

## 1. INTRODUCTION

I will argue that the unalloyed statistical discrimination on the basis of race (henceforth racial profiling), which profiles racial groups who have experienced and, or, continue to experience, pronounced injustice (henceforth conditions of background injustice) is morally wrong. In using statistical data indicating a correlation between racial group membership and a higher relative crime rate, racial profiling constitutes a speech act which testifies false essentialist claims about those racial groups, and ranks them as inferior. Thus racial profiling is an act of subordination and perpetuates the unjust circumstances which have historically characterised the social lives of members of those racial groups. Consequently, when I refer to racial profiling as a speech act, I will not be referring to individual *instances* of its use but to the *practice as a whole*, using, and justified as it is, on statistical evidence.

‘Unalloyed’ profiling is statistical discrimination against racial groups, uninformed and unaccompanied by: a racist attitude or harassing manner on the part of those who use it; unfairly selective use (ie. use towards one racial group but not another under the same circumstances); or the imposition of greater burdens on innocent members of the profiled group than provision of benefits gained in terms of protection from crime (Bou-Habib 2011: 34). Moreover, the statistical data constitutes good evidence for a correlation between race and crime; it is not, for example, skewed against members of a specific racial group, thanks to biases which have informed its collection. A racial group experiences conditions of background injustice when it has previously been subjected to, or continues to experience, deprivation of rights or otherwise extreme discriminatory treatment due to prejudicial stereotypes and biases. The racial profiling of black Americans is my central case study.

## 2. THEORETICAL BACKGROUND: SPEECH ACT THEORY AND PRAGMATICS

Given certain pre-requisite conditions, an utterance is a *speech act*: in addition to merely representing something with words, an utterance can *perform* action (Austin 1962: 6). Specifically, locutionary acts (the act of saying something with particular semantic content) (ibid: 109) can have illocutionary and perlocutionary force. Perlocutionary acts are those actions performed *by* saying something (ibid: 110). For example, by shouting “fire!” in a crowd one might consequentially create a stampede, but it is not the utterance in and of

itself which achieves this. Alternatively, illocutionary acts are those performed simply *in* saying something (ibid) - it is *in* saying the words "I name this ship Britannia" that the intended action, ship-naming, is performed. Certain felicity conditions must obtain for the intended illocutionary consequences to be conveyed: the utterance must occur in the context of a naming ceremony, and the speaker must possess the relative authority, otherwise, the speech act will 'misfire' and the illocutionary consequences will not follow (Austin 1979: 237-41)

Speech-act theory is an aspect of pragmatics, concerned with how sentences convey meaning in a "speech *situation*" (Austin 1962: 139), rather than semantically via representational content and syntactic structure. In a given speech situation, utterances communicate non-explicit pragmatic content, invisible on a semantic analysis. For example, a teacher's utterance, "John is punctual and hands in work on time" reads, semantically, as a positive report of a student's behaviour. However, if this utterance is given in response to the question "how is John's academic performance?", the utterance communicates, pragmatically, a less positive endorsement of the student due to what the teacher *omits*: namely, any reference to John's *academic* qualities.

I now show that racial profiling can be properly understood as a speech act by demonstrating its pragmatic illocutionary force, its perlocutionary effects in terms of this force, and illustrating that only under conditions of background injustice do the necessary felicity conditions obtain.

### **3. RACIAL PROFILING AS A SPEECH ACT**

#### **(i) The argument for racial profiling**

2019 arrest statistics<sup>1</sup> evidence that black Americans are arrested for homicide at a per capita offending rate eight times that of whites; for non-aggravated assault, almost three times; and for robbery, over eight times more. Of all homicide arrests, blacks made up 14.8% more offenders than whites. Therefore, in America, blacks are more likely to commit violent crime than whites. The argument for racial profiling is that using this data to focus police resources - eg. by employing stop and search strategies on black individuals more

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<sup>1</sup> Expanded Homicide Data Tables 3, 6, 43 and 43a: Murder Offenders by Age, Sex, Race, and Ethnicity, 2019". *FBI.gov*. 2020.

regularly than white individuals - will apprehend more criminals and reduce crime. Despite these potential security benefits, I argue, racial profiling is morally wrong.

## (ii) Social generics and illocutionary force

Generic generalisations are statements of the form 'Ks are C' or 'K<sub>1</sub>s are more C than K<sub>2</sub>s', where K refers to a kind and F refers to some characteristic; eg. "tigers are striped", or "tigers are more dangerous than cheetahs" (Haslanger 2011: 183). Generic generalisations can convey three types of connection (Leslie et al 2009: 479; Leslie 2008: 41) - a *statistical* connection (members of K *tend* to have C); a *causal* connection (being a member of K *causes* one to have C); and a *principled* connection (having C *is part of what it is* to be a member of K). Social group generics are often problematic because they truthfully describe a statistical connection, but pragmatically communicate a principled or causal connection (Haslanger 2011: 186-7).

Racial profiling is justified by a generalisation which asserts a statistical connection: "blacks are more violent than whites". Semantically, this meets the criteria of a striking generic because, as well as statistical correlation, the characteristic attributed is "dangerous or appalling" (Leslie 2008: 12); moreover, striking generics in fact "require only a tiny percentage of the kind to exemplify the property in order to count as true" (Haslanger 2011: 199). Striking generics assert a causal connection (Leslie 2008: 41). Thus, given conditions of background injustice whereby black Americans have consistently been perceived as second-class citizens; deprived of fundamental human rights (Haney-López 2006: 27-34); and enslaved, partly justified by arguments pertaining to the biological inferiority and 'primitive' nature of blacks (Vartija 2021: 40-5); the pragmatic implication is a causal connection between blackness and violence: that blacks are violent *in virtue of* being black (Haslanger 2011: 200). The illocutionary speech act is to *testify* that violence is part of the *essence* of blackness. This claim is false, demeaning, and, in not making the same claims about whites, it also *ranks* blacks as inferior. Consequently, racial profiling is an act of subordination, since it puts blacks, "in a position of inferiority or loss of power...[it] demean[s] or denigrate[s] them" (Langton 1993: 303).

Moreover, not only does racial profiling constitute an injustice (as an act of subordination), it perlocutionarily perpetuates it. By asserting a principled and causal connection, it also posits a normative standard (Prasada & Dillingham 2006a), thus

upholding negative stereotypes: blacks are *should* be violent. Moreover, sociological evidence suggests these social generics create a “feedback loop” (Haslanger 2011: 197): blacks become aware of how they are described, modifying their behaviour accordingly (Hacking 1999: 104). Therefore, racial profiling reinforces the social facts described by the statistical evidence it uses and is justified by - it actually *makes* black Americans more likely to commit violent crime.

#### **(iv) Felicity conditions**

Ranking and testifying are ‘authoritative illocutions’: their felicity conditions require that the speaker occupy a position of authority in the relevant domain (Langton 1993: 205). In this case, the speaker is the state since racial profiling is enacted and justified within the context of the criminal justice system, which is in under the jurisdiction of the state. I now show that it is conditions of background injustice which ensure the fulfilment of these felicity conditions.

Firstly previous unjust actions of the US state (Schultz 2002) demonstrate significant precedent for its authority to rank black Americans as inferior: blacks were subject to slavery until 1865; denied full citizenship until 1866, and the right to exercise their vote until 1965; subject to segregation in which black facilities across all areas of socio-economic life were of lower standard than their white counterparts; and submitted to racist violence which the state has consistently ignored. At any given moment, the state possesses the authority to enact into policy which treats black lives as of lesser value than white lives. The fact that the law is no longer so blatantly discriminatory is due to a choice on the part of the state, not impotence.

Secondly, illocutionary success is also hearer-dependent. When a hearer tacitly accepts a speaker’s implicit presuppositions and authority simply by failing to resist it, illocutionary success is achieved. Non-explicit presupposed content constitutes part of the ‘score’ (Lewis 1979: 345) upon which “sentences depend for their truth value...at the stage of conversation they are uttered” (ibid); if a “statement’s referential ‘presupposition’ is unfulfilled, a felicity condition is unfulfilled, and the statement misfires” (Langton 2018: 147). Therefore where speech acts rely on certain presuppositions, the hearers must tacitly accept them for the speech act to be successful. In ranking and testifying claims about blacks, racial profiling presupposes problematic content about the essence of

blacks, assuming a natural proclivity for violence. Given background injustice, these presuppositions are tacitly accepted. Prejudice towards blacks has long been prevalent in US society: eugenics arguments claimed blacks were inherently more base, aggressive and 'brutish' than whites (Smiley & Faknule 2016: 351-4); the denial of citizenship, implied they were not "created equal", or "endowed...with certain unalienable rights" including "life, liberty and the pursuit of happiness"<sup>2</sup>; and, although a minority, recent right-wing movements indicate that blatantly racist views still exist in American society (Atkinson 2018: 311). Moreover subconscious biases and stereotypes are pervasive across society more generally, highlighted by the representation of blacks in media (violent and engaged in criminal activity) (Oliver 2003: 6-8), and their relative socio-economic disenfranchisement (Gallagher 2009: 192-203). These biases are even evident within the criminal justice system (Taylor et al 2019: 217-9). Therefore, given that these norms are so embedded in shared social psychology and "the common ground we rely onto communicate" (Haslanger 2011: 196), the problematic content presupposed by racial profiling as a speech act is likely to be accommodated by hearers. The same is true, in part, for the authority of the state in successfully making these speech acts; they "acquire authority...[when] authority gets presupposed, and hearers let it go through, following a rule of accommodation" (Langton 2018: 152).

#### 4. OBJECTIONS

One objection is that unalloyed racial profiling holds no essentialist presuppositions - that the underlying, justificatory, generalisation is *purely* a statistical connection. This could be explicated through a PR campaign, for example. Firstly, I have empirical doubts as to whether such a campaign would be sufficiently wide-reaching. Moreover, psychological evidence indicates that social kinds grouped by generics, even if purely statistical, are still more likely to be viewed as having a shared essence (Rothbart et al 1978). More crucially, the illocutionary force of racial profiling occurs through a 'back-door' speech act: inexplicit speech acts, concealed behind 'front-door' acts, with insidious illocutionary potential which prevails by default (Langton 2018: 146). Therefore, even if the 'front-door' purpose of racial profiling - to use purely statistical evidence to focus police resources and hence reduce crime - were made explicit, the 'back-door' act of testifying that blacks are inherently violent and inferior is likely to sneak through, since these stereotypes are embedded

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<sup>2</sup> US Declaration of Independence, 1776

*subconsciously* in “intersubjective patterns of perception, thought and behaviour” (Haslanger 2011: 194) which govern what content is assumed to be true in conversation.

Subsequently, one could object that I make an unfair characterisation of the current prevalence of racist attitudes. Nowadays, very few hold racist attitudes; hence it is unlikely that the subordinative speech act is actually successful. Firstly, the empirical evidence I have highlighted to the contrary demonstrates this is not the case. Moreover, I do not claim that either party consciously recognises these biases as *true*. The subordination of blacks is an operation of power dependent upon agents having shared conceptions of social identity (Fricker 2007: 14) - a shared conception of blacks as essentially violent and inferior - but this operation “does not require that either party consciously accept the stereotype as truthful” (ibid: 15). On conscious reflection, most would acknowledge that blacks are not essentially violent or inferior, however what racial profiling presupposes in this respect is accommodated tacitly and implicitly on a deeply subconscious level excluding rational analysis.

Finally, some would argue that, in spite of my argument, the benefits of racial profiling in terms of crime reduction and increased security legitimate a consequentialist argument in its favour. Firstly, the subordination of a group on the basis of race constitutes an injustice so great that the moral costs of racial profiling outweigh its practical advantages; to permit subordination on a consequentialist basis would set precedent for a great manner of potential evils (Kamm 1992). Secondly, regardless of the consequentialist argument in its favour, the majority of philosophical literature nevertheless seeks to demonstrate its moral wrongness. My argument does the same, but is stronger than these other accounts because it captures the immorality of racial profiling as one that is *objective* and *ontologically real*. On other accounts, racial profiling does not actually constitute injustice, but profiled groups - albeit reasonably - *perceive* it as such. For example, on the expressive-harm based account (Risse & Zeckhauser 2004), given historical precedent, blacks resent racial profiling because they *reasonably misperceive* it as another instance of subjection to racist attitudes which have caused them injustices in other contexts. The ‘reasonable sense of inferior political status’ argument (Hosein 2018) is the most similar to my own; however this account does not claim that racial profiling *actually* diminishes profiled individuals’ sense of political status but that, racial profiling enables blacks to *infer* that the state *considers* them inferior. My account is also objective. The humiliation-based account (Bou-Habib 2011) claims that racial profiling humiliates in a way that is

ontologically real, but it is dependent on profiled individuals' perception of how others perceive them (ie. in a demeaning way). Inter-perception is subjective: if others do not view the profiled in a demeaning way, or if members of the profiled groups do not perceive this other-perspective as demeaning, then racial profiling is not constitute morally wrong.

## **5. CONCLUSION**

I have argued that unalloyed racial profiling is morally wrong, because - in using, and being justified by, a statistical correlation between blackness and violence - under conditions of background injustice which are characterised by prejudices towards blacks and which have in turn historically justified unjust, discriminatory treatment of blacks, racial profiling testifies that blacks are essentially violent, and ranks them as inferior. Thus it constitutes an act of subordination, perpetuating those very conditions of background injustice. In highlighting the necessity of background injustice for the fulfilment of felicity conditions, I have demonstrated how the profiling of certain groups is morally wrong whilst the profiling of other groups - for example white males, who have historically not been subject to the same biases and discrimination - might not be. My argument constitutes the strongest argument for the wrongness of racial profiling in current literature because it illustrates how racial profiling commits a harm which is ontologically and objectively real.

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