

Racial profiling and the police



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The concern about racial profiling is erupting throughout the country. Many provinces, cities, social groups, and academics have decided to study racial profiling, and how race and ethnicity may play a part in police investigations. Toronto is no different.

Allegations of racial profiling have been around for years and still are a subject that creates a lot on media hype and controversy surrounding police. Racial profiling should not be confused in with criminal profiling, because they are two different things (Mucchetti, 2006, pp. 1-32). Racial profiling is not specific to one race or one country. Actually being racially profiled can happen to anyone no matter what race or gender or what country they live in.

In Toronto, there have been numerous newspaper and television articles accusing the Toronto Police Service of institutionalized racism and racial profiling (Canadian Race Relations Foundations, 2005). Along with the media articles, there have been complaints filed at the Human Rights Tribunal of Ontario accusing the Toronto Police Service and its' members of racial profiling (The Law Society of Upper Canada, 2009).

Naturally, race is what makes allegations of racial profiling by the Toronto Police Service so controversial and, at least at the level of public rhetoric, so condemned. But it is important to rethink racial profiling through the lens of criminal profiling and to reduce race to the role that it is purportedly playing in racial profiling, namely a predictive factor; to treat race no differently than we would gender, class, age, or any other profile that works; to take the focus away from race and place it on criminal profiling more generally.

This paper will examine racial profiling by police and explaining it according to the different sociological perspectives of functionalist, conflict, interactionist, and feminist. The paper will also attempt to argue if there is institutional racial profiling by the Toronto Police. My thesis is the Toronto Police does not systematically racially profile, instead they systematically criminally profile.

In order to examine racial profiling and criminally profiling one must understand the differences between the two. Although there is no clear or universal definition of racial profiling, there is a common component in all of the definitions (Ontario Human Rights Commission, 2009). This paper defines racial profiling as “ the practice of targeting racial minorities for criminal investigation solely or, in part, on the basis of their skin colour” (Court of Appeal for Ontario, 1999).

According to the Harvard Latino Law Review, criminal profiling involves:

The use of racial or ethnic characteristics by police departments in stopping an individual because his or her description matches that of an actual suspect. In this sense, race functions as the equivalent of hair color or height, which can then be used in combination with other factors to paint a more accurate portrait of a suspected criminal. As a result, generalized notions of criminal propensity are not projected onto an individual because of that person’s membership in a particular racial or ethnic group (Mucchetti, 2006, pp. 1-32).

. The term ‘ racial profiling’ began in 1980s, when the Drug Enforcement Agency (DEA) in the United States developed and used common

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characteristics to profile drug couriers as part of the agencies “ war on drugs” (Harris, 2006, pp. 213-239). When community members began to complain about police investigations and their actions towards minorities, the use of the profiling technique emerged to be labelled as ‘ racial profiling’ (Ibid).

Functionalist perspective, conflict perspective, interactionist perspective, and feminist perspective all propose societies portrayals of discrimination pressure and manipulate individuals to deem their social class, sexual category, race, and sexuality superior over others. Prejudice is caused by psychological and sociological influence, where individuals are manipulated by their surroundings to hate another solemnly based on their disparity

This paper concedes that racial profiling may exist on an individual basis within the Toronto Police Service. This was confirmed by Chief Blair of the Toronto Police Service who was speaking a diversity conference and said: “ Racism is a human failing. Racial profiling can occur. We’ve acknowledged that right up front...” (Doolittle, 2009).

Social activist groups along with minorities group’s claims of systematic racial profiling by the Toronto Police Service exists, and refer to publish articles to support their claims such as the 2002 series of newspaper articles written by the Toronto Star.

The Toronto Star newspaper articles used empirical data collected from the Toronto Police Service’s Criminal Information Processing System (CIPS) database. According to the newspaper articles that examined 480, 000 files contained within the database, relating to arrest and traffic stops. The

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Toronto Star concluded that, “ Blacks arrested by Toronto Police are treated more harshly than white...”, and “ a disproportionate number of black motorists are ticketed for violations that only surface following a traffic stop. This difference, says civil libertarians, community leaders and criminologists, suggest police use racial profiling in deciding whom to pull over” (Toronto Star Newspaper, 2009, p. A01). The Toronto Star supported their claims of racial profiling by the Toronto Police Service by providing statistical analysis of the CIPS database which compared the number of arrest and tickets issued to blacks, and showed how disproportionate the numbers were to the number of whites living in Toronto (Ibid).

Social groups and minorities further their claims of systematic racially profiled by the Toronto Police Service by using rulings by The Human Rights Tribunal of Ontario and refer to the recent ruling of Ron Phipps versus the Toronto Police Service.

On June 18th, 2009 The Human Rights Tribunal of Ontario handed down a decision on a case involving members of the Toronto Police Service and a black Canada Post letter carrier. In the tribunals decision they concluded that Ron Phipps was racially profiled by a white police. The adjudicator wrote in her submission “ I find that Michael Shaw did discriminate against the applicant on March 9, 2005 in the provision of police services on the basis of colour, contrary to section 1 and 9 of the Code” (Canadian Legal Information Institute).

Social and minority groups also further their arguments of systematic racial profiling by Toronto Police Service based on the fact that Service does not

collect or release race base statistics. They argue that " One fears that the only reason the Police Board refuses to release this data is to ensure that the public does not get updated information on racial profiling " (Toronto Police Accountability Coalition, 2008).

Examining the Toronto Star articles as a police officer, it is obvious that there are errors in their conclusions. The Toronto Star compiled its' data using the files contained in the CIPS database, which ONLY contained files relating to arrest and tickets issued to persons. The problem using only this database is that it does not take into account the number of persons the police had investigated where there was no arrest or tickets issued. By only selecting the CIPS database and not the true number of persons stopped by police would have skewed the final results. The Toronto Star's analysis should have used all data which would have either enforcing their claims systemic racial profiling by the Toronto Police Service or disproving it.

The data-collection by the Toronto Star was also disputed by Allan Gold based on the distinction between reactive and proactive policing (2003, pp. 391-399). Gold argues reactive policing could attribute to claims of racial profiling while proactive policing will not. When it comes to the collection of data, the Toronto Start uses both styles of policing which flawed their conclusion (Ibid).

Gold also disagreed with the Toronto Stars use of the general census numbers in its data comparison and their claims that it was a recognized baseline standard. Gold argues that no reputable researcher would use the figures from the general census and in fact, the American literature on racial

profiling makes it clear that the uses of the general census as a baseline is worthless (2003, pp. 391-399). He further claims that the construction of the baseline is crucial and because of that fact, the Toronto Star article should be dismissed (Ibid).

The Ontario Human Rights Commission uses the following definition of racial profiling: “ any action undertaken for reasons of safety, security or public protection that relies on stereotypes about race, colour, ethnicity, ancestry, religion, or place of origin, or a combination of these, rather than on a reasonable suspicion, to single out an individual for greater scrutiny or different treatment” (2009). The Ontario Human Rights Commission’s definition is much broader than the definition used by the courts; “ the practice of targeting racial minorities for criminal investigation solely or, in part, on the basis of their skin colour” (Court of Appeal for Ontario, 1999). The Ontario Human Rights Commission broad definition of racial profiling does not allow the factor of race to play any part in a police officer’s decision. This means that no matter what if police use race as a factor at anytime, then he or she is racially profiling according to the Commission’s definition.

In the Ontario Human Rights Tribunal decision where Ron Phipps filed a complaint of racial profiling against members of the Toronto Police Service, the adjudicator said: “ In this case, as in many cases alleging racial discrimination, there is no direct evidence that race was a factor in the officer’s decision to take the actions that he did” (Canadian Legal Information Institute, 2009). Even with this statement, the adjudicator found the member of the Toronto Police Service guilty saying: “ I find that Michael

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Shaw did discriminate against the applicant on March 9, 2005” (Ibid). The problem with the Tribunal’s decision is that the adjudicator used circumstantial evidence in her decision of guilt, but should have used a clear defined evidence based system instead. According to Chief Blair of the Toronto Police Service, the ruling created “ an impossibly high standard” and “ you can have the best of intentions and be totally without bias but none of that matters if someone wants to believe you are biased” (Lesley Ciarula Taylor, 2009).

In the recent Ontario Progressive Conservative leadership campaign, Tim Hudak and Randy Hillier both members of the Ontario Parliament called for the overhaul of the Ontario Human Rights Tribunal (The Canadian Press, 2009). They claimed the current system is dysfunctional and called for evidence based system one similar to the family court system instead of a system that is based on “ hurt feelings” (Ibid).

The argument of race based crime statistics date back to 1929 (Johnston, 1994, p. 166). Social activist groups along with minorities group’s have argued that the reason Toronto Police Service is not releasing race based crime statistics is due to the that fact they are racial profiling (Toronto Police Accountability Coalition, 2008) . In fact in 1989 the opposite argument was used by community groups when then Inspector Julian Fantino released crime based statistics, claiming them to be inherently racist (Johnston, 1994, p. 166).

According to Robin S. Engel an Associate Professor of Criminal Justice at the University of Cincinnati and Director of the University of Cincinnati Policing Institute,

Data will never 'prove' or 'disprove' racially biased policing, we contend that vehicle stop data collection and analysis should never be viewed-either by police or resident stakeholders-as a pass fail test. Rather, it should be viewed as a diagnostic tool to help pinpoint the decisions, geographic areas, and procedures that should get priority attention when the agency, in concert with concerned residents, identifies its next steps for addressing the problem or perception of racial profiling (2008, pp. 1-36).

Systematic is defined in the Merriam Webster Online Dictionary as "methodical in procedure or plan" (2009).

In order for the arguments of systematic racial profiling by the Toronto Police Service to be true, the Service would have to have policies or procedures in place that sanctioned it. In fact the Toronto Police Service does not sanction any form of racial profiling by its members. The Service has numerous rules and procedures that prohibit racial profiling along with a Diversity Management Unit that monitors all human rights complaints and ensures that all members provide a bias-free service to the community (2009).

Members of the Toronto Police Service are constantly being advised of their responsibility in providing a bias-free service to the community. These reminders are done through training and education, the Services Core Values and letters to the members of the Service, such as a letter written in 2003 by then Chief Juilian Fantino who wrote;

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...we must be aware that social and institutional pressures can lead to unacceptable instances of racial bias in policing. Police officers must make their decisions to engage the public based on the actions or conduct that they observe, on actual witness information and/or on hand evidence. Police officers must have articulable cause or reasonable grounds in order to pursue legitimate law enforcement activities with a member of the public. We must not make any decision to stop, question and/or search citizens based solely on a person's race. All of us, at all times, must provide equitable and respectful service to all persons regardless of race.

I believe that the best way to deal with this and all other issues is simply by always treating people, all people, professionally. Let's continue to treat all people and each other with dignity and respect. Professional conduct means that we will never go wrong or be found wanting in our dealings with all components of our diverse society (Toronto Police Service, 2003).

Although the Toronto Police Service does not systematically racially profile, they do systematically criminally profile.

Criminal profiling also known as Criminal Investigative Analysis (CIA) is an effective tool enabling law enforcement agencies to enforce the law more effectively (Royal Canadian Mounted Police). The origins of criminal profiling can be traced back to 1800s when it was first used in case to identify Jack the Ripper (Winerman, 2004, p. 66). The current use of criminal profiling by law enforcement was developed the Federal Bureau of Investigation (FBI), in the United States by their Behaviour Science Unit (Ibid).

Criminal profiling can be broken into two stages; the first could be described as general profiling and the second as specific profiling (Palermo, 2002, pp. 383-385). General profiling is part of an officer's everyday duties and investigations of any crime, such as traffic stops, while specific profiling is more refined in the officer's approach to evidence and crime scene investigations (Ibid).

Criminal profiling can also take on several forms. The first form of criminal profiling can be institutional, which is where the organization develops the profile of the offender, while the second form can be formed by the individual officer. This form of criminal profiling is developed by the officer from his or her personal experiences (Higgins & Gabbidon, 2009, pp. 77-88).

In today's policing, Toronto Police Service front-line officers incorporated the general profiling aspect of criminal profiling when performing their general duties but will on occasion incorporate specific profiling aspects when responding to a serious radio call. The officers will also use both organizational and individual forms of criminal profiling as well.

A basic form of institutional criminal profiling is taught to members of the Toronto Police Service when he or she attends the Ontario Police College as a basic recruit. The recruits are provided the necessary knowledge of laws, procedures and skills that will help them perform their duties as frontline officers. With emphasis on the core function of police services found in the Ontario Police Service Act section 4(2) which focuses on Crime Prevention, Law Enforcement, Assistance to Victims of Crime, Public Order Maintenance, and Emergency Response (2009). The officers are also provided training a

variety of subjects including, ethics, anti-racism and community policing (Ibid). The training does not stop when an officer leaves the Ontario Police College, the officers are further trained at the Toronto Police College in the Services' Rule and Procedures, Core Values and Mission Statement of the Service along with officer safety training.

Officers develop individual criminal profiling skills when they start patrolling the streets of Toronto. The officer will respond to thousands of calls varying from thefts, domestics, fights, to vehicle stops. Each time the officer interacts with the individuals, he or she develops their own brand of policing and individual criminal profiling.

A more formal institutional style of criminal profiling is incorporated when it comes to serious crimes such as sexual assaults and homicides. It is more specific and uses an analyst to develop a profile of a potential suspect, using all available data. The officers then take this profile onto the streets of Toronto to look for a suspect.

In community policing, officers work closely with problem communities, in developing strategies to help the community combat crime. Working with the community, officers receive information on potential criminal activities and individuals within the community so that they can develop strategies to reduce crime. Officers will incorporate all aspects of criminal profiling to either be reactive or proactive in an attempt to reduce criminality. Being reactive, officers focus their attention on direct information that is received from the community to reduce the current problem within the community.

Proactive policing will allow the officers to profile activities and individuals within the community to prevent further victimization.

Officers also use criminal profiling when they perform traffic stops. The officer use individual criminal profiling when he or she selects an area to monitor the traffic flow, which is based on the officers personal experience. The officer might select an area where there is a high rate of incidences of failing to stop at a sign or a section or roadway where vehicle speed. When the officer decides to stop the vehicle for a violation of the Highway Traffic Act, he or she again criminally profiles the vehicle and occupants for officer safety reasons. The officer will conduct registration checks on the vehicle and the registered owner, all the time observing the occupants of the vehicle before stopping the vehicle, in order identify any criminal activity. This part of criminal profiling it taught to the officers by the Ontario Police College and the Toronto Police College (institutional criminal profiling) as part of the Officers Safety Section within both colleges, in order to keep the officer safe.

There are those who argue that criminal profiling is not supported by scientific evidence and should be dismisses as rhetoric and never be used. This paper agrees that criminal profiling is limited in empirical data but is still a useful tool to combat crime. According to a research study which states, “ criminal profiling will persist as a pseudoscientific technique until such time as empirical and reproducible studies are conducted on the abilities of large groups of active profilers to predict, with more precision and greater magnitude, the characteristics of offenders (Snook, Eastwood, Gendreau, Goggin & Cullen, 2007, pp. 437-453).

Each time when a members of the Toronto Police Service uses criminal profiling while investigating individuals, they are trained to reduce the factor of race so that it is equal to all the other factors of the investigation.

In conclusion, the Toronto Police Service does not systematically racially profile as the media, social and minority groups would have us believe. In order for the Toronto Police Service to be blamed for systematically racially profiling, the Service would have to be a plan or procedure in place to support it. The Toronto Police Service does not support any form of racial profiling by it members. In fact the Service is working with the Ontario Human Rights Commission to ensure that the officers being hired reflect the diversity of the City of Toronto, the officers are trained in ethics, and diversity and what constitutes racial bias policing (2009).

Criminal profiling plays a crucial and significant role in deterring and combating criminal behaviour and activity. Criminal profiling provides a valuable tool for police in which they can assess and analyze the patterns of criminal behaviour (Turvey, 2008, pp. 1-43).

The Toronto Police Service systematically criminally profiles and treats the race component of criminal profiling no differently than they would gender, class, age, or any other profile that works.