

19 Race and Self-Defense: Toward a Normative Conception of Reasonableness

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Fear of the foreign is sometimes a black streak that runs through America's political culture. We see instances of [this] when it involves hate crimes, not necessarily directed at black Americans, but at foreign Americans.

—Mike McCurry, White House Press Secretary¹

MOST discussions on the subject of race and the American criminal justice system have focused on the Black-White paradigm. Such focus may be justified because of the history of slavery and the current discrimination practiced against Blacks in this country. Nonetheless, because of this focus, issues concerning other non-Whites tend to be overlooked. This is unfortunate because other non-Whites are also subject to socially constructed notions about race.

It is almost oxymoronic to speak of foreign Americans, yet the term "foreign American" conveys meaning—Asian Americans and Latinos. Many Americans associate Asian Americans with foreignness. The person who asks an Asian American, "Where are you from?" usually expects a response like "Japan" (or China or Korea)—not "Texas" (or Ohio or Northern California). This focus on the Asian in "Asian American" is deep-rooted. During World War II, when the United States was at war with Japan, hostility toward Japan extended to all persons of Japanese ancestry. From 1942 to 1945, Japanese Americans were incarcerated in internment camps even though no evidence suggested that Americans of Japanese descent were disloyal to the United States.

The Asian-as-foreigner stereotype is evident today, though it has taken on more subtle forms. During the O. J. Simpson trial, much of the racial joking in the case was directed at two Asian Americans associated with the case. The Honorable Lance Ito, the judge who presided over the trial, and criminalist Dennis Fung, two Asian Americans who speak articulately and without a noticeable ac-

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cent, were portrayed as bumbling, heavily-accented Asians who could barely speak English by radio station disc jockeys, publishing houses, and even a United States senator. During the Simpson trial, the historical impulse to mock others on the basis of racial difference was fulfilled by poking fun at the Asian Americans associated with the trial, constructing them as Asians with heavy accents characteristic of the Asian-as-foreigner stereotype.

Sometimes the Asian-as-foreigner stereotype takes on more ominous manifestations. In 1982, Vincent Chin, a Chinese American, was beaten to death *with a baseball bat* by Ronald Ebens and Michael Nitz, two White Detroit autoworkers. Before killing Chin, Ebens and Nitz, illustrating the all-too-common confusion between Chinese Americans and Japanese Americans and between Asian Americans and Asian nationals, called Chin a "Nip." They also accused Chin of contributing to the loss of jobs in the automobile industry, yelling, "It's because of you little mother fuckers that we're out of work." They pled guilty to manslaughter and were each sentenced to three years of probation and fined \$3,780. When discussing the light sentence, the judge explained, "*Had it been a brutal murder*, those fellows would be in jail now."² It is unclear what led the judge to think the baseball bat beating was not a brutal murder, yet the judge was not alone in his sentiments. Friends of Ebens and Nitz claimed the beating was just an accident, despite witness reports that Ebens swung the baseball bat at Chin's head as if he were hitting a home run, Chin's skull was fractured in several places, and police officers who arrived on the scene said pieces of Chin's brain were splattered all over the sidewalk.

Because of the confusion between Asian Americans and Asian nationals, symptomatic of the Asian-as-foreigner stereotype, the killing of Yoshihiro Hattori, a Japanese foreign exchange student, by Rodney Peairs, a Louisiana homeowner who claimed he acted in self-defense and was acquitted, has special significance for both Asian nationals and Asian Americans. On October 17, 1992, two sixteen-year-old high school students, Yoshihiro Hattori and Webb Haymaker, were looking for a Halloween party in the suburbs of Baton Rouge, Louisiana, when they came to the home of Rodney and Bonnie Peairs and rang the doorbell. The Peairs's home was decorated for Halloween and was only a few doors away from the correct house. Hattori was dressed as the character played by John Travolta in "Saturday Night Fever," wearing a white tuxedo jacket and carrying a small camera. No one answered the front door, but the boys heard the clinking of window blinds coming from the rear of the carport area. The boys walked around the house in that direction. A moment later, Bonnie Peairs opened the door. Webb Haymaker started to say, "We're here for the party." When Yoshi came around the corner to join Webb, Mrs. Peairs slammed the door and screamed for her husband to get the gun. Without asking any questions, Rodney Peairs went to the bedroom and grabbed a laser-scoped .44 magnum Smith and Wesson, one of a number of guns Peairs owned.

The two boys had walked away from the house and were on the sidewalk about ten yards from the house when Peairs rushed out of the house and into the

carport area. The carport light was on and a street light was located in front of the house, illuminating the carport and sidewalk area. Hattori, the Japanese exchange student, turned and approached Peairs, smiling apologetically and explaining, "We're here for the party," in heavily accented English. Rather than explaining to Hattori that he had the wrong house, Peairs pointed his gun at Hattori and shouted the word "freeze." Hattori, who did not understand the English word "freeze," continued to approach Peairs. Peairs fired one shot at Hattori's chest. Hattori collapsed and died on the spot. The entire incident—from the time Peairs opened the door to the time he fired his gun at Hattori—took place in approximately three seconds.

Peairs was charged with manslaughter. At trial, Peairs's attorney argued that Peairs shot Hattori because he honestly and reasonably believed the unarmed Hattori was about to kill or seriously harm him. The judge instructed the jury that in order to acquit Peairs on the ground of self-defense, the jury needed to find that Peairs reasonably believed he was in imminent danger of losing his life or receiving great bodily harm and that the killing was necessary to save himself from that danger. After little more than three hours of deliberating, the jury returned a verdict of not guilty. The courtroom erupted with applause. In contrast to the public's outrage at the perceived shortness of the deliberation process in the O. J. Simpson case when jurors in that case reached a verdict in less than four hours, there was little if any public outrage at the three hours of deliberation and resulting acquittal in the *Peairs* case. . . .

On the issue of whether Peairs acted reasonably in self-defense, several facts suggest he did not. Rather than calling the police, looking outside the window to see what was outside, or even asking his wife why she was screaming, Peairs immediately went to his bedroom closet, grabbed a loaded gun, and went to the carport area to confront the boys outside. The boys were in the process of leaving the premises; Peairs easily could have avoided any confrontation by permitting them to leave. Additionally, Peairs might have chosen a less fatal course of action. He could have fired a warning shot or aimed for a less vital portion of Hattori's body.

The *Peairs* case is complicated by the fact that the racial nature of the case was less obvious than that of the *Goetz* case. While many Asian American groups felt the verdict was unjust and racist, non-Asian Americans explained the verdict as merely a tragic misunderstanding or an unfortunate incident. Most people have overlooked the degree to which racial stereotypes about Japanese people might have affected the jury's interpretation of the facts and their determination that Peairs acted reasonably. Just as the attorney representing Bernhard Goetz covertly and effectively played the race card, Peairs's attorney subtly and effectively appealed to prejudice against the Japanese "enemy." Playing on the Asian-as-foreigner stereotype, which was all the more readily believed in this case involving a true Asian foreigner, Peairs's attorney told the jury that Hattori was acting in a menacing, aggressive fashion, "like a stranger invading someone's home turf."³

Bonnie Peairs's trial testimony is also significant. When asked to describe Hattori, Mrs. Peairs responded, "*I guess he appeared Oriental. He could have*

been Mexican or whatever."⁴ Mrs. Peairs was unable to tell whether Hattori was "Oriental" or "Mexican" or neither. All she knew was that Hattori looked different, foreign. Her comment highlights the way minorities are often lumped together as a homogenous group outside the American community.

If Webb Haymaker had been the victim, it is unlikely that the spectators in the courtroom would have responded with applause to the not guilty verdict. If Haymaker, the boy from the neighborhood, rather than Hattori, a foreigner from Japan, had been the victim in this case, the defense would have had a more difficult time portraying the victim as "a crazy man," "frightening," or "scary," terms used to describe Hattori. If Haymaker had been the victim, the presence of his parents in the courtroom and in the community would have made it much more difficult for the defense to paint a credible picture of the victim as the bad guy. But Haymaker was not the victim; Hattori, a Japanese foreigner, was the one shot and killed.

The Latino-as-Foreigner and Latino-as-Criminal Stereotypes

The stereotyping of Latinos and Latinas in American culture has received relatively little attention in legal scholarship. Notwithstanding the paucity of legal attention to Latino stereotypes, it is clear that Latino stereotypes are varied and complex. Not all Latinos suffer from the same stereotypes because some Latinos look like their White but non-Latino counterparts, while other Latinos do not. The fair-skinned Cuban in Florida who can pass as White may receive different treatment than the dark-skinned Mexican American in the Southwest.

Unfortunately, Latinos suffer from an aggregation of negative stereotypes experienced by both African Americans and Asian Americans. Perhaps most commonly, Latinos, like Asian Americans, are perceived as foreigners, outsiders, or immigrants. The Latino-as-foreigner stereotype may have influenced a Capitol police security aide to accuse Congressman Luis Gutierrez, a Puerto Rican American who was born in Chicago and is a United States citizen, of presenting false congressional credentials. Leaping to the conclusion that the Congressman was a foreigner after seeing his daughter and niece with two small Puerto Rican flags, the security aide told Gutierrez that he should go back to where he came from.

The Latino-as-foreigner stereotype is particularly troublesome when it slides into the Latino-as-illegal-immigrant stereotype. In certain parts of the country, people commonly associate brown-skinned persons who speak English with a Spanish accent with illegal-immigration, particularly if they are unskilled or employed as domestic or menial laborers. Even if the person speaks English without an accent, he or she may be subject to the illegal immigrant stereotype.

Like African Americans, Latinos suffer from a Latino-as-criminal stereotype. The Latino-as-criminal stereotype often affects young male Latinos who are assumed to be gang members, particularly if they live in a low-income high-crime neighborhood and wear baggy pants and T-shirts. The Latino-as-criminal stereotype

is linked to the Latino-as-illegal-immigrant stereotype because the undocumented are often characterized as lawbreakers. Another stereotype, the Latino-as-macho stereotype, casts Latinos as hot-tempered and prone to violence.

The perception that young Latinos who dress a certain way are dangerous criminal gang members who pose a threat of serious bodily injury to those who confront them, coupled with the notion that Latinos tend to be hot-blooded and prone to violence, may contribute to the frequency with which homicide and assault cases involving Latino victims are not prosecuted. In numerous instances, Latinos have been shot, beaten, and/or killed by citizens or police officers claiming justifiable use of deadly force under circumstances calling into question whether the use of deadly force was truly warranted. In many of these cases, despite the fact that the Latino victim was unarmed or shot in the back, criminal charges were not brought against the person claiming justifiable homicide.

On January 31, 1995, eighteen-year-old Cesar René Arce and twenty-year-old David Hillo, two young Mexican Americans, were spray-painting columns supporting the Hollywood Freeway in Los Angeles at about 1:00 a.m. William Masters II, a White man carrying a loaded gun without a permit in his fanny pack, was out for a late-night walk and saw the two boys spray-painting the columns. Masters picked up a piece of paper from the ground and wrote down the license plate number of the young men's car. Masters claims that when Arce saw him writing, Arce blocked the sidewalk and demanded that he hand over the paper. A scuffle ensued in which Arce tried to rip the paper from Masters's hand and Masters tried to jam the rest of the paper into his pocket. According to Masters, when Hillo held up a screwdriver in a threatening manner, Masters handed over the piece of paper and began walking away. Masters claims he thought the boys were behind him, so he swung around, and fired at Arce. Masters then shot Hillo in the buttocks. Arce died from the shot which entered him from his back.

Masters told the first police officers at the scene, "I shot him because he was spray-painting."⁵ Later, Masters claimed he shot the boys in self-defense. In yet another explanation, Masters claimed that he shot the boys because they tried to rob him. Masters was arrested and jailed on suspicion of murder. When he was released from custody, Masters called the two youths he shot "skinhead Mexicans," and blamed Arce's mother for his death because she failed to raise Arce well.

The Los Angeles County District Attorney's Office declined to prosecute Masters on the ground that Masters acted in self-defense—even though the shot that killed Arce entered him from his back. In contrast, the Los Angeles County District Attorney's Office filed murder and manslaughter charges against two Black men (one of whom was the rap singer known as Snoop Doggy Dogg) who claimed they shot another Black man in self-defense, disbelieving their self-defense claim largely because the victim was shot in the back and buttocks. The decision not to file criminal homicide charges against Masters was also based on the prediction that the government would have had a difficult time convincing a jury to return a conviction against him. The government's case would have rested primarily on testimony by Hillo, the young man who survived the shooting. Hillo would have

been a poor witness since he gave conflicting versions of the facts in interviews with the police. Moreover, judging from public reaction to the event, the community was extremely supportive of Masters. Telephone calls reportedly flooded into the police station where Masters was held, offering money and legal assistance. Sandi Webb, a Simi Valley Councilwoman, declared her support for Masters by stating, "Kudos to William Masters for his vigilant anti-graffiti efforts and for his foresight in carrying a gun for self-protection. If [Los Angeles] refuses to honor Masters as a crime-fighting hero, then I invite him to relocate to our town."⁶

Racial stereotypes affect all people, including prosecutors, judges, and jurors. The *Masters* case is difficult because fear of crime and increasing gang violence are legitimate fears held by many, particularly in Southern California. Graffiti on freeway overpasses, public buildings, and private property is a reminder that the threat of violent crime is not far off. Supporters of Masters were likely reacting to this fear of crime and gang violence. As one supporter explained, "Whatever he did doesn't bother me. I'm not saying shooting people is the way to do it . . . But [the graffiti] is just disgusting. It doesn't seem like anyone's doing anything about it."⁷

However legitimate the fear of crime and the threat of gang violence that graffiti symbolizes, such fear of crime in general does not satisfy the more specific requirement in self-defense doctrine that one have a reasonable belief in an imminent threat of death or serious bodily injury by a particular individual. In this country, defacing property with graffiti is not a capital offense. If the state is not permitted to execute graffiti offenders after a trial and conviction, surely private citizens have no greater right to kill them.

The support William Masters generated for shooting two young Mexican American males engaged in spray-painting is striking when contrasted with the Michael Fay incident, in which a non-Latino White American teenager was caught painting graffiti in Singapore, less than one year earlier. In 1994, Michael Fay pled guilty to two counts of vandalism and two counts of mischief, admitting that he was one of a group of youths who spray-painted eighteen cars, threw eggs at other cars, and switched license plates on still others.

When a Singaporean judge sentenced Fay to four months in prison, a \$2,230 fine, and six lashes with a rattan cane, many Americans rallied to Fay's defense. Fay's mother appealed to U.S. government officials, stating, "Caning is not something the *American* public would want an *American* to go through. It's barbaric."⁸ Fay's mother further described her son as "a *typical* teen-ager" who played on the *American* football team.⁹ Apparently agreeing with her, U.S. Embassy officials and members of the American Chamber of Commerce condemned the severity of the sentence. Ralph Boyce, Charge d'Affaires of the American Embassy, stated, "[W]e see a large discrepancy between the offence and the punishment. The cars were not permanently damaged. The paint was removed with paint thinner. Caning leaves permanent scars."¹⁰ Even U.S. President Bill Clinton made a strong protest to the Singapore government, asking for reconsideration of the sentence.

In the *Masters* case, a White American shot two Mexican Americans after

catching them in the act of spray-painting columns supporting a public freeway, and was called a crime-fighting hero even though he killed one of the youths. In the Michael Fay case, the Singaporean government prosecuted a White American teenager for spray-painting eighteen cars and engaging in other acts of vandalism. Many Americans were outraged at the caning punishment the Singaporean government imposed on Fay. If a Singaporean citizen had shot and killed Fay after catching him in the act of spray-painting the Singaporean citizen's car, it is unlikely that Americans would view the Singaporean as a hero, even if the Singaporean claimed, as Masters did, that he thought Fay was going to hurt him and shot Fay in self-defense. Stereotypes of Mexican American youths as criminal gang members undoubtedly spelled the difference in the American public's mind.

Stereotypes play a more important role in our thinking and interactions with other people than we may be willing to admit. We all make assumptions about people. Often our assumptions are linked to perceived racial identities. Stereotyping, in and of itself, is not necessarily evil but can become evil when it results in harmful consequences. Because one of the purposes of the law is to ensure fair and equal treatment, the law should discourage reliance on stereotypes, especially when doing so results in harmful action such as the use of deadly force.

NOTES

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3. *Defense Depicts Japanese Boy As "Scary."* N.Y. Times, May 21, 1993, at A10.
4. Testimony of Bonnie Peairs at 22, *State v. Peairs* (May 22, 1993) (on file with author); telephone interview with Richard Haymaker, Webb Haymaker's father (Mar. 14, 1996).
5. Luis A. Carillo, *How to Kill a Latino Kid and Walk Free*, L.A. Times, Nov. 27, 1995, at B5; Ann W. O'Neill, *Tagger's Killer Faces Firearms Charges*, L.A. Times, Feb. 24, 1995, at B1; Nicholas Riccardi, *Death of a Tagger a Typical Street Mystery for Police*, L.A. Times, Apr. 7, 1995, at A1.
6. Hugh Dellios, *L.A. Vigilante Is Revered and Reviled*, Houston Chron., Feb. 13, 1995, at A7.
7. Nicholas Riccardi & Julie Tamaki, *1 Tagger Killed, 1 Hurt After Confrontation over Graffiti*, L.A. Times, Feb. 1, 1995, at B1.
8. Franki V. Ransom, *"This Is Brutal": Clinton, Hall Vow to Aid Dayton Team in Singapore*, Dayton Daily News, Mar. 5, 1994, at 1A (emphasis added).
9. *Id.* (emphasis added).
10. Ian Stewart, *Singapore: U.S. Teenager Jailed for Car Vandalism*, S. China Morning Post, Mar. 4, 1994, at 12.