Right Now

Warren and Tyagi also advocate metropolitan school-choice programs, so that parents, rather than bureaucrats, decide where children attend school, regardless of address. If nursery school is essential, expand the public-school system to include it, and if day care is subsidized, offer tax credits for stay-at-home parents. Finally, restore public universities to their original mission of affordability and access by freezing tuition and opening admission to all. Such reforms are necessary to secure the middle class, Warren believes: “The American middle class is strong, but it’s not infinite in its capacity to withstand economic pressure.”

—HARBOUR FRASER HODDER

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DWB=DRIVING WHILE BLACK

Profiling, Good and Bad

IT’S THE BEGINNING of a holiday weekend, and the line through the airport security checkpoint is backed up almost to the terminal door. After brief checks, security guards wave two people through: an elderly white woman in jeans and cable-knit sweater, and a middle-aged Asian man in suit and tie. But they pull the next person aside. He’s an olive-skinned man with dark, wavy hair and a thin mustache, wearing wrinkled chinos and carrying a stained canvas bag. The guards open and search his bag on a nearby table.

In the months following 9/11, such scenes were common in airports across the country. Although many Americans considered such “profiling” unjust, others considered it fair and based on reasonable generalizations about group behavior. Fear of terrorist attacks has focused attention, and even passions, on the role of “profiling” in public policy.

Profiling—taking actions based on group data or demographic probabilities—is a wide-ranging and controversial phenomenon. Some European soccer stadiums have considered refusing admission to English spectators due to the demonstrably violent behavior of English soccer hooligans, even though these fans are a small minority. Dog owners have protested the “canine racism” of laws that prohibit owning pit bull terriers—yet a report by the Humane Society of the United States found that between 1983 and 1987, pit bulls accounted for 20 of 28 recorded human deaths by dog bite,

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although only 1 percent of American dogs were pit bulls.

In his new book, Profiles, Probabilities, and Stereotypes, Frederick Schauer, Stanton professor of the First Amendment at the Kennedy School of Government, suggests that even though many people have visceral, negative reactions to the idea of making generalizations about groups, there are times when doing so is appropriate and just. In his view, uncritically accepting William Blake’s much-quoted contention that “to generalize is to be an idiot” can be costly.

Actuaries provide a useful model. “Decision-making by generalization is the stock in trade of the insurance industry,” Schauer says, adding that most people accept the “actuarial” approach used to determine driver insurance rates as a simple fact of life. “When I buy a sports car I become actuarially encumbered with the risk-taking driving attributes of most sports-car owners—attributes that I do not share,” Schauer says. “Indeed, if given the opportunity, I could prove to my insurance company that I do not share them.”

More often than we realize, we take this kind of actuarial approach in making concrete, day-to-day decisions: when we choose an airline based on safety and on-time statistics, or sit in the second subway car when the first is filled with tattooed young men with shaved heads who are all dressed in black. “And who among us,” Schauer asks, “would not prefer a retired federal judge to a former used-car salesman as an investment adviser?”

Schauer suggests that generalizations become problematic when based on bad or insufficient data. He points out, for example, that the belief that “gay men lack physical courage” is unsupported by any solid statistical evidence. Regarding the New Jersey Highway Police practice of targeting African-American drivers for traffic stops, Schauer concludes that the officers’ tendency toward racial animus, and their lack of training in drug interdiction, led to behaviors that constitute “harassment,” rather than profiling based on systematic analysis of genuine indicative factors.

In discussing airport security, Schauer says that in the months following 9/11, statistical evidence indicated clearly that...
flight attendants who feared youngish, Middle-Eastern men “should have had much more reason to be afraid of the cash-paying, one-way-flying, militia belonging, paroled explosives expert.” The problem was that there were no obvious visual cues to that profile. “The very visibility of race and, often, ethnicity,” he says, “may produce, among other things, the conditions of their frequent overuse.”

“Put starkly,” he continues, “the question of racial or ethnic profiling in air travel is not the question of whether racial and ethnic sensitivity must be bought at the price of thousands of lives. Rather, it is most often the question of whether racial and ethnic sensitivity should be bought at the price of arriving 30 minutes earlier at the airport.”

Whether the issue is airport security, auto insurance, or the making of general law, Schauer insists that it would be impossible for society to craft rules as nuanced as the world they seek to control. Yet he acknowledges that lawmaking “inevitably produces errors and injustices in individual cases.” In his view, one of the best strategies for minimizing those problems is to reassess and eliminate laws that no longer seem relevant or fair. “Keeping open the possibility of revising flawed rules,” he asserts, “is a valuable check on the limitations of human foresight.”

In a perfect world, the exceptionally bright and mature 12-year-old might be allowed to vote. And the person just convicted of first-degree murder might make the case that society’s best long-term interest would be served by sentencing him to supervised parole rather than a long prison term. But such a world, Schauer contends, cannot and does not exist, and the difficult work of making law and public policy is a constant process of balancing public good against the particular needs of the individual. “Legislatures cannot stand on the bridge of society, monitoring every variation,” he says. “As a generalization, the principle of treating all equally is a principle that ignores real differences—and consequently comes at a price.”—CHARLES COE

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