

Common racial profiling (RP) practices:

- A. “stop and search” (“stop and frisk”): stopping pedestrian and patting them down (generally for weapon)
- B. traffic stops: stopping drivers and looking for contraband in their car (?or on their person?)

“Basic argument” in favor of RP as carried out by police:

- A. Blacks and Latinos engage in various crimes at a higher rate than whites and Asians
- B. It is the job of police to reduce or prevent crime
- C. Police can do this best if they take the race of individuals into account (in addition to other factors, such as suspicious behavior) in deciding whether to engage them as potential suspects.
- D. Therefore it is justified for police officers to take race into account in their deciding whom to question, stop, examine, etc.

(the practice defended by this argument can be regarded as an instance of “statistical discrimination” in Blum’s sense)

Risse and Zeckhauser’s argument in favor of RP (criticized by Lever)

R&Z recognize that the “basic argument” is not sufficient by itself because it does not take account of the possible harms of RP, which have to be measured against the benefits alleged in the basic argument. So they add the following steps:

- E. RP can cause harm if it involves (1) police abuse, (2) harassment of racial minorities, (3) disproportionate use of race in RP. R&H defend RP *only* when it does *not* involve these harms.
- F. In addition R&Z defend the “**expressive harm thesis**,” which says that most of the harms associated with RP actually stem from the racist background to RP, that is racism in the society more generally that leads to the disadvantaged standing of blacks (see Lever 21b).¹ The actual harms of RP by itself (when not tainted by E1-3 above) are, they think, not great, and are less than its benefits in reducing crime (including, and especially, benefits to blacks: see Lever 22b).

Counterarguments to defense of RP that accept step A for the sake of argument

1. questioning move from C to D (see Lever 22a, 26a):

Consider the following analogous argument:

- C. Police can reduce crime best if they are not required to get a search warrant before searching a residence; or if they are not required to inform an apprehended suspect that they have a right to have a lawyer present.
- D. Therefore police should not be required to get a search warrant before searching a residence, nor to inform an apprehended suspect that they have a right to have a lawyer present.

¹ Risse and Zeckhauser, and Lever, discuss RP only in relation to blacks, but as the Sentencing Report shows, RP is practiced in relation to Latinos also.

2. Lever's argument against R&Z (see also her original article, "Why Racial Profiling is Hard to Justify: A Response to Risse and Zeckhauser")
 - I. Lever does not deny the expressive harm thesis, but argues that RP not only *reflects* racism in society but *contributes* to it (Lever 23a,b), including contributing to police abuse and harassment of minorities (E1,2 above. Lever 24a), to masking whites' own contribution to racism in society, and to sending a misleading message to whites and blacks about crime in society (original article 107).
 - II. In addition, background racism actually increases the harms of RP itself (Lever 24b, bottom—explained more fully in her original article, 103-04)
 - III. For these reasons, the requirement for justifying RP is quite high, and there is not evidence that RP as practiced (even without E1-3) meets that standard
3. Other harms of RP that Lever does not mention or understates:
 - a. contributes to stigmatizing of blacks and Latinos since association with criminality is one of the major elements of that stigma
 - b. alienates blacks and Latinos from the police, undermining the cooperation needed for effective police work through community policing
 - c. permitting any discretion to police to make use of individuals' (perceived/assumed) race is fairly likely to lead to abuse of that discretion, because of pervasiveness of racial stereotypes and also widespread implicit bias
 - d. mass incarceration of blacks strongly undermines the civic standing, political effectiveness, economic position, and general social well-being of black communities [not solely a product of RP but RP contributes to it] (see M. Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*)

Challenges to step A (greater commission of crime by blacks and Latinos)

David Harris's argument (*Profiles in Injustice: Why Racial Profiling Cannot Work*, 2002)

Harris does not deny that blacks and Latinos commit more violent crime than whites and Asians. But RP is not primarily aimed at this type of crime, which requires other methods. It is aimed at drug-related crime and gun possession, and in this area, whites engage in illegal activity at same or greater level as blacks and Latinos

Harris cites various studies of highway stops/searches/arrests that showed (1) blacks and Latinos were stopped at a (significantly) higher rate than whites, and (2) that the "hit rate" (rate at which illegal material was found on the individual) was the same between blacks and whites and both were significantly greater than Latinos. (e.g. New Jersey turnpike study from 2000: blacks and Latinos were 78% of those searched. Something worth finding was found in 25% whites, 13% blacks, 5% Latinos. [note: significance of 78% figure can only be assessed if we know what % of each race are drivers on the NJ turnpike during this period; but presumably it was unlikely to be anything like 78%.])
 New York stop and frisk study: 12.6% whites arrested; 11.5% Latinos; 10.5% blacks.

That is, step A is false with respect to the kinds of crimes racial profiling is meant to decrease