities in 2006.³⁷ By late 2007, the Bush administration was considering closing Guantánamo and transferring the detainees.³⁸

Abu Ghraib, a prison complex in Iraq originally built in the 1960s and notorious for its role in Saddam Hussein's repressive regime, was used by the American military to hold Iraqi prisoners following the U.S. invasion.³⁹ A report by U.S. Major General Antonio Taguba in early

2004 disclosed severe mistreatment of prisoners at Abu Ghraib. By late April 2004, *60 Minutes* and the *New Yorker* released evidence of abuses of prisoners by American soldiers, including photographs of prisoners in humiliating positions.⁴⁰ This publicity partly contributed to the American military's March 9, 2006, decision to transfer the approximately 4,500 detainees to other prisons, thereby ending Abu Ghraib's tenure as a detention facility.⁴¹

To formally sidestep United Nations rulings, President Bush pronounced the Geneva Conventions inapplicable to terrorist detainees at Guantánamo Bay in February 2002. He thereby discounted the federal war crime statute's application to the Guantánamo Bay case.⁴² Furthermore, the Justice and Defense Departments also drew their own definitions of permissible "coercive interrogation" techniques; these included sleep deprivation and the experience of painful physical conditions. The government had originally declared Abu Ghraib subject to the Geneva Conventions, but in 2003 a Pentagon-initiated study suggested that Guantánamo Bay's interrogation techniques be extended to Abu Ghraib. The Pentagon's study recommendation thus blurred the line between what the Geneva Conventions "permitted" at Guantánamo Bay and at Abu Ghraib.⁴³

The practice of rendition, which involves transporting foreign nationals suspected of terrorism to a third country for interrogation, has been documented in governmental directives since the 1990s (ACLU 2005; Human Rights Watch 2006), but its use became widely publicized after 9/11. Rendition is questionable on two counts: first, that due process is not offered to the detainee prior to rendition, and second, that the rendition is carried out because the United States presumes that the foreign country uses torture as an interrogation technique to obtain information the United States cannot obtain. The American Civil Liberties Union (ACLU 2005) cites expert estimates that approximately 150 foreign nationals were subject to rendition between 2001 and 2005 and reports that four criminal investigations of CIA rendition activities in Europe have been initiated.⁴⁴ Perhaps the most famous case of rendition is that of Maher Arar, who was arrested at JFK Airport while changing planes on September 26, 2002. He was rendered to Syria, where he was tortured during interrogation. Ultimately he was released for lack of evidence (see D. Cole and Lobel 2007).

While the cases of Guantánamo Bay and Abu Ghraib as well as rendition clearly represent some of the most extreme examples of American governmental flaunting of universal human rights principles, the scope

of our book deals principally with domestic American issues and persons arrested on U.S. soil. Instances involving international territory, United Nations conventions, and the detention of foreigners captured abroad are beyond the scope of this volume.

U.S. GOVERNMENT POLICY

The U.S. government's reaction to political/ideological crises has depended not only on the nature and scope of the crisis but also on the domestic political and legal situation at the time. The most extreme response, in terms of the number of persons targeted, was during World War II. As noted above, over 120,000 Japanese Americans, 70,000 of whom were U.S. born, were relocated to camps. The next most extreme case was during World War I. The government arrested over six thousand German Americans and interned two thousand. Additionally, over 250,000 German immigrants were required to register.

The Red Scare led to the arrest of over ten thousand Bolsheviks and the deportation of a few hundred, most of whom were Jews or Italians. During McCarthyism, several thousand individuals and their families whose communist sympathies were declared by suspicious neighbors, coworkers, and even friends in front of the hearings of the House Un-American Activities Committee and other official boards lost their jobs and were stigmatized. Many were unable to earn a living for several years afterwards. The U.S. government reacted to the Iranian Hostage Crisis by threatening Iranian students with deportation. After holding 7,177 deportation hearings, it ordered 3,088 students to leave the United States; and the departure of 445 was verified (Bozorgmehr 2000).

The Bush administration may have used the Iranian hostage crisis in support of its initiatives against Middle Eastern and Muslim immigrants after 9/11. However, the regulation requiring Iranian students to register with INS had a narrower focus. It was based on national origin—not ethnicity, race, or religion (Chishti et al. 2003). Perhaps this explains why the civil rights community did not step in to help the Iranians. At that time, there was no established Iranian community, let alone an Iranian advocacy group. It is ironic that newly arrived Iranian exiles, who were opposed to the Islamic regime, faced unfair targeting and scapegoating in their adopted country, making them double victims.

In the post-9/11 case, Arab and Muslim noncitizen men have suffered the most from U.S. government policies, but it is not yet known

how many of those detained, interviewed, and registered have been deported because the government has not published these statistics. Even less is known about how many decided to leave the country voluntarily. However, about six thousand Arab and Muslim absconders were sought;⁴⁵ 42 percent of those invited for "voluntary interviews" were questioned; about twenty were arrested on immigration and criminal charges; at least 231 individuals were deported, more than half of them Pakistanis; and fewer than 1 percent of the five thousand Iraqis were detained after interviewing. Estimates of the detainees vary from the inspector general's estimate of 762 illegal immigrants from the Middle East or South Asia to 1,200 from other sources (Chishti et al. 2003, Appendix F). By May 2003, about eighty-two thousand had obeyed the "special registration" orders of NSEERS (the National Security Entry-Exit Registration System), and almost 1,200 were detained. While Iranian nationals were detained and deported in relatively modest numbers, they became victims of NSEERS in larger numbers.

It is patently unfair to quantify a people's suffering and declare that one group has suffered more than another. Yet unless we assess and observe the qualitative differences in mistreatment of minorities, we will not be able to account for what has changed over time and why. Relative to earlier political/ideological crises, the tangible government reaction to 9/11 to date appears to be relatively moderate. Zolberg (2002, 287-88) seconds this opinion, noting, "In contrast with previous surges of securitarian nationalism provoked by international conflicts, most notoriously in the wake of Pearl Harbor when the U.S. government treated all ethnic Japanese as suspects, including American citizens, governmental responses to 9/11 were restrained. Not only were there no wholesale denunciations of particular groups, but instead, the President pointedly visited a mosque and the mayor of New York explicitly admonished the city's residents not to seek revenge on Arabs or Muslims." From a historical perspective, this marks a positive development. It is important to note that many Americans have shared the values of the decision makers and executors of discriminatory policies and have acquiesced to their actions. During McCarthyism, for example, the entertainment industry, philanthropic foundations, and even civil rights and professional organizations such as the National Association for the Advancement of Colored People (NAACP), the ACLU, Americans for Democratic Action, and the American Association of University Professors did little publicly to change the status quo (Schrecker 1998).

YIELD FROM GOVERNMENT INVESTIGATIONS

Although none of the drastic measures taken by the U.S. government since the beginning of the twentieth century have proven that there was a real threat from the groups under scrutiny,⁴⁶ discriminatory practices have generally created precedents, thus making it easier for future administrations to target outgroups. The Japanese redress movement may have served as a major deterrent to the large-scale detention of Middle Easterners and Muslims. In 1976, President Ford declared, "Not only was that evacuation wrong, but Japanese Americans were and are loyal Americans" (Daniels 1993, 90). In 1989, President George Bush authorized redress, and the attorney general held a small ceremony on October 9, 1990, to distribute checks in the amount of \$20,000 to elderly camp survivors (Daniels 1993, 105). A presidential apology letter was sent to the Japanese who had been interned or evacuated or who had lost property or liberty. Additionally, there was a public education effort to send the message "never again," including mention in textbooks and museum exhibits. In his book on reparations, John Torpey writes that "the history of the Japanese American internment has had some effect on recent discussions of the treatment of Arab Americans, reminding the public of a dishonorable past experience and a warning against repetition" (2006, 105).

RESPONSE OF AFFECTED GROUPS

As table 1 shows, the affected groups in times of war or political/ideological crisis have responded in a variety of ways. At one end of the continuum is German Americans' rapid assimilation, while at the other end is the Japanese Americans' long-term redress movement, preceded by short-term acquiescence. Between these extremes, we find limited challenge in the case of the Palmer raids, McCarthyism, and the Iranian Hostage Crisis. Clearly, the post-9/11 mobilization and potential for integration stand out in historical context.

In response to anti-German attacks by the U.S. government and overt discrimination during World War I, German Americans defended their loyalty, enlisted in the army, changed their names, and removed the word *German* from institutional names and commercial labels. The vast majority of German-speaking immigrants and their children felt that they had no choice but to publicly declare their support for the war

(Higham 1988). In summarizing the situation during this period, Kennedy (1980, 54) writes, "The perpetrators of these measures cared little for President Wilson's nice distinctions between the German government, with which the United States was at war, and the German people, toward whom Wilson wished to extend the hand of respect and conciliation." Kathleen Neils Conzen writes that the outcome "was the rapid dismantling of the associational structure of German America. The total number of German-language publications declined from 554 in 1910 to 234 in 1920; daily newspaper circulation in 1920 was only about a quarter of its 1910 level. Language shift accelerated rapidly in the churches as elsewhere; in 1917 only one-sixth of the Missouri Synod Lutheran churches held at least one English service a month, while by the end of the war, three-quarters were doing so. The National German-American Alliance dissolved in April 1918 under Senate investigation" (1980, 423).

In response to the Red Scare and McCarthyism, Bolsheviks and the targeted communities were mostly focused on defending their members. The National Civil Liberties Board (NCLB) asked Elizabeth Gurley Flynn, a veteran of the Industrial Workers of the World (IWW), to organize a separate foundation through which labor-related groups could support defenses of such cases. She thus headed the Workers Defense Union (WDU), which drew membership from over 170 organizations, including labor unions and radical groups. "In the first year-and-a-half of its existence the WDU distributed over \$12,500 for defense and raised over \$35,000 for bail" (Camp 1995, 90). The WDU also asked prominent liberals to write letters of protest to the government (Camp 1995, 100). By 1920, there was a shift in public opinion through the efforts of the WDU, and with internal dissensions in the Wilson administration, many more deportations were averted (Camp 1995, 99-101). The WDU also helped the defense of nonalien radicals on trial (Camp 1995, 102-3).

During World War II, Japanese Americans complied with Executive Order 9066 and cooperated overwhelmingly with the authorities. For example, immediately after Pearl Harbor, the Japanese American Citizens League (JACL) wired President Roosevelt, pledging the loyalty of its members (Daniels 1972).⁴⁷ There was both active and passive resistance among the internees,⁴⁸ but even when they resisted the draft and challenged the constitutionality of drafting interned citizens, the JACL director disassociated his organization from them (Daniels 1972). After the war, JACL's major political activities shifted to eradicating anti-

Japanese discrimination and commemorating the wartime achievements of Japanese servicemen.⁴⁹ Many U.S.-born men and women of Japanese ancestry enlisted in the armed forces as soon as they were given permission to demonstrate their loyalty to the United States. "The record of the 42nd Combat Team and the 100th Battalion composed of 33,000 Japanese Americans from Hawaii and the mainland was unparalleled. The most decorated units in American military history, they suffered more than 9,000 casualties" (Kitano 1980, 567). The redress movement was born after the war; almost twenty years later President Ford acknowledged the mistake of the U.S. government, and another decade elapsed before the distribution of monetary compensation for all those who had been interned.

The trials of communist leaders under the 1940 Smith Act were a direct response to McCarthyism. Twelve of them were on trial in the case that went to the Supreme Court in 1951 as *Dennis v. United States* for the act of having reconstituted the Communist Party of the United States in 1945. Elizabeth Gurley Flynn, who was also a Communist Party leader, orchestrated the defense and raised \$500,000 from 1948 to 1950 from party members and affiliated groups (Camp 1995, 211). Flynn also tried to mobilize liberal public opinion, but even groups like Americans for Democratic Action (ADA) and the American Civil Liberties Union (ACLU) were very reticent in their responses (Camp 1995, 214).

In response to President Carter's decree that all Iranian nonimmigrant aliens register with the INS, several Iranian students sued the government to overturn the order. The plaintiffs used the protection of personal rights under the Fifth Amendment to argue that the government had unfairly singled out Iranians. The defense retorted that the regulation served "overriding national interests." The district court dismissed this claim, finding only a dubious connection between protecting the lives of American hostages in Iran and singling out Iranians for registration with INS. It asserted instead that the regulation seemed to appease the American public's demand for action in response to the hostage crisis. When the government appealed, the D.C. Circuit Court of Appeals reversed the lower court's order, noting that the Immigration and Nationality Act had given the attorney general sufficiently broad authority to screen aliens of certain nationalities (Chishti et al. 2003, 139-40).

In this book we argue that in contrast to historical precedents, the post-9/11 mobilization of Arab and Muslim Americans has been exceptional. Chapters 7 and 8 describe their response.

COMPARING THE JAPANESE INTERNMENT AND THE POST-9/11 BACKLASH

The Japanese internment was on the minds of many Middle Eastern and Muslim Americans after 9/11. Several respondents wondered anxiously whether history would be repeated. An American-born woman told us, "I think a lot of people in the community after [9/11] . . . were talking about . . . Japanese Americans. Could that kind of internment situation occur [again]? Could we all be shipped out? Is it relevant that you have an American passport if your last name is [Arab name]?" As time passed, there was some relief: "Thank God, we have to admit that the officials in the United States . . . did not make the mistake that our leaders previously did when they [made] a massive arrest of the Japanese."

Hadi Jawad, an Iraqi-born American citizen, told journalists that when the FBI came knocking at his door "it reminded me of what was done to . . . the Japanese during the Second War."⁵⁰ Likewise, in Southern California, during the special registration initiative, Reuters quoted Ramona Ripston of the ACLU: "I think it is shocking what is happening. It is reminiscent of what happened in the past with the internment of Japanese Americans. We are getting a lot of telephone calls from people. We are hearing that people went down wanting to cooperate and then they were detained."⁵¹ Among thousands of Iranian Americans who protested special registration in mid-December 2002 in Los Angeles, some carried banners asking: "What's next? Concentration camps?"⁵²

There is ample evidence that Japanese Americans were quick to draw the same parallels and that they observed the gravity of the 9/11 backlash with empathy.⁵³ For instance, a study that interviewed a sample of Japanese who had been interned on the subject of reparations found that many compared the experiences of Arab and Muslim Americans after 9/11 to their own during World War II. One respondent said, "I cringe when I see the government bypassing judicial procedure by using military tribunals." Another noted that "the current climate is an echo of everything that was said in 1942." Yet another echoed, "Every Arab could be targeted and the administration won't care about the Constitution and government protocol" (quoted in Torpey 2006, 102). The comparison was the subject of a 2004 documentary by the Japanese American filmmaker Lina Hoshino, *Caught in Between: What to Call Home in Times of War*.⁵⁴

Japanese Americans reached out to the affected communities in solidarity and goodwill. Several of their activities have been documented, as in the following *Los Angeles Times* story:

Among the Muslim community's new friends is Japanese American activist Kathy Masaoka of Nikkei for Civil Rights and Redress. Listening to the radio after the terrorist attacks, Masaoka said fears expressed by Muslims struck an instant emotional chord, reminding her of her own family's ordeals after Pearl Harbor. Two weeks after Sept. 11, she helped organize a candlelight vigil for the victims of terror and to express support for innocent Muslims, Arabs and South Asians. Since then, she has helped form a committee to forge friendships with her community through picnics, dinners, cultural exchanges and Buddhist-Muslim dialogues.

"I don't think they should have to feel responsible for all of the actions done by others from other countries who don't represent them," Masaoka said, adding that her Muslim friends have shown her a faith of compassion and good deeds. "We weren't responsible for Pearl Harbor, and we don't have to prove our loyalty any more than anyone else. They shouldn't have to, either."⁵⁵

In support of Arabs and South Asians detained after September 11, three grandchildren of interned Japanese Americans filed an amicus brief opposing a Brooklyn federal judge's June 2006 ruling that gave the government the right to detain noncitizens indefinitely on the basis of their race, religion, or nationality. They argued that the Brooklyn judge "overlooks the nearly 20-year-old declaration by the United States Congress and the president of the United States that the racially selective detention of Japanese aliens during World War II was a 'fundamental injustice' warranting an apology and the payment of reparations." It must be noted that this third-generation activism among Japanese Americans has been rare compared to the activism of the second generation, who devoted their lives to seeking reparations.⁵⁶

Middle Eastern and Muslim American respondents in our study were forthcoming with compliments about the sympathy they had received from an ethnic group that had experienced backlash in the past. A leader in Dearborn noted how much he appreciated their support, adding, "I don't think anyone is as sensitive to what is going on in the Arab American community as the Japanese Americans." Another respondent stated, "The only thing that I can say for sure is that there's a lot more sense of closeness between the Japanese American community and the South Asian community" (see also Naber 2002). Since 9/11 the Muslim Political Affairs Council (MPAC) and other organizations have regularly reported interfaith activities with Japanese Americans, such as the *iftar* (breaking the fast of Ramadan) that brought together Muslim, Japanese, and Mexican Americans at the Senshin Buddhist

Temple in Los Angeles in 2003.⁵⁷ And on September 19, 2001, a multi-ethnic, multireligious gathering held a press conference at the National Japanese American Memorial in Washington, D.C., to mourn those who had lost their lives to the terrorist acts and to show solidarity in the various alliances being forged between Japanese/Asian American and Middle Eastern American organizations. The location of the meeting was undoubtedly strategically chosen. The symbolism could not be ignored. Respondents praised Transportation Secretary Norman Minetta, who presided over the ceremony and had been interned with his family during World War II, as “a great guy [who] understands” the plight of Arab and Muslim Americans.

In response to our question about the lack of public outcry during the Japanese internment, an Arab American noted, “At the time, they were not as sophisticated, the civil rights laws were not in place.” A knowledgeable source of Japanese descent chimed in:

In 1941, they didn't have any options, they were facing guns. It was a situation beyond their control. There is a Japanese saying that goes, “It can't be helped.” This was the pre-civil rights era. . . . Asian ethnic groups, including the Japanese, have the cultural value of going with the consensus. So they went with the government's edict. Everyone else thinks that it was fault of the Japanese leadership at the time. The leaders in 1941 . . . reasoned that if we fight, more damage will be done. There are people who said JACL was responsible. But there was no community that had power or sway. . . . Even the ACLU didn't support the Japanese community in 1941-42.

A high-ranking government official replied more defensively to our question: “If you look at the case of the Japanese Americans in the 1940s and compare it with today, there is no comparison. We're more respectful of civil rights today than one or two generations ago. There will always be criticism, we're not going to say that we are perfect; we could always do better. . . . The media misinformed people about what we are doing. Once people understand, they will realize that we are serious about protecting civil rights. We are open to people's ideas in the community.”

Although the post-9/11 governmental initiatives targeting Middle Eastern and Muslim Americans are most reminiscent of the Japanese internment, Daniels warns us to not push the comparison too far: “Many commentators have compared the two cases—some seeing a disturbingly similar pattern in the reaction against a feared nonwhite population, others praising what they see as the relative moderation of today's government. . . . But when compared with what was done to

Japanese Americans during World War II, government actions before and after September 11 do not seem to amount to very much. Indeed, many media commentators have objected that even to mention them in connection with the massive violations of civil liberties by the Roosevelt administration is inappropriate.”⁵⁸

THE LEGALITY OF THE POST-9/11 GOVERNMENT INITIATIVES

There has been considerable debate since 9/11 regarding the legality of the government initiatives that targeted Arab and Muslim noncitizens. Some have argued that these initiatives are merely legitimate immigration control measures—appropriate responses to the profile of the terrorists and the fact they used tourist (and, in one case, student) visas. And indeed, as Bill Ong Hing writes, “After the tragic events of September 11, 2001, perpetrated by foreign nationals who entered as nonimmigrants, a call for more restrictive immigration policies might seem the natural response” (2006, 46). Hing goes on to point out, however, that “while such a response was predictable, it was misguided and has inevitably resulted in overreaction” (47). He argues that a less, rather than more, restrictive immigration policy is more in the interests of U.S. national security. Similarly, David Cole and James Dempsey, who have applied their book *Terrorism and the Constitution* to the subtitle *Sacrificing Civil Liberties in the Name of National Security* (2002), argue that in delicately balancing liberties and security the U.S. government should not trample on the rights of vulnerable immigrants. They state that “while the post-September 11 response does not yet match . . . historical overreactions, it nonetheless features some of the same mistakes of principle” (151). Elsewhere, Cole argues that in spite of “talk about the need to sacrifice liberty for a greater sense of security, in practice we have selectively sacrificed *noncitizens'* civil liberties while retaining basic protections for citizens. It is often said that civil liberties are the first casualty of war. It will be more accurate to say that noncitizens' liberties are the first to go” (2003, 955; italics in original). He challenges this “double standard” not only on the grounds that it is against U.S. security interests both normatively and constitutionally but also on the grounds that it is likely to end up encroaching on citizens' liberties as well.

Cole contends that the line between citizen and noncitizen can easily be crossed. He finds ample support for this in U.S. history, corroborating our analysis in this chapter. The Sedition Act of 1918 punished political dissidents during the Palmer raids for allegedly disrespecting

the government—noncitizens and citizens alike. Japanese Americans were interned for fear of potential subversive action. During the McCarthy era, communist ideology and political association trumped race in the arrests and the eventual deportation of radical citizens along with radical aliens. Undisclosed evidence was used to incriminate the I.A. 8. The underlying rationale has been that aliens should not benefit from due process in the same manner as citizens. However, Cole contends that “contrary to widely held assumptions, the Constitution extends fundamental protections of due process, political freedoms, and equal protection to all persons subject to our laws, without regard to citizenship” (2003, 221).

Some legal scholars have argued that post-9/11 government policies are less about citizenship status than about Arab or Muslim identity and that they exemplify unconstitutional racial/religious profiling. Susan Akram and Maritza Karmely (2005) argue that the government has targeted Arabs and Muslims, both aliens and citizens, beginning long before 9/11 and suggest that their alien versus citizen status is actually a “distinction without a difference.” Elsewhere, Akram and Kevin Johnson (2004) point out that as far back as the 1970s U.S. laws and policies targeting Arab and Muslim noncitizens have been predicated on the assumption that Arabs and Muslims in general are potential terrorists. Lei Volpp (2002) similarly maintains that those who appear Middle Eastern, Arab, or Muslim, regardless of their citizenship status, are excluded from being considered American because of the legitimization of racial profiling and the redeployment of Orientalist stereotyping. Still, Volpp holds that a clear distinction exists between the treatment of citizens and that of noncitizens, which underscores the fact that formal, legal rights do make a difference.

According to law professor Hiroshi Motomura, after 9/11 the U.S. government adopted a double standard in the justice system—one for citizens and another for noncitizens⁵⁹—for reasons of convenience: “Noncitizens can be arrested, detained, and deported under immigration law with little recourse to the constitutional protections that would limit the government outside of immigration. For this reason, the government found it easier after September 11 to proceed against noncitizens in the United States who were suspected of terrorist ties by enforcing immigration laws, rather than initiating criminal prosecutions” (2006, 174). Immigration law is now being used as antiterrorism law through “new patterns of enforcing laws that have long been on the books” (177), and those singled out on suspicion of terrorism are Arabs and Muslims.

However, racial/ethnic profiling as a law enforcement technique can be sloppy and irrational, and the yield in this case has been negligible. Motomura writes, “The thousands of detentions that resulted from the post-September 11 immigration law enforcement against Arabs and Muslims led to virtually no terrorism convictions. Racial or ethnic profiling can cause ethnic communities to mistrust enforcement agencies, and the failure to enlist these communities’ assistance may be fatal to investigate terrorism” (181). Further, Motomura points to the harm that targeting Arab and Muslim noncitizens inflicts on citizens: “The assumption was that profiling in immigration law enforcement hurts only the noncitizens who are arrested, detained, or deported. Even the administration’s critics seemed to accept this assumption and did not press the point that post-September 11 enforcement treats too much on *citizens’* civil rights” (182, italics in original). Motomura’s argument rests on the belief that the function of immigration policy is to ensure the nation’s safety and the well-being of its citizens. The Bush administration has ignored the fact that noncitizens have strong intimate, professional, and civic ties to U.S. citizens. Profiling burdens loved ones and ethnic/religious communities with the stigma of guilt and increases their vulnerability to hate crimes. As Motomura says, “The real test of profiling is how it affects citizens, and the worst aspect of plenary power is that it disregards the interests of citizens in choosing new citizens, and thus in shaping their national future” (2006, 183). Motomura asserts that just as settlers on the western frontier circled their wagons to defend themselves against Native American raids, the Bush administration has kept Middle Eastern and Muslim Americans outside the circle. The problem is that “as soon as enforcement of immigration law relies on race and ethnicity, then a person’s race and ethnicity will matter more than whether he is a citizen” (187).

FACTORS LIMITING THE POST-9/11 GOVERNMENTAL POLICIES

Why have the post-9/11 government initiatives differed so markedly from their historical predecessors? There are several plausible explanations. First, the passage of the civil rights laws of 1964 and 1965, with their far-reaching legal consequences, has undoubtedly made a dramatic difference. Networks of rights-oriented grassroots advocacy nonprofits have emerged since the 1960s as watchdogs of the nation’s constitution and legal framework. Activists have been able to mobilize their constituents whenever they see threats to the erosion of hard-won civil

rights. Among others, the American Friends Service Committee and the ACLU were at the forefront of advocating for the rights of individuals held in detention centers in New Jersey and New York City. They tend to be successful whenever a large proportion of the public believes in a specific right, as was the case with the TIPS program, which proposed to enlist thousands of mail carriers, electricians, and other service providers as "citizen observers." TIPS was defeated when extensive media exposure resulted in outrage among the American public. The ACLU orchestrated the media blitz and the subsequent repeal (see Appendix).

Civil rights organizations have filed lawsuits against the government's excesses during the post-9/11 backlash.⁶⁰ In the first class-action case to reach a federal court, the Center for Constitutional Rights represented brothers Hany and Yasser Ibrahim, who were detained in the weeks after 9/11 and then deported to their native Egypt. They had overstayed their tourist visa. The judge, who heard the case in June 2006, allowed that the government had the right to detain noncitizens but faulted its abusive and unconstitutional confinement conditions. The judge's decision implies that former attorney general John Ashcroft and FBI director Robert S. Mueller will have to appear in court to answer these accusations. Constitutional scholars and the civil rights community found the ruling problematic because it would encourage profiling, and they have vowed to appeal.⁶¹

A second, related explanation for the relative restraint in the case of 9/11 is that, as Richard Alba and Victor Nee write, "*In the post-civil rights era, the institutional mechanisms for monitoring and enforcing federal rules have increased the cost of discrimination in non-trivial ways*" (2003, 54, emphasis in the original). Torpey argues that in response to the civil rights movement "the architects of the movement for Japanese American redress believed that it was strategically important to frame their demands in terms of constitutional violations—transgressions against the rule of law itself—rather than in terms of the wrong inflicted on a particular group. Instead, they stressed that, as a violation of the Constitution, it was a wrong done to the entire country" (2006, 87). The Japanese redress movement, which resulted in the passage of the Civil Liberties Act of 1988, cost the U.S. government \$1.6 billion. It is no wonder that the consensus at the highest levels of government not to repeat "our worst wartime mistake" seems to hold, at least for now.

Third, pluralism and multiculturalism have replaced the assimilation ideology of the early twentieth century. Since the civil rights movement,

minority populations have fought for greater inclusion in the Anglo/WASP mainstream. Both quantitatively, because of the influx of new immigrants, and qualitatively, because of the increased acceptance of ethnic and other minority diversity, American society has become more accepting of cultural pluralism. Even the "system" is more careful to respect minority and ethnic cultures.⁶²

Fourth, the role of the major U.S. newspapers, such as the *Washington Post*, the *New York Times*, and the *Los Angeles Times*, in exposing government abuses of civil rights has been critical. Globalization, especially in communications, has made news dissemination instantaneous, and the Arab and Muslim world is watchful. When the U.S. government profiles Middle Eastern and Muslim Americans and violates their human rights on our home turf, its proposals for improvement of human rights in the Middle East appear hypocritical and foment anti-American sentiments.

In conclusion, in the parlance of social movement literature, the institutionalization of civil rights laws opened new political opportunities for the affected communities. In the last quarter of the twentieth century, the United States experienced a major shift in its institutional structure and ideological outlook that has made minority/outgroup mobilization not only possible but also supported by the large oversight organizations that monitor governmental action/inaction.

Additionally, the passage of several decades since the civil rights laws has allowed the American people to become more familiar with the implications of the laws. Though race remains a heinous discriminatory marker in the United States, there is widespread acceptance of cultural diversity: that is, "discursive opportunity structure" (e.g., Koopmans et al. 2005). Therefore, the political climate at the turn of the twenty-first century has been more conducive to claims making, an opportunity the Japanese and Germans did not have when they suffered backlash in the twentieth century.