

Racial Profiling: Moral, Legal, and Empirical Perspectives

The debate about racial and ethnic profiling is often portrayed as a clash between opposing moral perspectives on crime and terrorism. Proponents of profiling appeal to dramatic reductions in crime; opponents appeal to violations of rights. The result is a standoff between *consequentialist* or *utilitarian* considerations in favor of profiling, and *deontological* or *rights-based* considerations against it. We will move past this oversimplifying standoff and probe racial profiling from a variety of moral, legal, and scientific perspectives. To consider how institutions can best promote public safety while simultaneously respecting civil liberty, we will examine:

- the consequentialist and deontological arguments for and against profiling;
- the empirical evidence suggesting that profiling helps to capture and deter criminals;
- the remarkable but commonplace claim that “it follows mathematically” that selectively targeting “a smaller but higher crime group” will reduce crime;
- the social, psychological, and behavioral consequences of profiling on the targets and perpetrators of it, as well as on the wider community;
- the sophisticated tools that social scientists are developing to predict and measure the causes and effects of profiling;
- concrete strategies that law enforcement agents (and ordinary people) can implement to make their perceptions of others more accurate and objective;
- the power of institutional structures to encourage or undermine practices of profiling.

Required Texts

Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*

Jack Glaser, *Suspect Race: Psychological Bases and Policy Implications of Racial Profiling*

Frederick Schauer, *Profiles, Probabilities, & Stereotypes*

Course Schedule and Reading List**Weeks 1-2** Introduction; NYC’s “Stop and Frisk” Program

Jeffrey Toobin, “Rights and Wrongs”

Shira Scheindlin, opinion in *Floyd v. City of New York*

Raymond Kelly (NYC Police Commissioner), “The NYPD: Guilty of Saving 7,383 Lives”

Weeks 3-4 What Is Profiling, and How Can We Tell It’s Happening?

Glaser, *Suspect Race*, Chs.1-2

Darin Fredrickson & Raymond Siljander, *Racial Profiling: Eliminating the Confusion between Racial and Criminal Profiling and Clarifying What Constitutes Unfair Discrimination and Persecution*, Chs. 2-3

Alexander, *New Jim Crow*, Ch.3, “The Color of Justice”

Optional Further Reading Historical Background, Counterterrorism, and Medicine

Historical Background: Alexander, *New Jim Crow*, Introduction, Chs.1-2

Glaser, *Suspect Race*, Ch.6, “Flying while Arab: Racial Profiling in Counterterrorism”

Schauer, Ch.7 (pp.175-190)

Harris, Chs.6, “Profiling Affects Latinos, Asians, and Arabs;” Ch.9, “Profiling After 9/11”

David Wasserman, “Is Racial Profiling More Benign in Medicine Than Law Enforcement?”

Weeks 4-5 Profiling as Rational Generalization

Schauer, Introduction, Chs. 1, 5-6, 7 (pp.191-198, “Driving while Black”)

Kasper Lippert-Rasmussen, “‘We are all Different’: Statistical Discrimination and the Right to be Treated as an Individual”

Frederick Schauer and Richard Zeckhauser, "Regulation by Generalization"
Philip Tetlock et al. "The Psychology of the Unthinkable: Taboo Trade-Offs, Forbidden Base Rates, and Heretical Counterfactuals"
Lee Jussim et al., "The Unbearable Accuracy of Stereotypes"

Week 6 The Cognition of Race in Policing

Malcolm Gladwell, *Blink*, Ch.6, "Seven Seconds in the Bronx"
Keith Payne, "Weapon Bias: Split-Second Decisions and Unintended Stereotyping"
Hal Arkes and Philip Tetlock, "Attributions of implicit prejudice, or 'would Jesse Jackson 'fail' the Implicit Association Test?"
Glaser, *Suspect Race*, Ch.3, "Causes of Profiling;" Ch.4, "Unintentional Causes of Profiling"

Weeks 7-8 Consequentialist and Deontological Defenses of Profiling

Mathias Risse & Richard Zeckhauser, "Racial Profiling"
Mathias Risse, "Racial Profiling: A Reply to Two Critics"
Jeffrey Reiman, "Is Racial Profiling Just? Criminal Justice Policy in the Original Position"
Michael Levin, "Comments on Risse and Lever"

Weeks 8-9 Unintended Consequences: "Reverse Deterrence" and the "Ratchet Effect"

Bernard Harcourt, *Against Prediction: Profiling, Policing, and Punishing in an Actuarial Age*, Ch.4, "The Mathematics of Actuarial Prediction;" Ch.5, "The Ratchet Effect"
Glaser, Ch.5, "The Effects of Racial Profiling: Costs and Benefits"
Frej Klem Thomsen, "The Art of the Unseen: Three Challenges for Racial Profiling"

Week 10 Consequences on African-Americans as Individuals and as a Group

David Harris, *Profiles in Injustice: Why Racial Profiling Cannot Work*, Ch.5, "The Costs of Racial Profiling: Casualties and Collateral Damage"
Alexander, *New Jim Crow*, Ch.4, "The Cruel Hand;" Ch.5, "The New Jim Crow"

Week 11 Psychological Consequences of Discrimination

David Harris, "The Stories, the Statistics, and the Law: Why 'Driving While Black' Matters."
Mark Chen and John Bargh, "Nonconscious behavioral confirmation processes: The self-fulfilling consequences of automatic stereotype activation"
Jeremy Jamieson et al., "Experiencing Discrimination Increases Risk-Taking"
Paul Bou-Habib, "Racial Profiling and Background Injustice"

Week 12 Racial Cognition and the Law

Charles Lawrence, "The Id, the Ego, & Equal Protection: Reckoning with Unconscious Racism"
Lawrence, "Unconscious Racism Revisited" (selections)
Charles Ogletree et al., "Coloring Justice: Implicit Social Cognition and Criminal Justice"

Week 13 Institutional Reforms

Alexander, *New Jim Crow*, Ch. 6, "The Fire This Time"
Glaser, *Suspect Race*, Ch.7, "The Policy Landscape;" Ch.8, "Destigmatizing Stereotyping"
Schauer, Ch.8 (pp.207-223, "Antidiscrimination as Generalization," "Generality of Equality")
Harcourt, Ch.9, "The Virtues of Randomization"

Week 14 Individual Reforms: Reducing the Influence of Race in Policing

Brandon Stewart and Keith Payne, "Bringing Automatic Stereotyping under Control: Implementation Intentions as Efficient Means of Thought Control"
Saaid Mendoza et al., "Reducing the Expression of Implicit Stereotypes: Reflexive Control Through Implementation Intentions"