

# Is racial profiling racist?

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## **Abstract**

We can imagine a model society in which racial profiling is the most effective method in reducing crime, produces more benefits than it incurs costs and it is carried out dispassionately. I argue that still, racial profiling of societally disadvantaged groups would be racist. On the other hand, racial profiling of groups which are not societally disadvantaged would not be racist. Whether a given instance of racial profiling is racist depends crucially on: i) our definition of “racist”, ii) whether we accept that racial profiling merely causes expressive harm, and iii) whether the harm caused is oppressive. This essay shall be proceed in three steps: first, I will justify a particular definition of “racist”. Secondly, I will argue that the harm from racial profiling is not merely expressive. Lastly, I will give a brief account of how the harm from racial profiling is oppressive.

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## **The setting: an unalloyed case of racial profiling and the definition of “racist”**

Consider the following case. Individual X is a black young man in the USA who does not engage in any criminal activity. He is subject to racial profiling at the airport, i.e. subject to a “police-initiated action that relies on the race...rather than the behaviour 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” (Risse and Zeckhauser, 2004, p. 135). X is not indifferent to racial profiling: on top of costing time, he incurs costs in the form of negative emotions. In order to distil my claim that racist racial profiling exists, I shall now aim to focus the debate on a case of racial profiling that is often called unalloyed, i.e. a case that does not involve other types of morally problematic practices or intentions.

First we eliminate any bad practices or intentions that render racial profiling racist by contingency. Therefore, in line with Kasper Lippert-Rasmussen (2007) we assume that:

- i) it is statistically valid that black young men in the US actually commit more crimes than white young men,
- ii) these statistics are not used disproportionately and they are as good as they can be,
- iii) police motivations are not racist, and the police is not abusive.

We furthermore want to make sure that racial profiling is the best possible solution:

- iv) the benefits to society overall from the reduction in crime is larger than the harm to society from racial profiling (racial profiling is justifiable on consequentialist grounds),
- v) everybody in society benefits - i.e. nobody is made worse off,
- vi) racial profiling is the most effective way to reduce crime; in particular, it is effective to subject young black (and not white) men at airports to extra screenings.

I claim that when X is stopped at the airport and subjected to extra screening of this unalloyed kind we submit him to a racist practice. I define “racism” to be more than differential treatment on the basis of race. In line with Frye (1983) and also Risse and Zeckhauser (2004) differential treatment by race is only racist if it involves oppression of the discriminated by the the discrimina-

tors. I maintain that this definition is justifiable because it appeals to much of our moral intuition. Stopping a white person in a predominantly black neighbourhood seems to be morally less problematic than stopping a black person in a predominantly white neighbourhood. A white safe space closed to black students seems worse than a black safe space closed to white students. We might also say: background social structures and history matter in our moral judgement, and I take it as given that these disadvantage black men vis-a-vis white men<sup>1</sup>. To return to our case and given our definition of racism we can now assert that if X were white his screening would not be racist, or not as racist, because white men are not oppressed, or at least not as oppressed as black men. To establish that X's screening is racist we thus need to establish that a) he is subjected to differential treatment because of his race, and b) the act of profiling is oppressive. Because we assumed that police target X because targeting black young men leads to the desired reduction in crime better than screening white men, X gets screened because he is black. We have so far established a).

### **Possible Objection: racial profiling merely as expressive harm**

Before I turn to offer an account of b) I want to consider a possible objection to the claim that racial profiling is oppressive. Risse and Zeckhauser (2004) argue that racial profiling is not oppressive, or as they call it, not an instance of pejorative discrimination, because the act of profiling itself does not cause any harm. They assert that “the harm caused by profiling per se is largely due to the underlying racism” (ibid, p. 146), because “profiling is harmful largely in an textitexpressive manner, specifically, because it serves as a focal point<sup>2</sup> for the racial injustices of society” (ibid, p.147, own emphasis). The cause for

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<sup>1</sup> There is an abundance of evidence showing that the black population in the United States is significantly disadvantaged in almost all areas of life. Black Americans are poorer, die earlier, are less educated, more likely to be convicted in courts, less likely to vote, unhealthier (see Centers for Disease Control and Prevention, and US Census Data) and racial bias is omnipresent (see Bertrand and Mullainathan, 2003, for an example how black-sounding names are heavily discriminated in call-backs for interviews).

<sup>2</sup> They define focal point as a *symbol* of structural disadvantage or maltreatment (p.147, own emphasis).

the feelings of offence, resentment, anger or sadness is really racism in wider society. Racial profiling “does not contribute to that oppressive relationship [i.e. towards racism in society]” (p.155). For Risse and Zeckhauser the direct harm done to X by the act of profiling is not oppressive; it is instead expressive of the oppression X experiences in wider society. In their view racial profiling *itself* is not oppressive, and therefore not racist.

They justify their claim by asking the reader to imagine “the closest possible world to the US society except that there is no racism” (p.146). Then, “using race for investigative purposes would not be considered offensive” (ibid). Therefore, it cannot be that the actual practice of profiling causes any harm.

However, as Annabelle Lever (2004) points out, this is a highly problematic understanding of profiling. It is indeed hard to see how profiling X in a racist society can be done “fairly and respectfully” (Lever, 2004, p.96) without causing harm in itself, even if we imagine police to be non-abusive. An analogy might be helpful. Imagine I *know* that my friend will feel sad when I tell an innocuous joke because that joke reminds her of a traumatic event in which she was harmed. If I do tell the joke, even in a considerate and respectful way, she will suffer. Then, there is a sense in which I caused her harm. Indeed, she would have reason to blame *me* (“But you *knew* it would hurt me”) and not only the past traumatic event. The harm I have done to her reasonably manifests itself in anger towards *me telling the joke*, and not towards the *joke as a symbol of her trauma*. Risse and Zeckhauser skip a step: while it is true that if the traumatic event had never taken place the friend would not be hurt by my joke, this does not mean that the harm I have done to her is *merely* expressive. *Actually* profiling someone on the basis of race is harmful *beyond* expressive harm, although it does include expressive harm.

We have seen how it is implausible to argue that the harm caused racial profiling is merely expressive. We now examine a justification for how racial profiling is in fact oppressive.

## **Racism as oppression**

To complete the argument that racial profiling is racist, it is necessary to demonstrate that racial profiling is oppressive. Frye in *Oppression* (1983) outlines four broad characteristics of oppression. While she does so for sexism, the lessons can be readily applied to X's case.

First, X has to be in a double-blind situation, i.e. his options are limited and they all lead to punishment or loss. Arguably, this is the case for X. He can co-operate and feel hurt, angry or sad, or he can refuse to co-operate and again, be seen as criminal and feel degraded or punished. Racial profiling is in part oppressive because he cannot opt out.

Second, X must be restricted by racial profiling. His mobility must be limited. This is plausible. Black young men cannot drive through wealthy neighbourhoods for fun or visit expensive jewellery stores as freely as young white men because of racial profiling. It is also imaginable that X does not dress as freely as he wants, or wear his hair as he wants, speak as he wants, or walk as he wants because he is afraid of racial profiling.

Third, X must be harmed. This we have established. X is harmed not only because racial profiling incurs expressive harm, but there is also a way in which racial profiling hurt him above and beyond that like in the example of traumatised friend. This is also crucial for why racial profiling of white Americans is not oppressive, or not as oppressive, as racial profiling of black Americans. White Americans are harmed less by racial profiling because it cannot serve as the focal point for hundreds of years of oppression by black people, or for widespread marginalisation and unfair treatment in society by black people. They are less societally disadvantaged, and the expressive harm from channelling that disadvantage is thus less.

Fourth, the restrictions in place must be systemic and systematic, and unavoidable. This is the case for X. Racial profiling is common not just at airports, but on highways, in crime investigations, in neighbourhood checks and general safety enforcements. Being a black young male, X has no option to escape this harm, and the harm is entrenched in society around him.

## **Conclusion**

In conclusion, even if we assume away all contingent racism of racial profiling and even if we argue that racial profiling can be justified on consequentialist grounds, racial profiling of societally disadvantaged groups in its most unalloyed version remains racist. This is because a) racial profiling causes harm above and beyond expressive harm, and b) racial profiling is oppressive. Racial profiling of non-societally disadvantaged groups is not, or less, racist because they are not, or less, oppressed. Distinguishing between societally disadvantaged groups and not societally disadvantaged groups is admittedly non-trivial and the distribution could be along a scale. A large part of determining whether a group is societally disadvantaged, however, is down to good empirical analysis, and most groups that are discussed today (such as being black or being female, or indeed in most cases a combination of many other salient categories) fall on the ends of this hypothetical spectrum.

## References

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