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The Spanish Inquisitorial Process in Latin America and Racial Profiling Today: A Comparative Legal Study

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THE SPANISH INQUISITORIAL PROCESS IN LATIN AMERICA AND
RACIAL PROFILING TODAY: A COMPARATIVE LEGAL STUDY

by

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B.A. University of Central Florida, 2021

A thesis submitted in partial fulfillment of the requirements
for the degree of Bachelor of Arts, Latin American Studies,
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ABSTRACT

This thesis analyzes the profiling practices of the Spanish Inquisition and explores how comparing these to present manifestations provides us a lens for understanding the phenomenon of racial profiling today. Irene Silverblatt notes that with reference to the Spanish Inquisition in colonial Peru, certain practices of the Inquisition constituted what could be called “racial profiling” in today’s terminology. This thesis revisits Silverblatt’s seminal observation and extends it to current questions of racial profiling, its nature, parameters, and the most notable differences and similarities between profiling during the Inquisition and racial profiling today, even as the enforcement in question shifts from matters of religious belief to policing with ethno-cultural characteristics in view. Currently, racial profiling is a phenomenon still in search of a standard definition and comprises complex legal and emotional issues involving law enforcement impacting many ethno-racial minorities. Specifically in border control, evidence suggests that tactics of racial profiling are employed to target undocumented immigrants with a criminal background, but the wider consequences can impact a wider range of individuals, some of which may include non-criminal, non-immigrant Latinos. Understanding how racial profiling worked in the Spanish Inquisition’s procedures helps us to perceive racial profiling today with keener sensitivity and awareness. Specifically, with reference to perceptions of “Mexicanness” at the U.S.-Mexico border, this enables us to see how, for both, racial profiling draws parameters for categories of suspect(s) beyond demonstrable criminality to include wider, at times inaccurate, categorical markers of appearance and behavior which may not coincide with an ethno-racial group’s identity on the group’s own terms.

DEDICATION

I dedicate this thesis to my family and friends who have always supported me and encouraged me to follow my dreams. Words cannot express how grateful I am for all of you.

To my mother, Maria Miller, for her love and faith in me. Thank you for always being here for me and for reminding me that I am more than capable of achieving my dreams. Your sacrifices provided me with the opportunities that not everyone is fortunate to have, and I do not believe I would be here if it were not for you.

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To the rest of my family, who continue to provide endless love and support. Without all of you, I would not be where I am today. Your love and support keep me motivated to not only work hard for myself but for all of you as well. I promise to keep making you proud.

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INTRODUCTION

Analyzing the profiling practices of the Spanish Inquisition and comparing these to present manifestations of racial profiling provide us a lens for defining the phenomenon of racial profiling in our own time. Racial profiling is a phenomenon still in search of a standard definition. As Irene Silverblatt notes with reference to the Spanish Inquisition's procedures in colonial Peru, certain practices of the Inquisition constituted what could be called "racial profiling" today, in popular and academic uses of the term (Silverblatt 25). However, the very application of this term, which did not exist several centuries in the past, remains contested. This thesis revisits Silverblatt's seminal observation and extends it to present-day questions of racial profiling, its nature, parameters, and the most notable differences and similarities between profiling during the Inquisition and racial profiling today. As the Spanish Inquisition sought to prosecute religious beliefs they deemed heresy, they focused on markers of cultural identity that extend beyond credal considerations. The Inquisition engaged in profiling based on behavioral and non-behavioral practices, whereas racial profiling today depends largely on visual categorical markers, such as hair color, skin color, facial features, clothing style, etc. While the Inquisition conflated matters of belief and behavior, racial profiling today is most prominent in issues concerning border control. Despite the more visible characteristics of those being targeted, there are points like national origins and related assumptions that are parallel to how the Inquisition looked at purported Jews or Muslim *moriscos*.

Building on Silverblatt's suggestion, we can first identify some elements of racial profiling in the Holy Office of the Spanish Inquisition's earliest decades, long before the Inquisition began operating in colonial Peru. Founded in 1478, the Spanish Inquisition's primary objective was to preserve Roman Catholic orthodoxy from aberrations of perceived "heretics." During the centuries of the Spanish Inquisition's operation, "heretic" as a categorical label changed over time. It could include judaizers (sometimes called crypto-judaizers), *conversos*, *moriscos*, Protestants, etc.; notably, the focus initially fell upon so-called *conversos*, suspected judaizers, because the Inquisition's jurisdiction — technically, theoretically — included only professing, baptized Christians. This is where the phenomenon of racial profiling came into play because of speculation surrounding *conversos* and the questions concerning the relative sincerity of their conversion to Christian beliefs. As the Inquisition leveled suspicions at *conversos*, this naturally raised questions as to how judaizing *conversos* could be identified and prosecuted. In light of this, the Inquisition developed procedures, derived from precedents in Roman Canon Law and inquisitorial judicial process, for soliciting testimonies from both the accused and associates of the accused — procedures revived and repurposed for meticulously examining the life stories and blood lineage of suspected judaizers.

In our own time, we have a term, "racial profiling," to designate such practices, yet the applications of that term remain contested, with definitions in flux. Racial profiling, reminiscent of that which the Spanish Inquisition practiced, takes place even within and alongside our adversarial judicial system, especially in the context of border control. "Racial profiling" is the prevailing term, in popular and professional contexts, but there are alternatives, such as "ethno-

racial profiling,” a term that Pat Rubio Goldsmith utilizes when discussing state violence in the Southwest *barrio* and the criterion of “Mexicanness,” where some visible, audible categorical markers are used such as skin color, facial features, language, and clothing style when identifying Mexicans as a particular ethno-racial group for control, monitoring, or detention. Variations in terminology correspond to differences in how racial profiling is defined. Some include a moral assessment in their treatment of the phenomenon, while others confine themselves to legal and constitutional terms. Michal Tamir, for one, does not specify what she means by moral assessment, but for my purposes, I will understand it as an evaluation of guilt relative to perceived adherence to a social norm (how people tend to behave in a particular society); such assessment may consider behavior, clothing, or other visual or audible categorical markers that Goldsmith discusses. As we will see, this array of factors does not necessarily match an ethnic group’s own markers of identity and inclusion. Furthermore, while this thesis focuses on evidence related to the Latino community and the issues of border control, various minority groups are affected by procedures of racial profiling; the implications, then, are likely applicable more widely to the experience of other ethno-racial minorities.

THE SPANISH INQUISITION

Large-Scale Conversions and Their Aftermath

Following the Edict of Expulsion of the Jews from Spain (1492), Jews who chose to convert to Christianity in order to remain within Spain became a large, new subset within Spanish Roman Catholicism. The context of large-scale conversion, and the potential for ulterior motives that conversion might entail, meant that these *conversos* were suspected of continuing their practices of Jewish ceremonies and conserving their Jewish beliefs. The Expulsion of 1492 was, in fact, something of a culmination of Spain's antisemitic measures from prior centuries. In the Middle Ages, the Iberian Peninsula was home to the largest population of Jews in Western Europe, but in 1391, Dominican friars provoked riots and pogroms against the Jews, which gave way to large-scale baptisms of Jews under duress. These circumstances eventually sparked a debate over whether or not these "new Christians," also known as *conversos*, were sincere in their new beliefs, thus raising levels of suspicion (Homza xv). Because of "Anti-Jewish polemics" created by Old and New Christians, an interest in genealogy flourished with pressure for individuals to document "a lack of *converso* bloodlines" (Homza xvi). Throughout the fifteenth century, many Spanish civil and ecclesiastical authorities disagreed on the sincerity of *conversos'* religious beliefs (Homza xvi). In 1477, while King Ferdinand and Queen Isabella were in Seville, they heard the preaching of a Dominican friar, Alonso de Hojeda, who stoked the monarchs' preoccupations regarding the religious situation with the judaizing *conversos* and how supposedly they were continuing to practice the Mosaic law (Homza xiv). These preoccupations directly informed the establishment of the Spanish Inquisition and its initial targeting of Spain's

Jewish population. Between 1480 and 1492, Spain experienced a wave of arrests of baptized men and women who were suspected of having been “contaminated” by Jews because of their presumed interest in the dietary laws and religious rituals of Judaism (Homza xx-xxi). In order to rectify the mingling of Jews and *conversos*, King Ferdinand and Queen Isabella felt it necessary to ostracize Jews from numerous cities and dioceses, or, in other instances, to confine them to ghettos within urban centers, as in Seville. Eventually, by 1483, Jews were expelled from Jerez de la Frontera and the dioceses of Zaragoza, Aragón, and Teruel (Homza xxi). Unfortunately, these partial expulsions proved unsuccessful in relation to the monarchs’ intentions, because inquisitors continued to encounter judaizing *conversos*. As a result, inquisitors and likeminded clergy felt it best to expel the Jewish population as a whole, creating a whole new generation of *conversos* (Homza xxi-xxii).

Targets of the Spanish Inquisition

The Spanish Inquisition aimed to protect Roman Catholic orthodoxy. Over the centuries of its operation, its targets remained the same insofar as, in theory, the targets were “heretics,” but the groups of people suspected of heresy changed over time and geography: Judaizers, *conversos*, *moriscos*, Protestants, indigenous converts in the New World, etc. As a result, the practice of racial profiling emerged because *conversos*, by definition, had changed their religious affiliation, if only nominally, but might retain elements of their former Jewish or Islamic faith. Therefore, the shifting categories of ethnicities suspected of heresy serves as a key part of my argument. Between 1480 and 1492 when the inquisitors arrested baptized men and women who supposedly continued the practices of Judaism, they viewed their suspects as having been

“contaminated” by Jews. This revelation encouraged the creators of the Spanish Inquisition and the Spanish monarchs to begin a process that would essentially expel all Jews in order to limit contact between the unconverted and the *conversos*. Since *conversos* comprised “new Christians,” baptized converts, the Spanish monarchs no longer wanted their subjects’ beliefs to be compromised (Homza xvi).

Heresy

The Spanish Inquisition’s official remit was “heresy,” but heresy, as a category, proved to be broad, flexible, and ambiguous. The Inquisition became an active vehicle for religious intolerance, by which those who confessed or were suspected of heresy underwent detention, trial, and punishment. In contrast to the ideal of “innocent until proven guilty,” the Spanish Inquisition operated on a fundamental concept of confession: a person who confessed would thereby become subject to a prosecution, and the trials’ principal aim was to elicit a full confession for the purposes of assigning spiritually salutary penance, even burning at the stake. Racial and ethnic categories naturally underpinned the grounds of suspicion for the Spanish Inquisition. In theory, although the Inquisition’s initial motive was to preserve Roman Catholic orthodoxy, as the work of Irene Silverblatt reveals, there are significant inconsistencies between the Inquisition’s stated motives and ideals, and the clear-cut application of procedures with reference to particular cases that will be reviewed. Her work discusses colonial Peru, and her broad argument insinuates that in bureaucracies, especially in the inquisitorial bureaucracy that governed Lima, we can identify the seeds for some remnants of colonialism even today. Silverblatt also suggests that the Inquisition wielded racial profiling. She highlights that

inquisitors practiced a kind of racial profiling in their efforts to expose the truth, because their form of profiling attached guilt to specific classes of human beings. Silverblatt also mentions that “in the pursuit of ‘new Christians’ ancestry,’ magistrates showed that their judgements were beholden to stereotypes and that they could create their own truth” (147). Moreover, stereotypes play an integral role when it comes to the topic of racial profiling because while the Inquisition dealt with issues of religion (intangible beliefs, abstract creeds, doctrines), the procedures utilized to determine guilt constituted profiling on the basis of external markers, corresponding to patterns that law enforcement at the United States’ border currently uses when engaging in such practices.

The Spanish Inquisition’s Organizational Structure

A brief overview of the Spanish Inquisition’s organizational structure will help clarify the contexts in which these procedures emerged and were perpetuated. The effectiveness of the Inquisition depended on the developments of tribunals, higher officials, and councils. Each tribunal required a minimum of two inquisitors, either a theologian or a canon law jurist or both. To name a few supporting roles, the inquisitors were often assisted by a prosecutor; a constable, who was responsible for detaining suspects; theologians who served as consultants; etc. What we will notice in the trials in question, witness depositions instigated inquisitorial trials. To put it simply, witnesses would depose before the prosecutors, disclosing relevant information about the defendants’ presumed heresy. Later, after the public denouncement of the defendant, prosecutors could continue interviewing additional witnesses. Depending on the evidence, if the “depositions against a suspect reached a critical weight,” the prosecutor would request the apprehension of the

suspect by the constable (Homza xxiii). The trial process commenced after the prosecutor orally and formally highlighted the charges against the defendant suspected of heresy. The defense attorney was appointed by the tribunal and was assigned to the case, but private communication between the defendant and the defense attorney was prohibited. It was the defense attorney's responsibility to notify inquisitors if the case "lacked justice" (Homza xxiv). In addition, although defendants knew generally that they were being charged with heresy, defendants remained unaware of the witnesses that testified against them or the nature of those witnesses' testimony, thereby diminishing their defense strategies. The strategies that the defense did have were *abonos*, *indirectas*, and *tachas*. *Abonos* aimed to utilize character witnesses to verify the defendant's Christian beliefs and behaviors, whereas *indirectas* called the witness to testify on behalf of the defendant to cast doubt on specific accusations. Furthermore, the *tachas* strategy aimed to incriminate the prosecution's witnesses by questioning the motives of the witness as malicious or otherwise motivated by animus against the defendant.

During the trial process, the *Instrucciones* (procedural instructions) for the Holy Office prescribe testimony and consultation; the first interview; genealogy; admonitions; hearing the defense. These particular instructions are revelatory when highlighting elements of racial profiling during the Inquisition. The first interview was important because once the prisoner was placed in prison, he would be brought before an inquisitorial notary to take an oath. The standard questions for the defendant demanded his name, age, occupation, residence, and how long he had been imprisoned. During this process, inquisitors were expected to treat prisoners kindly so they would not have a reason to despair. As far as genealogy is concerned, prisoners were ordered to

reveal this information, dating as far back as they could, preferably beginning with parents and grandparents. The genealogy allowed the tribunal to delve deeper into the lives of these prisoners because the Inquisition believed that by illuminating factors like their ancestors' occupations, residences, their spouses' names and, where relevant, the number of times they had been married prior to their detention, it might provide some insight into the defendant's character and associates. It was then the Inquisition's responsibility to record this genealogical information into the trial record and "putting each person at the start of a line ... penanced by the Inquisition" (Homza 224).

In addition, formal interrogations dissected the lives of the defendants by asking questions pertaining to where and with whom the defendant grew up, whether or not he attended a university, etc. After the declaration of this information, the defendants were asked if they were aware of the reason(s) behind their imprisonment. Depending on their answer, additional questions related to the case varied. Those guilty of these crimes received various penalties and penances imposed by the Inquisition. Such penalties fell under the "conformity with law, and their lawful discretion" (Homza 230). Finally, during the accusation phase of the trial process, defendants were accused of heresy through evidence presented by testimony or confession, although the veracity and reliability of such confessions are, of course, dubious.

After reviewing some of the *Instrucciones* of the Holy Office and analyzing how specific codes of procedure evince practices of racial profiling, key cases help to provide context for these inquisitorial procedures and illustrate elements of racial profiling in practice. For instance, in the case of Abram (or Abraham) Ruben, he was a Jew living in a well-established Jewish

community in a North African city, Fez. Essentially, the story of Ruben emphasizes the price of conversion. Around age 25, Ruben established a career for himself as an itinerant rabbi after leaving his native land for the eastern Mediterranean. As a rabbi, he often held a variety of small rituals with fellow Jews. Eventually, Ruben decided to change his name and begin a somewhat 'new life' by traveling to the Netherlands, integrating himself in the Catholic community in 1616, where he eventually converted to Christianity, and then adopted the baptismal name, Francisco de San Antonio. However, Ruben's, now Francisco, journey is not over because he decides to travel to Lisbon, where he could find a *converso* community to join. Many of these *conversos* were "secret Jews," who lacked "basic instruction in Hebrew and the tenets of Judaism" (Kagan and Dyer 110). As a result, after reigniting contact with his former community, Francisco decided to rekindle his ancestral faith and resumed his life's work as a rabbi. However, this transition began to attract attention from the Portuguese Inquisition. The role of the Portuguese Inquisition is integral because like its Spanish counterpart, and while they are separate tribunals, they are operating as part of the same Inquisition, because Portugal was under the Spanish monarchy at this time, it "prosecuted baptized Christians suspected of heresy" (Kagan and Dyer 88). Eventually, the Spanish Inquisition found Francisco guilty of "judaizing," and as a result, he was exiled from Portugal. Upon leaving Portugal, Francisco encountered a woman named Maria Gonzalez, whose life story proclaims that she was an Old Christian who was abandoned by her husband. The couple ventured into Madrid with a scheme of Francisco for Maria to act as an unmarried Jewish woman, who has a desire to convert to Christianity and marry Francisco de San Antonio. Francisco's role would be to bring Maria's case to Spain's King

Philip IV's attention, and in return, the couple would receive an extravagant gift from him. Francisco continued his work as a "clandestine rabbi, this time in Madrid," where his scheme continued for three years until Francisco and Maria fell ill. Francisco and Maria were finally arrested for their crimes after Maria confessed her sins to the hospital's priest while she was fighting for her life. In adherence to the procedures of the Inquisition, Francisco and Maria were tried separately, where Francisco was charged with Judaizing and Maria was charged with bigamy. As per the instructions for the Holy Office, during his trial, Francisco was asked the procedural questions, such as his name, age, occupation, and how long he had been arrested. Later, the type of questions that were asked concerned his fidelity to Christianity. For instance, he was asked if he was baptized and a confirmed Christian and he confirmed that he was by claiming he was baptized in 1616 in Antwerp, confesses, and hears mass. He also proved that he could recite four prayers, the Ten Commandments, and the Articles, and do it well. In addition, he also confirmed his abilities to read and write since he supposedly studied at a university. While he is able to read and write in Hebrew, he is unable to do so in Castilian. One of the main differences that I noticed between the elements of racial profiling during the Inquisition and racial profiling today is that during the trials of the Inquisition, defendants would be asked to illustrate their life story. Also, Francisco was asked if he was aware of the reasons behind his arrest and why he was brought before the Holy Office. He answered by claiming he baptized his wife, Maria de los Reyes, who had been a Jew. Maria was asked the same routine questions regarding her race, the reasons behind her arrest, and asked when she got married a second time to Francisco (Kagan and Dyer 88-118).

Value of Confessions

According to Richard Kagan and Abigail Dyer, the Spanish Inquisition placed high value on confessions during criminal trials; however, what separates the Inquisition from other tribunals is that they preferred to hold secret trials and refused to reveal the identities of witnesses who participated in the trials, whose testimonies “contributed to the presumption of guilt” (Kagan and Dyer 6). The Inquisition’s strategy to obtain truthful confessions was through extraction by fear from its prisoners. The Inquisition viewed these confessions as opportunities to reveal information that might be pertinent to the case. However, the problem with these confessions is that they run the risk of unreliability because some prisoners would cultivate stories as a way “to beg inquisitorial forgiveness and mercy” (Kagan and Dyer 6). According to the Inquisition, cases involving *moriscos*, judaizers, and others accused of heresies, posed a greater threat to Roman Catholic orthodoxy and the general Spanish society. In these particular cases, inquisitors were encouraged to investigate the lives and backgrounds of the accused. During the Inquisition, the Holy Office believed that heresy was hereditary. The most integral part of the Inquisition were its procedures because they required judges to collect sufficient information regarding the individual being prosecuted. Essentially, the Inquisition belonged to a long line of tribunals with “the purpose of extirpating heresy from within the confines of Christendom” (Kagan and Dyer 11). This judicial procedure encouraged judges to collect evidence, interrogate witnesses, and order arrests for the sake of the court proceedings. Here we can identify the two categories of the philosophy of law, jurisprudence, that is divided into two broad categories: inquisitorial and adversarial systems of judicial process. On the one hand, an

adversarial system of justice will normally include elements of the inquisitorial systems in its process, and vice versa. On the other hand, in ideal, theoretical terms, the principal points of difference are as follows: the inquisitorial system of justice is “largely controlled by judges rather than by lawyer and [...] the hearing or trial is considered to be part of the investigation,” while the adversarial system is “largely controlled by contending lawyers than by judges and [...] the hearing or trial is considered to be separate from the investigation,” to borrow Michael Asimow’s useful summary (2014:93).

The Moriscos

Even though the Edict of Expulsion of the *morisco* population from Spain came later than the edict concerning the Jews, similar patterns of suspicion and prosecution played out in the Spanish Inquisition’s treatment of the *moriscos*. Indeed, precisely because the earlier prosecutions of suspected judaizers provided a precedent, the inquisitors had a template to follow when turning their attention to suspected heretics of a different ethnicity. In December of 1527, recommendations were put forward by an ecclesiastical congregation to eliminate traces related to the “still flourishing Moorish civilization in Granada” (Rawlings 77). This was viewed as a punishable offense because the Inquisition viewed Islamic customs as impediments to Christian acceptance. Eventually, this led to the evolution of Christian authorities’ assault of the *moriscos* because instead of focusing on their religious deviance, they focused on their overall cultural identity. Despite this, *moriscos* were able to maintain their religious identity under the terms of the Islamic doctrine of *taquiyya*, which allowed Muslims to adopt all the appropriate external features of Christianity as long as they remained privately faithful to Islam, also known as the

falsity of Christian belief (Rawlings 78). Referring back to the behavioral practices of heretics, *moriscos* participated in daily prayer and his observance of periods of the past, such as Ramadan. They would also engage in Sunday labors and they would feign confession of sins. As far as non-behavioral practices are concerned, the *morisco* would not attend Mass and they would refuse “to acknowledge the consecration of the eucharistic bread and wine” (Rawlings 78). The evolution of Christian authorities’ prosecution of the *moriscos* corresponds to racial profiling today because instead of looking solely at the *moriscos*’ religious identity, they shift their attention to the evaluation of cultural identity.

Tactics of the Spanish Inquisition

The Spanish Inquisition employed profiling tactics throughout the trial of a suspected heretic and their methods of profiling targeted visible, external traits as well as inconspicuous characteristics to assign suspects to particular categories. They incorporated factors like genealogical questioning, *limpieza de sangre*, and asked routine questions when determining if the suspect was guilty of heresy. *Limpieza de sangre* played an integral role in the Inquisition’s profiling procedures because there was a demand for *limpieza de sangre* that a suspect’s ancestry was not tainted by Jewish or Muslim blood. *Limpieza de sangre*, genealogical investigations, and questions related to external modes of appearance and lifestyle are leveraged together in order to examine the sincerity of heretics’ beliefs. Having reviewed the relevant procedures alongside illustrative cases, we can formulate a definition of racial profiling as practiced by the Spanish Inquisition in the following terms: a suspect’s particular ethno-racial traits or absence of such

traits figured in the Inquisition's assessment of their guilt or innocence, motivating denunciations and apprehensions, and impinging on the formal evaluation of a suspect's case.

RACIAL PROFILING TODAY

Racial Profiling

While the term “racial profiling” seems to prevail in common parlance today, I encountered two additional terms while conducting my research: “ethno-racial profiling” and, similarly, “ethnic-racial profiling.” These terms usefully foreground that race is not necessarily ethnicity, and vice versa. However, for the purpose of this study, I will use the most common term, for clarity and convenience, while also acknowledging the utility and nuance of alternative terms applied by other scholars. Having considered the important nuances of definitions and terminology, my working definition of racial profiling agrees with Michal Tamir’s, defining this phenomenon as “any police-initiated action that relies on the race, ethnicity, or national origin rather than the behavior of an individual or information that leads the police to a particular individual who has been identified as being, or having been, engaged in criminal activity” (Tamir 74). Tamir’s definition is useful because it covers applications of racial profiling that alternative definitions exclude, such as the ACLU’s which states that “racial profiling does not refer to the act of a law enforcement agent pursuing a suspect in which the specific description of the suspect includes race or ethnicity in combination with other identifying factors” (ACLU n.pag). The ACLU’s relatively more limited definition of racial profiling can result in blindspots when critically considering the phenomenon -- areas of disregard that my working definition endeavors to illuminate, as is illustrated throughout the present thesis. I will apply discourse analysis to explore documents dating back to the Spanish Inquisition, especially trial records from that time,

while also reviewing articles and cases that incorporate elements of racial profiling today in order to evaluate existing patterns of correspondence or relation.

According to the ACLU, there are different situations in which racial profiling is applied, but for the purpose of my thesis, I am going to discuss elements of worksite racial profiling with regard to perceptions of immigration status. Over the years, the U.S Immigration and Naturalization Service (INS) has exhibited a tendency to “disproportionately” target ethnic groups based on color in relation to undocumented labor violations (ACLU n.pag). While the targeting of these groups may seem inordinate, the INS requires sufficient evidence in order to arrest or detain based on probable cause or reasonable suspicion. Although nationality is an integral part in matters of immigration violation, if there is not sufficient evidence to prove that any wrongdoing was committed, then no further action can be taken by law enforcement. The *New York Times* has reviewed many files of raids that the INS have taken part of over the years regarding “the settlement of garment worker union selective enforcement suit against the agency in New York City” (ACLU n.pag). While reviewing these files, the *New York Times* noticed that there were indeed some raids that were based on fact and sufficient evidence; however, about 80% of these raids were based on subjects’ appearance or language, and there was not sufficient evidence of any wrongdoing. Some characteristics that were considered included skin color, language, whether or not the suspect had an accent when speaking English, or if suspects appeared to be South or Central American based on their clothing, claiming that their clothing did not match that of a “typical Northern American” (ACLU n.pag). The characteristics that were mentioned by the ACLU mirror the categorial markers that Goldsmith includes in his study,

markers that determine if suspects look North American. With that being said, by using these categorial markers, a few of these raids resulted in the discovery of undocumented workers, and nearly everyone who was arrested were Latino. Over the years, several suits have been filed against the INS in California, Arkansas, Louisiana, and Ohio, alleging acts of racial profiling. For instance, there was a suit in Ohio where the federal court found that there were violations of the rights of Latinos by state highway patrol officers. With regards to the practice of stopping Latino drivers with the purpose of questioning their immigration status, there were even instances when officers confiscated green cards of legal migrant workers, claiming they were forgeries. In addition, federal courts in California found evidence of Fourth Amendment violations in instances of highway patrols' stopping Latinos on the basis of appearance and supposedly sounding foreign in speech or name (ACLU n.pag).

It is important to distinguish between “racial profiling” and “criminal profiling.” If an individual commits a robbery at a local convenience store and the culprit neglects to wear a mask, witnesses can provide law enforcement with a physical description of the offender. In theory, an element of racial profiling is essential or inevitable in such cases because it steers law enforcement in the direction of a probable suspect, but does not necessarily entail the scrutiny of a racial community more broadly. This is why law enforcement training and the legal system distinguish between “criminal profiling” and “racial profiling.” However, the application of racial profiling remains contested because of the potential or capacity for this phenomenon to encourage certain law enforcement officials to express or enact their biases against specific minority groups beyond particular criminal investigations. Doris Marie Provine and Gabriella

Sanchez discuss Maricopa County Sheriff Joseph Arpaio's reputation for executing workplace raids in predominantly Latino neighborhoods in the metropolitan area of Phoenix. Sheriff Arpaio's jurisdiction included the city and areas surrounding the suburbs, which houses a large population of Latino residents. Ostensibly, the objective of these raids was to remove criminals, but in reality, the raids focused on identifying, apprehending, and deporting unauthorized immigrants while also serving as a reminder to Latino immigrants that, regardless of their immigration status, they still submit to "the power that law enforcement holds over their lives" (Provine and Sanchez n.pag). Because of this system, the authors cite a study that shows how such operations instill a sense of fear among Latina immigrant women in Phoenix, deterring them from leaving their homes; the effects of such operations, then, extend to those who have a secure legal status. Provine and Sanchez's work includes statements from law enforcement officers who demonstrate the effectiveness of utilizing ethno-racial profiling (using physical appearance and notions of race and ethnicity) to subject Latinos to search, seizures, and scrutiny (Provine and Sanchez n.pag). In addition, the principal objective of the Legal Arizona Workers Act (2008) is to impede businesses from deliberately hiring an unauthorized alien. This employer sanctions law, as it is commonly called, requires that Arizona employers leverage E-Verify systems, which is a Web-based service offered by the Department of Homeland Security to verify the authorization of employment of new employees. However, the law is also known to be used to justify raids against businesses who are believed to have violated the law and hired undocumented immigrants (Provine and Sanchez n.pag). There have been numerous cases when employees have had suspicions about "illegals" being on the business' premises. In these cases,

employees justified their suspicions by saying that they heard “Mexican” music or Spanish being spoken, so these disgruntled employees made an assumption on the basis of such categorical markers that Goldsmith mentioned in his work. Ultimately, Provine and Sanchez explain that making assumptions regarding someone’s immigration status based on the type of music they listen to and the language they speak, directly entails an assumption regarding their legal behavior and status (Provine and Sanchez n.pag).

Victims of Racial Profiling

Ana Muñiz’s extended case study of Los Angeles law enforcement describes how a city’s policies can foment and reinforce profiling. She recounts an officer’s statement from his injunction declaration: “Sometimes a person will admit his gang membership, not by what he says or what he does, but by what he chose to wear that day” (Muñiz 113). In terms of non-discrimination, questions remain regarding what factors are permitted for consideration when establishing a case, such as the following: if there is a case that determines whether or not someone is deported, is law enforcement allowed to consider ethnicity, tattoos, age, gang membership, or gender in their decision to detain, search, arrest, or pursue charges? In addition, like the Black Codes of the American South following the Civil War -- laws governing African American conduct -- gang injunctions criminalize a broad range of mundane activities within the target community. Anyone who fits the racial profile of a gang member may be subject to stops and enhanced sentencing (Muñiz 116).

Victims of racial profiling are often African Americans and Latinos, but with the current issues concerning immigration, Latinos can be more susceptible targets of this practice in the

context of border security. It seems that, over time, the purposes and effects of racial profiling have evolved, thus exemplifying points of disconnect between stated motive and practical application of this phenomenon. At one point, this phenomenon provided a sense of security for the community because it guided law enforcement investigations towards a certain direction of whom to look for in a particular case; however, racial profiling has evolved into a phenomenon that can instill fear and a sense of vulnerability for all individuals and their loved ones within a community or network (Walker 121).

Hannah Walker suggests that targeting Latinos based on race for the purposes of immigration enforcement increases the likelihood that documented and undocumented have personal contact with the border control system. There are, in Walker's schema, two kinds of contact: personal and proximal. Personal contact can apply to families, friends, and social networks, whereas proximal contact refers to non-citizens who know someone who has been detained or deported. The point that Walker makes with her analysis is that having a relational connection to someone who has been deported or detained can have negative implications for one's life, especially with regard to degrees of socio-political participation (Walker 105). Quiora, Medina, and Glick expand on Walker's points by explaining that even though someone might not directly be at risk of detention or deportation, they can still be concerned for families, friends, and others among their social networks "as a result of increased attention to immigration enforcement or anti-immigrant sentiment" (Walker 105). As a result of the worry and concern, Latinos in communities subject to punitive immigration policies are discouraged from

maintaining contact with institutions that might compromise their status, or that of a loved one (Walker 106).

Racial Profiling in the Immigration Sector

Considering the issues of border control in the present day, U.S. border patrol officials continue their efforts to alleviate the high influx of immigrants entering the United States, specifically those arriving from Mexico. The historical roots of this pattern date back at least as far as the Mexican-American War. Events following that war influenced the implementation of special law enforcement agencies. At the time, Texas Rangers referred to Mexicans as “thieves” and “bandits,” believing that their main purpose was to reclaim stolen property (Romero 449). When Texas Rangers refer to Mexicans as such, U.S. citizens adopt these verbal cues. Eventually, these verbal cues begin to escalate and cultivate an image or stereotype of a particular group based on what they hear and see rather than what they actually know. Mary Romero’s article analyzes the function of immigration raids and how such raids relate to policing practices more broadly. Romero’s analysis considers a five-day immigration raid, evaluating how roundups contribute to patterns of immigration law enforcement practices. The study also describes how immigration inspections leave the suspected individual scarred. This is when racial profiling becomes an issue, when citizenship is called into question, because it involves perceived national origin being used as an “indicator of illegal status;” therefore, “Mexican Americans and radicalized Latino citizens were subject to insults, questions, and unnecessary stops” (Romero 449). Furthermore, by re-evaluating the history behind immigration laws based on racial exclusion, one can see how such measures and methods reinforce the stereotype that

Mexicans and any immigrants entering the United States via Mexico are inferior to the rest of society.

Ethno-Racial Profiling

Earlier I mentioned that although “racial profiling” is the prevailing term, I also recognize terms such as “ethno-racial profiling.” While no notable difference exists between these terms with regard to application, it is important to discuss Goldsmith’s treatment of “ethno-racial profiling” and state violence in the Southwest *barrio*. Prior to the U.S. invasion, much of the southwest region of what is today the United States of America was Mexican territory, under the colonial jurisdiction of the Spanish viceroy, but regardless, those who were of Mexican ancestry are often assumed to be foreigners. Consequently, persons identified as “Mexican” based on cultural and physical traits are believed to represent a “bodily figurative border” and, because of this, “Mexicanness” is marked as considerable grounds to suspect criminality in immigration law enforcement (Goldsmith 97). Goldsmith discusses the criterion of “Mexicanness,” which is socially and culturally constructed to separate group members from whites. In order to do so, categorical markers include skin color, facial features, language, and clothing style. “These markers identify Mexicans as a particular ethno-racial group that is distinct from and a cultural threat to whites and Anglo society” (Goldsmith 97). Goldsmith also draws parallels between mistreatment on the grounds of ethno-racial characteristics and residency or citizenship status. For instance, a 1975 Supreme Court decision in *United States v. Brignoni-Ponce* dealt with the question of whether “Mexican appearance” alone is sufficient grounds for law enforcement to conduct a citizenship inspection under the Fourth Amendment. The defendant was prosecuted

after the discovery of his role in transporting undocumented immigrants. His legal team argued that his appearance influenced his stop and it was no longer admissible in court, and this proved integral to the case because it deals directly with the issue of racial profiling in terms of how the opposing side discussed and articulated the evidence. Moreover, this decision regulated ethno-racial profiling in the seizure of suspected unauthorized immigrants. By “typing” suspected aliens, it makes racial profiling in immigration law enforcement acceptable and it fortifies a depiction “of Mexicans as foreigners, aliens, and criminals” (Goldsmith 97). When law enforcement agents leverage the criterion of “Mexicanness,” they are directing state violence at neighborhoods that are home to a vast population of Latinos, specifically those living in *barrios* who speak Spanish and “appear Mexican” (Goldsmith 118). As a consequence, a wide range of individuals are at risk of state violence along the border because victims of such violence can affect those who are and are not legally defined as criminals.

Earlier, we discussed how defendants who were suspected of heresy could be presumed guilty because of their ancestry. With that in mind, when scholars apply Critical Race Theory, they are able to ascertain copious techniques that immigration law enforcement utilizes to place people of Mexican ancestry at risk. For instance, according to Mary Romero, some techniques would include discretionary stops based on ethnicity and class; intimidation as a way to demean those being stopped; restricting the movements of Mexicans only or predominantly; “reinforcing stereotypes of Mexicans as being ‘alien,’ ‘foreign,’ ‘inferior,’ and ‘criminal;’ and limiting access to fair impartial treatment by the law” (463). Romero also highlights that citizens who share similarities, racially and culturally, with “aliens” who are being targeted by immigration law

enforcement will be treated as if they are “foreigners” because of categorical markers that Goldsmith mentions, such as skin color, language, clothing style, facial features, etc. In addition, by displaying such markers, these so-called “aliens” run the risk of being denied equal protection under the law. From my understanding, Romero’s findings relate to that of Walker because Walker explains that the procedures of racial profiling can affect non-criminal, non-immigrant Latinos just as severely as those with a criminal background based on physical characteristics. When discussing Critical Race Theory, Romero somewhat illuminates the similarities between the procedures of the Spanish Inquisition that can still be found in racial profiling today because of behavioral and non-behavioral practices that the Inquisition measured. During the Inquisition, profiling primarily focused on religious beliefs while analyzing the behavioral and non-behavioral practices of heretics. It was key for the Inquisition to consider such factors because doing so allowed the tribunal to gather insight on what suspects did or did not participate in when determining their level of credal sincerity. The same then goes for racialized immigration law enforcement because not only are darker Mexican Americans at risk, but members of the community who are bilingual, have family or friends who are immigrants, and engage in certain cultural practices are concomitantly at risk. Furthermore, analysis from Goldsmith’s study indicates that based on “Mexicanness,” *barrio* residents are more likely to experience state violence. Data from this study also stipulates that people who speak Spanish, lack U.S. education, and self-identify as Mexicans are more likely to have an encounter with immigration law enforcement, with numerous reports of mistreatment made by victims and witnesses of such behavior.

Question of Constitutionality

One of the main questions regarding racial profiling is whether or not racial profiling is constitutional. This can be considered a controversial issue because for those who are unfamiliar with criminal law, the American Bar Association states that it may be a surprise to learn that “the way of policing does not violate the 4th Amendment to the U.S. Constitution, which governs search and seizure practices” (n.pag). While there is a notable shift to dissociating race and religion in profiling practices when we turn from the Spanish Inquisition to the present day, the two groups that are most susceptible today are Latinos and African Americans. In recent years, issues related to immigration have sparked race-based targeting of Latinos. By increasing the number of Latinos targeted, it also increases the number of documented and undocumented immigrants who encounter the immigration system. To borrow Walker’s terms, there are two types of contact, personal and proximal. Personal contact refers to families, friends, and social networks, whereas proximal contact refers to non-citizens who know others who have been detained or deported as a result of immigration policy. Many believe that the consequences of racial profiling only affect documented and undocumented immigrants, but the reality is that someone who has a relational connection with another who has been deported or detained can be correspondingly affected, emotionally. According to Quiroga, Medina, and Glick, just because there is not a direct risk does not mean individuals cannot fear for the lives of their family and friends, who do carry this burden. Throughout the years, the phenomenon of racial profiling has received more attention because of social media, because social media’s highly personal content and network-driven replication can serve to heighten awareness regarding what other people are

experiencing. The fear of deportation and detention remains ingrained in the minds of immigrants. With that being said, this fear can inhibit immigrants from achieving a better life they have long desired. It also discourages immigrants from confiding in authority figures. Numerous scholars call it “cautious citizenship” when families and loved ones are reluctant to join organizations and institutions. Pedraza, Nichols, and LeBron explain that the abundance of immigration issues discourages individuals from engaging in typical daily activities, such as going to health clinics or taking public transportation (Walker 106). It is accurate to conclude that much of this behavior stems from “an eroded trust in the government” (Walker 108). The stringent immigration policies increase tensions between Latinos and their white counterparts. This environment reignites the perception of criminality that whites have against the Latino community.

Procedures of Racial Profiling

When analyzing procedures that entail racial profiling today, news indicates that there is selective law enforcement by U.S. Border Patrol officials to deal with Mexican immigrants. It appears that the foundation of selective law enforcement relies upon citizenship status and racial characteristics. News outlets indicate that the need to utilize selective enforcement results from “the perceived threat of the U.S.-Mexico border drug war on U.S. society” (Aguirre 696). Several news articles explain the use of apprehension quotas set by the U.S. Border Patrol. Such quotas are part of Border Patrol’s standard procedure and can involve punitive measures for agents who do not meet them. For instance, documented cases record agents patrolling outside of their jurisdiction because of their desperation to meet the quotas. The criteria they would follow

is if certain individuals looked “wet” or not. In order to spot these individuals, agents deemed it appropriate to investigate day labor sites (Aguirre 702). The problem with the use of apprehension quotas is that they would apprehend individuals out of desperation rather than detaining high-profile criminal immigrants. Eventually, such quotas began to affect U.S. citizens who are of Mexican origin, thus violating their civil rights.

Another risk of racial profiling is the unlawful detainment of individuals who “look Mexican.” Mistaken detentions often take place during work raids, which has been gaining more attention over the years. One of the problems with racial profiling are the markers that Goldsmith mentions in his article. Basing apprehensions on skin color, hair color, and clothing styles can lead to the apprehension of high-profile criminals, but it can also lead to wrongful detentions and deportations. Profiling individuals who “look Mexican” can lead to negative implications for Mexicans and Mexican-American citizens (Aguirre 702). It then raises the question: What if an American, who has no ties to the Latino community, happens to share the same physical characteristics as Mexican immigrants?

What individuals, who believe that any illegal immigrant should be deported, fail to recognize is that both documented and undocumented immigrants have worked hard to establish a better life for themselves and future generations in the United States and being closed-minded about the hardships of immigrants can negatively affect their lives and those individuals closest to them. Ultimately, the public views racial profiling tactics as a legitimate strategy for protecting the United States. The problem with targeting people that fit the racial profile of “looking Mexican,” those who are Mexican-Americans are equal victims of harassment because they are

also viewed as non-citizens, thus raising suspicion as to whether or not they are truly Americans simply because they may not fit the profile of an average American (an “average” that varies with perception, naturally).

Studies conducted by Bobo, Alexander, and Weitzer argue that institutions with long histories of ethnic tensions are often those that treat minority groups in an inferior way. Police officers are often viewed as protectors of areas where people enjoy privileges (Huerta-Bapat 29). As a result, there is turmoil between minority and majority groups because in a way, it seems that minority groups are trying to take away from the privileges of the majority groups. Another scholar, Engel, affirms that social separation contributes to this tension. In addition, Weitzer, Tuch, and Dixon report that minorities are more hostile towards law enforcement, and as a result, mutual hostilities reinforce structural inequalities (Huerta-Bapat 29). This idea is supported by numerous scholars such as Tyler, Huo, and Rosenbaum in a study they conducted, illuminating the mistreatment of African Americans and Latinos by the police. The study also suggests an abuse of power by the police to not only reinforce “the dominant status of whites,” but to target the Latino population in their communities (Huerta-Bapat 29).

Regarding the Mexican threat narrative, on April 23, 2010, Arizona Governor Jan Brewer signed SB 1070 into law, which states that it is a crime to be in Arizona as an undocumented immigrant. When signing this bill, Brewer expressed, “We cannot sacrifice our safety to the murderous greed of drug cartels” (Aguirre 699). Whether or not it was Brewer’s intention, his statement illustrates an assumption that the Mexican population as a whole is responsible for the disorder that the crimes of the drug cartels impose on American society. In addition, in terms of

the Mexican threat narrative, SB 1070 criminalizes Mexican identity by utilizing racial profiling as a tactic to alleviate fears regarding Mexicans' supposed threat to American society. The public's demand for stricter protocols stemmed from the media's portrayal of Mexicans, indicating that the actions of drug cartels affect how U.S. citizens view all undocumented Mexicans immigrants and Mexican-Americans. In a way, SB 1070 paved the way for the enactments of over 300 laws and resolutions related to immigration policy in other jurisdictions. The objective of these laws and resolutions were to impede Mexicans from owning property and seeking employment in an effort to limit their presence. While racial profiling appears most prominent in the African American community, the main difference between African Americans and Latinos is the U.S. Border Patrol's ability to leverage enforcement powers as a means to "harass Mexican immigrants" based on physical characteristics (Aguirre 699).

Beyond border control, racial profiling plays a role in other areas where elements of racial and ethnic characteristics serve to categorize suspects, for example, in the War on Drugs and the War on Terror. During the War on Drugs in the 1980s, police applied "drug courier profiles," which allowed law enforcement to execute "pretext stops, searches, and seizures," which were partially based on reasons other than "ex-post [facto] justification" (Tamir 75). In addition to the War on Drugs, the events of September 11, 2001, sparked implementation of terrorist profiling, the procedures of which shared commonalities with those applied in drug courier profiling, in both form and purpose (Tamir 75). In these varied contexts, then, racial profiling serves as an inclusive concept and term that describes the targeting of minorities who manifest a specific racial, ethnic, or cultural background for searches, seizures, and arrests (Bah n.pag). In addition,

over the past several years, evidence indicates that minorities such as Blacks, Hispanics, Arabs, and Muslims encounter biased treatments in a range of related phenomena, as encapsulated in phrases like “driving while black,” “driving while brown,” and “flying while Arab [or] Muslim” (Bah n.pag). As the phenomenon of racial profiling evolves and endures, its constitutionality continues to be questioned, generating numerous political debates. Questions of racial profiling often arises in situations concerning illegal immigration and the War on Drugs, where most of these cases include suspects who are either Black or Latino. Earlier, I mentioned the Supreme Court case, *United States v. Brignoni-Ponce*, which addresses the constitutional issues associated with racial profiling. Ultimately, the Supreme Court agreed that the 4th Amendment is violated when officers patrol near the Mexican border and question motorists on their immigration status solely on the basis of looking Mexican (Bah n.pag).

Another case that Bah mentions is *United States v. Martinez-Fuerte*, but the difference in this case is that the Supreme Court allowed for the application of racial profiling at specific checkpoints with the mindset that such measures protect the public interest against illegal immigration. As I have previously mentioned, racial profiling is most prominent concerning illegal immigration and the War on Drugs. With that being said, the Supreme Court has also addressed “issues of racial profiling in drug-related cases” (Bah n.pag). For instance, in *United States v. Sokolow*, the Supreme Court directed their focus to ongoing criminal activities, personal characteristics, and official profiles in order to justify any suspicions. While the Supreme Court agreed that law enforcement agents could use “government profiles of drug couriers”, they could only do so if there is a clear indication that the suspect fits the profile and the criminal conduct

associated with that profile. It is accurate to conclude that racial profiling has sparked many debates, measuring the values of liberty and equality in a democratic society. The problems with the cases I have mentioned is not whether the suspects engaged in criminal activity, but that racial profiling violates civil liberties of innocent people and endangers equal protection before the law (Bah n.pag). In most of these cases, the Supreme Court has failed to reject racial profiling. As a result, it has made many innocent individuals vulnerable to abuses inflicted by law enforcement agencies. According to Bah, racial profiling is both a threat to minority communities and overall American democracy. Bah strongly believes that the phenomenon of racial profiling negatively impacts the fundamental values of liberty and equality, which are essential elements in protecting the integrity of a democratic society. Furthermore, by violating such integral parts of a democratic society, it discourages minorities from trusting in the institutions that are supposed to advocate for and protect them (Bah n.pag).

CONCLUSION

“Mexican” is not a race. It is a nationality that comprises a vast variety of ethnicities and races, yet, as we have seen, the policing of “Mexicans” at the U.S. southern border has invoked particular constructs of ethno-racial characteristics, the essence of racial profiling. Such constructs can vary over time and geography. This phenomenon is analogous to the profiling I have described in the procedures of the Spanish Inquisition. The main factors the Inquisition considered when determining the sincerity of religious beliefs were behavioral and non-behavioral practices. While the Spanish Inquisition focused more on behavioral and non-behavioral practices, and racial profiling today focuses on visual or audible categorical markers, there is still a parallel between them because both serve to direct suspicions based on traits associated with perceived origins in a nation, ethnicity, or race (or a combination or conflation of these). When conducting my research, I have found that racial profiling selectively determines who is worthy of suspicion, whether that involves constructing concepts of “Mexicanness,” “Jewishness,” or “Moorishness,” imposing categories on groups. However, questions remain concerning how an enforcement agency determines if someone is actually worthy of suspicion, or if s/he is just presumed guilty based on behavioral practices, non-behavioral practices, or visual or audible categorical markers. For example, after the Legal Arizona Workers Act was passed, there were several cases when employees believed that some of their co-workers were undocumented immigrants, and they based their assumption on the fact that their co-workers were listening to “Mexican” music and were speaking Spanish. As Walker notes, because racial profiling today focuses on categorical markers like skin color, language, clothing, and facial

features, it affects a wider range of individuals—indirectly yet potently—even individuals who have a secure legal status as residents and do not have a criminal background.

Ultimately, when evaluating the procedures of profiling during the Spanish Inquisition and the procedures of racial profiling today, it is fair to say that suspicion of an individual based on behavioral practices, non-behavioral practices, and visual, audible categorical markers remains a beacon for assigning guilt. While the procedures of profiling have evolved over time, they can continue to intimidate and instill fear in individuals of all minority groups, including Latinos, African Americans, and Asians. While I did discuss the Latino community as the most susceptible minority groups of racial profiling in terms of border security, I also recognize the feeling of fear and vulnerability that law enforcement agencies can instill in individuals of all minority groups. Evidence suggests that racial profiling has the potential to disrupt the lives of these minorities because of the fear of losing a loved one or the fear of losing everything they have worked for in their lifetime, and for this reason, I hope my thesis brings awareness to the negative implications of racial profiling so that reform can become a goal for society and our judicial system.

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