Risse and Zeckhauser on Racial Profiling: A Reply

REGINALD WILLIAMS
Bakersfield College

This article criticizes Mathias Risse and Richard Zeckhauser's recent utilitarian defense of racial profiling. I use a novel thought-experiment to argue that even if a negative phenomenon could be reduced by profiling members of certain groups who happen to be disproportionately associated with it, the practice can be implausible. Specifically, I explore the possibility that in a given society, platinum blondes have a higher per capita incidence of a serious sexually transmitted disease, *D*. And I argue that doctors and health officials in the society would not be justified in profiling such blondes, given that there is nothing about being a platinum blonde that causes one to have *D*.

Mathias Risse and Richard Zeckhauser have recently published an important article on racial profiling.[1] In it they consider several arguments for and against the practice, both utilitarian and non-consequentialist arguments. Ultimately, though, Risse and Zeckhauser conclude:

> To the extent that race is clearly useful to curb crime, the [utilitarian] point of view developed in this section justifies the cost of profiling in at least some controversial contexts . . . As a rule of thumb . . . , these cases are those in which, plausibly, the use of race is sufficiently beneficial to curbing crime that the incremental effects of racial profiling, the incremental expressive harm caused by acts of profiling, are outweighed.[2]

Risse and Zeckhauser acknowledge that their utilitarian defense of racial profiling rests on two major assumptions: 'that there is a significant correlation between membership in certain racial groups and the tendency to commit certain crimes' and 'that given this tendency, police can curb crime if they stop, search, or investigate members of such groups differentially'.[3] Even granting these assumptions, however, Risse and Zeckhauser's defense of racial profiling, indeed the practice itself, is problematic. To see this, consider a thought-experiment:

> Suppose that we live in a society of one million people which has experienced an outbreak of a serious sexually transmitted disease *D*: a disease that causes severe flu symptoms, occasional liver damage, and growths on one's gonads;

[1] 'Racial Profiling', *Philosophy and Public Affairs* 32 (2004), pp. 131–70.
[2] 'Racial Profiling', p. 150.
[3] 'Racial Profiling', p. 132.

© Cambridge University Press 2010
Utilitas Vol. 22, No. 2, June 2010
doi:10.1017/S0953820810000117

https://doi.org/10.1017/S0953820810000117 Published online by Cambridge University Press

some of them malignant, some benign. Suppose, in addition, that *D* is so easily transmitted through sex that copulating with someone who has *D* gives one a 20 percent chance of contracting *D*. And one runs these risks whether or not one uses condoms; *D* is such a tiny pathogen that it slips right through them.

Suppose, further, that *D* is a particularly dangerous pathogen, and thus a particular concern of doctors and health officials, because it can be transmitted by blood and saliva which have been exposed to the air for less than 24 hours without being killed by sanitizers. So, for example, that drinking out of an improperly sanitized glass, or eating from a non-sterilized plate, could infect one with *D*. But despite the risk of contracting *D* from a contaminated glass, etc., less than 1 percent of those infected contract *D* thus; *D*, again, is officially, and primarily, a sexually transmitted disease. Doctors and health officials therefore focus on limiting sexual transmissions of *D*.

Now, disturbingly, doctors and health officials have no hope of convincing our society to abstain from having sex; the risks associated with *D* do not curb our society's ravenous sexual appetites. Doctors and health officials, accordingly, research alternative means of containing *D*. What they learn is most interesting.

It turns out that the spread of *D* can be reduced by identifying those who have *D* and by quarantining them for six months. And it also turns out that 8 percent of our society's 50,000 platinum blondes – be they male or female, natural or unnatural – are markedly more sexually active with markedly more partners each year than are the other 950,000 members of our society. Specifically, 8 percent of these blondes copulate with 8 or more people each year; whereas only 2 percent of the members of all other groups in our society fall into this category. And as a result of these trends, 4 percent of our society's 50,000 platinum blondes are infected with *D* (2,000 people): compared to a consistent 0.4 percent of the members of all other groups in our society (3,800 people).

The question is whether doctors and health officials in our society should profile, investigate, and upon discovery of *D*, quarantine platinum blondes in our society in an attempt to help contain *D*. Notice two points immediately.

First, *D* represents a serious problem for our society: one which our society has to address, health being a basic need that any stable society must work to secure. Moreover, generally speaking, *D* is a sufficiently serious problem that our society seems justified in taking some sort of aggressive action to contain *D*. Thus, for instance, were there a vaccine for *D*, or could a prescription cure those infected with *D*, our society might be justified in requiring everyone to receive the vaccine, or all those infected to take the prescription. Sadly, though, no such measure exists.

Second, profiling, investigating, and quarantining platinum blondes will not eradicate *D* from our society; indeed, it might prove impossible to eradicate *D*. Profiling, investigating, and quarantining platinum blondes, however, does stand to reduce the spread of *D* in our society

https://doi.org/10.1017/S0953820810000117 Published online by Cambridge University Press

by removing from the other members' possible sex-partner pool the members of our society who are statistically most likely to transmit *D*.

But despite the general legitimacy of our society's aggressively combating the spread of *D*, and despite the potential efficacy of profiling, investigating, and quarantining platinum blondes as described, there seems to be a problem with this practice. The problem is that while being a platinum blonde in our society is correlated with an increased likelihood of having and spreading *D*, it is not *by virtue of* being a platinum blonde that one is more likely to have or spread *D* – it is by virtue of having an increased likelihood of copulating with 8 or more people each year that being such a blonde is correlated with an increased likelihood of having or spreading *D*. That is, there is nothing *per se about being* a platinum blonde that makes one more likely to have or spread *D*. Given the numbers, in fact, 92 percent of platinum blondes are not particularly likely to have or spread *D* because 92 percent of platinum blondes copulate with no more people than does anyone else in our society.

So the problem with profiling, investigating, and quarantining platinum blondes in our society, one problem anyway, is that it treats persons according to a superficial quality, their hair color, which happens to be correlated with an increased likelihood of having a serious condition, *D*, when there exists a more fundamental quality, people's sexual habits, by virtue of which having the above superficial quality is known to be correlated with the said condition. That is, while profiling, investigating, and quarantining platinum blondes in our society targets those who are statistically most likely to have or spread *D*, it does not target *what it is about these persons* that makes them statistically most likely to have or spread *D*. Furthermore, this practice associates platinum blondes with a condition which carries considerable social stigma: being likely to have and spread a sexually transmitted disease. In this way, then, the practice denigrates merely *being* a platinum blonde; it inclines society to think of platinum blondes in terms of sexually transmitted disease, when in point of fact 96 percent of platinum blondes in our society do not have *D*.

Even if the only known way to combat *D* in our society is by quarantining those who have *D* for six months, and even if some sort of profiling could help to reduce the spread of *D*, it would be more plausible for doctors and health officials in our society to determine people's sexual behavior and to quarantine them according to *it*, rather than according to their hair color. For one's sexual behavior provides a deeper, more reliable explanation of one's likelihood of having and spreading a sexually transmitted disease than does one's hair color. And to associate a sexual behavior with a disease that it transmits is not to denigrate the behavior in the same way as associating a completely

https://doi.org/10.1017/S0953820810000117 Published online by Cambridge University Press

innocuous hair color with a sexually transmitted disease; the former is to state a mere fact.

In just the same way, poverty provides a deeper, more reliable explanation of one's likelihood of committing crime than does one's alleged race; this is a platitude of behavioral science. So even if some sort of profiling can help to reduce crime, even on the assumption that Risse and Zeckhauser are right to take seriously utilitarian arguments for racial profiling, I take the above thought-experiment to show, minimally, that the *racial* component of racial profiling renders it implausible. Three objections to this argument, however, are worth addressing by way of conclusion.

First, one could fault this article for not rejecting profiling altogether – i.e. for countenancing the legitimacy of some sort of non-racial profiling. But if this article provides a powerful counterinstance even to racial profiling, I take this to be significant, given the use of racial profiling internationally and the recent tendency of commentators to endorse racial profiling.

Second, one could argue that to the extent that this article seeks to avoid denigrating certain races by associating them with crime, it denigrates poor people by associating poverty with crime. To associate poverty with crime, however, is just to acknowledge the fact that if one is financially disadvantaged, let alone desperate or hungry, one is more likely to resort to illicit means of overcoming one's predicament than if one were privileged. This is not denigrating; it is not even discriminatory. It is a fact about the vast majority of human beings.

Finally, and importantly, one could argue that were racial profiling to be supplanted by profiling people in terms of poverty, many of the same persons would ultimately be targets of profiling. African Americans, for instance, are not just targets of racial profiling in the US; as a group, they are statistically poor as well.[4] If acted upon, though, this article would eliminate the targeting of African Americans *qua* African American: a welcomed result. And it would prevent African Americans from being pulled over by law enforcement essentially because they are driving expensive cars, as has often happened.[5] This, I take it, would be another welcomed result.

rwilliam@bakersfieldcollege.edu

[4] According to the US Census Bureau, in 2006, 22 percent of all African Americans lived below the American poverty line, compared to 10 percent of all other races. For such statistics, go to <http://www.blackdemographics.com/housing_poverty.html>.

[5] This phenomenon has garnered much attention in the literature. See, for instance, Risse and Zeckhauser, 'Racial Profiling', p. 138, and David Harris, 'Driving While African-American: Racial Profiling on Our Nation's Highways', *American Civil Liberties Union Special Report* (1999).

https://doi.org/10.1017/S0953820810000117 Published online by Cambridge University Press