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Racial Profiling and Second-Class Citizenship

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Racial Profiling and Second-Class Citizenship

Abstract: I argue that racial profiling gives minority groups reason to perceive a threat of violence and wrongful arrest when interacting with the criminal justice system, consequently leading them to engage in self-limiting conduct in order to avoid being profiled. As a result, they may ultimately exercise a de facto second-class citizenship status through a limited exercise of basic rights and access to public services. This would suggest, contra consequentialist defenders of the practice, that a public ban on profiling would serve to contain an important, but often overlooked source of racial injustice and that a thorough cost-benefit analysis should include these costs.

Keywords: racial profiling, distrust, policy interpretation, consequentialism, perception-based view

Racial profiling is a controversial practice among philosophers. Some object to the practice on deontological grounds, viewing it as an infringement on rights and equality, while others focus on weighing its consequences against its benefits. In this paper, I take the latter approach to shed light on some normatively significant, but underexplored costs of profiling.

Allow me, first, to issue some brief remarks on the background of my discussion. Risse and Zeckhauser (2004) advance an influential consequentialist defence of racial profiling which they define as “any police initiated action that relies on the race, ethnicity, or national origin and not merely the behavior of an individual.” (95) They argue that the resentment, hurt and distrust felt by those subjected to profiling are centrally generated by the background injustice, whereas the practice is merely an expression of racism or underlying socioeconomic disadvantages, rather than a wrong in itself (95-6). Consequently, these costs should not be included in the cost-benefit calculation; instead, we should only count the incremental harm inflicted by profiling itself, which is modest and outweighed by the benefits of the practice. This consequentialist defence of profiling has been met with several objections. Most relevantly to the present discussion, Lever (2005:97) argues that consequentialist defenders underestimate the harm caused by profiling and minimize the extent to which the practice exacerbates racism. In response, Risse (2007) argues that Lever misinterprets the expressive harm thesis, by assuming that its purpose is to completely separate profiling from racism in police practices. Because of this misinterpretation, he argues, Lever fails to identify non-expressive harms that are centrally caused by profiling, and, as such, the consequentialist case for profiling remains intact.

This paper aims to vindicate the consequentialist case against racial profiling by highlighting a distinctive, underexplored way in which profiling can generate harms. I advance a perception-based critique of profiling, by arguing that communities of colour can reasonably interpret it as a serious threat, and that, based on this interpretation, they may suffer a range of harms which have so far been neglected in cost-benefit analyses of the practice.¹ The perception-based critique advanced in this paper owes its premises to Hosein’s (2018) argument that racial

¹ To be clear, this critique maintains that racial profiling has bad overall consequences when it is employed as a rule by public officials. The critique does not maintain that it has bad consequences on each and every occasion it is used.

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3 profiling causes significant harms because it is reasonably interpreted by racial minorities as
4 indication that their interests will be discounted within the criminal justice system. In a
5 departure from Hosein's view, I argue that it is not always reasonable for racial minority
6 members to infer from profiling that they have an *overall* inferior political status, in all key
7 policy areas. Nevertheless, I show that in taking the vantage point of the would-be profiled, we
8 can identify a wide range of perception-based harms such as reduced employment and
9 educational opportunities, limited access to public services and a threat to the exercise of their
10 basic civil rights. On their own, each of these individual harms may have important
11 socioeconomic or political consequences, but, when taken cumulatively, they indicate that,
12 from a societal perspective, profiling leads racial minorities to exercise a de facto second-class
13 citizenship status.
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18 This paper aims to contribute to consequentialist debates about profiling in several ways. In
19 shifting our attention to how profiling is perceived by the would-be profiled, we are able to
20 identify a wider range of normatively significant harms, which are not usually included in
21 consequentialist assessments of the practice. As such, my view has significant implications for
22 how we should run a cost-benefit analysis of profiling, since it urges us to include longer-term,
23 perception-based harms in that calculation, rather than focus solely on short-term
24 maximization. My analysis may also be distinguished from other views for focusing on the
25 effects of racial profiling on all the members of racial groups (the would-be profiled), rather
26 than only those who are actually being profiled. In taking the vantage point of communities of
27 colour, we are able to isolate the incremental harm generated by profiling, which would be
28 avoided, or at least greatly reduced, if the practice was outlawed. Implicitly, bringing
29 considerations about the mental states of the would-be profiled into sharp focus would
30 strengthen the position of critics of profiling against consequentialist defenders.
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36 My discussion proceeds in three parts. The first section sets out my premise, that racial
37 minorities have reason to interpret profiling as a threat, given their relation with the police, and
38 the state, more broadly. Here, I offer a brief outline of Hosein's view, highlighting both its
39 contribution to my argument and its limitations. Second, I advance my perception-based
40 consequentialist view, according to which racial profiling leads communities of colour to
41 reasonably anticipate substantial costs and to engage in self-limiting conduct in order to avoid
42 being profiled. The third section draws on empirical evidence to specify these self-limiting
43 behaviours and the reasons why political theorists should care about them. In my conclusion, I
44 issue some brief remarks about the implication of my argument for choosing the correct
45 normative framework is for thinking about racial profiling. While I do not aim to show that all
46 kinds of profiling are unjustified, it is noteworthy that the sorts of issues I highlight may lead
47 to that conclusion on a rights-based or rule consequentialist account.
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53 Before I begin, some preliminary clarifications are in order. First, in this paper I focus on pre-
54 emptive profiling², which seeks to identify individuals who are likely to commit a crime, even
55 when they have not previously engaged in criminal acts; in contrast, post-crime profiling
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59 ² Throughout the paper I will be focusing primarily on racial profiling in the US, while also drawing on some UK
60 examples.

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3 focuses on identifying those that have already committed a crime by narrowing down a pool of
4 suspects (Lever, 2016). Second, like Risse and Zeckhauser, I assume that racial profiling is an
5 effective tool for reducing crime and that screening racial minority members beyond
6 proportional aims is illegitimate. Finally, the majority of my discussion takes into account the
7 accompanying injustices of profiling, such as police brutality and abuse; the reason for this is
8 simple. Unlike most philosophical discussions on profiling, I do not focus on those being
9 profiled, who may or may not experience the use of physical force. Rather, I am concerned
10 with how racial profiling is experienced by people of colour even when they themselves are
11 not being profiled. This vicarious experience involves awareness of the practice, through highly
12 publicized cases such as the murders of George Floyd and Breonna Taylor, as well as of cases
13 in which close others have been racially profiled. The full extent of harm cannot properly be
14 spelled out unless we view these practices as they are seen, through publicly available evidence,
15 by racial minorities.
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21 **1. Racial minorities and policy interpretation**

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23 In this section, I outline the premise of my argument – racial minorities are more likely to
24 interpret policies as a threat, because of the background of injustice against their group,
25 experiences of institutional racism, and distrust in the criminal justice system and the state,
26 more broadly. Throughout this section, I acknowledge that the view advanced in this paper
27 owes much of its premise to Hosein’s (2018) argument that profiling creates an unjust relation
28 between racial minorities and the state, by giving the former reason to develop an inferior sense
29 of political status. After outlining his argument, I highlight perceptions of profiling as a
30 significant, yet neglected component of the assessment of the practice. In particular, I share
31 Hosein’s view that perceptions *as such* matter, provided that they are reasonable, even if they
32 are objectively unsupported. However, I also argue that the kind of perception-based
33 consideration he uses is inconclusive, because it relies on a controversial empirical claim, that
34 profiling leads people to develop an *overall* sense of inferior political status.
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40 **1.1 Hosein’s view**

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42 Hosein (2018) argues that profiling gives people reason to develop *an overall sense of inferior*
43 *political status*, thereby creating an unjust relationship between the members of racial
44 minorities and the state. His argument starts from the premise that racial minorities distrust the
45 criminal justice system and, on that basis, have formed the belief that their interests and rights
46 will be discounted in interactions with the police. The empirical evidence for this claim is
47 compelling, with Nadal et al. (2017) finding that African American and Latinx communities in
48 the US often distrust law enforcement agencies, harbouring particularly negative perceptions
49 of the police. This lack of trust is explained, first, by the evidence available to communities of
50 colour about their interactions with the state and relative social status. Police brutality against
51 African Americans is widespread in the US and, often, normalized and legitimized through the
52 state’s decision to not punish the culprits in a proportional manner (Brunson, 2007). The
53 criminal justice system is heavily biased against Black and Latinx minorities who are often
54 given more severe sentences for the same crimes, racially profiled and overrepresented in
55 prison populations (Steffensmeier & Demuth, 2000). Furthermore, in light of anxieties about
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3 race-based criminality, the coercive institutions of the state may abuse the trust these
4 communities, such as in the case of FBI's 'community outreach' events as a pretext for spying
5 on AMEMSA³ groups and mosques (Markon, 2011). Finally, awareness of historical injustice
6 also contributes to this distrust, through racial parental styles and priming. Hughes et. al (2006:
7 15) conceptualize racial socialization as "the transmission of parents' world views about race
8 and ethnicity to children by way of subtle, overt, deliberate and unintended mechanisms". An
9 extensive body of research shows that most African American parents engage in this practice
10 while bringing up their children and that they do so in a very homogeneous way. Alongside
11 messages of racial pride, parental strategies commonly include highlighting racial
12 discrimination as a barrier to the success of African Americans in society, which may decrease
13 overall trust in state (Neblett et. al, 2008). More relevantly, racially charged incidents involving
14 harassment, police brutality or shootings of young black men may also shape racial parental
15 styles and further increase distrust in law enforcement agencies. For instance, a study found
16 that the murder of Trayvon Martin led many African American parents to engage in emotional
17 processing with their children, and advise them on how to react if they found themselves in a
18 similar situation (Thomas & Blackmon, 2015).

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25 Hosein's second premise is that racial minorities also harbour distrust in other key policy areas
26 such as housing, education and employment. Showing this is essential for his conclusion that
27 the would-be profiled are caused to develop an *overall* sense of inferior political status, in that
28 they believe that their interests are likely to be discounted not just within the criminal justice
29 system, but by all key branches of the state. This belief is motivated by evidence of racial
30 disparities such as those illustrated by Tommie Shelby's (2018) description of *dark ghettos* in
31 the US, predominantly black urban neighbourhoods with high concentrations of poverty,
32 limited educational and employment opportunities and high crime rates. African Americans
33 are also socially stratified through current forms of welfare provision which are designed to
34 relegate women to social reproduction tasks such as childrearing (Orloff, 2002), and men to
35 low-wage, seasonal, and hazardous employment (Belkhir et. al, 2001). From this evidence,
36 communities of colour may infer that institutional racism is still tolerated, working to
37 perpetuate structural disadvantage with regard to the distribution of resources, power and
38 opportunity and to entrench white supremacy.

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Against this background of distrust, Hosein argues, the members of racial minorities may
reasonably interpret racial profiling as indicating that the state is willing to discount their rights
and interests, not only within the criminal justice system, but all other policy areas. On his
view, establishing that interpretations are reasonable is essential to determine the limits of state
responsibility regarding the costs that arise out of the practices which are being interpreted.
Reasonable policy interpretations require a person to have 'sufficient grounds to justify her
belief' by appealing to the evidence that is available to her about her standing in the political
community (Hosein 2018:e7). Here, we are concerned with *objectively reasonable*
interpretations, in that, given the evidence, any similarly situated individual, has reason to
interpret racial profiling as indication that their interests will be substantially discounted. Since
racial minorities are severely disadvantaged as a result of frequent and egregious instances of

³ Arab, Middle Eastern, Muslim and South Asian

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3 institutional racism, particularly within the criminal justice system, they may reasonably
4 interpret profiling as a severe threat. In contrast, Christians who claim they feel politically
5 inferior because of the state's refusal to give pride of place to their religious symbols fail to
6 satisfy the reasonableness condition. This is because they are not a stigmatized group in the
7 US, and their claim involves a demand for preferential, rather than equal, treatment.
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10 This reasonable interpretation leads to the development of a sense of inferior political status,
11 defined as 'the perception or belief that the state substantially discounts the rights and interests
12 of members of one's group relative to the rights and interests of members of other groups' (e5).
13 Since the criminal justice system plays an important role in the lives of some racial minorities,
14 to the extent to which it may shape their prospects across other policy areas, they are likely to
15 develop an *overall* sense of inferior political status, by forming the belief that their interests
16 will be discounted not just by the police, but indeed across all key aspects of social and political
17 life. Having an *overall* sense of inferior political status threatens civic participation and it
18 creates an unjust relation between the members of racial minorities and the state. Hosein
19 concludes that, as a matter of justice, the state ought to secure, for each citizen, the confidence
20 that her interests and her rights are being given equal weight; as such, under present
21 circumstances, racial profiling is unjust and should be replaced by randomized screening.
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27 **1.2 An objection to Hosein's perception-based view**

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29 Hosein's argument has many merits, the most important of which is its focus on how profiling
30 is perceived by racial minorities. However, I argue that it is not always reasonable for racial
31 minority members to develop a sense of inferior political status *overall* in response to racial
32 profiling. This claim is central to Hosein's conclusion, since it is used to explain why the
33 would-be profiled may be excluded or alienated from civil life. First, minority distrust in policy
34 areas other than law enforcement is not as homogenous or common as he assumes, but rather
35 dependent on factors such as socioeconomic status, lived experience and ideology. While it is
36 true that many members of racial minorities live in racially segregated, materially deprived
37 areas, it is also the case that a considerable proportion of them live in more affluent
38 neighbourhoods, are well-educated, have high-paying jobs and are more likely to benefit from
39 state-funded scholarships and affirmative action initiatives. Mangum (2016) supports this
40 claim, finding that the level of trust of racial minority members in the government varies and
41 is shaped by demographics, social characteristics, personal interactions with the state, the state
42 of the economy and racial awareness.
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48 Second, not all members of racial minorities have equally compelling evidence to give them
49 reason to assume that their interests will always be discounted within the criminal justice
50 system and in other policy areas. Those who are better off are less likely to engage with, and
51 feel betrayed by, public housing and welfare provision institutions or inadequate educational
52 establishments (Sherman, Gartin, and Buerger, 1989). Equally, those who do not live in
53 deprived, predominantly black neighbourhoods usually have fewer interactions with the
54 criminal justice system and are more likely to view it as an isolated policy area in which they
55 interests are discounted, rather than indication of their overall inferior political status. It is not
56 surprising, then, that the evidence which Hosein provides for this claim focuses entirely on
57 racial minority members that fare worse from a socio-economic point of view and who live in
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3 segregated, materially deprived neighbourhoods with poor housing and schools. However,
4 when looking at evidence about differences in socioeconomic standing, interactions with state
5 and even ideology, it becomes clear that, while racial minority members are generally
6 distrusting of the criminal justice system, their levels of trust in other key policy areas may
7 vary. Therefore, Hosein's conclusion, that racial profiling causes people to develop a sense of
8 inferior political status *overall* is too hasty. While he is right to argue that the members of racial
9 groups may reasonably interpret profiling as indication that the police are willing to discount
10 their interests, they may still lack sufficient grounds to reasonably anticipate that their interests
11 will be discounted across all key policy areas.
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15 16 **1.3 My perception-based view**

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18 Having outlined Hosein's view and its limitation, I can now spell out the distinctiveness and
19 advantages of my own perception-based critique of profiling. First, I agree with him that the
20 distrust in the criminal justice system is a key factor in how profiling is perceived by racial
21 minorities, but I do not commit to his second premise, that these groups can reasonably expect
22 their interests to be discounted in all other policy areas. While the latter may be true to a large
23 extent, it could still be controversial in case of minority members that are better off, or who
24 have less frequent interactions with the state.
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28 Second, I also reject his conclusion, that profiling is wrong because it leads people to develop
29 an *overall* sense of inferior political status. On my view, profiling may be reasonably
30 interpreted as a substantial threat, over which the would-be profiled have very little control and
31 to which they may be subjected in wide range of social contexts. This interpretation leads the
32 would-be profiled to engage in strategies to avoid interactions with law enforcement, such as
33 limiting their access to public services and their exercise of basic civil rights. Taken
34 collectively, these consequences amount to an actual inferior political status (hereafter second-
35 class citizenship)⁴, defined independently of whether people internalize it or not. Furthermore,
36 this second-class citizenship status manifests in all key policy areas, not because racial
37 minorities have generalized distrust in all branches of the state, but because they are likely to
38 be profiled by law enforcement even in education or healthcare. By focusing on the perceived
39 threat of profiling, the potential for wrongful arrest, violence and even death, we are able to
40 expand the list of harms which ought to be included in the cost-benefit analysis of profiling,
41 because these can arise even if people do not feel as though they have an inferior political
42 status.
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49 Third, my argument is distinctive because it applies a perception-based perspective to the cost
50 -benefit analysis of profiling. Hosein does mention some of the consequences of profiling, such
51 as civic exclusion, but ultimately focuses on a deontological view, according to which it is
52 unjust for people to feel like they have an inferior political status. So, a strength of my approach
53 is that it allows me to establish that racial profiling is problematic on the basis of the very
54 approach that has been used to justify it.
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59 ⁴ I use the term of second-class citizenship to refer to this 'actual inferior political status', in order to avoid
60 confusion.

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3 In this section, I have presented an account of Hosein’s critique of racial profiling, highlighting
4 both its merits and its limitations. My argument shares the premise that distrust in the criminal
5 justice system shapes interpretations of profiling and acknowledges the importance of
6 including perception-based harms in the cost-benefit analysis of the practice.
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9 10 **2. Perceptions of racial profiling**

11 In the previous section, I have outlined the premises of my consequentialist critique of racial
12 profiling. First, racial minorities distrust the criminal justice system because of evidence about
13 police abuses, unfairness and historical injustice. Second, this distrust leads the members of
14 these groups to interpret profiling as serious threat, since it is a situation in which their interests
15 are likely to be discounted. Third, this interpretation is objectively reasonable, since any
16 similarly situated individual would perceive profiling in this way, given the publicly available
17 evidence about racial disparities in the criminal justice system. In this section, I draw on
18 empirical evidence to outline in more detail how the would-be profiled may reasonably
19 interpret profiling – as a frightening, high likely experience, to which they may be subjected
20 arbitrarily in virtually all public spaces, which may impose extremely high costs on their lives.
21 I aim to show that each of the interpretations that I discuss can arise independently of whether
22 the would-be profiled feel as though they have an inferior political status overall, being based
23 on the anticipation that their interests are likely to be discounted specifically in the context of
24 police encounters.
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30 31 **2.1 ‘Racial profiling is unavoidable and highly likely in public spaces’**

32 Compared to white citizens, racial minority members are more likely to assume that profiling
33 is done arbitrarily, with no legitimate reason, based purely on their race or appearance (Nadal
34 et. al, 2017). This contributes to amplifying the perceived threat of profiling by the would-be
35 profiled in two ways. First, it suggests that as long as they are in public, they are likely to be
36 targets of profiling, because the visible markers of racial membership makes them stand out.
37 Implicitly, profiling is a particularly likely occurrence in ‘the white space’, opportunity-
38 abundant neighbourhoods, schools, workplaces, and even roads where white citizens are
39 overwhelmingly present and racial minorities are regarded with suspicion, often required to
40 produce an ID or state their business (Anderson, 2015). Second, the belief that racial profiling
41 is conducted arbitrarily may also amplify feelings of powerlessness, since it suggests that there
42 is nothing that a non-white citizens can do, or refrain from doing, in order to minimize the
43 likelihood of being profiled. They may be stopped and searched regardless of how they dress
44 or present themselves, regardless of whether they are just going about their business and not
45 engaging in suspicious behaviour (Lamberth, 2010).
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51 To illustrate, consider the case of Larry Skyes, the African American head of the Board of
52 Education in Toledo, Ohio, bank vice-president, and respected civic leader, who was stopped
53 by the police as he was driving back from a conference in Cleveland. Mr Skyes had not broken
54 any traffic laws, was dressed in a crisp suit and was prompt in presenting his documents.
55 Nevertheless, the police officer proceeded told him to get out of the car and proceeded to frisk
56 him, noting that “[y]ou can’t be too careful. You might have a gun” (Harris, 2002). In this case,
57 Mr Skyes had good reason to infer that he had been stopped and frisked purely on the basis of
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3 his skin colour, even if, given his circumstances, he may not reasonably assume that he has an
4 inferior political status *overall*, since he enjoyed opportunities or advantages in other aspects
5 of life. Mr Skyes' experience is not unique or even rare; in fact, most of the would-be profiled
6 have never actually committed a crime (Lerman & Weaver, 2014).
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9 The belief that profiling is likely to be both frequent and unavoidable in spaces that are
10 predominantly white may generate significant perception-based costs, as I will show in the
11 following section. It suggests that behavioural and appearance-based strategies to avoid being
12 profiled, such as dressing in a mainstream style or behaving in a way that distance oneself from
13 racial stereotypes, are futile. The only effective strategy, from their vantage point, is to limit
14 their presence in public spaces that are populated primarily by white citizens, even if this
15 involves forfeiting significant rights and opportunities (Anderson, 2015).
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19 **2.2 'Racial profiling indicates that the state is willing to impose substantial costs'**

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21 Racial minorities may reasonably interpret profiling as indication that the police is willing to
22 impose substantial costs on them (Hosein, 2018). There is extensive evidence to support this
23 claim, since the members of these groups are disproportionately subjected to unwarranted
24 arrests, harassment, violence, and even death, at the hands of the police (Weitzer & Tuch,
25 2002). In fact, over the life course, about 1 in every 1,000 black men can expect to be killed
26 by police, 2.5 times more likely than white males (Edwards & Esposito, 2019). The same is
27 true of legal sanctions, since African Americans are incarcerated at more than 5 times the rate
28 of whites and much more likely to be wrongfully convicted, and later exonerated for serious
29 crimes, especially when the victims are white (Gross, 2017).
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33 These perceptions of threat in relation to profiling are widespread among the members of racial
34 minorities, regardless of whether they feel as though they have an inferior political status
35 overall. Highly publicized cases like that of Tamir Rice, a 12 year old African American boy
36 shot instantaneously while playing with a toy gun, serve to reinforce the anticipation that the
37 police are ready to impose extreme costs on racial minority groups. Furthermore, Feagin (1991)
38 found that narratives of discrimination at the hands of the police are abundant in black
39 neighbourhoods, where residents often discuss their experiences and potential strategies to
40 avoid being targeted. The lived experiences of stop and frisk practices as recounted by racial
41 minorities highlight it as a demeaning and humiliating practice, and even intimidating and
42 frightening when conducted with the discretionary use of force by law enforcement agents
43 (Romero, 2006). These practices have rippling effects leading entire communities to endure
44 'fear as a way of life', with the police presence being regarded as 'military-style occupation'
45 even in more affluent New York neighbourhoods (Huber & Solorzano, 2015).
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51 **2.3 'Random' stop-and-searches involve racial profiling**

52 Since profiling is seen as a frequent experience, to which racial minorities can be subjected
53 arbitrarily, the members of these groups often assume that whenever they are stopped and
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3 searched they are being racially profiled (Stone & Pettigrew, 2000).⁵ As Boonin (2011) points
4 out, African American drivers have no way of knowing whether they are being racially profiled
5 when stopped by the police. For a black citizen, regardless of their circumstances, even a
6 random stop and search could be seen as a context where their interests are likely to be
7 discounted, given the prevalence and normalization of racial profiling, on the one hand, and
8 their distrust in the police. This perception is further supported by empirical findings showing
9 that police and immigration officers commonly gaslight communities of colour, by making it
10 appear that their policing practices represented “a fair and just process to any who would
11 inquire” (Tobias & Joseph, 2018). In contrast, if a white man were randomly searched, he
12 would find it inconvenient, but lacking the background distrust in the police, he would not take
13 it as an indication that the state is willing to discount his interests or impose particular costs on
14 him for no good reason. This is evident in Boonin’s (2011) recounting of his most recent
15 encounter with airport security: ‘But the security officials who compelled me to undergo this
16 search had no particular reason to think that I was guilty of anything. Indeed, they didn’t pick
17 me out for any particular reason at all: they did this to everyone’ (p. 330).

18
19 In this section, I have argued that racial minorities may reasonably interpret profiling as a
20 frequent occurrence in public spaces, to which they may be subjected without good reason, and
21 which may be impossible to avoid while in public. Given perceptions of the police as racially
22 biased, the members of racial minorities are likely to form the belief that they are being profiled
23 even when the police is actually conducting random stop-and-searches. In the remainder of the
24 paper, I use a consequentialist framework to argue that these interpretations may lead people
25 to engage in self-limiting conduct which results in harms that ought to be taken into account in
26 the cost-benefit analysis of profiling.

27 **3. Perceived costs, actual consequences and second-class citizenship**

28
29 So far, I have outlined how racial minorities may reasonably interpret racial profiling – as a
30 highly likely occurrence to which they are subjected arbitrarily and which may impose
31 substantial costs on them. Given these perceived costs, the members of racial minorities often
32 seek to avoid or to minimize their interactions with law enforcement agents, by engaging in
33 self-limiting conduct in contexts where they are most likely to be profiled (Weitzer and
34 Brunson, 2009: 241). In this section, I identify a non-exhaustive list of perception-based harms
35 caused by interpretations of profiling: limits on the access to public services, such as the police,
36 education and healthcare, and on the exercise of basic civil rights such as freedom of speech
37 and of association, and the right to peaceful protest. I highlight the normative significance of
38 each of these individual costs of profiling, and show that, taken together, they lead to long-term
39 societal costs as well – the de facto exercise of a second-class citizenship status by racial
40 minorities and the exacerbation of racial injustice.

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⁵ It is worth noting that this perception of profiling may pose a further difficulty for Hosein’s (2018) view, since he argues that, in order to prevent people from developing an inferior sense of political status, the state should only conduct randomized stops.

3.1 Perceived costs and adaptive preference formation

How do the perceived threats of profiling lead to changes in preferences, and, in turn, to behaviour modifications? According to Lerman and Weaver (2014), custodial citizens, defined as communities of colour with a history of negative interactions with the criminal justice system, employ a range of behavioural and psychological strategies to minimize their contact with law enforcement. Since profiling is perceived as a likely occurrence while in public and as posing potentially severe risks, the members of racial minorities often modify their conduct while in public in order to avoid raising suspicion and being profiled in the first place. For instance, since the perceived likelihood of being profiled as an AMEMSA citizen is so high in an airport, second-order volitions such as the desire to express one's faith in public by wearing religious attire may be superseded by a need to avoid looking conspicuous, being profiled and exposed to risks.

These changes in the priority of desires may be characterized as *adaptive preference formation*, through which the victims come to believe, act and develop preferences and desires that appear to internalize their oppressive contexts (Stoljar, 2014). Adaptive preferences are troubling from a normative point of view because they denote an autonomy deficit. On Gerald Dworkin's (1988) conception, an autonomous preference is characterized by autonomously formed lower-order motivations which have to be consistent with our higher-order preferences. In our case, the first-order preference – to look inconspicuous in an airport – is motivated by a new second-order volition – to avoid being subjected to the costs of profiling. Yet, we may assume that the members of racial minorities would have an even higher-order desire to not have to face unwarranted racial profiling altogether and to not have to factor the potential costs into their decisions. In contrast with character planning, which involves a rational, autonomous adaptation to one's environment, inappropriately adapted preferences are formed as a response to irrelevant causal factors that operate 'behind the back' of the person" (Elster, 1983). A further normative issue is that, although often disguised as legitimate expressions of taste, adaptive preferences are often triggered by coercive norms and the institutionally racist actions that appear to validate them (Stoljar, 2014). Profiling leads the would-be profiled to fear for their lives and to endorse that fear as a primary motivation, thus having a disciplinary effect on these communities. They are, as the saying goes, between a rock and hard place – the looming likelihood of being shot or wrongfully arrested by the police and the difficult decision of sacrificing their civil freedoms and opportunities.

To summarize my point, the perceived threat and frequency of profiling leads people to form adaptive preferences and to engage in self-limiting conduct so as to avoid being profiled in the first place. As I will proceed to argue, this self-limiting conduct may amount to significant harms, the exercise of a de facto second-class citizenship and the exacerbation or racial inequality.

3.2 Access to public services

The perceived threat of racial profiling may lead racial minorities to limit their access to or engagement with key publicly-funded services, such as policing, healthcare and education. First, since the members of these groups already perceive law enforcement as a policy area

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3 which routinely discounts their interests, cases of racial profiling may only serve to further
4 lower their trust (Nadal et. al, 2017). Another contributing factor to this distrust may be highly
5 mediatized racial profiling cases that involve police brutality and victimization, given evidence
6 that official accusations of Islamophobic crime has often invited criticism of the Muslim
7 victims (Cheng, 2015). Unsurprisingly, the self-limiting conduct in this case often includes
8 failures to report hate crimes, since the members of some racial minorities may anticipate that
9 they will not be taken seriously, or, worse, that will be subjected to the threats which they
10 associate with profiling (Githens-Mazer, 2010). Consequently, BIPOC may incur normatively
11 significant costs. For one, they may resign themselves to being victim to racial harassment and
12 even violence out of the fear that the costs of potentially being profiled are even higher if they
13 reported the hate crime (Abu-Ras & Suarez, 2009). This limited access to policing services is
14 at odds with people's rights to security and to freedom from discrimination which entitle people
15 to live without fear of being subjected to violence or racially-motivated mistreatment. Exposure
16 to hate crimes may lead to alienation from public life and severe psychological distress,
17 anxiety, anger and shame (Equality and Diversity Forum, 2018).
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24 Second, the fear of being profiled may contribute to a limited identification with the educational
25 sector, which can lead to significant losses to opportunities that are essential ingredients of a
26 flourishing life, such a building skills, identifying and nurturing talents, obtaining
27 qualifications, and eventually, securing meaningful employment. While it is true that schools
28 are not the sorts of places in which people can usually expect to be subjected to stops and
29 searches by the police, there may nevertheless be some cases in which profiling takes place in
30 this context. For example, the Prevent Safeguarding Duty in the UK requires teachers and
31 university professors to identify students that may be vulnerable to extremist ideas and to refer
32 them to a government de-radicalization program. The self-limiting conducts and anxieties
33 regarding these kinds of policing are, unsurprisingly, most common among AMEMSA
34 students, since they are part of a group that is often associated with religiously-motivated
35 terrorism and radicalization of the young. In response, they may engage in self-censorship, by
36 avoiding to discuss politics or religion, even in classes where such topics are relevant, out of
37 the fear that they may be seen as having radicalized views and referred to the government
38 (Murtuja, 2017). There are many reasons why we may find self-censorship in this context
39 problematic. Students may be robbed of the educational and self-development benefits that
40 come from articulating their views in public, from exercising their critical thinking skills and
41 from being evaluated thoroughly by educators. Moreover, a substantive body of research
42 argues that students who anticipate being targeted on the basis of their race find it more difficult
43 to identify with their school, which can have dire consequences for their academic performance
44 and aspirations (Steele, 1997). This failure to identify with a formative environment has a huge
45 impact on development, since it may strain potential relations with peers, leading to alienation
46 and distrust of group outsiders, psychological distress, and even personality disorders (Sellers
47 et. al, 2006).
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57 Third, racial profiling may also negatively impact the access to public healthcare systems
58 among racial minorities. Although, so far, I have focused on profiling by law enforcement
59 agents, it is worth noting that this practice is also widely used in healthcare provision, leading
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3 to widespread racial health disparities. Medical racial profiles associating African Americans
4 with a propensity for obesity and cardiovascular disease or Latinx patients with a high pain
5 threshold, have been shown to lead to ‘errors in diagnosis, distorted judgments about the
6 appropriate course of treatment, and, ultimately, to different and inferior medical treatment’
7 (Bowser, 2001). In turn, the anticipation of racial profiling in the medical field gives
8 communities of colour reason to further distrust the medical establishment which has been
9 found to correlate with fewer physician visits, an erosion of positive health behaviours and
10 more unmet treatment needs (Kemper et. al, 1999). Law enforcement profiling may also
11 contribute to limiting the access to healthcare among AMEMSA groups. For example, the
12 Prevent Duty in the UK also requires physicians and mental health counsellors to identify
13 patients that are vulnerable to radicalization and to refer them to the government’s de-
14 radicalization programme. As a result, the threat of legal sanction may lead AMEMSA
15 individuals to lose trust and refrain from seeking medical treatment, out of the fear that they
16 will be profiled. This is true particularly of mental healthcare, given anxieties about being seen
17 as an extremist when admitting to suffering depressive symptoms (Ciftici et. al, 2012).
18 Perceived costs to accessing healthcare is normatively significant as it may conflict with basic
19 rights to health and to receive medical care and it may effectively diminish one’s prospects for
20 a flourishing life.
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28 **3.3 The exercise of basic civil rights**

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30 Civil rights that enable political participation, freedom of speech, association and religion are
31 guarantees of equal opportunities and protection under the law. To be denied the full exercise
32 of these rights amounts to an *actual* inferior political status, where one’s interests are routinely
33 discounted and one is vulnerable to the arbitrary exercise of power. While communities of
34 colour are not formally denied this status, the perceived costs of racial profiling may lead them
35 to limit the exercise of their basic civil rights.
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40 First, in order to avoid the perceived threat of profiling, the members of racial minorities may
41 limit the expression of their group affiliation while in public, which may involve a limitation
42 of their freedom of religion. This is illustrated by the example of AMEMSA individuals who
43 refrain from wearing religious symbols or attire while in airports, in order to appear less
44 conspicuous to boarder security agents. Equally, the perceived costs of profiling may
45 exacerbate psychological phenomena common among stigmatized individuals, such as
46 *stereotype threat* - the belief that certain actions or ways of presenting oneself to the world
47 appear to fit stereotypes about one’s racial identity. Consequently, people may strive to conduct
48 themselves in ways that distance them from racial stereotypes, even at the cost of alienating
49 themselves from their culture and their community. Stanford psychologist Claude Steele
50 captures this case quite vividly in his example of a black young man who, being fed up with
51 whites purposely ignoring or avoiding him in the most mundane of social settings, adopted the
52 habit of whistling Vivaldi music while in public (Steele, 2011). Najdowski et al (2015) found
53 that stereotype threat is often experienced during police encounters and that this leads the
54 profiled to attempt to self-regulate and to adjust their behaviour so as to avoid being seen as
55 criminals. Many liberal theorists should find it troubling that some people perceive costs to
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3 practising their religion or expressing their cultural affiliation in public, and even more so that
4 they feel the need to distance themselves from their racial group. For example, Kymlicka
5 (1989) argues that the rights to cultural expression are tantamount to individual autonomy and
6 a key ingredient of a flourishing life.
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10 Second, profiling may also hinder various forms of political expression such as online activism
11 and exercising freedom of speech in order to express grievances about the government. For
12 instance, the perceived threat of racial profiling may silence AMEMSA individuals, leaving
13 them even more vulnerable to institutional mistreatment. In the UK, the Prevent Strategy
14 defines extremism as “vocal or active opposition to fundamental British Values, including
15 democracy, the rule of law, individual liberty and mutual respect and tolerance of different
16 faiths and beliefs.” To these groups, political activism may appear to be costly, since expressing
17 mundane grievances against the government may be interpreted as extremism and entrench
18 their labelling as a suspect community (Heath-Kelly, 2013). The profiling of AMEMSA groups
19 for terrorism-related offences serves as an illustrative example; the 7/7 London Metro
20 Bombings, AMEMSA spokesmen lost public credibility, being regarded with increased
21 suspicion, with relationships between advocacy groups such as the Muslim Council of Britain
22 and the state significantly deteriorating (Elshsyayal, 2018). The anticipation of increased
23 hostility, such as heightened policing and the threat of being referred to the government’s anti-
24 radicalization programme may also lead them limit their freedom of speech online, which
25 serves to demonstrate just how widespread the side effects of profiling can be. Testimonial
26 evidence serves to illustrate this point: ‘I must constantly be cautious about what I am
27 Googling, what I write and publish on blogs, or whether or not I should retweet something
28 about politics, religion or even humanitarian crises – anything which might possibly be
29 misconstrued as “extremism” ’(Zubair, 2017). This raises concerns that the perceived threat of
30 racial profiling may have ripple effects not only in physical public forums but also in online
31 environment, with regards to the right to privacy and to freedom of speech.
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40 Third, perceptions of racial profiling may also lead people to limit the exercise of their right to
41 protest. During the US protests ignited by the murder of George Floyd, racial profiling played
42 a role in the excessive use of police force on peaceful African American protesters. Many
43 international organizations such as the Amnesty International raised concerns about the
44 unwarranted use of tear gas and physical violence on citizens that were simply exercising their
45 basic freedoms of assembly and speech (Amnesty, 2020). While some of the victims of police
46 brutality in the 2020 US anti-racism protest were white, an overwhelming majority included
47 citizens of colour and the violence and arrests that they were subjected to were much more
48 severe. In contrast, much less police violence was recorded during the mostly white "American
49 Patriot Rally" organised by Michigan United for Liberty against the state’s coronavirus
50 restrictions, where armed, violent protesters stormed the state capitol building. The differences
51 regarding the police response in the two protests may well be perceived as linked to racial
52 profiling, specifically to the negative associations between blackness and criminality. As such,
53 racial minorities may perceive extremely severe costs attached to exercising their rights to
54 peaceful political protest, and this may deter them from engaging in activism, a context in
55 which they are highly likely to be profiled. This is significant since self-limiting conduct by
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3 which historically oppressed groups limit their presence and voice in public, and the visibility
4 of their protected characteristics may further cement their subordinate status and suppress
5 movements for racial equality.
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8 **3.4 Second-class citizenship and the exacerbation of racial inequality**

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10 So far in this section, I highlighted some of the individual perception-based harms that result
11 from the self-limiting conduct in which racial minorities engage, in order to avoid the costs of
12 profiling. While each of these harms are normatively significant on their own, it is noteworthy
13 that, when taken together, they indicate that communities targeted by profiling exercise a de
14 facto second-class citizenship status. This is because, in addition to *individual* harms incurred
15 by those that are being profiled, racial profiling may also generate *societal* costs by relegating
16 communities of colour to an inferior, caste-like status, and, consequently, exacerbating
17 systemic racial disparities. It is worth noting that this implication is distinct from Hosein's
18 problematic empirical claim that profiling leads people to develop a sense of inferior political
19 status. My view does not focus on the subjective dimension of second-class citizenship,
20 *whether people feel as though they are second-class citizenship*, but on the actual ways in
21 which people might have their political status limited, which are easy to track through empirical
22 studies.
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28 Second-class citizenship may involve a legally recognized status, for instance, awarded to
29 migrant workers (Stilz, 2010), or a moralized notion referring to individuals who have full
30 citizenship status, but who are nevertheless systematically oppressed (Young, 1989). On the
31 latter conception, second-class citizens are unable to access benefits of citizenship, such as key
32 rights and freedoms, and are stigmatized, and vulnerable to domination by others and the state,
33 even if they have the full citizenship status (Allard-Tremblay, 2018). This view captures the
34 long-term effects that arise out of the interpretations of profiling by racial minority members.
35 Given the evidence available to them, these groups reasonably anticipate that police
36 interactions could have disastrous effects, and, consequently, they seek to minimize the risk of
37 being profiled in the first place. This risk minimization, however, is achieved through the
38 sacrifice of things that are tantamount to equal citizenship: rights, access to tax-funded services,
39 education, security, and so on. Long-term, these sacrifices may lead to caste-like distinctions,
40 with racial minorities having considerably fewer educational and employment opportunities,
41 experiencing poorer health and higher crime rates, and being unable to exercise their civil rights
42 and fight for racial equality. What is more, since these risk reduction strategies are often
43 transmitted from general to generation, through racial socialization, the second-class
44 citizenship status of the would-be profiled is likely to become more entrenched over time.
45 Children will grow into adults that fear the state and see the police as an instrument of
46 persecution. The forfeiting of educational, medical and occupational opportunities by their
47 parents will reproduce the cycle of material deprivation, crime and stigma which plays a huge
48 role in their lives. Finally, when generations of minority members are scared into acting as
49 though they were less than full, equal citizens, the possibilities for resistance, for challenging
50 the status quo, and for emancipation are severely diminished.
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3 In this section, I have argued that, in perceiving profiling as threat and seeking to avoid being
4 profiled in the first place, the would-be profiled may incur a number of normatively significant
5 individual costs, such as a limited access to public services and exercise of their basic civil
6 rights. Additionally, I have showed that, cumulatively, these harms may indicate that profiling
7 also generates societal costs, by leading the would-be profiled to exercise a de facto second-
8 class citizenship status and, implicitly, by exacerbating systemic racism. In my concluding
9 remarks, I show that these harms would count as particularly weighty in the cost-benefit
10 analysis of profiling and, if taken into consideration, the scales might well tip in favour of
11 banning the practice, at least in some cases.
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15 **Concluding Remarks**

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18 In this paper, I have highlighted some significant, perception-based costs of racial profiling
19 that are usually neglected in the consequentialist analysis. In these concluding remarks, I
20 outline key implications of my discussion for the debate between consequentialist critics and
21 defenders of profiling.
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24 First, perception-based harms should be included in the cost-benefit analysis of the practice.
25 To reiterate, Risse and Zeckhauser (2004) argue that the assessment of racial profiling should
26 only include the ‘incremental increase in harm caused by profiling as such, rather than the
27 overall amount that comes to the fore in acts of profiling but is largely caused by underlying
28 racism’. The question, then, is whether banning profiling would positively affect the way in
29 which minority members interpret their encounters with the police, and, whether, as a result,
30 they would feel safe to take opportunities and exercise their rights. Although this counter-
31 factual prediction might only be proved right by empirical researchers, a normative point could
32 still be made to support it. Banning profiling would constitute a public condemnation of the
33 practice by the state, which sends the message that the police may not stop and search people
34 purely on the basis of their skin colour, that when one is stopped, that is a random occurrence,
35 and that the law no longer sanctions a license for abuse and brutality. Of course, it is not quite
36 so easy to ease centuries of racial discrimination, so the resentment and distrust of racial
37 minorities are likely to persist in interactions with the criminal justice system. However, the
38 fear which generates perception-based harms, is likely to be diminished, particularly if an
39 abolition of profiling is accompanied by a crackdown on abusive and racist practices within
40 law enforcement.
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48 Second, if we agree that these perception-based harms should be included in the cost-benefit
49 analysis of profiling, then the position of consequentialist critics would be significantly
50 strengthened. Lever (2005) does mention fear as one of the harms of profiling as she argues:
51 ‘being stopped on the motorway at night is likely to be a scarier experience. Police in the United
52 States carry guns, and are known to use them. By the side of the motorway no one can really
53 tell what is going on. A wrong move, the inability to hear or understand what is being said, a
54 fit of coughing or a panic attack can all lead to violence and tragedy.’ She also argues that
55 profiling may bolster associations between certain races and certain crimes among the members
56 of the dominant group. Yet, Lever’s view does not fully capture the idea that profiling can
57 exacerbate systemic racism by disciplining the behaviour of the would-be profiled. While she
58 is right that fear is in itself a cost, it is the adaptive preferences and subsequent behaviour
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3 adjustments that constitute some of the most serious consequences of profiling. The range of
4 harms that I identify are not experienced only by those that are stopped by the police, but
5 potentially by all of those that could be profiled, including future generations.
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8 Third, the implication of including these costs in the consequentialist analysis may be that there
9 are fewer justifiable forms of racial profiling because their costs outweigh the benefits.
10 Notably, in some cases profiling could still be permissible, for instance, if the police know that
11 the threat of violence has increased for some reason, but they do not know where it will arise.
12 Forced to allocate scarce resources to different areas of the city, they go on the basis of
13 statistical information about the likelihood of violent crime being attempted that is drawn from
14 recent history.
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18 Nevertheless, I believe it plausible for a further argument to be made, starting from my view,
19 which would conclude that racial profiling should be banned altogether. Rather than running a
20 cost-benefit analysis, we may take a rights-based approach and make the case that the state has
21 a duty to not give citizens reason to fear the unwarranted imposition of substantial costs and to
22 engage in self-limiting behaviour symptomatic of a second-class citizenship status. We may
23 even make this argument from within a rule consequentialist view, by arguing that law
24 enforcement strategies are expected to generate the best consequences when they do not give
25 citizens reason to fear the threat of violence or wrongful arrests. Furthermore, one may argue,
26 on deontological grounds, that a policy that gives people reason to fear the arbitrary exercise
27 of power denotes a grave political injustice. According to Williams (2005), political legitimacy
28 consists of an answer to the 'first political question of order, protection, safety, trust and the
29 conditions of cooperation' that must be justifiable to those subject to it. In other words, a
30 legitimate state cannot subject its citizens to coercion if it is justified on premises that citizens
31 cannot reasonably agree to. To say that a legitimate state should not make its citizens fear
32 unwarranted incarceration or violence is not a controversial moral statement; in fact, much of
33 the contractarian tradition legitimizes political authority as a better alternative to a state of
34 nature in which the strong would dominate the weak. So, liberal neutrality may be grounded in
35 the fear of the arbitrary exercise of power as the summum malum, the worst evil that must be
36 avoided at all costs and the first political question to which political authority offers an answer
37 (Kauffman, 2020). It is this kind of justification that would chime with the liberal project of
38 neutrality, as no individual would find it acceptable to live under a political authority that makes
39 them constantly fear for their lives.
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47 These are valuable lines of enquiry which are beyond the scope of this paper. In any case, my
48 aim was to highlight the need to take seriously the perceptions of stigmatized individuals when
49 assessing the impact of controversial practices like racial profiling. Perception-based
50 assessments, I believe, have a far wider application in the normative examination of existing
51 policies and institutional arrangements that can bear not only on cost-benefit analyses but also
52 in a wide range of rights or justice-based arguments.
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