

## RACIAL PROFILING AND RACIALIZED CRIME

RACIAL PROFILING AND MORAL RESPONSIBILITY FOR RACIALIZED CRIME

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## Abstract

This thesis began (in thought) as a response to the killing of Trayvon Martin in 2012 and that of Mike Brown not too long after, and the many victims who succumbed to some form of racial profiling of another before these deaths, in-between, and after. Desmond Cole wrote an article in 2015 that further precipitated the thought into action and the desire to address racial profiling in writing form. In the thesis I take a philosophical approach to racial profiling, and although in the first two chapters I address the ordinary discussions surrounding racial profiling, in the latter two I tackle the problem of moral responsibility which I take to be central. In the first part of the thesis I defend the policy in the case of illegal weapons possession based on Henry Shue's principle of basic rights, but in the latter part I question this assertion. Even *if* blacks were shown to commit more of certain crimes or even violent crimes, that does not address the fact that crime arises out of context and in the case of "black crime" out of a racialized context. In the latter part of the thesis I work through the problem of collective and personal moral responsibility, eventually maintaining that not only is reparations just, but for *racial profiling* to be justified investment must be made into racialized communities with high rates of poverty. This is because collective responsibility must be taken for the societal oppression and discrimination that has partly resulted in high rates of racialized crime.

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### Declaration of Academic Achievement

The contribution that I believe I made to the topic of racial profiling was to take seriously personal moral responsibility for wrongdoing. I do defend racial profiling in certain cases where the threshold for harm is high enough to justify its use, with the caveat that institutional investment must be made to address the socioeconomic inequality that partly contributes to such rates of crime. As I write this in September of 2016, there are serious discussions being had amongst community of colour in the United States about gun violence in cities such as Chicago, and the fact that not only are many young black men perpetrator of such violence but *victims* of it. Arguably, there are much better approaches to reducing such forms of violent crime than racial profiling and in the thesis I attempt to address this fact, but the bottom line is that something needs to be done and racial profiling recognizes an important truth: that people of colour *do* statistically commit more of certain crimes and for the government to ignore that would be to do an injustice to the many victims of such crimes, many of whom are also of colour.

## Introduction

Racial profiling by police has been a contentious topic of debate in recent years, especially since the death of Trayvon Martin in 2012 and the subsequent rise of the Black Lives Matter movement. Although much of the controversy surrounding racial profiling and police brutality against blacks has been concentrated in the United States, the topic has been a long-standing issue of concern within the black community in Canada. Most recently, journalist Desmond Cole wrote an article in *Toronto Life* entitled “The Skin I’m In: I’ve Been Interrogated By the Police More Than 50 Times – All Because I’m Black”<sup>1</sup> detailing his own experiences with racial profiling, by the general public as well as the police. In the article Cole specifically addresses “carding,” a practice in which police stop and question “suspicious looking” individuals and record the details of their encounters on “contact cards.” These contact cards include information such as an individual’s “name, address, description, and the personal information of the people they’re with”<sup>2</sup> – information entered into a database that can be accessed at a later date. Not all such citizen-police encounters are recorded, however. As Knia Singh’s experience demonstrates, many “stop-and-searches” and/or “stop-and-questionings” go undocumented. Singh is an African Canadian who has never been arrested but has been questioned by police approximately thirty times, with only eight of those encounters recorded in the Toronto Police Services database.<sup>3</sup> He discovered through a Freedom of Information request that not only were there over fifty pages’ worth of details on him, but that one officer even characterized him as “unfriendly” and quite a few identified him as Jamaican – even though he was born and raised in Canada.<sup>4</sup> Singh has since launched a



constitutional challenge against carding on the grounds that it violates *Charter* rights against unreasonable search and seizure.<sup>5</sup>

Singh's story formed part of a 2013 *Toronto Star* newspaper series entitled "Known to the Police," where journalists and data analysts examined information from 1.8 million contact cards. They discovered that not only were the individuals questioned by police disproportionately "black" and "brown," but "[f]rom 2008 to 2012, the number of young black males, aged 15 to 24, who were documented at least once in the police patrol zone where they live exceeded the young black male population for all of Toronto."<sup>6</sup> The *Toronto Star*, having published a series of a similar kind in October of 2002, is quite familiar with the issue of racial profiling. The 2002 articles were published on the basis of information gathered from the Toronto Police Services database from 1996 to 2002, which were said to reveal "significant disparities in how Blacks and Whites were treated in law enforcement practices. Specifically, they showed that a disproportionate number of black motorists are ticketed for violations that only surface following a traffic stop," and that "Black people who are charged with simple drug possession are taken to the police stations more often than Whites facing the same charge."<sup>7</sup> The response to the 2002 series from the Toronto Police Service (and its allies) was swift, and fierce. The very day the first article was published former police chief Julian Fantino denied that racial profiling was practiced by the force, followed by denials from Craig Bromwell (head of the Toronto Police Association at the time), Norm Garner (chair of the Toronto Police Services Board at the time), and Gloria Luby (vice-chair of the Board).<sup>8</sup> Fantino eventually ended up hiring a data analyst to try and refute the *Star's*

findings,<sup>9</sup> and the Toronto Police Association even went on to sue the *Star* for libel. The \$2.7 billion lawsuit was eventually thrown out by the Ontario Superior court on the grounds that the “articles had not implied every police officer was racist.”<sup>10</sup> Although carding has been recently banned in Ontario,<sup>11</sup> the practice continues to be used by police departments across Canada.<sup>12</sup>

### **Thesis Outline**

This thesis is divided into two parts. In the first part I present a survey of the debates surrounding racial profiling and my case for a just application of the policy. Chapter one discusses the drug laws and argues against them on the basis that whites and blacks use illegal substances at about equal rates, while chapter two argues in favour of the gun laws based on the fact that violent crime violates people's basic right to physical security. In chapter one I focus on the views of certain philosophers that it does not matter which laws are enforced using the policy. On the contrary, I point out that one of the ways that the racial hierarchy has been realized in North America *has been* through the unequal application of certain laws. In America, the arrest rate for blacks is much higher for drug offences than for whites, even though studies have shown that black and white adults offend at about equal rates and black youth at lower rates than white youth. This unjust application of the drug laws, where one group is treated with more scrutiny than the other, raises the question of fairness in the application of certain laws. Racial profiling can be seen in such a case as either a tool used to *justly* address disproportionate rates of crime or one that *unjustly* reinforces the perception that certain racialized groups commit

more crime. In chapter two I move on to argue for what I consider to be a just application of racial profiling, which is when it used in the service of illegal weapon laws. I discuss the American case in particular, where rates of violent crime for blacks (which include crimes such as manslaughter, robbery, and rape) far exceed their percent distribution in the population. I narrow down my defense to addressing illegal weapons' laws in particular, arguing that illegal guns are used in enough violent crimes to justify the application of racial profiling to seek out perpetrators of these crimes. Underlying my position is Henry Shue's argument that the basic right to physical security must be secured before any other right can be exercised.

Having outlined some of the main positions that enter into debates surrounding racial profiling in the first part of the thesis, in the second part I move on to address what I consider to be a key objection to it: how we can justly implement a policy that places the burden of high rates of racialized crime on the backs of racialized persons *instead of* on the society that helped to foster those rates of crime through discrimination. Chapter three discusses the problem of collective responsibility, or how we can attribute to a collective as large as "whites" or "society, in general" moral responsibility for any systemic social problem. This chapter moves through different phases. In phase one I present empirical evidence in support of the critics' case based on a study of Aboriginal rates of crime. A correlation exists between high rates of racialized crime and historical/present-day oppression. Phase two moves on to discuss the problem of collective responsibility from the perspective of two different philosophical models, one liability and the other forward-looking. In phase three I present my own account of collective responsibility based on the

liability model, arguing that for systemic racial inequality to be addressed reparations must be paid in the form of institutional investment paving the way for a reduction in racialized rates of crime. In the final chapter of the thesis I discuss theories of personal moral responsibility and argue that for racial profiling to be employed systemic inequality needs to be addressed.

### **Defining Racial Profiling**

Before moving on to discuss the policy in detail it is necessary for me to define exactly what I mean by “racial profiling.” Different interpretations of the practice have been offered by various philosophers. Mathias Risse and Richard Zeckhauser, for example, define “racial profiling” as “any police-initiated action that relies on the race, ethnicity, or national origin and not merely on the behaviour of an individual”<sup>13</sup> and state that the practice encompasses everything from police investigations of crime to screening at airports and programs targeted at getting guns and drugs off the street.<sup>14</sup> Jeffrey Reiman does not count using race in the process of investigating a crime as “racial profiling” because in most of those cases a suspect has already been identified. He argues that a proper use of practice would deploy it only if suspicious behaviour gave rise to it, reliable statistics were available to justify its use and the need for it was made public.<sup>15</sup> David Boonin defines racial profiling simply as any “practice [in] which race is taken into account when deciding which people, from among those one could permissibly investigate, to focus one’s limited resources on,”<sup>16</sup> while Kasper Lippert-Rasmussen states that when racial profiling is used not only should *all* groups (racialized and non-

racialized) be targeted at rates consistent with their commission of crimes, but the policy must also be proven to be the best available option for reducing crime.<sup>17</sup>

The definition of “racial profiling” employed here is an investigative tool used by police that relies on crime rate statistics to determine the percentage of offenders that exist in a racialized group. This tool becomes “activated” when a community has a mandate in place to protect people from certain kinds of crimes (such as “white-collar crime”) and it is proactive in nature. It is proactive in nature because presumed offenders are *searched for* amongst the innocent. Since my thesis is mostly concerned with racial profiling as it relates to the black population and “street crimes” such as drug trafficking and illegal gun possession, I take as paradigmatic instances of racial profiling to be the following: (1) Johnny is speeding and is pulled over by the police, but because he is young and black his car is strip-searched for drugs. Thirty minutes and two police cars later, no drugs are found but he is still given a ticket for speeding. (2) José is accosted by police on his way home and frisked. They are searching for drugs if they can find any, but are hoping to find illegal weapons. In recent years the homicide rate in the city has spiked and they are trying to crack down on gang-related violence. A third paradigmatic case of racial profiling is profiling at the airport. This can include everything from Columbians being searched for drugs or Middle-Easterners being subjected to additional scrutiny because of post-9/11 security measures. Since my thesis is mainly concerned with anti-black racism in particular, I stick to an investigation of the first and second paradigmatic instances of racial profiling.

## **Chapter One: Statistical Discrimination and Racism in the Law**

From the stories recounted in the introduction above it may seem as though racial profiling is only used by police as an excuse to harass visible minorities, and although this is what many people think there are statistics available to justify its use. Crime rates show that certain visible minorities are arrested for certain crimes at rates much higher than their percent distribution in the population. For example, according to FBI crime rate statistics, blacks in the United States were arrested for approximately twenty-eight percent of the total crimes committed in 2014 and black youth under the age of eighteen for approximately thirty-five percent of the total crimes committed for their age group.<sup>18</sup> These numbers are disproportionate when compared to their total percent distribution in the population, which was approximately thirteen percent in 2014.<sup>19</sup> Although crime rate statistics disaggregated by race are not as readily available in Canada, according to a 2002 *Toronto Star* report blacks in Toronto were charged with almost twenty-seven percent of all violent crimes in the city even though they comprised only about eight percent of the population at the time.<sup>20</sup> The makeup of the inmate population in Canada reflects this overrepresentation. According to a 2013 press release from the Office of the Correctional Investigator, blacks comprised almost ten percent of total inmate population that year even though they made up only three percent of the civilian population.<sup>21</sup> From the perspective of statistics such as these, implementing a policy of racial profiling may seem to be a matter of public safety and security; a means of ensuring that the population that commits a disproportionate number of the crimes is treated accordingly.

If we were also to cut out clear cases of harassment, such as those of Desmond Cole and Knia Singh's from the picture, a defender of racial profiling might justifiably ask what is so morally objectionable about the policy. Kasper Lippert-Rasmussen points out that "[s]tatistical discrimination is something we all engage in. Arguably, it is something we can hardly avoid engaging in given that inductive reasoning and a tendency to make decisions that are based on it are deeply ingrained in our nature."<sup>22</sup> Although he does not defend all cases of statistical discrimination, he also does not think there is anything *intrinsically* wrong with it. As long as the statistics in question present as accurate a depiction of the world as possible, are not enforced with bias against only certain groups, and do not result in targeted groups being treated as second-class citizens, he argues that the use of statistics can actually increase efficiency within society.<sup>23</sup> A defender of racial profiling might agree with Lippert-Rasmussen and argue that as long as the inconvenience that accompanies the policy is relatively minor, the traffic stop brief and the frisk non-invasive, there is nothing *intrinsically* wrong with the policy. Since statistics show that certain racialized groups commit certain crimes at higher rates than others, it makes sense to use this information to pre-empt their commission of certain crimes or to even catch them in the process. That is efficiency at its best – police using all the information available to them to better secure the safety and security of the general public.

From the many stories of racial profiling recounted in the news, especially those detailing the black American experience of it, the policy might also appear to be straightforwardly and undeniably racist – but this is highly debatable. Mathias Risse and

Richard Zeckhauser argue that racial profiling does not constitute a “pejorative” form of discrimination because the ultimate aim of the policy, even when officers abuse it, is not to establish an oppressive relationship with people of colour. They point out that racial profiling has been used against other races without issue or complaint, as the example of the 2002 search for the Washington DC sniper demonstrates.<sup>24</sup> Because most serial killers are white many whites in the vicinity of the shooting were questioned. Yet “... the white community did not object to the disproportionate attention given to whites – mistakenly in retrospect...”<sup>25</sup> Jeffrey Reiman also thinks there is nothing *intrinsically* racist about racial profiling, and examines the question from the perspective of John Rawls’ “original position.” The key question he asks is if, from behind the veil of ignorance, it would be “rational for these parties, not knowing which race they belong to, nor whether they are criminals or victims or bystanders, to agree to racial profiling as an investigative technique aimed at the group with higher crime rates...”<sup>26</sup> The two cases he considers are of a society *without* a history of racial discrimination that still groups people according to “race,” and a society *with* a history of racial discrimination much like our own. In a society without a history of racial discrimination he argues that parties behind the “veil” would think it reasonable to employ racial profiling as long as it was “carried out respectfully and expeditiously and likely to contribute to effective crime control.”<sup>27</sup> Since racial profiling would be accepted as a means of crime prevention in the thought-experiment society he creates, he takes it to be evidence that there is nothing *intrinsically* racist about the policy.



But can the question of whether racial profiling is intrinsically racist *in theory* be separated from how it is applied, *in practice*? David Boonin explicitly denies that a connection should be made between the im/morality of racial profiling and the im/morality of the laws enforced using the policy,<sup>28</sup> which might explain why he defends its use for searches on highways for illegal drugs.<sup>29</sup> Risse and Zeckhauser also state at the beginning of their article that they aim to defend racial profiling for the purpose of identifying illegal drug and gun traffickers,<sup>30</sup> but the closest they actually come to doing so is to reason that their "...utilitarian argument might support searches for contraband in certain neighbourhoods with the aid of profiling. It seems less plausible that drug searches on the New Jersey Turnpike will be supported. The prospects of diminishing drug traffic by intercepting cars on a major highway seems slim – too slim to outweigh its incremental effects on minority sentiments."<sup>31</sup> Jeffrey Reiman also addresses racial profiling used in the service of drug laws, but argues against it. Because racial profiling has the potential of exacerbating already existing racism within society, he sets a high threshold for its use. According to Reiman it should only be employed when "lives, limbs, and possessions"<sup>32</sup> are at stake, and since "...the drug trade is simply a matter of providing drugs to consenting adults..."<sup>33</sup> it is not a big enough threat to require the use of racial profiling.

### **Legal Discrimination and Racism**

According to FBI crime rate statistics, in 2014 blacks were arrested for approximately twenty-three percent of drug abuse violations and approximately forty

percent of weapons violations.<sup>34</sup> As already mentioned, they comprised only thirteen percent of the total population at the time. If Boonin is correct in arguing that “the question of whether there’s something wrong with racial profiling is a question about which law enforcement techniques are acceptable, not a question about which laws should be enforced by whatever enforcement techniques prove acceptable,”<sup>35</sup> it would make no difference whether racial profiling was used to curb drug or gun crimes. But there is a difference in each case, and it has to do with the fact that – at least for the time being – racial profiling must necessarily be employed in societies that have both histories of racism as well as present-day discrimination. Risse and Zeckhauser acknowledge this by positing that most of the harm that results from racial profiling, in the form of hurt feelings and resentment on the part of those targeted, actually occurs because of “harm attached to *other* practices or events.”<sup>36</sup> These “other practices or events” include people of colour being subject to “everyday racism,” which makes racial profiling seem like a “focal point”<sup>37</sup> for other harms. The connection that I see between racial profiling and racism is that when used as an official policy it becomes much like law, and laws have a long history of being integral to the maintenance of the “colour line.” Carol Tator and Frances Henry express this in their statement that “[t]he law itself is racialized. This is inevitable, because so much of it was written at a time when people of colour and other disadvantaged groups were barred from participating in the justice system and in society as a whole.”<sup>38</sup> If we are not careful, endorsing legal discrimination in the form of racial profiling might actually end up *exacerbating* already existing racism within society, resulting in the supposed “good” of the policy (a guaranteed reduction in crime)

becoming significantly outweighed by the “bad” (making things much worse for *all* people of colour, criminals and non-criminals alike).

To demonstrate the close relationship that exists between the law and racial discrimination in the West, I turn to Charles Mills’ metaphysical inquiry into the “reality” of race.<sup>39</sup> According to Edward Craig, metaphysicians seek to answer one of two basic questions: “What is the ‘nature of reality?’” and “What is ‘ultimately real?’”<sup>40</sup> While there has been much debate in philosophy about the viability of metaphysical inquiry because of the “impossible” sorts of questions asked in the field (“impossible” because there is no real way of finding out if the answers to these questions are correct),<sup>41</sup> the persistence of “race” as a category of identification presents us with a bit of a metaphysical quandary. Even though we know that “races” are social constructs with no biological reality, we continue to act as though different “races” exist. Mills seeks to explain why this is.<sup>42</sup> Before moving on to consider “race” as we know it, he asks us to imagine a society in which each person is randomly assigned a “quace” at birth, either “Q1,” “Q2,” or “Q3.” These quaces are put on everything from their birth certificates to driver’s licences, but because they have nothing to do with ancestry people cannot just tell by looking at one another what their quaces are. There is also no discrimination faced by certain quaces because of their membership in certain quacial groups. In such a society, Mills states it would be meaningless to declare “I am a Q1!”<sup>43</sup> or to ask someone, “Are you *really* a Q2?” because quacial membership would have “... no significance to the lives of the people in that society beyond bureaucratic irritation... [it] would have no metaphysical ring, no broader historical resonance to it, any more than our declaration of

our passport number has any metaphysical ring or broader historical resonance to it.”<sup>44</sup>

The second type of society that Mills asks us to imagine is a “horizontal system” in which racial designations based on ancestry exist but possess no social power. In such a society discrimination on the basis of race would not exist so racial groups would be relatively evenly distributed across different levels of society. He contrasts this “ideal” horizontal system with an “ideal” vertical system. In an ideal vertical system, where “R” stands for an individual’s race and  $R_1 > R_2 > R_3$ , “R1s” are “designated as the superior race... seen as more intelligent and of better moral character than the other races.”<sup>45</sup> In a society with such a system, race would carry with it extreme moral significance because of its association with social standing<sup>46</sup> and there would be laws in place, such as those prohibiting intermarriage, to keep different races “in line.”

Contemporary Western societies have much more in common with vertical systems of racial hierarchy than horizontal (and nothing at all in common with a society of “quaces”), which is why Mills goes on to answer the metaphysical question of “But what are you *really*?”<sup>47</sup> against the backdrop of a non-ideal vertical system. According to Mills, race can be considered ontologically “real” in objective and non-objective ways and positions about it can range from a realism about race that takes it to be a biological fact about human difference to an “error” theory that takes it to have neither biological nor social reality. The position that he endorses lies somewhere in-between. On a racial constructivist account, race is not a scientific fact about the world but its *intersubjective* reality makes it *objectively* real. So while “[r]ace is not ‘metaphysical’ in the deep sense of being eternal, unchanging, necessary, part of the basic furniture of the universe... race

is a contingently deep reality that structures our particular social universe, having a social objectivity and causal significance that arises out of our particular history.”<sup>48</sup> To relate this point back to the question of the relationship between racism and the law, just a few generations ago what it *meant* to be “black” was to be vulnerable to unjust treatment by “whites” without means of legal recourse. This was how race was *made* “real” in the United States in particular, and part of the reason why the Civil Rights movement was so transformative was because it fought for race *not* to be realized in this way; for it *not* to be realized in the unequal application of laws.

The “black codes” adopted by many states in the South is a prime example of what legal discrimination used to look like in the United States, about which a planter was reported as saying: “We have the power to pass stringent police laws to govern the Negroes – this is a blessing – for they must be controlled in some way or white people cannot live among them.”<sup>49</sup> In the post-Reconstruction era, vagrancy laws imprisoned blacks who did not, or could not, find work and included crimes such as “mischief” and “insulting gestures” that were commonly enforced against blacks alone. Convict leasing, which sometimes paid prisoners very little and other times not at all, developed as a result of the surplus labour provided by such laws.<sup>50</sup> Laws continued to be discriminately enforced against blacks even up until the Civil Rights era, when “[b]etween autumn 1961 and the spring of 1963, twenty thousand men, women, and children had been arrested”<sup>51</sup> for “disorderly conduct.” The discriminatory application of certain laws also has a strong history in Canada. According to a study done by Clayton James Mosher (cited in Tator and Henry), in the years between 1892 to 1961 it was found that “[i]n six cities in

Ontario... 12 per cent of all public order charges were against African Canadians, 11 per cent against Aboriginal people, and 2 per cent against Chinese. This was vastly disproportionate to their actual numbers in these cities.” Blacks were asked more often than other groups to appear in court to defend themselves and “...received longer sentences when convicted.”<sup>52</sup> The average sentence length was approximately eleven months for blacks, eight months for Aboriginals, and six months for whites. Blacks were also legally discriminated against in the form of slavery, segregation, laws preventing them from owning their own land, and business owners being allowed to refuse service on the basis of their colour.<sup>53</sup>

It is true that at this point in history all have been afforded formal equality. Canada has a *Charter of Rights and Freedoms* which states that “[e]very individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”<sup>54</sup> Section 15.2 even allows for affirmative action programs to be implemented to help mitigate against the effects of bias. The *Canadian Multiculturalism Act* further reinforces this standard of equality by recognizing Aboriginal rights and creating the Human Rights Commission to provide redress for those denied equal opportunity on the basis of “race, national or ethnic origin or colour.”<sup>55</sup> Canada also recognizes its multicultural heritage in the *Act* and commits to help preserve the heritages of all who call the country home.<sup>56</sup> But in spite of official efforts such as these to fight inequality, there continue to be significant

differences between how racialized and non-racialized individuals are treated under the law.

The ongoing “war on drugs” in the United States is a prime example of this. Michelle Alexander states that when former President Ronald Reagan introduced the policy in 1982 “... less than 2% of the American public viewed drugs as the most important issue facing the nation.”<sup>57</sup> In spite of this, Reagan went ahead and “[p]ractically overnight the budgets of federal law enforcement agencies soared.”<sup>58</sup> Federal funding for drug abuse dropped dramatically over the next few years, and by the time President Bill Clinton came into office in the 1990s there was great incentive for police to crack down on drugs because of the cash grants<sup>59</sup> and military equipment transfers<sup>60</sup> that accompanied aggressive campaigning. The “war on drugs” has also had a significant impact on the incarceration rate in the United States. In 1980 there were 41, 100 people in jail for drug offences and today there are over 500, 000.<sup>61</sup> In the words of Reiman, “... the number of people incarcerated increased *sevenfold* over the last three decades of the twentieth century for all crimes, and *11-fold* for drug-related crimes, significantly outpacing crime rates.”<sup>62</sup>

Since much of the “war” has been waged in black and mixed-race communities, racial profiling has been integral to it. Although the “official” reason given for this is that most of the complaints about illegal drug activity come from black and mixed-race neighbourhoods, studies cited by Alexander go a long way towards disproving that claim. One in particular was done by the University of Washington on the Seattle Police Department, and showed that despite the fact that most reports of drug sales were based

on *indoor* narcotic activity, police still chose to focus their efforts on “open air drug markets.”<sup>63</sup> And even though most of the reports about drug deals happening outdoors *originated from mostly white communities*, they continued to focus “... their drug enforcement efforts in one downtown drug market where the frequency of drug transactions was much lower.”<sup>64</sup> Furthermore, even though it was a mixed-raced market, more black drug dealers were arrested than whites, and police officers focused their efforts “...overwhelmingly on crack – the one drug in Seattle most likely to be sold by African Americans – despite the fact that local hospital records indicated that overdose deaths involving heroin were more numerous than all overdose deaths for crack and powder cocaine combined.”<sup>65</sup> The researchers concluded based on the information gathered in that the Seattle Police Department reflected a “racialized conception of the drug problem.”<sup>66</sup>

Other studies have been done comparing black and white rates of illegal drug use that support the University of Washington's findings. According to a 2000 report by the American National Institute on Drug Abuse, “... white students use cocaine at seven times the rate of black students, use crack cocaine at eight times the rate of black students, and use heroin at seven times the rate of black students.”<sup>67</sup> Another study done by The National Household Survey on Drug Abuse that same year also noted that “... white youth aged 12 – 17 are more than a third likely to have sold illegal drugs than African American youth.”<sup>68</sup> Alexander maintains that “...at least 10 percent of Americans violate drug laws every year, and people of all races engage in illegal drug activity at similar rates,”<sup>69</sup> while Naomi Zack provides the following statistics: “The NAACP Criminal



Justice Factsheet states: About 14 million whites and 2.6 million African Americans report using an illicit drug. Five times as many Whites are using drugs as African Americans, yet African Americans are sent to prison for drug offenses at ten times the rate of whites.”<sup>70</sup> If police were *truly* concerned with catching more drug dealers, they would probably fare better knocking down campus doors and canvassing white suburbs than sending SWAT teams into black or mixed-race communities. The counter-intuitiveness of their logic demonstrates exactly what is wrong with having a policy such as racial profiling in place in a society that struggles with *racism*: laws can end up being discriminately applied.

The intimate connection that exists between legal discrimination and racial inequality cannot be overlooked when it comes to racial profiling, and it is part of the reason why Albert Atkin finds the policy so problematic. Atkin argues that if racial profiling is employed by persons in authority ordinary citizens may end up feeling justified in doing the same, potentially resulting in a domino-effect increase of racial inequality within society. Besides being subject to increasing scrutiny by members of the general public in their daily lives, racialized individuals may also find themselves increasingly passed over for jobs because the stereotypes that exist in society of them as lazy, dishonest, and lacking in morals may seem to have been confirmed. Atkin argues that the “official” recognition of stereotypes in the form of racial profiling “ossifies and endorses the idea in ordinary concepts of *race*,”<sup>71</sup> reifying already existing racism within society and making it much more stubborn to change. Another way that racial profiling might serve to exacerbate already existing racism is by feeding more people into the

prison industrial complex. A key feature of the policy is that it is proactive in nature; police *seek out* the guilty amongst the innocent, and as a result are able to catch many more offenders. The inevitable result is not only more people of colour going to jail, but more people of colour being plagued with the social problems that come along with the “criminal” badge. Alexander points out that “[o]nce a person is labeled a felon, he or she is ushered into a parallel universe in which discrimination, stigma, and exclusion are perfectly legal, and privileges such as voting and jury service are off-limits.”<sup>72</sup> As a result of being incarcerated, many people in the United States are “[b]arred from public housing by law, discriminated against by private landlords, ineligible for food stamps, forced to ‘check the box’ indicating a felony conviction on employment applications for nearly every job, and denied licenses for a wide range of professions, people ... find themselves locked out of the mainstream society and economy – permanently.”<sup>73</sup> While some might respond to facts such as these by stating the obvious – “That is not the fault of racial profiling!” and “The guilty are – above all – still guilty!” – we should seriously consider whether it is morally just for us to help the process of second-class citizenship along by *proactively* seeking out the guilty *only in communities of colour*. As already noted, studies have shown that whites and blacks engage in illegal drug use at just about equal rates, and some have even shown that white youth use *and sell* at much higher rates than black youth. If racial profiling were to be non-discriminately applied as a means of enforcing the drug laws, it would have to be employed against almost all of society – which would completely defeat the purpose of it being a supposedly more efficient method of catching criminals.

## Conclusion

Therefore, while there may be nothing *intrinsically* racist about using crime rate statistics as a means of tackling crime, because racial hierarchies in the West have been partly constructed through the discriminatory application of laws, police departments should be very careful about the instances in which profiling is applied. Furthermore, as the drug laws example should have demonstrated, the statistics themselves may reflect biased policing practices. As a reminder, blacks in America were arrested in 2014 for approximately twenty-nine percent of drug abuse violations<sup>74</sup> even though they comprised thirteen percent of the population. Just because crime rate statistics reveal that X-racialized demographics were arrested for Y-percentage of offences does not necessarily mean that “Y” is the percent distribution of offenders in a given population. It could simply mean that X is over-policed, allowing police to catch more offenders. Finally, because racial profiling has the potential to exacerbate already existing racism within society, the threshold set in place for its use should be quite high.

## **Chapter Two: General “Black” Rights and Basic “Black” Rights**

In the previous chapter I responded to the contention that racial profiling is just statistical discrimination and that there is nothing *intrinsically racist* about the policy. Against Mathias Risse, Richard Zeckhauser, and David Boonin, I argued that because of the way discriminatory laws have functioned in the West to solidify racial hierarchies it matters the kinds of laws that are enforced using the policy. While there may be nothing intrinsically racist about the notion of statistical discrimination, when theory meets practice in the form of racial profiling we must be careful what we endorse. But just because racial profiling used in the service of drug laws is immoral does not mean that it is immoral in all cases. In this chapter I argue that as long as the threshold set in place for racial profiling to be applied is high enough for the implementation of the policy then it is morally justified. The mandate I defend is violent crime, and the application of the policy against the possession of illegal weapons. (The problem with applying racial profiling as it relates to the mandate of “violent crime” is clear: “victims” of such crime only come into existence *after* a crime has been committed, and the definition of racial profiling I employ is police relying on statistics to try and determine the *potential* percentage of perpetrators of crime that exist in particular racialized demographics. There is no certainty that a crime has actually been committed in this case, and as Naomi Zack will argue below, most of the persons subjected to racial profiling are actually innocent. Yet I focus on the offence of illegal weapons possession because the possession of illegal weapons has the *potential* to result in violent crime, a problem that some black communities in the United States are now struggling with).

### **The Threshold of Violent Crime**

To reiterate Jeffrey Reiman's position on the just application of racial profiling, he sets the threshold at "lives, limbs, and possessions."<sup>75</sup> He argues against racial profiling being used in the service of drug laws in part because the relationship between drug dealers and users is consensual, but we can take his position even further by turning to a discussion of paternalism in the law. John Stuart Mill has convincingly argued that "... the only legitimate restrictions on individual liberty [are] those that will prevent harm to others."<sup>76</sup> Given that drug users primarily harm *themselves* through the use of illegal substances (and the extent of this harm is highly debatable when it comes to certain drugs), should law enforcement officials not take a less aggressive approach to tackling this particular form of crime? Alexander points out that in the United States "[t]he vast majority of those arrested are *not* charged with serious offences. In 2005 for example, four out of five drug arrests were for possession, and only one out of five was for sales. Moreover, most people in state prison for drug offences have *no* history of violence or significant selling activity."<sup>77</sup> Furthermore, "arrests for marijuana possession – a drug less harmful than tobacco or alcohol – accounted for nearly 80 percent of the growth in drug arrests in the 1990s."<sup>78</sup> She also points out that while at the beginning of the "war on drugs" a significant amount of money was transferred to the Department of Defense and FBI to engage in anti-drug measures, the budgets for rehabilitation centers were drastically cut: "The budget of the National Institute on Drug Abuse, for example, was reduced from \$274 million to \$57 million from 1981 – 1984, and antidrug funds allocated

to the Department of Education were cut from \$14 million to \$3 million.”<sup>79</sup>

Comparatively, “Department of Defense antidrug allocations increased from \$33 million in 1981 to \$1, 026 million in 1991 [and] DEA antidrug spending grew from \$86 million to \$1, 026 million, and FBI antidrug allocations grew from \$38 to \$181 million.”<sup>80</sup> If more money was put into rehabilitation centers than anti-drug measures there would (arguably) not be as many people booked for offences. But *even if* blacks were found to offend against the drug laws at twice their percent distribution in the population, would police be morally justified in employing a policy of racial profiling against them? It is one thing to try to regulate the use of illegal drugs through criminalization – which is controversial enough – it is quite another to implement a policy against traffickers, users, and abusers that *proactively* searches them out. After all, drug dealers only exist because a market exists for illegal drugs, and a market only because there are users who go out of their way to find them. Drug offences differ from crimes with victims in the important respect that Reiman points out: In most cases, users crave or at the very least receive some sort of pleasure from the drugs they seek, while victims of crime are harmed without their consent, for the pleasure or gratification of another. Therefore, even if it were the case that blacks offended against the drug laws at rates disproportionate to their percent distribution in society, it would not necessarily be the case that racial profiling would be the answer. Alternatives that do not come with them the risk of exacerbating already existing racism within society are certainly available.

The necessity of having a threshold in place when it comes to racial profiling becomes clear when we remember that a *mandate* must exist for this particular law

enforcement measure to be activated within a community. Part of my definition of racial profiling is not only that it relies on crime rate statistics to determine the percentage of offenders that exist within a particular racialized demographic but that it must be *decided* which offences are threatening enough to justify the implementation of the policy.

Oftentimes when we discuss racial profiling we are referring to “street crimes” but those are not the only kinds of crimes that exist, nor are they the most dangerous.<sup>81</sup> There are the “white-collar crimes” that precipitated into the 2008 financial crisis which brought down the entire American economy as well as other forms of crime that do not receive nearly as much attention as drug dealers and “gang bangers.” “Driving under the influence” is one example of a crime committed mostly by whites (they were arrested in 2014 for approximately eighty-four percent of such offences<sup>82</sup>) that does not receive much attention in the news yet takes the lives of many each year. According to MADD, “every two minutes, a person is injured in a drunk driving crash,” “every day in America, another 27 people die as a result of drunk driving crashes,” and “drunk driving costs the United States \$132 billion a year.”<sup>83</sup> Despite facts such as these, we see no targeted efforts on the part of police to stop-and-search *only white* drivers for potential intoxication.<sup>84</sup> While there may be many reasons for this, one of them cannot be that drunk driving is not harmful enough to justify implementing such a proactive policy against it.

A mandate great enough for racial profiling to be activated should be “physical harm against others,” which I defend below.

## **Violent Crime and Basic Rights**

According to a 2014 Department of Justice report, there are two categories of crimes from which “victimization” results: violent crime and property crime.<sup>85</sup> “Violent crimes” include offences such as “rape or sexual assault, robbery, aggravated assault, and simple assault,” while “property crimes” include “household burglary, theft, and motor vehicle theft.”<sup>86</sup> In 2014, blacks were arrested for approximately thirty-six percent of the violent crimes committed in America that year. Some particularly high rates for their demographic was approximately fifty-one percent of *all* murders and non-negligent manslaughters, approximately fifty-two percent of *all* robberies, and approximately forty-one percent of *all* illegal weapons possessions (which have *potential* victims, to be discussed soon).<sup>87</sup> Since they only comprised approximately thirteen percent of the population in 2014,<sup>88</sup> their rates of crime for these particular offences significantly outpaced their percent distribution in the population. In a similar vein, blacks were more likely to be victimized by certain violent crimes than any other race, with a U.S. Department of Justice report finding that in 2010 they were five to six times more likely than any other race to die by firearm homicide. They were also more likely than any other race to be victimized by nonfatal firearm incidents.<sup>89</sup> Homicide particularly affects youth (of all races), with a study done by Chelsea Pearsons and Anne Johnson for Generation Progress/Center for American Progress noting that “54 percent of people murdered with guns in 2010 were under the age of 30.”<sup>90</sup> Approximately eighty-three percent of those responsible for the deaths of youth between the ages of fifteen and twenty-four used a gun to kill them, with gun death being the second leading cause of death amongst American



youth between the ages of fifteen to twenty-four.<sup>91</sup> Black youth were also significantly affected by gun violence. Pearsons and Johnson report that “in 2010, 65 percent of gun murder victims between the ages of 15 and 24 were black. Forty-two percent of the total gun deaths of individuals in this age group were of black males. Young black men in this age group are killed by gun at a rate that is 4.5 times higher than their white counterparts.”<sup>92</sup> These facts are confirmed by a U.S. Department of Justice report, which states that between 2002 to 2011, the homicide victimization rate for blacks “peaked” at age twenty-three and was “nearly 9 times higher than the highest rate for white males.”<sup>93</sup> Gun violence was also noted by the NAACP to be “[t]he leading cause of death among African American teenagers ages 15 to 19 in 2008 and 2009... account[ing] for 45 percent of all child and teen gun deaths in 2008 and 2009 but were only 15 percent of the total child population.”<sup>94</sup>

The National Crime Victimization Survey reports that approximately 466, 110 “nonfatal firearm victimizations”<sup>95</sup> occurred in 2014, and according to FBI crime rate statistics for that same year “firearms were used in 67.9 percent of the nation’s murders, 40.3 percent of robberies, and 22.5 percent of aggravated assaults.”<sup>96</sup> Even though guns are legal in the United States a large percentage of crimes are committed using illegal guns. A 2013 report by the U.S. Department of justice found that forty percent of state inmates who used a gun in their commission of an offense obtained it illegally and another thirty-seven percent got it from family or friends.<sup>97</sup> A different study conducted by Philip J. Cook, Susan T. Parker, and Harold A. Pollack in 2013 showed that amongst the ninety-nine inmates at the Cook County Jail “[o]nly about 60% of guns in possession

of respondents were obtained by purchase or trade” and the rest “from their social network of personal connections” or gang members; only a small number purchased them directly from stores or obtained them through theft.<sup>98</sup> Youth have also been found to be able to obtain illegal guns relatively easily.<sup>99</sup>

The primary job of the government when it comes to crime within society is to do its best to protect its citizens from everyday threats. While it may be unable to guarantee that every person is protected from every type of harm, “few, if any, people would be prepared to defend in principle that anyone lacks a basic right to physical security.”<sup>100</sup> Because crime usually occurs intra-racially, it is safe to assume that most targets of “black crime” are black. Given that high rates of black crime are committed in certain areas it is also safe to assume that certain blacks are more prone to harm than other members of society. If, or rather since, this phenomenon can be empirically determined, it is also safe to assume that the government is aware that certain people are subject to the “everyday threat” of being a victim of black crime. Since the government is charged with ensuring the basic physical security of its citizens, it should make an effort to address this. One variable easily identifiable in the commission of “black crime” is race, therefore it makes sense to use this variable to pre-empt the commission of certain crimes. If the mandate for racial profiling to become activated is “harm against others,” the case of violent crime presents a good opportunity for police (as an extension of the government) to mitigate against this particular form of harm.

One way of characterizing the responsibility that the government has to ensure the safety and security of its citizens is through the language of rights. Henry Shue defends

the basic rights of citizens in his book *Basic Rights: Subsistence, Affluence, and Foreign Policy*. Although his main focus is on defending economic rights, he spends quite a bit of time discussing the basic right to security. He conceives of a basic right in terms of a moral right, which for him “provides (1) the rational basis for a justified demand (2) that the actual enjoyment of a substance be (3) socially guaranteed against standard threats.”<sup>101</sup> Basic rights are *demands* and not requests, and provisions must be made by the government to ensure that the *substance* of them is enjoyed. There are three duties that Shue states attend every basic right: duties to avoid, protect, and to aid. Since for every basic right to be guaranteed these three provisions must be made, every basic right has positive *and* negative duties that attach to them. When it comes to the basic right to physical security he states that “[f]or every person’s right to physical security, there are three correlative duties: I. Duties not to eliminate a person’s security... II. Duties to protect people against deprivation of security by other people... [and] III. Duties to provide for the security of those unable to provide for their own.”<sup>102</sup> While the first duty can be fulfilled by individuals within society exercising restraint and not harming others, the second two often require institutions to guarantee them.<sup>103</sup>

The degree to which basic rights are guaranteed is evident in whether or not other non-basic rights are enjoyed. One cannot say that the right to physical security has been “socially guaranteed” if people can credibly threaten others “with murder, rape, beating, etc., when he or she tries to enjoy the alleged right.”<sup>104</sup> Furthermore, what makes certain rights *basic* is that they are *necessary* for the enjoyment of all others.<sup>105</sup> The basic right to security cannot be said to have been guaranteed if people cannot exercise their right to

assembly because there is a strong chance they will be assaulted. In order for security rights to be *socially guaranteed* there must also be “payments [made] towards the taking of, a wide range of positive actions. For example, at the very least the protection of rights to physical security necessitates police forces; penitentiaries; schools for training police, lawyers, and guards; and taxes to support an enormous system for the prevention, detection, and punishment of violations of personal security.”<sup>106</sup>

When Shue's model of the basic right to security is applied to the case of racial profiling, the primary institution at issue becomes the state. In the language of basic rights, the question becomes whether the state has a *duty* to protect certain communities against certain forms of violence by *proactively* enforcing certain laws in discriminatory ways. The first duty, “not to eliminate a person's security,”<sup>107</sup> can be argued to be neglected by those who choose to harm others by means of gun violence. On Shue's account, because the government has a duty to “protect people against deprivation of security” and “provide for the security of those unable to provide for their own,” it may be found morally responsible for the deaths and violent encounters that result from high rates of racialized crime by refusing to act. Since it has a duty to protect citizens against standard threats and for young black men in certain areas being exposed to gun violence is a standard threat, it should make a proactive effort to fulfill duties two and three. If it refuses to do so, not only might it be argued that the government has not fulfilled its duties to its citizens, it might also be argued that it has “intentionally, knowingly, and voluntarily”<sup>108</sup> contributed to high rates of racialized crime.

The government has the potential to fulfill the basic duty of physical security, via the institutions put in place to guarantee the right, by allowing police officers to proactively search out individuals who carry on them illegal weapons that *may* end up being used to perpetrate violent crimes. Versions of it are currently in place in “high risk” or “hot spot” neighbourhoods, where police engage in targeted efforts to discourage former convicts from reoffending. An example of such an effort working out successfully is the “Operation Ceasefire” put in place by the Boston Police Department in 1995. The Operation involved police using “retailing,” using “levers,” “carrots,” and “sticks” to get drug dealers to either reduce the overall level of violence in their communities or to stop dealing altogether.<sup>109</sup> “Retailing” describes drug dealers being instructed to spread the word that harsher penalties than normal will accompany even simple offences (such as weapons possession); “pulling levers” involves “[p]reventing violent behavior or gun use by exploiting a targeted individual or groups' vulnerability to law enforcement to get them to comply;”<sup>110</sup> “Carrots” describe providing incentives to stop weapons violence such as free access to certain services; and “sticks” some of the harsh penalties promised if violence in the community continued. Operation Ceasefire was reported by the Office of Justice Programs to have reduced the rate of violent crime in Boston by sixty-eight percent in just one year,<sup>111</sup> and similar targeted crime reduction efforts that have also been successful – such as the High Point Intervention in North Carolina – have followed.<sup>112</sup>

Programs such as Operation Ceasefire and the High Point Intervention differ from racial profiling because the targeted individuals were already known to the police to be gang-affiliated or offenders with a criminal record. Racial profiling searches for the

criminals amongst the innocent, so to endorse racial profiling in order to get illegal guns off the streets would be to significantly widen the scope of those potentially scrutinized by police. At the same time, putting the threshold in place of *only* implementing racial profiling in areas that have already been identified as “hot spots” or “at risk neighbourhoods” would also reduce the prevalence of more controversial instances of racial profiling – such as police “stop and searches” on highways or of the lone black male driving home to his predominately white neighbourhood. Restricting charges to *only* illegal weapons, and not drug offences, would help address the problem mentioned in chapter one, of certain laws being unjustly applied.

### **Objections to the Case**

The first objection to this argument in favour of racial profiling is that blacks have a right to be treated as others are treated under the law. As already mentioned in the introduction, Knia Singh currently has a test case before the Supreme Court that maintains carding violates constitutional rights against unlawful search and seizure. Naomi Zack spends a great deal of time defending “black rights” against unreasonable search and seizure (the American Fourth Amendment) and equal treatment under the law (the Fourteenth Amendment) in her book *White Privilege and Black Rights: The Injustice of U.S. Police Racial Profiling and Homicide*. Even though Zack admits that universal rights discourse has not been successful in ensuring that all ideal rights are materially instantiated, she maintains that “rights talk” is the only viable means of achieving racial equality<sup>113</sup> because enforcement mechanisms exist in domestic laws to ensure it.<sup>114</sup> She

argues that when we state that racial profiling is “unfair” what we are saying is that it is unfair *relative* to how whites are treated under the law. While some of the “perks” of being racialized as white include opportunities such as quicker advancement on the economic ladder (opportunities not necessarily open to poor whites), according to her such “perks” should not be conflated with rights. “Entitlements” are conditional, but rights such as the Fourth Amendment protection against unreasonable search and seizure and Fourteenth Amendment equal protection under the law are intended to be unconditional and basic to all.<sup>115</sup> She maintains that as long as these rights exist they should be honoured, regardless of what the crime rates say.

A second potential objection to my defense of racial profiling in the case of illegal weapons is also defended by Zack, and has to do with the treatment of the innocent when compared to that of the guilty. She points out that only a *very small* percentage of persons who are stopped and searched are actually found guilty of a crime. Between 2002 and 2012, 4.4 million people were “stopped and frisked” in New York City, 2 million of whom were black. Of these blacks, ninety percent were found innocent.<sup>116</sup> Facts such as these cause Zack to argue that a “paradigm shift” in focus is required in the discussion surrounding “black crime” *away* from the persons of colour who are guilty of crimes and *towards* the majority of whom are innocent. If one out of every fifteen black men are in jail, that leaves approximately ninety-three percent of whom are not. Since the innocent comprise the vast majority of the population, their well-being should be taken much more seriously by the state. Zack even goes so far as to quote the Bible in support of her position. In Genesis eighteen, Abraham goes to God multiple times in an effort to save

Sodom from destruction. He asks God if He could save the city if he could find but fifty righteous men, then forty-five, then thirty, then twenty, then ten. Since ten righteous men could not be found in the city, God destroyed it. Zack quotes William Blackstone as stating the significance of this passage to be that “[b]etter that ten guilty persons escape than that one innocent suffer,”<sup>117</sup> and the significance for her seems to be just about the same. From a legal standpoint, even criminals have certain protections under the law and the onus is usually on the courts to presume innocence until guilt is proven. In racial profiling this onus is reversed, and *guilt* is assumed until *innocence* is proven; “a suspect is discovered and the police then look for a crime for the person to have possibly committed.”<sup>118</sup> Related to her point about rights, Zack maintains that persons should be treated with a certain degree of respect, regardless of what the statistics reveal.

But sometimes the status quo must be put aside to make room for the greater good. Politicians often have to make difficult decisions that burden some to benefit the rest, and while such decisions may be unpopular they must sometimes be made. This is a position taken up by Bernard Williams in his book *Moral Luck: Philosophical Papers 1973 – 1980*. Although Williams does not discuss racial profiling in particular, he does address “dirty hands” cases where politicians must make “morally disagreeable”<sup>119</sup> decisions. Sometimes the “moral” thing to do is run roughshod over rights, which might be the case when the consequences of not doing so are dire and the pay-offs of doing so substantial. While “the victims can justly complain that they have been wronged,” “if the politician is going to take the claims of politics seriously, including the moral claims of politics, and if he is going to act at anything except a modest and largely administrative



level of responsibility, then he has to face at least the probability of situations of this kind.”<sup>120</sup> The most fitting attitude of a politician who finds herself in a “dirty hands” situation is (of course) not glee, but a reluctance at having to do what needs to be done. To state that such a situation carries with it a “moral remainder” is to admit that those who have been disadvantaged by the process need not “approve of the agent’s action, nor should they be subject to the patronising thought that, while their complaints are not justified in terms of the whole picture, they are too closely involved to be able to see that truth. Their complaints are, indeed, justified, and they might quite properly refuse to accept the agent’s justification which the rest of us may properly accept.”<sup>121</sup> When it comes to the contentious topic of racial profiling, it may be the case that the “good” of the policy, public safety and security, outweighs the “bad,” the infringement of certain rights. To defend the rights discourse to a fault is to ignore the complexity of the political process and the fact that sometimes it requires “give” and “take” and at other times there are “winners” and “losers.” While we should expect those who have been given the “short end of the stick” to protest, sometimes their protest will simply not be enough to stem the tides.

Racial profiling comes with it a set of benefits that cannot be overlooked. The first is catching more offenders in the process of committing a crime than one would without it. In the case defended in this chapter of illegal guns, that means potentially mitigating against the commission of violent crimes. While the innocent in such cases are simply innocent and are let go scot-free, the guilty are caught red-handed. The second benefit of racial profiling is that it mitigates against the prevalence of certain kinds of crimes. To

return to the example of weapons offences, when a perpetrator is caught and arrested it reduces the total number of guilty persons roaming free in a given community. A third benefit of racial profiling is deterrence. Once members of a particular racialized demographic realize that they are being targeted for certain kinds of offences, they will avoid engaging in that particular form of criminal activity for fear of being caught by the police.<sup>122</sup> Still, the cost of implementing any policy of racial profiling is high. Even though American police databases are incomplete on the topic, Zack points out that “[t]he NAACP reported that out of forty-five police shootings in Oakland, California, over 2004 – 2008 thirty-seven of those shot were black, none were white, and fifteen died;”<sup>123</sup> “... *USA TODAY*, reported that from 2005 – 2012, a white police officer killed a black person about twice a week; 18 percent of the blacks killed were under 21, compared to 8.7 percent of whites killed;”<sup>124</sup> and of the 313 deaths reported by “Operation Ghetto Storm”<sup>125</sup> in 2012, “an incident of racial profiling preceded 43 percent of these killings.”<sup>126</sup> How many of those deaths occurred in areas with high rates of violent crime would require further investigation, but it is clear from the number of blacks who are unjustly killed by police that some form of anti-racism training would have to accompany *any* policy of racial profiling, and that any instance of a police killing would have to be treated seriously and prosecuted fairly. “Fairly” not meaning police being let off the hook, and just as racial profiling serves as a deterrent, the punishment meted out to police should also serve as a deterrent to officers who use excessive force on the job.

## **Conclusion**

The purpose of this chapter was to take the defender of racial profiling seriously and consider the conditions under which the policy might be morally justified. I set the threshold at “harm against others” because I figured that it would be high enough – and urgent enough – to mitigate against some of the negative effects of the policy. But just because a case can be made for racial profiling does not necessarily mean that it should be employed. There are much bigger moral problems left unsaid by a surface-level analysis that does not address the fact that crime necessarily arises out of a particular context. The critic can easily reason that history is to blame for high rates of racialized crime because discrimination has made it so that people of colour are disadvantaged by socioeconomic status and lack of overall opportunity. If that is the case, what does it say about the supposed justness of racial profiling and the fact that by it people of colour seem to be paying a price that society should pay?

### **Chapter Three: Collective Moral Responsibility for Wrongdoing**

A common criticism of racial profiling is that it ignores the social context from which “black crime” develops, placing upon the shoulders of blacks a burden that results from racial inequality. This position is expressed by George Yancy, who argues that the discourse of “Black-on-Black crime” serve to “obfuscate the magnitude and toxicity of white supremacy and its impact on Black people. Indeed,” he goes on to say, “such discourse renders Black people the cause of their own demise, shifting the blame away from historically white racist practices, institutional and micro-social, to Black people themselves.”<sup>127</sup> The critic maintains that some of the moral responsibility for high rates of black crime lies with anti-black racism, and although it may seem easy to blame society for this it is not so easy to philosophically prove. Attributing moral responsibility to collectives as large as millions of people requires establishing a group intent that is often not present, even though a particular “end” may result from many uncoordinated activities. In this chapter I look at two philosophical models of attributing collective responsibility – liability and non-liability – and examine the suitability of each for tackling the problem of systemic racial injustice. I defend the liability model on the grounds that it takes seriously the actions of individuals who have created a racial hierarchy difficult to dismantle. To support the liability model as a means of addressing systemic racial injustice I turn to the philosophical debate surrounding reparations, which has been able to effectively trace the causal chains necessary for establishing liability. I conclude the chapter by returning to the question of racial profiling and arguing that

collective moral responsibility will only have been fulfilled if investment is made in impoverished racialized communities.

Kasper Lippert-Rasmussen argues that as long as whites make no effort to address the underlying cause of high rates of black crime – discrimination – implementing a policy of racial profiling would be unjust. It would be unjust because it would benefit blacks more to live in a society without discrimination than it would to live in a society with discrimination *and* racial profiling, and whites have it within their power to realize the former. He further argues that the extent to which whites contribute to racial inequality determines the extent to which they could be justifiably victimized by blacks, if blacks were to reject racial profiling and there continued to be high rates of black crime. This would simply be the burden that the discriminatory “aggressors”<sup>128</sup> would have to bear, whose victims must bear the burden of their aggression. Two ways around this (regrettable) scenario are also provided by Lippert-Rasmussen. Racial profiling would either be justified if a majority of blacks accepted it or if a majority of whites did not act in discriminatory ways. If either case was to obtain the potential victims of black crime would form into such a critical mass that it would be morally unjustified to not implement the policy.<sup>129</sup> There are four assumptions that underlie Lippert-Rasmussen's claim:

Suppose (i) that African-Americans are more likely to commit certain crimes than European-Americans solely as a result of the deprivation resulting from discrimination and unjust, racial inequality. Hence, if discrimination and unjust, racial inequality were eliminated, the crime rates of European-Americans and African-Americans would converge over time. Suppose, next, (ii) that all European-Americans could choose to act so that, in the long run at least, African-Americans would no longer suffer unjustly from discrimination and racial inequality. Suppose (iii) that given the existing discrimination and racial inequality, racial profiling will benefit African-Americans as well as European-Americans. It will benefit African-Americans because, although African-

Americans will have to bear the costs of racial profiling, they will also enjoy the lion's share of the benefits in the form of reduced crime, since African-Americans are more likely than European-Americans to be victims of crime. Suppose, finally, (iv) that relative to a state in which there is neither discrimination nor racial inequality, European-Americans generally benefit from discrimination and racial inequality in their favour, while African-Americans are generally harmed (a supposition that is consistent with the idea that in some respects European-Americans as well as African-Americans may benefit from the cessation of discrimination and racial inequality).<sup>130</sup>

Although controversial, Lippert-Rasmussen's argument reflects a sentiment felt by many. And beyond mere sentiment, it reflects the empirical reality of many people of colour in North America.

Supposing that a historical connection could be made between racist oppression, present-day socioeconomic inequality, and rates of crime, the responses to Lippert-Rasmussen's four assumptions would be as follows: "Suppose (i) that African-Americans are more likely to commit certain crimes than European-Americans solely as a result of the deprivation resulting from discrimination and unjust, racial inequality."<sup>131</sup> Although we cannot conclusively prove that racial discrimination is the *sole* cause of higher rates of crime amongst blacks when compared to whites, there is good reason to believe that historical discrimination is a contributing factor. "Hence, if discrimination and unjust, racial inequality were eliminated, the crime rates of European-Americans and African-Americans would converge over time."<sup>132</sup> If racial inequality was eliminated, there is good reason to believe that rates of crime between whites and blacks would *eventually*, even if it took generations, converge. Although since this has not yet happened this statement cannot be proven. "Suppose, next, (ii) that all European-Americans could choose to act so that, in the long run at least, African-Americans would no longer suffer

unjustly from discrimination and racial inequality.”<sup>133</sup> This statement would require more than empirical analysis to prove. Are whites, as a group, *solely* responsible for racist discrimination and inequality? And do all whites even discriminate? Since the answer to both questions is “no,” we must go on to show which collectives are morally responsible for racial inequality, given that whites are not the only group that discriminates and not all whites discriminate. “Suppose (iii) that given the existing discrimination and racial inequality, racial profiling will benefit African-Americans as well as European-Americans. It will benefit African-Americans because, although African-Americans will have to bear the costs of racial profiling, they will also enjoy the lion’s share of the benefits in the form of reduced crime, since African-Americans are more likely than European-Americans to be victims of crime.”<sup>134</sup> This seems to be true, given that the less criminals there are the less victims of crime there will be, and that crime tends to occur intra-racially. “Suppose, finally, (iv) that relative to a state in which there is neither discrimination nor racial inequality, European-Americans generally benefit from discrimination and racial inequality in their favour, while African-Americans are generally harmed...”<sup>135</sup> It is safe to assume that racial discrimination harms people of colour and benefits those who discriminate against them in the form of increased opportunity, whether those who discriminate against people of colour are white or of any other race.

The assumption that I take issue with is claim two, that whites could act in such a way as to not discriminate and that they are responsible for high rates of racialized crime as a result.<sup>136</sup> This assumption is central to Lippert-Rasmussen’s argument against racial

profiling because if whites *could* act otherwise but *choose* not to, they by default they are responsible for the conditions that foster high rates of black crime, a moral responsibility because individuals are harmed. But it is not so philosophically easy to attribute moral responsibility to aggregates so large as “all whites” or “society, in general.” For responsibility to be attributed causal chains need to be found in order to establish liability, and when it comes to systemic injustices such as racial inequality these are very difficult to find. Iris Marion Young, for example, states that structural injustice “exists when social processes put large groups of persons under systematic threat of domination or deprivation of the means to develop and exercise their capacities, at the same time that these processes enable others to dominate or to have a wide range of opportunities for developing and exercising capacities available to them.”<sup>137</sup> According to Young, what characterizes structural injustice is that many people contribute to it without even knowing, making it difficult to trace the causal chains necessary for liability.

### **Collective Responsibility and Reparations**

Young conceives of collective responsibility not in the backward-looking sense of praise or blame but in the forward-looking sense of *taking* responsibility. Her “guiding question” is how moral agents should view their role as potential contributors to systemic injustice, and she argues that employing the language of blame is not as useful for this purpose.<sup>138</sup> She agrees with Hannah Arendt that “[w]here all are guilty... nobody is. Guilt, unlike responsibility, always singles out; it is strictly personal.”<sup>139</sup> Arendt denied that *all* Germans were morally responsible for the Holocaust, although she stated that they



were *politically* responsible for the rise of the Nazis to power.<sup>140</sup> Political responsibility is something that Arendt thinks nations and societies can have, which Young interprets to be essentially forward-looking:

One *has* the responsibility always *now*, in relation to current events and in relation to their future consequences... If we see injustices or crimes being committed by the institutions of which we are a part, or believe that such crimes are being committed, then we have the responsibility to try to speak out against them with the intention of mobilizing others to oppose them, and to act together to transform the institutions to promote better ends.<sup>141</sup>

On Young's "social connection model" responsibility is assigned based on the roles people occupy within society, in descending order according to their relationship to the injustice. The degree to which one has power, privilege, a vested interest in having a particular injustice addressed (as victims do) and the ability to realize it is the degree to which one should work to realize the goal of justice on the social connection model.<sup>142</sup> There are four characteristics of her model that she believes are attractive: it is not isolating, or in other words assigning responsibility to one does not absolve others of it; it recognizes the existence of background injustice; it does not assign blame or encourage the development of resentment; and can only be discharged collectively.<sup>143</sup> One key thing to note about the social connection model is that it is not meant to replace the liability model of responsibility, only to offer a means of attributing responsibility in cases where there are many actors contributing to the perpetuation of an injustice. A similar model of collective responsibility is found in Tracy Isaacs' *Moral Responsibility in Collective Contexts*.<sup>144</sup> According to Isaacs, instead of thinking about social problems such as structural inequality and global warming in terms of a moral *responsibility* we should

think of them in terms of a moral *obligation*. For example, even though some “white heterosexual men” may engage in “parallel activities” of discrimination, Isaacs states that they cannot be attributed moral responsibility as a *collective* if they are not aware that they are acting together to accomplish a particular end. “White heterosexual men” may be poor or rich, have grown up in mixed-race communities or ones that are segregated. Since identities are multiple, it is sometimes difficult to determine *which* identities are at play and which to attribute moral responsibility to.<sup>145</sup> Based on Virginia Held’s account of collective action, Isaacs maintains that the higher the moral stakes the more obligated people are to come together and organize around a collective goal. If the road to accomplishing the goal is relatively clear and no effort is made to organize, people risk being held morally responsible for refusing to act.<sup>146</sup>

Young applies her model of collective responsibility to many cases, one of which is reparations for African Americans. She points out quite a few problems with the liability model of collective responsibility when it comes to this case. For one, “[w]hite people in America today can rightly protest that *we* have not perpetrated the harms of slavery. Indeed, the majority of white people in the United States descend from people who immigrated to the United States after emancipation.”<sup>147</sup> The American government is also a difficult target upon which to place blame. Although it recognized slavery in its constitution, it also abolished it. And then it allowed for the violation of African American civil rights and turned a blind eye to much of the violence suffered by blacks after Reconstruction, but also passed the Civil Rights, Voting Rights, and a host of other Acts intended to address racism. Given the U.S. government’s efforts to redress the role it

played in the creation of the “peculiar institution,” she argues that it cannot be charged with responsibility for slavery in the form of paying reparations to African Americans. Furthermore, doing so would let the rest of America “off the hook too easily. Slavery and its aftermath were social ills, not simply matters of public policy. If there are responsibilities in relation to these historic injustices, then these belong in some sense to the people of the United States, or at least to some of them...”<sup>148</sup> Besides figuring out fair compensation, Young also thinks that the liability model would run up against political problems employing the language of blame. People would recoil at being held responsible for things that they did not think they did, and would likely get defensive instead of motivated to do the work required for systemic change.<sup>149</sup>

Young applies the four different elements of her social connection model – that it is forward-looking instead of backward-looking, that it does not seek to establish responsibility in such a way that absolves some and punishes others, that it recognizes the existence of background conditions of injustice, and that it only discharges responsibility collectively<sup>150</sup> – to the question of black reparations in the following way: We must accept the past, the bad decisions our ancestors made and the pain they endured as a result of the decisions of others, as “given.” We are not responsible for the decisions that others before us have made, and cannot go back to change what has been done. What we are responsible for now is how we “*deal with* it as memory. We are responsible in the present for how we narrate the past.”<sup>151</sup> Furthermore, direct causal links cannot be traced from present-day systemic racial injustice to slavery, because many social and economic processes have intervened since then. While racial inequality exists in the present, it is of

a different kind than existed in the past. Instead of direct compensation to African Americans in the form of reparations, Young proposes “institutional reform and investment”<sup>152</sup> and states that even though whites should not be blamed for the wrongdoing of European slaveholders they still have a moral obligation – because of their privileged position in the racial hierarchy – to “work on transforming the institutions that offer this privilege, even if it means worsening [their] own conditions and opportunities compared to what they would have been.”<sup>153</sup>

Some philosophers, such as J. Angelo Corlett, base collective moral responsibility on the principles that apply to individual moral responsibility. He characterizes the causal chains connecting the actions of individuals to their consequences in the following way: “[t]o the extent that I am responsible for *X*, and to the extent that I, being a reasonable person can understand, by way of common sense reflection, that *X* is likely to cause or lead to *Y*, I am responsible also for *Y*.”<sup>154</sup> Because Corlett’s primary concern is with criminal wrongdoing, his account of moral responsibility is backward-looking (having to do with praise or blame), and liability is said to be ideally ascribable to an agent only if she performs an action “intentionally, knowingly, and voluntarily.”<sup>155</sup> A similar set of conditions is said to apply to collectives. According to his “Principle of Collective Responsibility,” in order for a conglomerate to be found morally responsible for action(s) or omission(s), it must be shown that:

- (i) that conglomerate *did* the harmful thing in question, or at least that its action, omission, or attempt made a substantial causal contribution to it... (ii) that conglomerate is an *intentional* agent concerning that outcome... (iii) that conglomerate is a *voluntary* agent concerning that outcome; (iv) that conglomerate is an *epistemic* agent concerning that outcome; (v) the causally contributory conduct must have been in some way *faulty*... and (vi) if the harmful outcome was

truly the fault of the conglomerate, the required *causal connection* must exist between the faulty aspect of its conduct and the outcome.<sup>156</sup>

Because Corlett requires such strong conditions to be met for collective responsibility, his discussion of it is very limited in scope. Most of the agents that meet his requirements are institutions and businesses; agents that have a set corporate structure and a clear set of rules, values, and beliefs that govern the decisions made by those in charge.<sup>157</sup> He doubts that unorganized collectives such as “social groups” or “society, in general” would be able to meet the strict requirements of his account.<sup>158</sup> When it comes to the collective called the “American people,” for example, he points out that its government does many things in its name that many individual Americans would never agree with or politically endorse if made privy to. The government is like an organization, the president has many advisors, and although all decisions are made on *behalf* of the people they are not made *by* the people. Based on this reasoning Corlett states that “American people” should not be punished for the bad decisions made by their Heads of State in the form of planes crashing into their buildings. While the American government has made mistakes and even violated the human rights of some members of countries overseas, that does not mean that the American people should be punished as a result. They are not the appropriate targets of collective responsibility.<sup>159</sup>

Corlett discusses reparations for Native Americans and focuses specifically on the role of the government in ensuring them. He argues in favour of reparations for Native Americans on the grounds that they aim to correct injustices of the past, and his “Reparations Argument” consists of three claims: “... instances of clear and substantial

historic rights violations against groups ought to be rectified by way of reparations; The U.S. government has clearly committed substantial historic rights violations against millions of Native Americans; Therefore, the historic rights violations of the U.S. government against Native Americans ought to be rectified by reparations...”<sup>160</sup> He responds to various objections to his argument, the only one relevant to this discussion pertaining to collective responsibility. The Objection to Collective Responsibility maintains that neither the current U.S. government nor its citizens should be held liable for the wrongdoing of previous generations.<sup>161</sup> There are two problems identified with this position. First, the U.S. government that exists today is technically the same as the one that existed in times past because the document that brought it into existence remains the same. Furthermore, not only is the government but the citizens are also loyal to the “American way of life” that is “based on the joint purpose of manifest destiny”<sup>162</sup> which harmed Native Americans. Finally, when the wrong was originally committed the U.S. army as well as its government “knowingly, intentionally, and voluntarily”<sup>163</sup> harmed the Native Americans, making them culpable for the wrongdoing which reparations aim to resolve. To further his point, Corlett likens the U.S. government to a corporation, that even if as far back in 1900 was proven to commit significant harm would be expected to pay restitution. The second problem that he finds with the collective responsibility argument is that it does not adhere to the principle of Just Acquisitions and Transfers.<sup>164</sup> According to this principle, if the land upon which the U.S. government and its citizens reside was unjustly acquired then any transfer of the land would also be unjust. Most of the land acquired by U.S. citizens and its government has been unjustly acquired,

something that has nothing at all to do with collective responsibility yet still requires reparations be honoured.

According to Margaret Urban Walker, reparations can take many forms: “restitution; material compensation; rehabilitation through legal, medical, and social services; guarantees of non-repetition through institutional reform; and ‘satisfaction’ (a category of diverse measures that include truth-telling, exhuming human remains [after] atrocities, public apology, commemoration, and educational activities).”<sup>165</sup> Reparations for slavery are a unique form of reparations because the harm at issue dates back generations, which is in contrast to other cases of reparations that have been successfully awarded. Walker cites many of these examples in her essay: to the Jews in West Germany in response to the horrors of the Holocaust and to displaced Jews in the creation of the state of Israel; to Japanese Americans who were subjected to extreme racial discrimination during World War II in the United States in the form of a \$20, 000 payment and official report entitled *Personal Justice Denied*; to the “comfort women” of former Japanese military brothels in response to their extreme abuse at the hands of the Japanese during World War II; and to the blacks of South Africa in the form of the Truth and Reconciliation Commission.<sup>166</sup> Yet even though the harm of slavery dates back 150 years it continues to manifest itself in the form of racial injustice, and this is the basis upon which many claims of reparations are made.

Bernard Boxill demonstrates this in his application of John Locke’s account of reparations to the African American case.<sup>167</sup> He characterizes the “inheritance argument” as the position that since the U.S. government did not compensate the original slaves for

their enslavement it owes compensation to the descendants of slaves. While this position gets around some difficulties by not relying on harm as the criterion for reparations, some of the problems that Corlett and Young identify with collective responsibility still apply. It does not follow from the fact that former slaves had a claim for reparations against their former slave masters and the U.S. government for allowing the institution to exist that present-day African Americans have claims against the American people and its government. As Young pointed out, not only is the government that exists today different from the one that existed over a century ago, the citizens today are not the ones who were complicit in the existence of the institution. To “repair” the inheritance argument, Boxill turns to John Locke’s *The Second Treatise of Government* – specifically sections 179, 180, and 183 where he discusses reparations due to a lawful conqueror from those who joined in an “unjust war” against him. From those “who have... assisted, concurred, or consented to that unjust force,”<sup>168</sup> Locke states that reparations are due from their estates with the one exception that as long as their wives and children are provided for. Boxill makes a few observations about this argument. First, that it is the *transgressors* who are charged with making reparations, not their children. Second, that as long as paying reparations does not endanger the livelihoods of the transgressors’ wives and children, they must be set aside. Third, if the transgressors were to pass away without paying reparations and their children were to inherit their estates, a portion of the children’s estates would still have to be paid to the lawful conqueror. This portion would not belong to the transgressors’ children or their children’s descendants, but to the lawful conqueror and his or her descendants.



Boxill applies Locke's account of reparations to the African American case by mirroring the lawful conqueror who has been transgressed to former slaves and the transgressors to the American people and its government. Slave owners, along with the white Americans who "assisted, concurred, or consented" to the existence of slavery, transgressed against slaves and because of this they owe reparations. These reparations were to come from part of the transgressors' estates, and since they were not paid they are to be taken from the descendants and paid to the descendants of slaves. While not *all* whites may have consented to the existence of the "peculiar institution," most did not dissent. We know this because slavery was in existence for quite some time before the American Civil War. Their wealth was passed down to their heirs, part of which belongs to the heirs of slaves. According to Boxill, whites who immigrated to America after slavery are also responsible for paying their share of reparations:

They came to take advantage of opportunities, funded by assets to which the slaves had titles, or to take natural assets including land to which the slaves also had titles. The fact that they competed for these opportunities and worked hard misses the point. They have a right to their own earnings, but it does not follow that they own the opportunities that enabled them to make the earnings. If I laboriously grow valuable crops on your fields, not knowing they belong to you, I am entitled to keep my earnings, but surely I must give you back your fields!<sup>169</sup>

There are two positions that Boxill addresses in his article. The "inheritance argument," modified and discussed above, and the "counterfactual argument." The counterfactual argument reasons that too many factors have intervened since slavery to attribute to that original harm the systemic racial inequality that exists today. The most controversial instantiation of this argument is that blacks today are *themselves* responsible for the conditions they face. To respond to this position Boxill turns to the example of

two fictional slaves named Tom and Beulah, who were freed and had a daughter named Eulah. Tom and Beulah were owed reparations that they were never paid, but not only that, discriminatory laws were enforced against them. This had a significant effect on Eulah, who was forced to grow up in poverty and ignorance because of her parents' condition. While Eulah does not have a claim to the compensation of her parents (unless they die without compensation, so that would be an inheritance claim) she does have a claim to the compensation *she* is owed as a result of the harms *she* has suffered. While these harms can be partly traced back to slavery, she is not pressing for reparations on the basis of slavery but on the basis of what was not given to her parents *after* she was born which was due to them – their deprivation formed part of her harm. According to Boxill this argument for reparations can also be used by succeeding generations, who may press for reparations on the basis of present-day harm that has in part resulted from the harm of compensation not being given and society continuing to make it difficult for African Americans to recover from the original harm of slavery.<sup>170</sup>

Boxill argues in response to the counterfactual argument that it does not matter whether or not the original slaves received reparations. What matters is that *after* slavery was abolished, the “U.S. Government did not merely fail to compensate the former slaves, but continued to persecute them after they were freed. Indeed, adding injury to injury it prevented them from even competing for opportunities that were already owed to them as compensation and which therefore should simply have been turned over to them.”<sup>171</sup> Generations of whites after slavery continued this pattern of harm, and so

present-day African Americans have a title to reparations *today* as a result of the harms they suffered that made it difficult to recover from the original harm of slavery.<sup>172</sup>

Andrew Cohen states that Boxill's argument is incomplete because "it fails to specify fully the conditions under which we can justify claims to compensation for children born to victims of historic injustice."<sup>173</sup> He looks at such claims to compensation from the perspective of Locke's theory of the rights of children. According to Locke, parents are not only responsible for ensuring that their children do not perish but they must provide additional "comforts" to their children as property will allow.<sup>174</sup> This is the "natural duty" that parents have to their children, and Cohen states that it extends beyond mere survival – we would not think it appropriate if parents locked their children in cages, provided them with little to no mental or physical stimulation, and fed them only enough to keep them alive. In addition to providing the bare minimum, we expect parents to provide their children with enough resources to enable them to develop into well-functioning adults. This range of welfare Cohen calls "W." It has an upper and a lower limit, and what falls beneath it is mere subsistence.<sup>175</sup> Cohen states that W is what children are entitled to, and if the transgressor's ("Jack's") failure to compensate the victim ("Jill's") results in the victim's child's ("Luke's") welfare dropping below W, then the transgressor is responsible for providing the child with compensation. Luke's claim for reparation constitutes an entirely separate claim from Jill's because a new injustice has occurred. On the other hand, if Jill was able to provide for Luke in the range of W *without* receiving compensation from Jack, Luke would have no claim to reparation. While Jill would still need to have her claim honoured, because Luke has not been

personally harmed he would not. But if Luke's welfare was to drop below *W* just once and Jill was able to recover, he would still have a claim against Jack because he was harmed as a result of Jack not paying compensation to Jill. Although his claim may not end up amounting to very much, all things considered, it would amount to something.<sup>176</sup> Compensation is much easier to determine the first generation after the harm than it is to determine generations later. The claim that adult Luke would have to compensation would still be dependent on whether or not his welfare fell below *W* *during childhood*, and Cohen sets an arbitrary limit at three generations for children having their livelihood maintained at *W* for reparations claims to lapse, although inheritance claims may not.

### **Liability or Non-Liability Models of Collective Responsibility**

From the non-liability to the liability model of collective responsibility, which best applies to the case of racial profiling? The causal lines in this case extend beyond those discussed by Young, Corlett, Boxill, and Cohen, because at issue is the potential *consequences* of racial inequality. A report by Employment and Social Development Canada notes that “[r]acialized communities face high levels of poverty. The 2006 Census showed that the overall poverty rate in Canada was 11%. But for racialized persons it was 22%, compared to 9% for non-racialized persons.”<sup>177</sup> According to the same report, eighteen percent of blacks were living in poverty. Similar information is available for the American population. According to the US census, between 2007 and 2011 approximately twenty-seven percent of Native Americans and twenty-six percent of blacks lived below the poverty line. These two groups also had the “highest national

poverty rates.”<sup>178</sup> Out of such economic conditions arise crime, because one of the determinants of crime is poverty. According to a *Toronto Star* article by Senator Hugh Segal, “[w]hile all those Canadians who live beneath the poverty line are by no means associated with criminal activity, almost all those in Canada’s prisons come from beneath the poverty line. Less than 10 per cent of Canadians live beneath the poverty line but almost 100 per cent of our prison inmates come from that 10 per cent.”<sup>179</sup> Senator Segal argues that the answer to crime is investment in the welfare of those who live below the poverty line in the form of a minimum income: “With all costs factored in, Canadians spend more than \$147,000 per prisoner in federal custody each year. By contrast, it would take between \$12,000 and \$20,000 annually to bring a person in Canada above the poverty line.”<sup>180</sup>

Senator Segal is not the only one who has made a connection between poverty and crime. Much of the research that has been done on high rates of Aboriginal crime, especially when it comes to physical and sexual violence against women and children, form a strong connection between their history of past oppression and displacement and their present-day circumstance. Katie Scrim from Department of Justice Canada states that “trauma theory” is the most often used/most useful framework within which to understand high rates of Aboriginal crime and victimization. This theory explains the phenomenon in terms of the history of abuse and neglect suffered by Aboriginals at the hands of colonial powers, and pays close attention to the effect that institutions such as Residential schools have had on those who were taken from their families and placed within them.<sup>181</sup> The first Residential school opened in Canada in 1880 and the last one

closed in 1996. They were funded by the government and involved children being taken from their homes to be taught in environments where they were discouraged from using their own language, wearing their traditional dress, and made to feel like their heritage was inferior. Many who were sent to Residential schools as children suffered physical and sexual abuse, and when they returned home they found it very difficult to integrate back into their communities. Some even died on site and were buried in unmarked graves.<sup>182</sup> Besides trauma theory being used as a means of explaining high rates of Aboriginal crime and victimization, there are principles that have been adopted by the courts to recognize the effect of colonisation. “Gladue factors” (*R. V. Glade* (1999)) include the “effects of the residential school system; experience in the child welfare or adoption system; effects of the dislocation and dispossession of Aboriginal peoples; family or community history of suicide, substance abuse and/or victimization; loss of, or struggle with, cultural/spiritual identity; level or lack of formal education; poverty and poor living conditions;” and “exposure to/membership in, Aboriginal street gangs” that are supposed to mitigate some of the sentences given to Aboriginals in the Canadian criminal justice system.<sup>183</sup>

According to a 2006 report by the Canadian Center for Justice Statistics, eight of the factors that increase one's risk of either being a perpetrator or victim of a crime are found in high prevalence in Aboriginal communities: “being young, having low educational attainment, being unemployed, having low income, being a member of a lone-parent family, living in crowded conditions, and having high residential mobility.”<sup>184</sup> There is a clear connection in the research between these factors and the effects of

colonisation, as well as the fact that many Aboriginals continue to live on reservations that have lower standards of living than the rest of the Canadian population. Although a direct parallel cannot be made between the Aboriginal experience of colonisation and the African American experience of slavery, there are similarities that exist between them: both groups share a history of race-based discrimination in North America and both groups' incarceration rates outpace their percent distribution in the population many times over. In the years between 2013 to 2014 Aboriginal women comprised approximately thirty-five percent of the women in custody and Aboriginal men approximately twenty-three percent of the men in custody.<sup>185</sup> When it came to violent offences, "Aboriginal offenders were more likely to be serving a sentence for a violent offence (78.1%) than non-Aboriginal offenders (65.9%)," and "[o]f those offenders serving a sentence for Murder, 4.5% were women and 19.3% were Aboriginal."<sup>186</sup> Aboriginals comprised approximately four percent of the total Canadian population in 2013 and were approximately ten times more likely to be incarcerated than non-Aboriginals.<sup>187</sup> Blacks in America fared little better. According to the Bureau of Justice Statistics, in 2014 black males comprised thirty-seven percent of the male inmate population<sup>188</sup> and fifty-seven percent of blacks were in jail for violent offences when compared to forty-eight percent of whites and fifty-nine percent for Hispanics.<sup>189</sup> They comprised approximately thirteen percent of the total American population at that time<sup>190</sup> and were between four and ten times more likely to be incarcerated than white males and between one and three times more likely than Hispanic males.<sup>191</sup>

Although a direct connection cannot be made between the Aboriginal and African American/African Canadian experience, there are similarities between the two. Aboriginals were also enslaved by the colonial powers<sup>192</sup> and were similarly racialized in the Canadian context.<sup>193</sup> I highlight the Aboriginal case not to imply that they too should be subject to racial profiling because of their high rates of certain crime – the Canadian and American contexts are very different when it comes to gun violence – but to bring to the fore some of the very real consequences of historical oppression and inequality. A convincing case can be made outlining the connection between Aboriginal rates of crime and their colonial history. Given that poverty rates between Native Americans (twenty-seven percent) and blacks in America (twenty-six percent) are quite similar, as is their history, I would like to posit that a similar connection can be made between the history of slavery that precedes blacks in America and their rates of crime. If the argument for reparations is sound, part of the responsibility for high rates of racialized crime will lie with either the government and/or society in general. If the argument for reparations is sound, it would also potentially justify the economic investment required to bridge the economic gap between the races. This would translate into the problem of high rates of racialized crime in the following way: collective responsibility taken in the form of economic investment into racialized communities with high rates of poverty, mitigating against the prevalence of high rates of racialized crime in the future. To break this argument down into philosophical parts, the conditions under which collective responsibility can be attributed must be established.



### **The Shadow Agent**

While it may sometimes be difficult to attribute collective responsibility, it is clearly possible to do so in the case of racial socioeconomic inequality. The first thing to be established is that at some point in history some groups have oppressed others, as is evident in the case of blacks in North America in the examples of slavery and racial discrimination. This is where Boxill's inheritance argument comes in, and what forms the basis upon which Locke's reparations argument stands. Compensation is due to the descendants of slaves based on the reparations due to slaves from those who harmed them and was not paid. The second is that there are groups who continue to face disadvantage based on the disadvantage faced by historically disadvantaged groups. This is where Boxill's counterfactual argument comes in, and its modification by Cohen. Boxill's response to the counterfactual argument, through the example of Eulah, is that reparations are due to the descendants of slaves not based on the original harm of slavery but on the fact that the descendants of slaves were not allowed to fully recover. The third thing to be established is much more difficult, that *individuals* have participated in bringing about unequal outcomes, which is what Young identified as problematic with the liability model and why Corlett refused to discuss collective responsibility for social problems. At this point Young develops a model of responsibility that will not find fault in past actions but charge individuals with the forward-looking charge of *taking* responsibility for how things turn out in the future. To overcome the third problem requires an expansion of one's conception of the moral agent. For both Young and Corlett, moral responsibility could only be attributed to agents whose decisions resulted in a specific set of

circumstances, but social categories are much more abstract than this. To return to Mills' argument about the tenuousness of racial categories, they are only "real" insofar as we treat them as such. There is no biological reality to race; nothing that distinguishes "whites" from "blacks" when it comes to intelligence, moral aptitude, or any other measure that racialists insist upon. Yet there continue to be advantages and disadvantages conferred upon individuals based on their racial categories. This is made most stark in cases of police brutality, where blacks are disproportionately killed by police.<sup>194</sup> How do we conceptualize such things as "more likely to be hired because I am 'white'" or "more likely to be followed around the store because I am 'black'" on an account of individual moral responsibility?

Young's social connection model is a very isolated picture of our relationship to our moral communities. Being human is a material phenomenon that is inherently social, and the social part of this experience is captured by living in community. To return to Charles Mills' argument about racial constructivism, race is only "realized" in social interaction. In the interaction between "black" and "white," privilege and disadvantage become embodied and how we *become* morally responsible for things we did not bring about depends upon the social roles we occupy. Take the example of a white employer who is confronted with the decision to either diversify his department or continue to uphold the status quo. He has interviewed two candidates for a high paying position, one black and one white. Each have a comparable set of experiences and qualifications and his department is all white, making his choice necessarily political. While the employer was hired much later than the department came into existence and he is not wholly

responsible for how the department is racially composed, because of the position he occupies he is now charged with the responsibility of interrupting a pattern he did not help create. Young's social connection model outlines the forward-looking aspect of him *taking* responsibility for his decision but integral to his decision is a backward-looking sense of taking responsibility for wrongdoing. The employer may not know whether or not his is the only black candidate who has applied for a position at his company or who has been qualified, but he can look at his decision in terms of the broader social context. If he refuses to hire the black candidate because he feels it would be too difficult to integrate him, he would be morally responsible for the perpetuation of racial privilege. If he is able to reach a level of awareness where he is able to realize the role he potentially plays in the perpetuation of oppression, he will see what the right decision to be made is from the perspective of furthering racial equality.

There are segments of society that are more vulnerable to certain forms of harm than others, and as we become more aware and accept our moral responsibility to not perpetuate harm against others these moral responsibilities come into view. Young partly argues against the liability model of collective responsibility because she believes that too much is required for people to realize that they form part of a system that they did not create but can unconsciously replicate. I am not sure how much that matters, however, from the perspective of morality, if the person who is harmed is harmed regardless of whether or not the person who is doing wrong realizes it. What this might mean is that we carry with us a "shadow agent," a term that captures the abstract nature of social categories. This agent entangles us in a set of relations which we did not choose but can

still be held morally responsible. Take for example the male student who does not realize he is privileged by his sex until he takes a women's studies course. Just because he was not aware of the moral responsibility to not perpetuate sexism before he attended this class does not mean that this responsibility did not exist. Before he became aware of his moral responsibility his wrongdoing may not have been attributable to his primary agent, but it is to his shadow agent.

If Segal is correct in arguing that what will be required to reduce rates of crime is investment in poverty, what will be required to reduce racialized rates of crime is extreme economic investment. This could not be justified without appealing to the liability model because that is how we, as a society, understand wrongdoing and the amount of money collected from society would appear as though it was a penalty to be paid. This penalty could only be understood in one of two ways: as charity or imbursement for wrongdoing, and charity would be an inappropriate connection to be made between the collective and racialized persons because the remedying of systemic racism is not a matter for which racialized persons should be ingratiated. Understanding wrongdoing in the form of the "shadow agent" works because as abstract as social positions and the contribution to something like "systemic racism" is, whether knowingly or unknowingly we contribute to it because it still exists.

## **Conclusion**

In conclusion, this chapter addressed theories of collective responsibility and ended in an argument for reparations. I argued that the liability model of collective

responsibility is best for addressing collective responsibility in the case of systemic racial injustice, both because it is possible to trace the liability (as is evident in the case of Aboriginals and rates of crime, in addition to the fact that it is necessary to establish liability in order to affect systemic change). I propose the concept of a “shadow agent” to establish liability in cases where it seems as though *individuals* within the collective have not done wrong themselves, but the perpetuation of injustice continues. The point was to establish that there is a case for reparations, which will be expanded upon in chapter four.

## **Chapter Four: Personal Moral Responsibility for Wrongdoing**

Suppose that blacks were more likely to commit crimes than whites because of racist discrimination and whites could act in such a way as to not discriminate, would that necessarily make racial profiling unjust? Perpetrators of crime have complex histories, yet under many circumstances we can (and should) hold agents responsible for wrongdoing even if they have been victims of injustice. Even though racialized groups have more criminogenic factors to deal with than non-racialized groups, this does not absolve them of the moral responsibility to not harm others. In this chapter I address theories of personal responsibility and argue that given systemic injustice what would be morally required for racial profiling to be implemented is an acknowledging of collective responsibility.

### **Personal Moral Responsibility**

To return to Lippert-Rasmussen's argument in chapter three, a connection can be made between discrimination and rates of crime, in the sense that historical oppression is correlated to socioeconomic circumstance and economic circumstance has rates of crime. Yet for every example of a person who breaks the law because he has been dealt a difficult hand there is a counter-example of someone who arises out of much more challenging circumstances yet is still able to make it through legitimate means. To maintain otherwise, that people's actions are completely determined by their circumstances, is to go down a most unconvincing path. Determinists about human freedom maintain that once one is presented with a decision there is only one choice to

make. We cannot choose otherwise, other than what we have chosen or what we will choose to do, which also means that we cannot be held responsible for actions. Since we had no alternative, how could we be held to account? J. Angelo Corlett recreates the determinist position in his “Argument for Non-Responsibility”:

(1) Moral responsibility requires that we are at least sometimes able to do otherwise than what we do; (2) Being able to do otherwise than what we do requires our having essential control over what we do; (3) Our having essential control over what we do requires that we have the ability to do otherwise; (4) But we lack the ability to do otherwise because all of our actions are determined such that we lack essential control over them; (5) Therefore, we are not morally responsible for what we do.<sup>195</sup>

While no moral agent's decisions are completely immune to external influences, the extent to which external factors influence an agent's decisions is highly debatable and unique to each case. While personal agency can be restricted depending on circumstance, this does mean that the determinist about human freedom wins. An important part of what it means to be a member of a moral community is to be “viewed as an apt target (pending excuse or exemption) for demands for accountability by others in virtue of how we behave.”<sup>196</sup> Even though people of colour in North America have been harmed by colonisation and racist discrimination, this does not necessarily mean that we should refrain from judging them for harming others. Sometimes the debate surrounding racial profiling is contentious because when the policy is defended it appears as though the victim is being blamed, but that is not necessarily the case. We must be able to separate individual action, in this case high rates of racialized crime that *harms others*, from historical circumstance. Diane Enns tackles the problem of judging victims of injustice in her book *The Violence of Victimhood*. Her investigation was precipitated by a set of

personal experiences in which she was accused of racism by two black female students. One was a teaching assistant who was offended by a criticism she gave of identity politics in a guest lecture, and another an undergraduate who took one of her courses. One student completely “misconstrued”<sup>197</sup> her lecture and the other told a fellow colleague that she regretted pressing the charge,<sup>198</sup> but Enns was still upbraided by the university administration and received little moral support from her department. “The most important fact,” she writes, “was that her skin was black and mine white – the only reason given for the fact that the chances of clearing my name were slim if the matter went to a university hearing.”<sup>199</sup> Upon reflection of her experience, Enns asks a key question that will guide the rest of her analysis: How did we get to the point where victimhood, in this case black female victimhood, carried with it so much moral currency so as to appear beyond reproach?

The “veneration of the other” has philosophical roots that can be traced back to Emmanuel Levinas, who Enns posits was so anxious about totalitarianism in the post-World War II context that he, along with a host of poststructuralists, “valorized” difference.<sup>200</sup> Levinas is said to have advocated an ethics in which the privileged, who stand at the “center” and not on the “margins,” are forced into taking full responsibility for “the other.” Enns points out that this is an immensely unequal relationship, in which guilt on the part of those “at the center” keeps them in a state of continual responsibility for “the other” – without hope of reciprocation. “Substitution” is a key part of this relationship, in which “I have the other inside my skin, like the pregnant woman who Levinas claims loses all substantiality and identity in her suffering for the other... She is



evicted from her own being – her body is devoted to the other before being devoted to itself – becoming an authentic figure of responsibility, the substitution of ‘the-one-for-the-other’ par excellence.”<sup>201</sup> In some areas of philosophy, the “other” has been taken to signify the “oppressed other,”<sup>202</sup> a theme that some feminists have wholeheartedly taken up: “The ‘other’ as feminine has come to signify pure innocence, a victim bereft of historical responsibility and, at the extreme, paralyzed by the trauma of oppression... That the other is capable of any degree of violence is hardly ever considered.”<sup>203</sup> The problem Enns sees with this ethics is not only that it denies the oppressed moral agency, but that it places “perpetrators” and “victims” into entirely “separate ethical universes.”<sup>204</sup>

One of the most complex cases of moral responsibility examined by Enns is that of the child soldier. In recent years, humanitarians have paid increasing attention to the plight of youth who have been recruited to fight in civil and political wars across the world. While Enns points out that the notion of “childhood” as encompassing all ages up until eighteen is not universal<sup>205</sup> and that “children” even fought during the American civil war, she also highlights many of the morally problematic elements of the modern-day recruitment of child soldiers. For one, many children are recruited from war-torn areas where their friends and families have been killed. Some may simply join armies because of the guaranteed food, shelter, and overall sense of security. Others are kidnapped and forced into fighting; beaten, raped, threatened with death or the death of their families if they do not rape and kill themselves. While others still join for the mere thrill of it, the power that accompanies violence or to avenge the death of loved ones who have been killed amidst the conflict.<sup>206</sup> Although child soldiers function from a place of

significantly diminished moral agency because of their reduced life options, which Alcinda Honwana characterizes as “limited weak agency,”<sup>207</sup> that does not mean that they *necessarily* function from a place of diminished moral responsibility. The harms they inflict upon their victims remains constant no matter their personal circumstance, and it from the perspective of their victims that Enns poses the question of how we are to judge the crimes of victims who are, at the same time, perpetrators.<sup>208</sup>

To address this question, Enns turns to the autobiographies of two former child soldiers: Ishmael Beah in *A Long Way Gone: Memoirs of a Boy Soldier* and Arkady Babchenko in *One Soldier's War*. Beah was kidnapped at twelve by the Sierra Leone army and Babchenko was conscripted to fight in Chechnya at eighteen and returned to the front four years later.<sup>209</sup> Their stories are used alongside others, including those of children who blow themselves up in the name of freedom, to examine moral cases in which individuals are “neither purely guilty nor purely innocent.”<sup>210</sup> Difficult cases such as these in some ways mirror the role that the Jewish Councils played during the Holocaust. Hannah Arendt condemned them for being complicit because they provided the Nazis with the lists they needed to locate many Jews. While the Councils were certainly not fully responsible for the Holocaust, there would have been much less people killed had they refused to comply. Arendt (quoted in Enns) stated that it would have been “infinitely better to let the Nazis do their own murderous business”<sup>211</sup> than for them to have helped them along in it. While the Councils may have thought they had little choice to do otherwise, Arendt points out that they provided this information to the Nazis even before there was threat of coercion and could have chosen to fight, die with honour, or

even flee before turning in fellow Jews (a few of whom they were permitted to save).<sup>212</sup> What these cases bring to light is that even victims can be perpetrators of injustice, and if we do not adequately address this fact we can end up encouraging the development of a cycle of victimhood. In the words of Enns, “[i]f responsibility for actions is not acknowledged – if deeds are not *owned* – then we cannot learn from our pasts, and the same excuses will suffice again and again.”<sup>213</sup> A prime example of a victim who *was* judged for his actions is Dominic Ongwen, one of the foremost leaders of the Lord's Resistance Army (LRA) who has been charged by the International Criminal Court (ICC) with seventy counts of crimes against humanity.<sup>214</sup> Ongwen was twenty-seven at the time of his trial in 2008 and is still being held in custody, but was kidnapped by the LRA at the age of ten. Because he was also once a child soldier, he is characterized by Erin Baines as a “complex political victim.”<sup>215</sup> Although she does not deny that he should be held responsible for his crimes, which include “murder, enslavement, inhumane acts of inflicting serious bodily injury and suffering,”<sup>216</sup> she does argue that his life circumstances complicate the clear line that is often drawn between innocence and guilt.<sup>217</sup>

How much moral responsibility should we place on the figurative “shoulders of society” for the decisions *individuals* make to break the law and sometimes even harm others in process? The story of Shaka Senghor, as recounted in his memoir *Writing My Wrongs: Life, Death, and Redemption in an American Prison*, is not as morally complex as that of Beah and Babchenko. He was not “victim *as* perpetrator” but *once* “victim” who *became* “perpetrator,” yet we can still empathise with his story of abused-kid-turned-

runaway-turned-drug-dealer-turned-killer-turned-prison-activist, as the readers of *A Long Way Gone* and *One Soldier's War* could certainly empathise with the struggles of Beah and Babchenko. In Senghor's memoir he details his journey from being fourteen and a drug dealer to nineteen and on trial for murder, and the process of forgiveness that led to his eventual "redemption" almost twenty years later. Having run away from an abusive mother in the mid-1980s he found himself homeless, on the streets of Detroit, at the height of the "Crack Era."<sup>218</sup> He had nowhere to go and no money to provide for himself, so when the opportunity arose for him to become a "roller" for a local drug dealer, he took it. The job required him to sit in the same spot for "twenty-four hours a day, seven days a week" and sell drugs. Young James (the name given to him at birth) was paid "... up to \$350 a week, plus \$10 a day for food..."<sup>219</sup> and was being exploited by the adults around him before he even knew it – by the drug dealer who hired him, expecting him to skip school to sell crack, to the pedophiles who exchanged sexual favours for drugs. Being as young as he was when he got into the game, "[a]ll [he] knew was that [he] stayed fresh and [his] pockets were fat. [He] didn't have long-term plans or an exit strategy."<sup>220</sup> During the same time violence in Detroit was escalating. After a series of moves and failed attempts to get out of the game, depression set in and Jay attempted to take his life by swallowing sleeping pills.<sup>221</sup> The attempt failed, but soon after he got shot in retaliation for getting into an argument with another man's girlfriend. Although the wounds were not life-threatening, they seriously affected his sense of well-being. He started carrying around a gun for safety and fourteen months later he fired the shots that took another man's life. At the ripe age of nineteen he found himself before a judge,

facing seventeen to forty years in jail for murder. After many years Senghor was finally able to forgive all who had wronged him, his mother in particular, and take full responsibility for his actions. No matter his personal circumstance, he killed someone. This shattered not only the lives of his family and loved ones but the family and loved ones of his victims, which is something he had to learn to grow to accept.<sup>222</sup>

In Senghor's five-year stint in the streets he was acting under a "diminished ethical ideal."<sup>223</sup> According to Claudia Card, this is when "the best one can do as an individual is to identify the least unjust option..."<sup>224</sup> Being homeless at a young age led to him choosing the security of selling drugs over the insecurity of begging for food and having nowhere to sleep or bathe, and he admits that his time on the streets hardened him. He lost respect for his community after seeing the depths to which addicts would go to get their next hit,<sup>225</sup> and after he got shot he did not receive proper psychological care: "No one had counseled me that everything would be okay. No one came to talk to me and explain all the emotions I was feeling. No one told me that if I didn't find a way to deal with the fear I felt, I would become paranoid; would reach a point where I would rather victimize someone else than become a victim."<sup>226</sup> As Card points out, not everyone has equal opportunity to be good.<sup>227</sup> While recognizing this does not absolve individuals of their responsibility to not harm others it should help change the tenor of debate surrounding personal responsibility. To *take* responsibility for oneself does not only mean accepting praise or blame in the backward-looking sense,<sup>228</sup> as Senghor did when he came to terms with his wrongdoing. *Taking* responsibility also includes a forward-looking dimension. When we *take* responsibility for ourselves Card states that we "...locate

ourselves as morally relevant centers of agency.”<sup>229</sup> By accepting the role he played in his own demise, Senghor was able to move forward with his life. After spending almost two decades in jail he now takes the message of mercy for those caught up in the criminal justice system around the world.

### **Moral Luck and Personal Responsibility**

There are different ways of conceptualizing the responsibility of persons who have been through difficult times such as Senghor. One way of doing so is to look at it from the perspective of moral luck. Philosophers such as Bernard Williams and Thomas Nagel have examined the impact of luck on morality, and traditional debates have revolved around incidental luck, or the luck surrounding specific choices made by the agent. Examples of these include the painter Gauguin who leaves his family and may or may not become a great painter as a result, the driver who does not hit down a child in the street and the one who does, and Anna Karenina who leaves her family for her lover Vronsky and does not properly weigh out the consequences of her decision. In each case the agent makes a choice that could turn out either way, and only in hindsight can we evaluate the extent to which the choices they made were the “right” ones. Gauguin becomes a famous painter with the moral remainder of a family left behind, one driver gets convicted of manslaughter while the other goes free, and Karenina kills herself after she realized that the relationship she so coveted could not hold the weight of her betrayal. Card recount these stories in her book, and states that objective criteria (or “the view from over there”) are used in each case to evaluate the agent’s decisions. She is more

concerned with *constitutive* luck, or the kinds of circumstances and events that influence character development.

Card sets up her primary occupation with the “view from here,” or the perspective of everyday lives.<sup>230</sup> In the “view from here,” responsibility is conceptualized in the forward-looking sense of it being *taken* instead of *attributed*. Since “we do not have an equal chance to be good, and our goodness is less up to us than our religion and moral traditions would allow us to believe,”<sup>231</sup> she accounts in her analysis for the way in which structural injustice affects our ability to “choose right.” But even though we may be affected by circumstances beyond our control, Card maintains that we have still have influence over the decisions we make. She quotes Simon Wiesenthal, Jewish survivor of the Holocaust, in defense of her position, who stated that “oppression [is not] an excuse, or even an occasion, for moral insensitivity.”<sup>232</sup> At the very least, victims of injustice should make an effort to not perpetuate the same kinds of injustices that they have been subject to. Yet a big part of who we become has to do with the many unchosen relationships we have with others. As Senghor’s case demonstrates, throughout childhood we are vulnerable to abuse and into adulthood we form relationships with people for the sake of employment, friendship, and partnerships. Sometimes the very way people react to us is a source of luck, and can impact the decisions we make in either life-affirming or life-threatening ways.<sup>233</sup> Card still maintains that although “[o]ppression makes some of our choices difficult, others tempting, attractive [and] easy... victims have responsibilities of their own to peers and descendants [which is why] activists often prefer the term ‘survivor’ to ‘victim,’ to emphasize activity rather than passivity.”<sup>234</sup>

Iris Marion Young also addresses moral luck, but argues that it is insufficient for addressing systemic injustice. She turns to Ronald Dworkin's "theory of equality of resources,"<sup>235</sup> that tries to capture the intuition that part of what it means to respect people's autonomy is to acknowledge the fact that they are responsible for the decisions they make, yet at the same time circumstances enter beyond their control that affect the kinds of decisions they can make. Dworkin considers factors beyond our control to be matters of sheer luck, and in his theory posits that justice requires society compensating for factors beyond individuals' control, but not for those that arise out of the decisions individuals make. How this ends up being represented in his theory is in "a generous welfare state"<sup>236</sup> that distributes according to people's circumstances, not choices. "He includes in the category of people's circumstances... the families into which they are born, along with the resources available to them for that reason; features of the environment in which they act; unchosen characteristics such as their sex, race, or nationality; and, most especially, their mental and physical abilities and talents, or lack thereof."<sup>237</sup> How welfare becomes distributed on his account is based on the insurance market. Premiums would be calculated according to risk and spread out so that the least fortunate would have access to subsidies that address their bad luck. On Dworkin's account there is nothing morally significant about the disadvantages certain people face as a result of their circumstance.

Young criticizes Dworkin's account of moral luck based on the fact that it focuses too much on individual attributes and ignores structural injustice. People's tastes as well as what the market prefers are thought to result from mere preference, when in many



cases preference reflects “the social-structural context that helps make features of a person advantageous or disadvantageous.”<sup>238</sup> What is considered a handicap on Dworkin's account, such as being born without sight, might simply reflect the fact that measures have not been put in place by society to accommodate such a circumstance. Instead of being viewed as a handicap in need of pity in the form of welfare, the underlying societal conditions should also be examined in cases of disadvantage. The difference between the two conceptions of what social justice requires are significant according to Young because one views injustice as a matter of fate while the other views injustice as a matter of institutions or social processes resulting in the harm of injustice. The former resigns one to think of one's bad luck as a matter of beyond one's control, while the latter acknowledges the fact that victims of injustice are entitled to the remedying of their situation:

Not all facts about a person's circumstances, as distinct from her choices, are morally arbitrary. To the extent that they derive from actions, policies, institutional organization, and the combined consequences of these factors that make some people vulnerable to domination, exploitation, or deprivation, they raise specific issues of justice that implicate other people in the circumstances of those vulnerable people. Injustice in this sense concerns more than simply the fact that people suffer fates they do not deserve. It concerns how institutional rules and social interactions conspire to narrow the options many people have.<sup>239</sup>

### **Rates of Crime and Personal Responsibility**

Racial profiling presents an interesting case of personal moral responsibility. To return to the example of high rates of black crime, specifically when it comes to violent crime, there are victims to consider. As Enns points out, even victims can be perpetrators of crime, and just because people of colour are “victims” of racial injustice in the form of

socioeconomic inequality and/or discrimination does not mean they should be absolved of the moral responsibility to not harm others. Here the critic can enter and point out a key metaphysical problem with police treating “blacks” as a group with a propensity for crime. Charles Mills has already pointed out that “[r]ace is not ‘metaphysical’ in the deep sense of being eternal, unchanging, necessary, part of the basic furniture of the universe,”<sup>240</sup> and philosophers of race have been discussing the usefulness of it for personal identity for quite some time. Anthony Appiah, for example, argues that “the only contestant for criterion of racial membership is the false belief in biological heritability”<sup>241</sup> and even goes so far as to insist that “[h]istory may have made us what we are, but the choice of a slice of the past in the period before your birth as your own history is always exactly that: a choice.”<sup>242</sup> Even Naomi Zack was noted as saying “that undermining the foundation of the racialized community designated by the term *black* will help to undermine racism itself.”<sup>243</sup> To target blacks as potential offenders is not only to ignore the fact that racial categories are contingent, but to treat them as essential. Just because the statistics disaggregate crime according to race does not mean that they capture the best picture. Better determinants of crime may be neighbourhood, city, or socioeconomic status – not all blacks live in “ghettos” and not all blacks are poor.

Lewis Gordon responds to claims such as those made by Appiah and Zack by pointing out that “[w]hile race can be deconstructed for those racially ambiguous enough to ‘pass,’ this is not a luxury available to all.” He argues that until the conditions of persons of colour significantly improve, “race” must continue to be deployed as a meaningful social construct at the level of the collective.<sup>244</sup> That race is still a meaningful

category of identification is evident in facts discussed in chapter two, such as just being an Aboriginal in Canada makes one three times more likely to be a victim of crime,<sup>245</sup> and that being black in the United States makes one five to six times more likely to die by gun, with black males “peaking” at age twenty-three *nine times* more likely to die by gun than white males.<sup>246</sup> Even though treating blacks as a group from a metaphysical standpoint overlooks the personal identity of individuals, statistically speaking it seems to make sense. There is something to the critic's contention, however, and it has to do with the second part of Mills' statement: “... race is a contingently deep reality that structures our particular social universe, having a social objectivity and causal significance that arises out of our particular history.”<sup>247</sup> At its original inception, race signified a difference between peoples that ended up being considered hierarchical. “Race” continues to have meaning, and although in many cases it has lost its hierarchical sense it continues to manifest itself in unsavoury ways – socioeconomic status being one of them.

Leaving the problem of personal identity aside, being born a particular race and into a particular set of circumstances might be conceived as a matter of luck for which no one is responsible, or a matter for social justice. If it is considered a matter of luck for which no one is responsible, the problem of racial profiling can be left here: Applicable in cases of crime as argued in chapter two, since race is a statistically relevant category and racialized persons are potentially more likely to be perpetrators as well as victims of crime. Leaving cases of brutality and police killings of racialized persons aside as matters for police training and punishment, racial profiling would be justified on the basis that it mitigates against violations of the basic right to personal security. Contrary to Lippert-

Rasmussen's assertion, it would not violate principles of justice because although discrimination may be a reality for many, there remains a realm of personal agency and moral responsibility which external circumstances may not interrupt. Individuals may still be found responsible for wrongdoing on the basis that another person has been harmed. If certain circumstances result from social structures and are a matter of systemic inequality, however, there will be more to the story than this.

Even though personal moral responsibility for wrongdoing is not circumscribed by circumstance, there must be some concept available to relay the fact that there is an agent beyond the agent at issue who is responsible for the conditions she faces. In chapter three I discussed collective responsibility and posited that this agent was a "shadow agent," a concept underdeveloped but meant to express the fact that we can do wrong and contribute to injustice by virtue of our social position – an abstract enough concept as there is – and without awareness of the fact that we are contributing to the perpetuation of injustice without even realizing it. Does that mean that we are not morally responsible for our wrongdoing? Of course not. But it does mean that our wrongdoing should not be attributed to our primary agent. The concept is extremely abstract, but consider the fact that we can look back in history and see wrongdoing; the fact that certain groups were oppressed and the movement of social justice. When the weight of injustice becomes heavy enough on society and enough people become enlightened to the moral standing of others, change comes. Today the Black Lives Matter movement seems counter cultural to some, but as police brutality against blacks continues to have a light shone on it, more

people will realize the problem, and what was once viewed as acceptable police behaviour will come to be realized as morally unacceptable.

Although I do not agree with Young's account of collective responsibility, I do with her account of personal responsibility. When it comes to addressing issues of systemic injustice such as socioeconomic inequality resulting in high rates of racialized crime, it should not be perceived as a matter of bad luck but a matter for justice, and for collective responsibility to be realized in the case of systemic injustice socioeconomic inequality must be addressed.

## **Conclusion**

In this chapter I addressed various theories of personal responsibility and argued that in order for racial profiling to be justified systemic racism in the form of socioeconomic inequality would have to be acknowledged and remedied. I argued for collective responsibility for systemic racism to be realized in the form of the "shadow agent," and based on the observations made in chapter three that *investment* would have to be made in impoverished racialized community for racial profiling to be justified. While personal moral responsibility for wrongdoing *en masse* is addressed by racial profiling, the underlying causes of it are not addressed if that investment is not made.

## Conclusion

This thesis was written during a very trying time in American race relations. The Black Lives Matter movement was well on its way, and with the help of social media many more cases of police brutality and violence against blacks have been publicized. It has been difficult to write with the distance required of a philosophical essay during this time, but it has also been helpful for separating the idea of a thing from its practical application. Given that the notion of “racial profiling” still seems sound to me even though such tragic deaths have occurred such as those of Alton Sterling, Philando Castile, Oscar Grant, Freddie Gray, Mike Brown, and many, many others, reinforces that just because something appears sound in theory does not necessarily mean that it should be applied in practice. As chapter one of this thesis should have clearly demonstrated, there is such a close relationship between racial discrimination and the law that it is difficult to take racial profiling seriously as a *just* policy. Would racial profiling even have been considered if the high rates of crime were not considered in racial terms? If the American government did not choose to disaggregate crime rates according to race? This is not at all necessary, as the Canadian context demonstrates. The drunk driving example should have also shown that not necessarily because a certain race's rates of crime are high means that police need to develop targeted programs against their demographic.

Rights also play a significant role in the history of racial discrimination in North America, as chapter two was intended to demonstrate. Are there conditions under which certain rights should be over-ruled? And if so, why does this still remain problematic for communities of colour? The problem is that equal rights was what was fought for, and the

overruling of certain rights in some cases – no matter the reason – brings back memories of oppression for racialized demographics. To return to Charles Mills' racial constructivist account of race, part of the way that races have become realized in society has been through the state refusing to recognize the equality of all persons through the medium of law. On the other hand, high rates of racialized crime must be addressed by *some* means, and I pointed out that on the receiving end of these crimes are victims. These victims are citizens too, and they deserve to have their basic right to physical security recognized and protected. I turned to Henry Shue because he distinguishes between basic rights and ordinary rights, the latter of which he argues should be put aside to secure those that are basic. Even though people of colours' rights to be treated equally under the law and to not be subjected to unreasonable search and seizure may be infringed upon by racial profiling, there may be more basic rights at stake. The basic right that I argue to be at stake when in the case of racial profiling is that of the safety and security of victims of violent crime.

And yet there is another side to the story, a side which I felt was not adequately addressed by most philosophers who discussed racial profiling. That is the responsibility the collective holds for fostering high rates of racialized crime through a history of racial discrimination. Kasper Lippert-Rasmussen addresses this perfectly in his article, although I found the justification for his position to be quite weak, which is why I turned to a discussion of collective responsibility and discussed the philosophical arguments that were offered in its defense. Young presents a non-liability model of collective responsibility and Corlett a liability model that reflects individual moral responsibility.

Young attempts to address systematic injustice by acknowledging the fact that individuals should only be held morally responsible for the things they do, while Corlett admits that because his model mirrors individual moral responsibility it cannot be applied to social problems. Both accounts of collective responsibility seem insufficient to capture the weight of responsibility that seems to propel systemic change. While the notion of the “shadow agent” is underdeveloped, I introduced it to capture the feeling that while we may not be responsible for things we did not do we hold a degree of responsibility for who we are. For those who hold positions of power within society by virtue of their social position, the shadow agent is meant to capture their degree of responsibility. Finally, for racial profiling to be justified collective responsibility for systemic racism will have to be acknowledged in the form of a redressing of socioeconomic inequality.



## Bibliography

- “2014: Crime in the United States.” *The Federal Bureau of Investigation*. Accessed December 1, 2015. <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-43>.
- “2014: Crime in the United States.” *The Federal Bureau of Investigation*. Accessed June 24, 2016. <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/offenses-known-to-law-enforcement/violent-crime>.
- Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Revised Edition. New York: The New Press, 2012. Kindle edition.
- “Alleged Crimes (Non-Exhaustive List).” *International Criminal Court*. Accessed July 4, 2016. <https://www.icc-cpi.int/uganda/ongwen/pages/alleged-crimes.aspx>.
- Atkin, Albert. *The Philosophy of Race*. Durham: Acumen Publishing Limited, 2012.
- “Backgrounder: Aboriginal Offenders – A Critical Situation.” *Office of the Correctional Investigator*. Last updated September 16, 2013. <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022info-eng.aspx>.
- Boonin, David. *Should Race Matter?: Unusual Answers to the Usual Questions*. Cambridge: Cambridge University Press, 2011.
- Boxill, Bernard R. “A Lockean Argument for Black Reparations,” *The Journal of Ethics* 7 (2003): 63 – 91.
- Brzozowski, Jodi-Anne and- Andrea Taylor-Butts and Sarah Johnson. “Victimization and Offending Among the Aboriginal Population in Canada.” PDF, Canadian Center for Justice Statistics, 2006.
- “Canadian Multiculturalism Act (R.S.C., 1985, c. 24 (4<sup>th</sup> Supp.)).” *Government of Canada*. Last modified May 19, 2016. <http://laws-lois.justice.gc.ca/eng/acts/C-18.7/page-1.html>.
- Card, Claudia. *The Unnatural Lottery: Character and Moral Luck*. Philadelphia: Temple University Press, 1996.
- Carson, E. Ann. “Prisoners in 2014.” PDF, U.S. Department of Justice, 2015.
- Cohen, Andrew I. “Compensation for Historic Injustices: Completing the Boxill and Sher Argument.” *Philosophy & Public Affairs* 37 no. 1 (2009): 81 – 102.

- Cole, Desmond. "The Skin I'm in: I've been interrogated by police more than 50 times—all because I'm black." *Toronto Life*. Last modified April 21, 2015.  
<http://torontolife.com/city/life/skin-im-ive-interrogated-police-50-times-im-black/>.
- "Constitution Acts, 1867 to 1982." Government of Canada. Last modified May 19, 2016.  
<http://laws-lois.justice.gc.ca/eng/const/page-15.html>.
- Cook, Phillip J., Susan T. Parker and Harold A. Pollack. "Sources of Guns to Dangerous People: What We Learn By Asking Them." *Preventative Medicine* 79 (2015): 28 – 36.
- Corlett, J. Angelo. *Responsibility and Punishment*. Dordrecht: Springer Netherlands, 2006. DOI: 10.1007/1-4020-4148-9.
- Craig, Edward. "Metaphysics." *Routledge Encyclopedia of Philosophy*. Date accessed April 1, 2016. <https://www.rep.routledge.com/articles/metaphysics/v-1>.
- "Drunk Driving Statistics." *MADD*. Accessed May 1, 2016. <http://www.madd.org/drunk-driving/about/drunk-driving-statistics.html?referrer=https://www.google.ca/>
- Enns, Diane. *The Violence of Victimhood*. Pennsylvania: The Pennsylvania State University Press, 2012. Kindle edition.
- "Gun Violence Programs: Operation Ceasefire." *National Institute of Justice*. Last updated June 25, 2008.  
<http://www.nij.gov/topics/crime/gun-violence/prevention/pages/ceasefire.aspx>.
- Hoffman, Kristy and Patrick White and Danielle Webb. "Carding Across Canada: Data Shows Practice of 'Street Checks' Lacks Mandated Set of Procedures." *The Globe and Mail*. Last modified August 17, 2015.  
<http://www.theglobeandmail.com/news/national/does-carding-occur-across-canada/article25832607/>.
- Isaacs, Tracy. *Moral Responsibility in Collective Contexts*. Oxford: Oxford University Press, 2011. DOI: 10.1093/acprof:oso/9780199782963.001.0001.
- Kennedy, David. "Drugs, Race, and Common Ground: Reflections on the High Point Intervention." *National Institute of Justice*. Last updated March 9, 2009.  
<http://www.nij.gov/journals/262/pages/high-point-intervention.aspx>
- Lever, Annabelle. "Racial Profiling and the Political Philosophy of Race." *Oxford Handbook of the Philosophy of Race* (2015): 1 – 18.  
SSRN: <http://ssrn.com/abstract=2675633>.

- Lippert-Rasmussen, Kasper. "Racial Profiling Versus Community." *Journal of Applied Philosophy* 23, no. 2 (2006): 191 – 205.
- Lippert-Rasmussen, Kasper. "Nothing Personal: On Statistical Discrimination." *The Journal of Political Philosophy* 15, no. 4 (2007): 385 – 403.
- Loppie, Samantha and Charlotte Reading and Sarah de Leeuw, "Aboriginal Experiences With Racism and Its Impacts" (PDF, National Collaborating Center for Aboriginal Health, 2014).
- MacCartney, Suzanne and Alemayehu Bishaw, and Kayla Fontenot, "Poverty Rates for Selected Detailed Race and Hispanic Groups by State and Place: 2007 – 2011" (PDF: Census.gov, 2013).
- Mill, John Stuart. "On Liberty." In *Law and Morality: Readings in Legal Philosophy*, Third Edition, edited by David Dyzenhaus, Sophia Reibetanz Moreau, and Arthur Ripstein, 306 – 326. Toronto: University of Toronto Press, 2008.
- Mills, Charles. "'But What Are You Really?': The Metaphysics of Race." In *Blackness Visible: Essays on Philosophy and Race*, 41 – 66. United States of America: Cornell University, 1998.
- News Staff. "Is There a Link Between Carding and the Recent Spate of Shootings in Toronto?" *City News*. Last modified February 1, 2016.  
<http://www.citynews.ca/2016/02/01/is-there-a-link-between-carding-and-the-recent-spate-of-shootings-in-toronto/>.
- Office of the Correctional Investigator. "The Changing Face of Canada's Prisons: Correctional Investigator Reports on Ethno-Cultural Diversity in Corrections." *Government of Canada*. Last modified November 26, 2013.  
<<http://www.oci-bec.gc.ca/cnt/comm/press/press20131126-eng.aspx>>
- Parsons, Chelsea and Anne Johnson. "Young Guns: How Gun Violence and is Devastating the Millennial Generation." PDF, Generation Progress and the Center for American Progress, 2014.
- Planty, Michael and Jennifer L. Truman. "Firearm Violence, 1993 – 2001." PDF, U.S. Department of Justice, 2013.
- Public Safety Canada Portfolio Corrections Statistics Committee. "Corrections and Conditional Release Statistical Overview: 2014." PDF, Public Works and Government Services Canada, 2015.

“QuickFacts United States.” *United States Census Bureau*. Accessed December 2015.  
<https://www.census.gov/quickfacts/table/PST045215/00>.

Rankin, Jim and John Duncanson, Jennifer Quinn, Michelle Shephard and Scott Simmie.  
“Black Arrest Rates Highest.” *Toronto Star Newspapers Ltd*. Last modified  
August 26, 2002.  
<https://www.thestar.com/news/gta/raceandcrime/black-arrest-rates-highest.html>

Rankin, Jim and Patty Winsa. “As Criticism Piles Up, So Do the Police Cards.” *Toronto Star Newspaper Ltd*. Last modified January 8, 2014.  
[http://www.thestar.com/news/gta/known\\_topolice2013/2013/09/27/as\\_criticism\\_piles\\_up\\_so\\_do\\_the\\_police\\_cards.html](http://www.thestar.com/news/gta/known_topolice2013/2013/09/27/as_criticism_piles_up_so_do_the_police_cards.html).

Reiman, Jeffrey. “Is Racial Profiling Just? Making Criminal Justice Policy in the Original Position.” *J Ethics* 15 (2011): 3 – 19.

Reading, Charlotte. “Understanding Racism.” PDF, National Collaborating Center for Aboriginal Health, 2014.

Risling, Randy. ““Excuse Me Officer, Why Are You Stopping Me?”” *Toronto Star Newspaper Ltd*. Last modified September 27, 2013.  
[https://www.thestar.com/news/gta/known\\_topolice2013/2013/09/27/excuse\\_me\\_officer\\_why\\_are\\_you\\_stopping\\_me.html](https://www.thestar.com/news/gta/known_topolice2013/2013/09/27/excuse_me_officer_why_are_you_stopping_me.html).

Risse, Mathias. “Racial Profiling: A Reply to Two Critics.” *Criminal Justice Ethics* Winter/Spring (2007): 4 – 19.

Risse, Mathias and Richard Zeckhauser. “Racial Profiling.” *Philosophy & Public Affairs* 32, no. 2 (2004): 131 – 170.

Scrim, Kate. “Aboriginal Victimization in Canada: A Summary of the Literature.” *Department of Justice*. Last modified March 7, 2016.  
<http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd3-rr3/p3.html>.

Segal, Senator Hugh. “Tough on Poverty, Tough on Crime.” *Toronto Star Newspaper Ltd*. Last modified February 20, 2011.  
[https://www.thestar.com/opinion/editorialopinion/2011/02/20/tough\\_on\\_poverty\\_tough\\_on\\_crime.html](https://www.thestar.com/opinion/editorialopinion/2011/02/20/tough_on_poverty_tough_on_crime.html).

Senghor, Shaka. *Writing My Wrongs: Life, Death, and Redemption in an American Prison*. New York: Convergent Books, 2016. Kindle edition.

Smith, Erica L. and Alexia Cooper. “Homicide in the U.S. Known to Law Enforcement, 2011.” PDF, U.S. Department of Justice, 2013.

“Snapshot of Racialized Poverty in Canada.” *Employment and Social Development Canada*. Last modified August 16, 2013.

[http://www.esdc.gc.ca/eng/communities/reports/poverty\\_profile/snapshot.shtml](http://www.esdc.gc.ca/eng/communities/reports/poverty_profile/snapshot.shtml).

“Stopping Gun Violence; Urging Strong Support for Safe, Sane & Sensible Gun Prevention Laws.” *National Association for the Advancement of Colored People*. Accessed May 1, 2016.

<http://www.naacp.org/action-alerts/entry/stopping-gun-violence>.

“Tactics That Can Reduce Gun Violence.” *National Institute of Justice*. Last updated June 5, 2013.

<http://www.nij.gov/topics/crime/gun-violence/prevention/pages/tactics.aspx>.

Tator, Carol and Frances Henry, Charles Smith, and Maureen Brown. *Racial Profiling in Canada: Challenging the Myth of ‘A Few Bad Apples.’* Toronto: University of Toronto Press Incorporated, 2006.

Tessman, Lisa. *Burdened Virtues: Virtue Ethics for Liberatory Struggles*. Oxford: Oxford University Press, 2005.

“The Changing Face of Canada's Prisons: Correctional Investigator Reports on Ethno-Cultural Diversity in Corrections.” *Government of Canada*. Last modified January 21, 2014.

<http://www.oci-bec.gc.ca/cnt/comm/press/press20131126-eng.aspx>.

The Canadian Press. “Ontario Regulation Bans Random Carding by Police.” *CBC News*. Last modified March 22, 2016.

<http://www.cbc.ca/news/canada/toronto/yasir-naqvi-carding-1.3501913>.

Truman, Jennifer L. and Lynn Langton. “Criminal Victimization, 2014.” PDF, U.S. Department of Justice, 2015.

Van Inwagen, Peter and Meghan Sullivan. “Metaphysics.” *Stanford Encyclopedia of Philosophy*. Last modified October 31, 2014.

<http://plato.stanford.edu/entries/metaphysics/>.

Walker, Margaret Urban. “Moral Vulnerability and the Task of Reparations.” In *Vulnerability: New Essays in Ethics and Feminist Philosophy*, edited by Catriona Mackenzie, Wendy Rogers, and Susan Dodds, 110 – 133. Oxford: Oxford University Press, 2014.

“Who Has Guns and How Are They Acquired?” *National Institute of Justice*. Last accessed June 24, 2016.

<http://www.nij.gov/topics/crime/gun-violence/pages/aquired.aspx>.

- Williams, Bernard. "Politics and Moral Character," in *Moral Luck: Philosophical Papers 1973 – 1980*, 54 – 70. Cambridge: Cambridge University Press, 1982.
- Winks, Robin W. *The Blacks in Canada: A History*, 2nd ed. Canada: McGill-Queen's University Press, 1997.
- Winsa, Patty and Jim Rankin. "Carding By Toronto Police Drops Sharply." *Toronto Star Newspaper Ltd.* Last modified November 18, 2013.  
[https://www.thestar.com/news/gta/2013/11/18/carding\\_by\\_toronto\\_police\\_drops\\_sharply.html](https://www.thestar.com/news/gta/2013/11/18/carding_by_toronto_police_drops_sharply.html).
- Winsa, Patty. "Toronto Resident Knia Singh Launches Charter Challenge to Police Carding." *Toronto Star Newspaper Ltd.* Last modified June 11, 2015.  
<https://www.thestar.com/news/gta/2015/06/10/toronto-resident-knia-singh-launches-charter-challenge-to-police-carding.html>.
- Yancy, George. "Preface." In *Pursuing Trayvon Martin: Historical Contexts and Contemporary Manifestations of Racial Dynamics*, editors George Yancy and Janine Jones, ix – xxii. London: Lexington Books, 2013.
- Young, Iris Marion. *Responsibility for Justice*. Oxford: Oxford University Press, 2011.  
DOI:10.1093/acprof:oso/9780195392388.001.0001.
- Zack, Naomi. *White Privilege and Black Rights: The Injustice of U.S. Police Racial Profiling and Homicide*. London: Rowman & Littlefield, 2015.

## Endnotes

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<sup>1</sup> Desmond Cole, "The Skin I'm in: I've Been Interrogated By Police More Than 50 times—All Because I'm Black," *Toronto Life*, last modified April 21, 2015, <http://torontolife.com/city/life/skin-im-ive-interrogated-police-50-times-im-black/>.

<sup>2</sup> Patty Winsa and Jim Rankin, "Carding By Toronto Police Drops Sharply," *Toronto Star Newspaper Ltd.*, last modified November 18, 2013, [https://www.thestar.com/news/gta/2013/11/18/carding\\_by\\_toronto\\_police\\_drops\\_sharply.html](https://www.thestar.com/news/gta/2013/11/18/carding_by_toronto_police_drops_sharply.html).

<sup>3</sup> Patty Winsa, "Toronto Resident Knia Singh Launches Charter Challenge to Police Carding," *Toronto Star Newspaper Ltd.*, last modified June 11, 2015, <https://www.thestar.com/news/gta/2015/06/10/toronto-resident-knia-singh-launches-charter-challenge-to-police-carding.html>.

<sup>4</sup> Randy Risling, "'Excuse Me Officer, Why Are You Stopping Me?'" *Toronto Star Newspaper Ltd.*, last modified September 27, 2013, [https://www.thestar.com/news/gta/knownstopolice2013/2013/09/27/excuse\\_me\\_officer\\_why\\_are\\_you\\_stopping\\_me.html](https://www.thestar.com/news/gta/knownstopolice2013/2013/09/27/excuse_me_officer_why_are_you_stopping_me.html).

<sup>5</sup> News Staff, "Is There a Link Between Carding and the Recent Spate of Shootings in Toronto?" *City News*, last modified February 1, 2016, <http://www.citynews.ca/2016/02/01/is-there-a-link-between-carding-and-the-recent-spate-of-shootings-in-toronto/>.

<sup>6</sup> Jim Rankin and Patty Winsa, "As Criticism Piles Up, So Do the Police Cards," *Toronto Star Newspaper Ltd.*, last modified January 8, 2014, [http://www.thestar.com/news/gta/knownstopolice2013/2013/09/27/as\\_criticism\\_piles\\_up\\_so\\_do\\_the\\_police\\_cards.html](http://www.thestar.com/news/gta/knownstopolice2013/2013/09/27/as_criticism_piles_up_so_do_the_police_cards.html).

<sup>7</sup> Carol Tator, Frances Henry, Charles Smith, and Maureen Brown, *Racial Profiling in Canada: Challenging the Myth of 'A Few Bad Apples'* (Toronto: University of Toronto Press Incorporated, 2006), 5.

<sup>8</sup> *Ibid.*, 124 – 125

<sup>9</sup> *Ibid.*, 125 – 126

<sup>10</sup> *Ibid.*, 133

<sup>11</sup> The Canadian Press, "Ontario Regulation Bans Random Carding by Police," *CBC News*, last modified March 22, 2016, <http://www.cbc.ca/news/canada/toronto/yasir-naqvi-carding-1.3501913>.

<sup>12</sup> Kristy Hoffman, Patrick White and Danielle Webb, "Carding Across Canada: Data Shows Practice of 'Street Checks' Lacks Mandated Set of Procedures," *The Globe and Mail*, last modified August 17, 2015, <http://www.theglobeandmail.com/news/national/does-carding-occur-across-canada/article25832607/>.

<sup>13</sup> Mathias Risse and Richard Zeckhauser, "Racial Profiling," *Philosophy & Public Affairs* 32, no. 2 (2004): 136.

<sup>14</sup> *Ibid.*, 137.

<sup>15</sup> Jeffrey Reiman, "Is Racial Profiling Just? Making Criminal Justice Policy in the Original Position," *J Ethics* 15 (2011): 4 – 6.

<sup>16</sup> David Boonin, *Should Race Matter?: Unusual Answers to the Usual Questions* (Cambridge: Cambridge University Press, 2011), 306.

<sup>17</sup> Kasper Lippert-Rasmussen, "Racial Profiling Versus Community," *Journal of Applied Philosophy* 23, no. 2 (2006): 192 – 193.

<sup>18</sup> "2014: Crime in the United States," *The Federal Bureau of Investigation*, accessed December 1, 2015, <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s./2014/crime-in-the-u.s.-2014/tables/table-43>.

<sup>19</sup> "QuickFacts United States," *United States Census Bureau*, accessed December 2015, <https://www.census.gov/quickfacts/table/PST045215/00>.

<sup>20</sup> Jim Rankin, John Duncanson, Jennifer Quinn, Michelle Shephard and Scott Simmie, "Black Arrest Rates Highest," *Toronto Star Newspapers Ltd.*, last modified August 26, 2002, <https://www.thestar.com/news/gta/raceandcrime/black-arrest-rates-highest.html>.

<sup>21</sup> Office of the Correctional Investigator, "The Changing Face of Canada's Prisons: Correctional Investigator Reports on Ethno-Cultural Diversity in Corrections," *Government of Canada*, last modified November 26, 2013,

---

<http://www.oci-bec.gc.ca/cnt/comm/press/press20131126-eng.aspx>.

<sup>22</sup> Kasper Lippert-Rasmussen, "Nothing Personal: On Statistical Discrimination," *The Journal of Political Philosophy* 15, no. 4 (2007): 385.

<sup>23</sup> *Ibid.*, 389 – 393

<sup>24</sup> Mathias Risse and Richard Zeckhauser, "Racial Profiling," *Philosophy & Public Affairs* 32, no. 2 (2004): 138.

<sup>25</sup> *Ibid.*, 148

<sup>26</sup> Jeffrey Reiman, "Is Racial Profiling Just? Making Criminal Justice Policy in the Original Position," *J Ethics* 15 (2011): 10.

<sup>27</sup> *Ibid.*, 3

<sup>28</sup> David Boonin, *Should Race Matter?: Unusual Answers to the Usual Questions* (Cambridge: Cambridge University Press, 2011), 304.

<sup>29</sup> *Ibid.*, 310

<sup>30</sup> Mathias Risse and Richard Zeckhauser, "Racial Profiling," *Philosophy & Public Affairs* 32, no. 2 (2004): 137 – 138.

<sup>31</sup> *Ibid.*, 150

<sup>32</sup> Jeffrey Reiman, "Is Racial Profiling Just? Making Criminal Justice Policy in the Original Position," *J Ethics* 15 (2011): 17.

<sup>33</sup> *Ibid.*, 17

<sup>34</sup> "2014: Crime in the United States," *The Federal Bureau of Investigation*, accessed December 1, 2015, <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-43>.

<sup>35</sup> David Boonin, *Should Race Matter?: Unusual Answers to the Usual Questions* (Cambridge: Cambridge University Press, 2011), 304.

<sup>36</sup> Mathias Risse and Richard Zeckhauser, "Racial Profiling," *Philosophy & Public Affairs* 32, no. 2 (2004): 146.

<sup>37</sup> *Ibid.*, 147

<sup>38</sup> Carol Tator, Frances Henry, Charles Smith, and Maureen Brown, *Racial Profiling in Canada: Challenging the Myth of 'A Few Bad Apples'* (Toronto: University of Toronto Press Incorporated, 2006), 45.

<sup>39</sup> Charles Mills, "But What Are You Really? The Metaphysics of Race," in *Blackness Visible: Essays on Philosophy and Race* (United States of America: Cornell University, 1998), 41 – 66.

<sup>40</sup> Edward Craig, "Metaphysics," *Routledge Encyclopedia of Philosophy*, accessed April 1, 2016, <https://www.rep.routledge.com/articles/metaphysics/v-1>.

<sup>41</sup> Peter van Inwagen and Meghan Sullivan, "Metaphysics," *Stanford Encyclopedia of Philosophy*, last modified October 31, 2014, <http://plato.stanford.edu/entries/metaphysics/>.

<sup>42</sup> Charles Mills, "But What Are You Really? The Metaphysics of Race," in *Blackness Visible: Essays on Philosophy and Race* (United States of America: Cornell University, 1998), 41 – 66.

<sup>43</sup> *Ibid.*, 42

<sup>44</sup> *Ibid.*, 42

<sup>45</sup> *Ibid.*, 43

<sup>46</sup> *Ibid.*, 43 – 44

<sup>47</sup> *Ibid.*, 44

<sup>48</sup> *Ibid.*, 48

<sup>49</sup> Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Revised Edition (New York: The New Press, 2012), 28. Kindle edition.

<sup>50</sup> *Ibid.*, 27

<sup>51</sup> *Ibid.*, 36

<sup>52</sup> Carol Tator, Frances Henry, Charles Smith, and Maureen Brown, *Racial Profiling in Canada: Challenging the Myth of 'A Few Bad Apples'* (Toronto: University of Toronto Press Incorporated, 2006), 73.

<sup>53</sup> *Ibid.*, 72

<sup>54</sup> "Constitution Acts, 1867 to 1982," *Government of Canada*, last modified May 19, 2016, <http://laws-lois.justice.gc.ca/eng/const/page-15.html>.



---

<sup>55</sup> “Canadian Multiculturalism Act (R.S.C., 1985, c. 24 (4<sup>th</sup> Supp.)),” *Government of Canada*, last modified May 19, 2016, <http://laws-lois.justice.gc.ca/eng/acts/C-18.7/page-1.html>.

<sup>56</sup> *Ibid.*

<sup>57</sup> Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Revised Edition (New York: The New Press, 2012), 49. Kindle edition.

<sup>58</sup> *Ibid.*, 49

<sup>59</sup> *Ibid.*, 48 – 73

<sup>60</sup> *Ibid.*, 76

<sup>61</sup> *Ibid.*, 60

<sup>62</sup> Jeffrey Reiman, “Is Racial Profiling Just? Making Criminal Justice Policy in the Original Position,” *J Ethics* 15 (2011): 12.

<sup>63</sup> Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Revised Edition (New York: The New Press, 2012), 126. Kindle edition.

<sup>64</sup> *Ibid.*, 126

<sup>65</sup> *Ibid.*, 126

<sup>66</sup> *Ibid.*, 127

<sup>67</sup> *Ibid.*, 99

<sup>68</sup> *Ibid.*, 99

<sup>69</sup> *Ibid.*, 123

<sup>70</sup> Naomi Zack, *White Privilege and Black Rights: The Injustice of U.S. Police Racial Profiling and Homicide* (London: Rowman & Littlefield, 2015), 38.

<sup>71</sup> Albert Atkin, *The Philosophy of Race* (Durham: Acumen Publishing Limited, 2012), 162.

<sup>72</sup> Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Revised Edition (New York: The New Press, 2012), 94. Kindle edition.

<sup>73</sup> *Ibid.*, 94

<sup>74</sup> “2014: Crime in the United States,” *The Federal Bureau of Investigation*, accessed December 1, 2015, <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-43>.

<sup>75</sup> Jeffrey Reiman, “Is Racial Profiling Just? Making Criminal Justice Policy in the Original Position,” *J Ethics* 15 (2011): 17.

<sup>76</sup> John Stuart Mill, “On Liberty,” in *Law and Morality: Readings in Legal Philosophy*, Third edition, edited by David Dyzenhaus, Sophia Reibetanz Moreau, and Arthur Ripstein (Toronto: University of Toronto Press, 2008), 306.

<sup>77</sup> Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Revised Edition (New York: The New Press, 2012), 60. Kindle edition.

<sup>78</sup> *Ibid.*, 60

<sup>79</sup> *Ibid.*, 49

<sup>80</sup> *Ibid.*, 49

<sup>81</sup> Carol Tator, Frances Henry, Charles Smith, and Maureen Brown, *Racial Profiling in Canada: Challenging the Myth of ‘A Few Bad Apples’* (Toronto: University of Toronto Press Incorporated, 2006), 20.

<sup>82</sup> “2014: Crime in the United States,” *The Federal Bureau of Investigation*, accessed December 1, 2015, <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-43>.

<sup>83</sup> “Drunk Driving Statistics,” *MADD*, accessed May 1, 2016, <http://www.madd.org/drun-driving/about/drun-driving-statistics.html?referrer=https://www.google.ca/>.

<sup>84</sup> I got this idea about whites and drunk driving from Annabelle Lever’s article: “Racial Profiling and the Political Philosophy of Race,” *Oxford Handbook of the Philosophy of Race* (2015): 1 – 18. SSRN: <http://ssrn.com/abstract=2675633>.

<sup>85</sup> Jennifer L. Truman and Lynn Langton, “Criminal Victimization, 2014” (PDF, U.S. Department of Justice, 2015).

<sup>86</sup> *Ibid.*, 1

<sup>87</sup> “2014: Crime in the United States,” *The Federal Bureau of Investigation*, accessed December 1, 2015, <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-43>.

- 
- <sup>88</sup> “QuickFacts United States,” *United States Census Bureau*, accessed December 2015, <https://www.census.gov/quickfacts/table/PST045215/00>.
- <sup>89</sup> Michael Planty and Jennifer L. Truman, “Firearm Violence, 1993 – 2001,” (PDF, U.S. Department of Justice, 2013), 5.
- <sup>90</sup> Chelsea Parsons and Anne Johnson, “Young Guns: How Gun Violence and is Devastating the Millennial Generation,” (PDF, Generation Progress and the Center for American Progress, 2014), 2.
- <sup>91</sup> *Ibid.*, 4 – 5
- <sup>92</sup> *Ibid.*, 7
- <sup>93</sup> Erica L. Smith and Alexia Cooper, “Homicide in the U.S. Known to Law Enforcement, 2011,” (PDF, U.S. Department of Justice, 2013), 5.
- <sup>94</sup> “Stopping Gun Violence; Urging Strong Support for Safe, Sane & Sensible Gun Prevention Laws,” *National Association for the Advancement of Colored People*, accessed May 1, 2016. <http://www.naacp.org/action-alerts/entry/stopping-gun-violence>.
- <sup>95</sup> Jennifer L. Truman and Lynn Langton. “Criminal Victimization, 2014,” (PDF, U.S. Department of Justice, 2015) 3.
- <sup>96</sup> “2014: Crime in the United States,” *The Federal Bureau of Investigation*, accessed June 24, 2016, <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/offenses-known-to-law-enforcement/violent-crime>.
- <sup>97</sup> Michael Planty and Jennifer L. Truman, “Firearm Violence, 1993 – 2001,” (PDF, U.S. Department of Justice, 2013), 13.
- <sup>98</sup> Phillip J. Cook, Susan T. Parker and Harold A. Pollack, “Sources of Guns to Dangerous People: What We Learn By Asking Them,” *Preventative Medicine* 79 (2015): 28.
- <sup>99</sup> “Who Has Guns and How Are They Acquired?” *National Institute of Justice*, last accessed June 24, 2016, <http://www.nij.gov/topics/crime/gun-violence/pages/aquired.aspx>.
- <sup>100</sup> Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* Second Edition (Princeton: Princeton University Press, 1996), 21.
- <sup>101</sup> *Ibid.*, 13
- <sup>102</sup> *Ibid.*, 52 – 53
- <sup>103</sup> *Ibid.*, 60
- <sup>104</sup> *Ibid.*, 21
- <sup>105</sup> *Ibid.*, 26 – 27
- <sup>106</sup> *Ibid.*, 37 – 38
- <sup>107</sup> *Ibid.*, 52
- <sup>108</sup> J. Angelo Corlett, *Responsibility and Punishment* (Dordrecht: Springer Netherlands, 2006), 149. DOI: 10.1007/1-4020-4148-9.
- <sup>109</sup> “Gun Violence Programs: Operation Ceasefire,” *National Institute of Justice*, last updated June 25, 2008, <http://www.nij.gov/topics/crime/gun-violence/prevention/pages/ceasefire.aspx>.
- <sup>110</sup> “Tactics That Can Reduce Gun Violence,” *National Institute of Justice*, last updated June 5, 2013, <http://www.nij.gov/topics/crime/gun-violence/prevention/pages/tactics.aspx>.
- <sup>111</sup> “Gun Violence Programs: Operation Ceasefire,” *National Institute of Justice*, last updated June 25, 2008, <http://www.nij.gov/topics/crime/gun-violence/prevention/pages/ceasefire.aspx>.
- <sup>112</sup> David Kennedy, “Drugs, Race, and Common Ground: Reflections on the High Point Intervention,” *National Institute of Justice*, last updated March 9, 2009, <http://www.nij.gov/journals/262/pages/high-point-intervention.aspx>; “Editor’s Note: Evaluating the High Point Intervention,” *National Institute of Justice*, last updated March 24, 2009, <http://www.nij.gov/journals/262/pages/evaluating-high-point-intervention.aspx>.
- <sup>113</sup> Naomi Zack, *White Privilege and Black Rights: The Injustice of U.S. Police Racial Profiling and Homicide* (London: Rowman & Littlefield, 2015), 49.
- <sup>114</sup> *Ibid.*, 32 – 33; 49 – 50
- <sup>115</sup> *Ibid.*, 46 – 48
- <sup>116</sup> *Ibid.*, 57
- <sup>117</sup> *Ibid.*, 58
- <sup>118</sup> Carol Tator, Frances Henry, Charles Smith, and Maureen Brown, *Racial Profiling in Canada: Challenging the Myth of ‘A Few Bad Apples’* (Toronto: University of Toronto Press Incorporated, 2006), 3.

---

<sup>119</sup> Bernard Williams, "Politics and Moral Character," in *Moral Luck: Philosophical Papers 1973 –1980* (Cambridge: Cambridge University Press, 1982), 54.

<sup>120</sup> Ibid., 60

<sup>121</sup> Ibid., 37

<sup>122</sup> David Boonin expands upon this point in detail.

<sup>123</sup> Naomi Zack, *White Privilege and Black Rights: The Injustice of U.S. Police Racial Profiling and Homicide* (London: Rowman & Littlefield, 2015), 64.

<sup>124</sup> Ibid., 64

<sup>125</sup> A report published by the Malcolm X Grassroots foundation, which tracked the "extrajudicial killing of 313 Black people by police, security guards and vigilantes.

<sup>126</sup> Naomi Zack, *White Privilege and Black Rights: The Injustice of U.S. Police Racial Profiling and Homicide* (London: Rowman & Littlefield, 2015), 64.

<sup>127</sup> George Yancy, "Preface," in *Pursuing Trayvon Martin: Historical Contexts and Contemporary Manifestations of Racial Dynamics*, eds. George Yancy and Janine Jones (London: Lexington Books, 2013), xiii.

<sup>128</sup> Kasper Lippert-Rasmussen, "Racial Profiling Versus Community," *Journal of Applied Philosophy* 23, no. 2 (2006): 200 – 201.

<sup>129</sup> Ibid., 201

<sup>130</sup> Ibid., 194

<sup>131</sup> Kasper Lippert-Rasmussen, "Racial Profiling Versus Community," *Journal of Applied Philosophy* 23, no. 2 (2006): 194.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

<sup>136</sup> Mathias Risse discusses this in his reply to Lippert-Rasmussen's article. Mathias Risse, "Racial Profiling: A Reply to Two Critics," *Criminal Justice Ethics* Winter/Spring (2007): 4 – 19.

<sup>137</sup> Iris Marion Young, *Responsibility for Justice* (Oxford: Oxford University Press, 2011), 52. DOI: 10.1093/acprof:oso/9780195392388.001.0001.

<sup>138</sup> Ibid., 95 – 96.

<sup>139</sup> Ibid., 76

<sup>140</sup> Ibid., 77 – 78

<sup>141</sup> Ibid., 92

<sup>142</sup> Ibid., 144 – 148

<sup>143</sup> Ibid., 105 – 110

<sup>144</sup> Tracy Isaacs, *Moral Responsibility in Collective Contexts* (Oxford: Oxford University Press, 2011). DOI: 10.1093/acprof:oso/9780199782963.001.0001.

<sup>145</sup> Ibid., 25 – 27

<sup>146</sup> Ibid., 147 – 148

<sup>147</sup> Iris Marion Young, *Responsibility for Justice* (Oxford: Oxford University Press, 2011), 176. DOI: 10.1093/acprof:oso/9780195392388.001.0001.

<sup>148</sup> Ibid., 177

<sup>149</sup> Ibid., 179

<sup>150</sup> Ibid., 180 – 181

<sup>151</sup> Ibid., 182

<sup>152</sup> Ibid., 187

<sup>153</sup> Ibid., 187

<sup>154</sup> J. Angelo Corlett, *Responsibility and Punishment* (Dordrecht: Springer Netherlands, 2006), 25. DOI: 10.1007/1-4020-4148-9.

<sup>155</sup> Ibid., 149

<sup>156</sup> Ibid., 148

<sup>157</sup> Ibid., 153 – 154

<sup>158</sup> Ibid., 162 – 163

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<sup>159</sup> Ibid., 150; 163

<sup>160</sup> Ibid., 188

<sup>161</sup> Ibid., 193

<sup>162</sup> Ibid., 194

<sup>163</sup> Ibid., 194

<sup>164</sup> Ibid., 195

<sup>165</sup> Margaret Urban Walker, "Moral Vulnerability and the Task of Reparations," *Vulnerability: New Essays in Feminist Philosophy*, edited by Catriona Mackenzie, Wendy Rogers, and Susan Dodds (Oxford: Oxford University Press, 2014), 113.

<sup>166</sup> Ibid., 113 – 116.

<sup>167</sup> Bernard R. Boxill, "A Lockean Argument for Black Reparations," *The Journal of Ethics* 7 (2003): 63 – 91.

<sup>168</sup> Ibid., 73

<sup>169</sup> Ibid., 77

<sup>170</sup> Ibid. 88 – 91

<sup>171</sup> Ibid., 86

<sup>172</sup> Ibid., 87

<sup>173</sup> Andrew I. Cohen, "Compensation for Historic Injustices: Completing the Boxill and Sher Argument," *Philosophy & Public Affairs* 37 no. 1 (2009): 82.

<sup>174</sup> Ibid., 89

<sup>175</sup> Ibid., 90

<sup>176</sup> Ibid., 92 – 93

<sup>177</sup> "Snapshot of Racialized Poverty in Canada," *Employment and Social Development Canada*, last modified August 16, 2013, [http://www.esdc.gc.ca/eng/communities/reports/poverty\\_profile/snapshot.shtml](http://www.esdc.gc.ca/eng/communities/reports/poverty_profile/snapshot.shtml).

<sup>178</sup> Suzanne MacCartney, Alemayehu Bishaw, and Kayla Fontenot, "Poverty Rates for Selected Detailed Race and Hispanic Groups by State and Place: 2007 – 2011," (PDF: Census.gov, 2013), 2.

<sup>179</sup> Senator Hugh Segal, "Tough on Poverty, Tough on Crime: Guaranteed Annual Income Could be Society's Best Crime-Fighting Tool," last modified February 20, 2011, *Toronto Star Newspapers Ltd.*, [https://www.thestar.com/opinion/editorialopinion/2011/02/20/tough\\_on\\_poverty\\_tough\\_on\\_crime.html](https://www.thestar.com/opinion/editorialopinion/2011/02/20/tough_on_poverty_tough_on_crime.html).

<sup>180</sup> Ibid.

<sup>181</sup> Kate Scrim, "Aboriginal Victimization in Canada: A Summary of the Literature," *Department of Justice*, last modified March 7, 2016, <http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd3-rr3/p3.html>.

<sup>182</sup> Samantha Loppie, Charlotte Reading and Sarah de Leeuw, "Aboriginal Experiences With Racism and Its Impacts" (PDF, National Collaborating Center for Aboriginal Health, 2014), 6 – 8.

<sup>183</sup> "Backgrounder: Aboriginal Offenders – A Critical Situation," *Office of the Correctional Investigator*, last updated September 16, 2013, <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022info-eng.aspx>.

<sup>184</sup> Jodi-Anne Brzozowski, Andrea Taylor-Butts and Sarah Johnson, "Victimization and Offending Among the Aboriginal Population in n Canada," (PDF, Canadian Center for Justice Statistics, 2006), 3.

<sup>185</sup> Public Safety Canada Portfolio Corrections Statistics Committee, "Corrections and Conditional Release Statistical Overview: 2014" (PDF, Public Works and Government Services Canada, 2015), 53.

<sup>186</sup> Ibid., 61

<sup>187</sup> "Backgrounder: Aboriginal Offenders – A Critical Situation," *Office of the Correctional Investigator*, last updated September 16, 2013, <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022info-eng.aspx>.

<sup>188</sup> E. Ann Carson, "Prisoners in 2014," (PDF, U.S. Department of Justice, 2015), 15.

<sup>189</sup> Ibid., 16

<sup>190</sup> "QuickFacts United States," *United States Census Bureau*, accessed December 2015, <https://www.census.gov/quickfacts/table/PST045215/00>.

<sup>191</sup> E. Ann Carson, "Prisoners in 2014," (PDF, U.S. Department of Justice, 2015), 15.

<sup>192</sup> Robin Winks, *The Blacks in Canada* (Canada: McGill-Queen's University Press, 1997), 9.

<sup>193</sup> Charlotte Reading, "Understanding Racism," (PDF, National Collaborating Center for Aboriginal Health, 2014), 1 – 8.

<sup>194</sup> Naomi Zack, *White Privilege and Black Rights: The Injustice of U.S. Police Racial Profiling and Homicide* (London: Rowman & Littlefield, 2015), 64.

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- <sup>195</sup> J. Angelo Corlett, *Responsibility and Punishment* (Dordrecht: Springer Netherlands, 2006), 20. DOI: 10.1007/1-4020-4148-9.
- <sup>196</sup> Margaret Urban Walker, "Moral Vulnerability and the Task of Reparations," in *Vulnerability: New Essays in Ethics and Feminist Philosophy*, edited by Catriona Mackenzie, Wendy Rogers, and Susan Dodds (Oxford: Oxford University Press, 2014), 117.
- <sup>197</sup> Diane Enns, *The Violence of Victimhood* (Pennsylvania: The Pennsylvania State University Press, 2012), 18.
- <sup>198</sup> Ibid., 36
- <sup>199</sup> Ibid., 18
- <sup>200</sup> Ibid., 21
- <sup>201</sup> Ibid., 32
- <sup>202</sup> Ibid., 21
- <sup>203</sup> Ibid., 23
- <sup>204</sup> Ibid., 35
- <sup>205</sup> Ibid., 121
- <sup>206</sup> Ibid., 125 – 127
- <sup>207</sup> Ibid., 127
- <sup>208</sup> Ibid., 133
- <sup>209</sup> Ibid., 117
- <sup>210</sup> Ibid., 117
- <sup>211</sup> Ibid., 95
- <sup>212</sup> Ibid., 95 – 96
- <sup>213</sup> Ibid., 134
- <sup>214</sup> "Alleged Crimes (Non-Exhaustive List)," *International Criminal Court*, accessed July 4, 2016, <https://www.icc-cpi.int/uganda/ongwen/pages/alleged-crimes.aspx.ra>
- <sup>215</sup> Diane Enns, *The Violence of Victimhood* (Pennsylvania: The Pennsylvania State University Press, 2012), 131. Kindle edition.
- <sup>216</sup> "Alleged Crimes (Non-Exhaustive List)," *International Criminal Court*, accessed July 4, 2016, <https://www.icc-cpi.int/uganda/ongwen/pages/alleged-crimes.aspx>.
- <sup>217</sup> Diane Enns, *The Violence of Victimhood* (Pennsylvania: The Pennsylvania State University Press, 2012), 130 – 131. Kindle edition.
- <sup>218</sup> Shaka Senghor, *Writing My Wrongs: Life, Death, and Redemption in an American Prison* (New York: Convergent Books, 2016), 13. Kindle edition.
- <sup>219</sup> Ibid., 43
- <sup>220</sup> Ibid., 51
- <sup>221</sup> Ibid., 102
- <sup>222</sup> Ibid., 182
- <sup>223</sup> Claudia Card, *The Unnatural Lottery: Character and Moral Luck* (Philadelphia: Temple University Press, 1996), 87.
- <sup>224</sup> Ibid., 88
- <sup>225</sup> Shaka Senghor, *Writing My Wrongs: Life, Death, and Redemption in an American Prison* (New York: Convergent Books, 2016), 50 – 54. Kindle edition.
- <sup>226</sup> Ibid., 127
- <sup>227</sup> Claudia Card, *The Unnatural Lottery: Character and Moral Luck* (Philadelphia: Temple University Press, 1996), 22.
- <sup>228</sup> Ibid., 25 – 26
- <sup>229</sup> Ibid., 28
- <sup>230</sup> Ibid., 10
- <sup>231</sup> Ibid., 22
- <sup>232</sup> Ibid., 7
- <sup>233</sup> Ibid., 37 – 40
- <sup>234</sup> Ibid., 41

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<sup>235</sup> Iris Marion Young, *Responsibility for Justice* (Oxford: Oxford University Press, 2011), 27. DOI: 10.1093/acprof:oso/9780195392388.001.0001.

<sup>236</sup> Ibid., 29

<sup>237</sup> Ibid., 29

<sup>238</sup> Ibid., 30

<sup>239</sup> Ibid., 34

<sup>240</sup> Charles Mills, “‘But What Are You Really?’ The Metaphysics of Race,” in *Blackness Visible: Essays on Philosophy and Race* (United States of America: Cornell University, 1998), 48.

<sup>241</sup> Claudia Card, *The Unnatural Lottery: Character and Moral Luck* (Philadelphia: Temple University Press, 1996), 165.

<sup>242</sup> Ibid., 166

<sup>243</sup> Lisa Tessman, *Burdened Virtues: Virtue Ethics for Liberatory Struggles* (Oxford: Oxford University Press, 2005), 150 – 151.

<sup>244</sup> Ibid., 152

<sup>245</sup> Kate Scrim, “Aboriginal Victimization in Canada: A Summary of the Literature,” *Department of Justice*, last modified March 7, 2016, <http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd3-rr3/p3.html>.

<sup>246</sup> Michael Planty and Jennifer L. Truman, “Firearm Violence, 1993 – 2001,” (PDF, U.S. Department of Justice, 2013), 5.

<sup>247</sup> Charles Mills, “‘But What Are You Really?’ The Metaphysics of Race,” in *Blackness Visible: Essays on Philosophy and Race* (United States of America: Cornell University, 1998), 48.