David Cole argues persuasively that infringement on the rights of aliens is the vanguard for infringement of the rights of citizens. This point was recognized during the struggle against harassment and deportation of aliens that marked the first half of the last century.

The American Committee for Protection of Foreign Born (ACPFB) was a progressive civil liberties organization or a Communist front, or both, depending upon which side of history you choose. It fought long and hard to uphold the rights of immigrants and ultimately its own right to exist in the time of McCarthyism.

In its heyday the ACPFB chose the strategy of the united front: we are one America, and our strength as a nation depends upon welcoming everyone’s contributions, regardless of national origin. In the inter-war period, as the threat of fascism grew, the united-front rhetoric gained currency. The New York Times editorialized, “The American Committee for Protection of Foreign Born deserves nonpartisan support . . . we can contribute nothing of more value to a sick world than proof that men and women of different racial origins can get along together peaceably and democratically.” President Roosevelt sent greetings to the ACPFB’s 1940 annual conference, stating that “[o]ne of the great achievements of the American commonwealth has been the fact that race groups which were divided abroad are united here . . . any injustice, any hatred, is a wedge designed to attack our civilization.”

The melting-pot version of equality was imparted by war as the sons of immigrants died fighting purveyors of racial superiority. The names of department-store workers who died in the war—Irish, Italian, Puerto Rican, and Jewish—inscribed along with “Smith” and “Jones” on a wall at Macy’s is a testament to the atmosphere in which the ACPFB gained widespread support.

Alongside this mainstream rejection of xenophobia in the war years lurked the contradiction of racism. William Hastie fought segregation of Black troops; Fred Korematsu’s case challenging race-based internment of Japanese Americans slowly made its way through the courts.

As World War II gave way to the Cold War, the united-front rhetoric collapsed into an older American belief system: the terrible fear of those who are not “we.” ACPFB members were harassed and intimidated; its leaders were imprisoned for refusing to name names for HUAC.

I agree with Professor Cole’s conclusion that human rights, as inscribed in our Bill of Rights, must apply to all within our boundaries regardless of immigration status. I would add to the history he cites a number of reasons, rooted in our history of xenophobia, why immigrants have not shared equal treatment under law. I count four American reasons to hate your neighbor. The one Professor Cole refers to, and the one most obviously tied to our post–September 11 abandonment of civil liberties, is fear. I would also add economic competition, ideological competition, and racism, each appearing at different historical junctures.

When Japanese Americans were interned during World War II, fear allowed it to happen; but economics was the driver and racism the fuel. Japanese American farmers and merchants were obtaining property and establishing an economic stronghold in the western states. Hawaii, arguably more militarily strategic than California, had no mass internment. Japanese Americans in Hawaii were contract laborers; they toiled for the benefit of others, not themselves. Keith Aoki has argued that the internment, together with racist naturalization and real property laws, had the effect of moving Japanese American land into Anglo hands. The national security arguments for the internment were bogus. The court in the Fred Korematsu coram nobis case (coram nobis is a legal writ allowing correction of an error) determined several decades later that the government knew Japanese Americans presented no security threat and that government lawyers deliberately withheld evidence of the non-threat from the courts.

It was racism—the hatred of Asians seething in the western states since the mid–nineteenth century—along with resentment of Japanese-American economic ascendancy that created the internment. The government’s actions showed that it did not believe its own national-security justification that Japanese Americans’ loyalty could not be discerned. Many Japanese Americans, citizen and alien alike, participated in the war effort at the most classified level. The Japanese Americans in the Military Intelligence Service, who infiltrated enemy lines, are credited with saving hundreds of lives in the Pacific while their families waited at home behind barbed wire. The Purple Heart Battalion (100th Infantry) along with the 442nd Regimental Combat Team lost scores of men—including every member of my father’s machine gun squad except himself—in some of the bloodiest battles in Italy and France. My father volunteered from Heart Mountain, Wyoming, where he’d been locked up as a security threat, but he was deemed loyal enough to risk his life for his country at Anzio, at Monte Cassino, and in the “Lost Battalion” rescue.

Japanese-American progressives at other times faced threat of deportation and xenophobia in a rather different context: the politically motivated immigrant bashing of the Palmer Raids, reincarnated under McCarthyism. The motivation in these cases was fear of ideological competition. Like many immigrants, Japanese Americans were drawn to socialism and the notion of a worker-run democracy. Large numbers of poor and working people found this vision attractive, and there was a real fear that the IWW vision—one
big union, racial unity, immigrant and native-born together—would triumph over big business. Deportation was the tool; stopping populist socialism was the aim.

When I hear Woody Guthrie sing “My father’s own father, he waded that river,” I see Paul Kochi, an elder of the Okinawan community I grew up in. He was an illegal immigrant who crossed the Rio Grande into the United States. He toiled in the fields as a young man and served in the OSS during World War II. For his strategic contribution to the war effort he was promised legal resident status (not citizenship, because anti-Asian naturalization laws still applied). Paul Kochi would have had an easy life after the war, except for one problem. He had been since his youth an “internationalist” who believed in peace, labor rights, and socialism. He was a working-class scholar, active in the vibrant and multiethnic left-politics of the time. He fought an eleven-year battle against deportation, supported by the ACPFB. Three hundred people of every race, attended his victory celebration in 1965, in the declining hours of McCarthyism.

I doubt the FBI actually believed that Paul Kochi was likely to plot a violent overthrow of the United States. This small, bookish, peace-loving man was a danger in quite another way. He worked for a world in which the interests of workers would come before the interest of capital, and he worked for it through the power of writing, organizing, and talking. The emergence of leaders like Paul Kochi from many immigrant communities was the real reason for the immigrant bashing Palmer Raids and the McCarthy-era deportations. The excuse was that “those immigrant anarchists are going to start throwing bombs.” The truth was that those immigrant socialists were gaining converts through the power of their words. It was an ideological threat, not the threat of violence, that fueled the many civil liberties atrocities directed at progressive immigrants in the first half of the twentieth century.

In contrast, the Ashcroft assault on immigrants originates in an actual fear of violence and a credible threat of future violence. Professor Cole wisely acknowledges this in his article and notes that violation of civil liberties is not the best way to prevent violence. The current assault is not, however, just about fear. It is also about racism.

The face of the disappeared, as mainstream Americans imagine it, is a brown face. Xenophobia and racism are, of course, linked, but the history of hating Arabs as a race runs strong in United States culture. Sociologists who study American racial attitudes over time have long noted that Arabs are feared, stereotyped, and reviled even more than Blacks. It is a question not subject to empirical response, but worth asking: would we tolerate this level of massive, secret, indefinite, inhumane detention if the target group were western European immigrants?

If read too broadly, Cole’s argument that we Americans tolerate violations of immigrant rights because “it won’t happen to us” misses those Americans whose experience tells them “it will happen to us.” Japanese Americans are quite vocal in opposing the current detentions. Professor Derrick Bell has conducted a nationwide thought experiment asking audiences if they think America would ship all blacks off into intergalactic exile in exchange for the promise of safety from invading space aliens. The majority of blacks answer, “Sure they would.” The sense that “it could not happen to me” is racially located, as Cole’s earlier book, No Equal Justice, amply recognizes.

To conclude, David Cole is dead-on right and it is a profound disgrace that he is not joined by a chorus of voices. Corporate lawyers in Hawaii opposed martial law and the suspension of habeas corpus after December 7; workaday lawyers should step forward now in the wake of September 11. I would add to Cole’s essay a footnote on the shifting reasons for immigrant bashing and on the old American question of race. I would also add a prescription: The fear, this time, is legitimate. There really is a bear in the woods. Our job is to ask how we participated in its creation, and how we feed it still by choosing militarism and global inequality over peace and global justice. We do so need to make ourselves safe. Certainly we can start with an integrated, multilingual, and law-abiding FBI that will get good tips about racism by the FBI. But why do many blacks answer, “Sure they would.” Why do many blacks answer, “Sure they would.” The sense that “it could not happen to me” is racially located, as Cole’s earlier book, No Equal Justice, amply recognizes.

While we have you...

...we need your help, While reading “Civil Liberties after 9/11” by Mari Matsuda, you might have noticed the absence of paywalls at Boston Review. **We are committed to staying free for all our readers.** We’ve also gone one step further and become completely ad-free. This means you will always be able to read us without roadblocks or barriers to entry. It also means that we rely on you, our readers, for support. **If you like what you read here, please your support to keep it free for everyone by making a tax-deductible donation.**
Printing Note: For best printing results try turning on any options your web browser's print dialog makes available for printing backgrounds and background graphics.