

"We are all Different": Statistical Discrimination and the Right to be Treated as an Individual

Author(s): Kasper Lippert-Rasmussen

Source: *The Journal of Ethics*, Vol. 15, No. 1/2, Racial Profiling (March/June 2011), pp. 47-59

Published by: Springer

Stable URL: <https://www.jstor.org/stable/41486900>

Accessed: 16-12-2018 23:33 UTC

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <https://about.jstor.org/terms>



JSTOR

Springer is collaborating with JSTOR to digitize, preserve and extend access to *The Journal of Ethics*

“We are all Different”: Statistical Discrimination and the Right to be Treated as an Individual

Kasper Lippert-Rasmussen

Received: 1 September 2010 / Accepted: 1 October 2010 / Published online: 8 December 2010
© Springer Science+Business Media B.V. 2010

Abstract There are many objections to statistical discrimination in general and racial profiling in particular. One objection appeals to the idea that people have a right to be treated as individuals. Statistical discrimination violates this right because, presumably, it involves treating people simply on the basis of statistical facts about groups to which they belong while ignoring non-statistical evidence about them. While there is something to this objection—there *are* objectionable ways of treating others that seem aptly described as failing to treat them as individuals—it needs to be articulated carefully. First, most people accept that many forms of statistical discrimination are morally unproblematic, let alone morally justified all things considered. Second, even treating people on the basis of putative non-statistical evidence relies on generalizations. Once we construe treating someone as an individual in a way that respects this fact, it becomes apparent: (1) that statistical discrimination is compatible with treating people as individuals, and (2) that one may fail to treat people as individuals even without engaging in statistical discrimination. Finally, there are situations involving the expression of messages of inclusion where we think it is good, morally speaking, that we are *not* treated as individuals.

Keywords Generalizations · Justice · Racial profiling · Respect · Statistical discrimination · Treating as an individual

1 A Right to be Treated as an Individual

It is common for people to complain about adverse treatment where the relevant agent or agency has knowledge of or easy access to facts about the relevant individual, but nevertheless relies on coarse-grained statistical information. In his

K. Lippert-Rasmussen (✉)
Department of Political Science, Aarhus University, Bartholins Allé 7, 8000 Aarhus C, Denmark
e-mail: lippert@ps.au.dk

article, “Statistical Badness,” Laurence Thomas reports the following autobiographical story: “In the summer of 1990, an American woman traveling in Israel thought that a black American male, who walked from the guests rooms into the hotel lobby, was about to steal her pocketbook ... Was it rational for her to have had that thought? The black American called the woman on her behavior. She retorted that she had once been robbed by a black man in Harlem. He retorted that he had once been called a nigger in Harvard Yard (between Emerson Hall and Widener Library). Her response was: ‘I am not that kind of person.’ Well, consider: How many not-so-well-off people, black hoodlums or otherwise, take a holiday in Israel to relieve themselves of the monotony of poverty?” (Thomas 1992: 33). It would seem natural for Thomas to complain that his fellow tourist from the United States treated him simply “on the basis of [a] group to which [he] belong[ed] rather than as [an individual]” (Thomas 1992: 31).¹ More specifically, she treated him simply on the basis of her—clearly inadequately based—belief about the dispositions of black Americans ignoring various other bits of information available to her, e.g., that well-off people—whatever their propensity to engage in other forms of criminal behavior—are quite unlikely to engage in pick-pocketing and that to be a U.S. tourist in Israel one has to be fairly well-off and probably not very hoodlum-like.

Thomas describes the reaction of his fellow U.S. tourist as involving an “indiscriminate generalization” and suggests that such generalizations are due to bias.² Others would describe it as failing to treat Thomas as an individual. Many would add that we ought, morally speaking, to treat others as individuals, and not simply on the basis of statistical information about groups to which they belong, or that each of us has a right to be so treated. Let me offer two examples of theorists who address such moral claims.

David Miller considers a case where an employer has the choice between a male and a female applicant. For this employer to make the assumption about the female applicant “that she is liable to perform at a lower level because of a decision to have children” on the basis of “information that relates to the whole group or class” to which she belongs (that is, women) is “to fail to treat her respectfully as an individual, and potentially to commit an injustice” (Miller 1999: 168–169). This is so independently of the correctness of the statistical assumption underlying the employer’s view that the female applicant, despite being in all other respects no less qualified than the male applicant, is likely to perform less well.

Ronald Dworkin discusses an argument in relation to the famous court case *The Regents of the University of California v. Allan Bakke*, which he believes to be “frequently made on editorial pages”, namely that Bakke’s right to be treated as an individual was violated when he was rejected by the medical school to which he had

¹ These are not the terms in which Thomas prefers to diagnose the moral objectionableness of the encounter. Some may “vigorously object to the idea of treating people on the basis of the group to which they belong rather than as individuals” (Thomas 1992: 31), but Thomas thinks that “it is next to impossible not to invoke group categories when assessing strangers” (Thomas 1992: 37) and that any stranger “should be treated on a group basis” (Thomas 1992: 37).

² J. Angelo Corlett seems to have a similar objection in mind when he presses the objection against Michael Levin’s endorsement of certain kinds of racial profiling that Levin “seems to assume that young African-American men are mostly or all of one cloth” (Corlett 1993: 165).

applied given that he might well have been admitted had he had a different race, all other things being equal (Dworkin 2003: 302). Dworkin dismisses the complaint. He believes that "(a)ny admissions procedure must rely on generalizations about groups that are justified only statistically" (Dworkin 2003: 303). Hence, the right to be treated as an individual really is "the principle that no one should suffer from the prejudice or contempt of others" (Dworkin 2003: 302).³

More generally, the idea behind the views of Miller and some of those sympathetic to Bakke's case and, I should add, many others is that we have a right to or, for other reasons, ought to be treated as individuals rather than as mere members of a group. This idea seems to enjoy widespread support and often comes up in discussions of the wrongness of discrimination, often in the writings of those (such as Dworkin) who think that, ultimately, the objection is unsound albeit often canvassed (<http://plato.stanford.edu/entries/civil-rights/> (accessed 6 Dec 2010); Levin 1992: 21–24; Cavanagh 2002: 186–87).⁴ More specifically, it comes up in discussions of statistical discrimination such as Miller's in the example above, and it is generally thought to form the basis of an argument against statistical discrimination.

In this paper I want to scrutinize the idea of treating someone as an individual and its relation to statistical discrimination. First, I explore a challenge to the very idea of treating someone as an individual (Sect. 2). Next, I show how we can account for it without denying that our beliefs about others are inductively based through and through (Sect. 3). Third, I argue that treating someone as an individual is compatible with statistical discrimination and that one can fail to treat someone as an individual even if one does not discriminate (Sect. 4). Finally, I say something about the wrongness of not treating people as individuals (Sect. 5). Specifically, I suggest that sometimes we have reasons favoring our *not* being treated as individuals.

My main claim is that the failure to treat people as individuals is only loosely connected with statistical discrimination and cannot explain what is morally amiss with it even when failing to treat people as individuals is a moral flaw.

2 The Problem

However popular the idea that we have a right to be treated as individuals is, it is also clear that it is hard to specify in any convincing way what exactly treating someone as an individual amounts to. So return to Thomas' example. The problem here, according to Thomas, was an indiscriminate generalization and apparently not, in his view, generalizations as such. More specifically, had his fellow U.S. citizen taken into account the unlikelihood of "not-so-well-off people, black hoodlums or otherwise, [taking] a holiday in Israel to relieve themselves of the monotony of poverty," her generalization would have been less indiscriminate and, accordingly,

³ Note that, as I construe the notion, treating someone as an individual is compatible with affirmative action, even if some forms of affirmative action may involve not treating people as individuals so construed.

⁴ Cavanagh writes that this not-treating-people-as-individuals objection is a line of argument that he has "come across countless times" (Cavanagh 2002: 209).

she would have been closer to treating him as an individual. The problem was not that she feared theft on the basis of Thomas' belonging to a certain group with certain statistical properties, but that she had a very coarse-grained way of individuating groups. Had she had a sufficiently fine-grained way of individuating groups, presumably, she would have made more accurate predictions and she would not have failed to treat people as individuals. So we might suggest that:

X treats Y as an individual if, and only if, X's treatment of Y is informed by all relevant statistical information available to X.

Obviously, to flesh out this view one would have to say more about when statistical information is "relevant," "available," and something that "informs" an agent's treatment of another. However we clarify these issues, on the view canvassed here, failing to treat someone as an individual is a failure that comes in degrees. There is a huge difference between ignoring only one relevant piece of information and taking into account only information about the individual's race.

This suggestion is open to two important objections. First, in some cases taking into account all relevant statistical information is *not sufficient* for treating someone as an individual. Often we have access to non-statistical information that is relevant to how people should be treated and this bears on whether we treat others as individuals. Non-statistical information is information that we have reason to believe is a causal result of the relevant fact that the information concerns (Thomson 1986a: esp. Sect. 8, b; Feinberg 1984: 201). So, in Thomas' case, had one of his fellow travelers told the woman that she knows Thomas well and knows he is a law-abiding citizen, she would have had testimony specifically regarding Thomas available to her. It would be non-statistical information because Thomas' fellow-traveler would have reason to believe that the fact that Thomas is a law-abiding citizen was causally relevant—indeed, causally necessary—for the production of this testimony.⁵ We can then say that ignoring this non-statistical information would amount to failing to treat him as an individual even if she had taken account of all relevant statistical information.⁶ Moreover, if there can be situations where one has no relevant statistical information, the present definition has no implications for what it is to treat someone as an individual in this case. Yet, surely it is possible to treat someone as an individual in such cases.

Second, arguably, taking into account all relevant statistical information is *not necessary* for treating someone as an individual either. For suppose that Miller's employer decides not to hire the female applicant on the basis of information gained through direct observation of her—the employer can see that she is pregnant—and she herself tells him that she is. Presumably, however faulty the employer's conduct is in other respects, the employer treats the applicant as an individual even if she disregards all relevant statistical information on the group of women of her age.

⁵ This is unlike statistical information about groups to which any given individual belongs.

⁶ "We may accept ... the danger that we will be betrayed by friends or neighbors who bear false witness, mistaken for someone else because of appearance or manner, or seen to engage in innocent but suspicious activity. But we may feel outraged by being held liable merely because our association with a group, or our past conduct, makes us especially likely to have engaged in criminal or tortious acts" (Wasserman 1991: 940–941).

These objections might suggest that the focus on statistical information is wrongheaded and that instead we should say:

X treats Y as an individual if, and only if, X's treatment of Y is informed by all relevant non-statistical information, e.g., information gained through X's perception of Y, other people's testimony about Y delivered to X, X's memory of what Y did in the past, available to X.

Suppose we have no non-statistical information available. In that case, we cannot treat people as individuals according to this definition. Presumably, the injunction to treat them as such enjoins us to acquire non-statistical information about them, if at all possible.

Despite its attractions, this non-statistical-information-focused account of treating people as individuals is open to a forceful objection. I have distinguished between statistical information and non-statistical information. However, one might challenge this distinction: either (1) by denying that, ultimately, one can coherently distinguish between the two or (2) by contending that while one can indeed draw a distinction between the two it is superficial because any non-statistical information qualifies as such only because it stands on the massive shoulders of statistical information. So compare the following two employers:

- (A) "I seem to observe that this applicant is a 25 year old woman. Hence, it is almost certain that she is a 25 year old woman. 30 out of 100 twenty-five year old, employed women apply for parental leave within 5 years. If I hire her, the probability that she will apply for parental leave is almost 3–10."
- (B) "I seem to observe that this applicant is telling me that she intends to have a child within the next 5 years and apply for parental leave. Hence, it is almost certain that this is indeed what she is telling me. 30 out of 100 applicants who say they intend to have a child and apply for parental leave within the next 5 years apply for parental leave within 5 years. If I hire her, the probability that she will apply for parental leave is almost 3–10."

Initially, we might think that only the latter employer treats the applicant as an individual. Yet, on reflection it is hard to see that they are engaged in two types of reasoning that are in any significant way different. Frederick Schauer puts the point as follows: "[A]cknowledging the way in which seemingly direct observation involves a process of inference and generalization enables us to appreciate that even the processes that initially appear to us to be 'direct,' 'actual,' or individualized turn out to rely far more on generalizations from past experience than is often appreciated. Once we see that all evidence is in the final analysis probabilistic, the distinction between the probabilistic and the 'real,' 'direct,' or 'actual' emerges as even more of an anomaly ... the cumulative set of inferences that produces a purportedly 'direct' conclusion or observation is nothing more than a collection of inferences drawn from generalizations known to be reliable" (Schauer 2003: 103, 172). Both employers in (A) and (B) make an inference from what they can observe—in one case that the applicant is a woman and in the other case that the applicant is conveying a certain piece of information to the probability of a certain kind of event—the applicant taking parental leave—occurring.

True, there are a number of differences between these two cases. First, the contents of the relevant observations and the relevant generalizations in (A) and (B) are different. While these descriptive differences mean that we can base a distinction between treating and not treating as an individual on these, it is harder to see that this distinction can have any moral significance.

Second, it is less likely that an employer will go through any explicit process of reasoning of the sort involved in (B) than in the sort of reasoning involved in (A). But that is neither here nor there. For presumably, no one would want to say that if an employer really explicitly reasons the way the employer does in (B), then she fails to treat the applicant as an individual which she would not do if the reasoning was only implicit, e.g., because that would be how she would account for her hiring decision herself if she were asked.

Note moreover that we may insist that the content of the generalizations that we rely on make a moral difference even if the reasoning is the same and even if the difference between reasoning based on these different generalizations is not aptly described as one of treating or not treating someone as an individual. Isak Applbaum might be doing this when he distinguishes between group-based patrol and group-based enforcement, on the one hand, and group-based identification, i.e., cases where witnesses describe the perpetrator of a crime as having a certain sex or race and, accordingly, the police look out for someone who fits this description, on the other hand. The former “use statistical inferences from group characteristics [notably about the likelihood of criminality among those who belong to this group] to select those who will be” scrutinized or subject to law enforcement, whereas the latter uses an inference “about the likelihood that someone who fits a description is the particular person described” (Applbaum 1996: 147–148). Applbaum thinks this difference is morally relevant and that whereas no one can complain about group-based identification, some can complain about group-based patrol and enforcement precisely because of the content of the generalization involved (Applbaum 1996: 147–151).

Here I set aside Applbaum’s distinction for two reasons. First, I do not think it is aptly described as involving a difference between treating someone as an individual and not doing so. Second, even group-based identification will need to draw on assumptions about the frequency of criminality of different groups and, thus, will not avoid the sort of generalizations that Applbaum appears to find objectionable. Reports from eyewitnesses may be erroneous and to judge the likelihood of the perpetrator actually matching a certain description we will need to take into account the relevant baseline rate of criminality among people matching this description (Schauer 2003: 79–107).

Finally, in a critique of Bayesian models of legal proof David Wasserman has argued that naked statistical proofs of guilt—whether the relevant statistics concern the conduct of the defendant’s reference group or her own past behavior—are inadmissible in courts because if the courts were to allow them they would fail to treat a defendant as “an autonomous individual, free to determine and alter his conduct at each moment” (Wasserman 1991: 943). Arguably, such concern explains why (A) and (B) are morally different. Whatever the weight of this concern, it can be set aside for the purpose of this article. There is an independent concern for

treating people as individuals whether autonomous in Wasserman's sense or not. This comes out in cases involving treating non-autonomous minors on the basis of coarse-grained generalizations.

3 Two Responses

Suppose that my argument in the previous section is sound. What does that imply for the claim that people ought to be treated as individuals? There are at least two responses worth considering. The first response is to be a *nihilist about the moral requirement to treat people as individuals*, where the idea is that taking into account statistical information about the groups to which this individual belongs is to fail to treat this person as an individual. Richard Arneson seems to take this line. In connection with a defense of his idea that wrongful discrimination is differential treatment tied to unwarranted animus or prejudice against people of a certain type, he rejects an alternative account: "Although in the current cultural climate there is considerable support for the idea that one must respond to each individual with whom one interacts as a unique individual, on the basis of a good faith effort to determine that individual's particular qualities relevant to one's potential interaction with the person, this idea is hopeless. There is nothing morally untoward about responding to individuals on the basis of statistical indicators their broad characteristics suggest" (Arneson 2006: 787). Another theorist who at least in places seems to offer this response is Schauer: "[From this perspective all] human beings ... deserve to be treated as individuals and not simply as members of a group ... But although this belief in the wrongfulness of reliance on even statistically sound but nonuniversal generalizations is widespread, it still may not be correct. Indeed, it may not even be plausible" (Schauer 2003: 19).⁷

Second, one might be a *revisionist about the moral requirement to treat people as individuals*. This is the position I want to pursue in this paper. Revisionists concede that for reasons given in Sect. 2 in a strict sense it makes no sense to treat people as individuals where this is understood to involve treating them only on the basis of non-generalization-based information. However, there are morally faulty ways of relating to available information, including that contained in generalizations, that we can helpfully describe as failing to treat people as individuals, say, the sort of situation Thomas reports. Revisionists do not contrast treating people as individuals with treating them on the basis of generalizations. Rather, revisionists hold that failing to treat someone as an individual involves a particular way of treating people employing certain general information while ignoring other pieces of information. It is a further question, of course, whether it is always morally problematic to fail to treat someone as an individual and for what reason. Just for the record: I believe that, in the absence of cosmic luck, treating people on the basis of statistical information is bound to involve unjust treatment from time to time, since the whole

⁷ Levin takes a similar stance: "I have been arguing thus far as if there is an acceptable principle of individualism, the only question being who has a right to it. There is in fact no such principle. People are and must always be judged by the classes to which they belong, the traits they share with others" (Levin 1992: 23). Cavanagh dismisses the objection as well (Cavanagh 2002: 190–193).

idea of relying on statistical information is to avoid having to identify and consider differences between individuals that imply that ideally they ought to be treated differently. But obtaining information is costly, so it is morally justified, all things considered, to treat people on the basis of statistical generalizations even though one knows that, in effect, this will mean that one will treat some people in ways, for better or worse, that they do not deserve to be treated. Moreover, one may make even greater errors if one tries not to rely on statistical generalizations. So in the light of the discussion in Sect. 2 I propose:

X treats Y as an individual if, and only if, X's treatment of Y is informed by all relevant information, statistical or non-statistical, reasonably available to X.

Note that on this definition it makes no difference whether the information ignored is statistical. So on this definition Thomas' fellow tourist did not treat him as an individual since she ignored information available to her. Miller's employer who refuses to hire a female applicant simply on the ground that many women apply for parental leave without taking into account other kinds of relevant information, e.g., what her own plans are, similarly fails to treat her as an individual. However, if he takes into account these other pieces of information and in addition to that the frequency of 25 year old women taking parental leave before they reach 30, he does treat her as an individual, which, of course, is not to say that she acts morally permissibly in so doing and that the law should not require employers to disregard such information in the interest of gender equality. Note finally that admitting people to universities *simply* on the basis race (as in extreme, hypothetical affirmative action programs) would, on this proposal, amount to not treating applicants as individuals given the plausible assumption that there are other kinds of relevant information reasonably available to universities being disregarded. However, admitting students *partly* on the basis of race may not amount to failing to treat applicants as individuals on the assumption that race is relevant information, e.g., society needs more doctors to serve a particular community and such doctors are likely to come from this community itself.

4 The Relationship Between Statistical Discrimination and Treating Someone as an Individual

Could one engage in statistical discrimination and yet treat those individuals against whom one discriminates as individuals given the revisionist account expounded above? And could one refrain from engaging in statistical discrimination against anyone and yet fail to treat the relevant people as individuals? Elsewhere I have defined statistical discrimination roughly as follows:

X engages in statistical discrimination against Y if, and only if, (i) X has statistical evidence suggesting that a certain group of people, Y-people, of which Y is a member, differs from non-Y-people, (ii) X treats Y worse than X treats (or would have treated) a non-Y-person, all other things being equal, and (iii) (ii) is the case because of (i) (Lippert-Rasmussen 2007: 387).

Racial profiling is a form of statistical discrimination where the relevant statistical evidence concerns, or least also concerns, a racial group. Note that my definition says nothing about whether the relevant evidence is sound or not. However, from the point of view of moral theory, it is of little interest to discuss statistical discrimination based on flawed generalizations, so I shall proceed on the assumption that the relevant sorts of statistical discrimination that I address are so based. Also, since statistical discrimination and racial profiling understandably have bad names I should say that I set aside all sorts of abuses etc. that these may be correlated with, but are not conceptually tied to, statistical discrimination as I have defined it (Lippert-Rasmussen 2007: 389–394; Risse and Zeckhauser 2004).

You may think that by unrealistically abstracting from these features of statistical discrimination, e.g., abuse and disproportionate attention given to certain minorities reflecting prejudice or animus, I fail to address a much more important question about the justifiability of statistical discrimination (Lever 2005: 96; Applbaum 1996: 145–147). If so, I might in fact agree with you. My concern here is a philosopher's concern about the cogency of a particular objection and not that of a social critic's concern with a particular practice. So my question is how the revisionist account of treating someone as an individual relates to statistical discrimination. As I shall now argue these two notions are quite loosely connected.

First, it is possible to engage in statistical discrimination without failing to treat someone as an individual. An agent might take into account all relevant evidence when treating people and yet do so and act on it in a discriminatory manner. It is no part of the definition of treating someone as an individual that one's assessment and use of the relevant information is in every way unbiased.⁸ So suppose, for instance, that in the case of white suspects with a criminal record I am inclined to arrest them on the slightest suspicion ignoring all sorts of general knowledge about how other properties than having a criminal record warrant a suspicion that they might be the culprit. In the case of non-white suspects with a criminal record I am inclined to consider all these other properties. Suppose also that I have statistical information suggesting that non-whites are more likely to be involved in the relevant kind of crime and that my having this information explains why I subject them to a much more intense scrutiny. So I let some non-white people with a criminal record off the hook and I arrest some non-white people without a criminal record that I would not have arrested had they been white. I am also slightly biased in my evaluation of all these other properties such that if in the case of whites I had considered all the evidence that I consider in the case of non-whites, when making a choice of whether to arrest, the likelihood of my arresting someone who is white would be smaller than the likelihood of my arresting someone who is not white. Here non-whites can complain that they are being discriminated against, but, unlike white people, they cannot complain that unlike whites they are not being treated as individuals. On the account I have given they are being treated as such. It is just that the assessment of

⁸ Admittedly, one might add this bit to the right-hand side of the bi-conditional that defines treating someone as an individual in which case we have: "X treats Y as an individual if, and only if, (i) X's treatment of Y is informed by all relevant information, statistical or non-statistical, reasonably available to X and (ii) *X processes all of this formation in an unbiased way.*" However, such an additional condition is not one that normally underlies complaints about failures to treat someone as an individual.

all relevant evidence is skewed in a way that amounts to statistical discrimination against non-white people.

Second, it is possible to fail to treat some as an individual and yet not engage in statistical discrimination. Discrimination is an essentially comparative notion: it requires that I treat different groups of people differently. But failing to treat someone as an individual is non-comparative. Hence, I cannot discriminate against everyone, but I can fail to treat everyone as individuals.⁹ Suppose I am a policeman inclined to stop people carrying Rolex watches to check if these are stolen. Race has no influence whatsoever on whether I stop people. But the same is true of a lot of other factors such as whether the person carrying a Rolex watch looks like a Wall Street banker, a Saudi Arabian prince, or a particular Hollywood movie star. Here I disregard all sorts of relevant information in my treatment of people. I simply mechanically search any person wearing a Rolex watch. Still, none of those checked can complain about adverse treatment on the grounds of race and, thus, no one can complain about statistical discrimination on racial grounds.¹⁰

The upshot of this conceptual mapping of the relation between treating someone as an individual and statistical discrimination is that we cannot explain any wrongness of statistical discrimination—of which racial profiling is an instance—per se by appealing to a moral requirement that we treat others as individuals. This is worth stating, since moral objections to racial profiling and other forms of statistical discrimination are often articulated in these terms. And, indeed, they might often take such forms, and my point is simply that in some cases of statistical discrimination such an objection will not fit.

5 Is it Always Morally Wrong to Fail to Treat People as Individuals?

So far I have argued that we cannot explain the moral wrongness of statistical discrimination per se by appeal to a requirement that we treat people as individuals on the ground that we may comply with this requirement and still engage in potentially wrongful statistical discrimination. In this last section of the paper, I explore a further and independent reason: that while, in some cases, it is morally wrong to fail to treat people as individuals, there is no general moral requirement not to fail to treat them as individuals.

Why is it morally wrong to fail to treat people as individuals (when failing to do so is morally wrong)? Before I answer this question, let me first state that I think we should be careful about distinguishing two different kinds of moral faults here. First, it is a fault in the way a person thinks about or judges other people, if she fails to treat them as individuals. So the fault here lies with the character of the person or with the way she deliberates about how to treat others. This fault may not affect the

⁹ I set aside here the complication that I might be able to discriminate against all people who actually exist, provided I would treat all of them worse than other groups of people who might exist, but actually do not.

¹⁰ If you think that people carrying Rolex watches can complain of discrimination, suppose I stop and question all people carrying watches (or perhaps simply stop anyone I come across whether or not they carry watches).

permissibility of what she does. I may save the life of another for faulty reasons, e.g., to win a medal, but this fault does not mean that I acted impermissibly. Second, it is a fault if one humiliates others by failing to treat them as individuals and this may not reflect any particular flaw in one's character or deliberations, but this may affect the moral permissibility of one's actions (for this distinction see Scanlon 2008: 22–28).

Now, there might be other reasons why it is wrong not to treat people as individuals than the fact that not treating them as individuals sometimes is to humiliate them—e.g., because ignoring relevant information brings about a worse outcome, say, because what one does is less tailored to the needs and abilities of others—but I want to focus on this particular aspect. Also, I set aside the question of why it is wrong to humiliate others. It might be wrong in itself independently of how it affects the victim's well-being or it might be wrong because it makes one's life worse to be humiliated. I take no stand here.

Suppose failing to treat people as individuals is morally wrong, when it is, because it humiliates people. I suppose something like this is what is at stake in Thomas' autobiographical story. It is humiliating—even if one does not feel humiliated—that others refuse to see one for what one pretty obviously is—say, an accomplished, well-off academic—but simply insist, due to the color of one's skin, to see one as a pickpocket. The message involved—"Whatever you are like or whatever you accomplish I will always look at you as a criminal and a threat"—is humiliating. We might even imagine that the person Thomas encountered would be deferential to others like Thomas, but with a different skin color.

But is it always humiliating not to be treated as an individual? I think not. There are cases where the uniform application of the same rule to all of us, disregarding proxies that contain useful information on the relevant target, has a certain expressive content that we cherish. For instance, there are cases where disregarding information about our past deviant conduct despite its strong predictive value—heavy drinking, absenteeism, theft etc.—is something we want because it sends a message of trust, inclusion, and solidarity. Or, at least, treating all in the same way ignoring differences may be a way to avoid sending a message of exclusion as when "all travelers are... [subjected] to the same screening procedure" (Hellman 2008: 128).

Similarly, the fact that political rights are not tailored to individual variations in political knowledge or political virtue—i.e., the one-person-one-vote rule—expresses an ideal of a society of equals. Here there is a sense in which the ideal of equal citizenship requires that we are not treated as individuals (Schauer 2003: 222; Lever 2005: 110).

Thirdly, there are cases where ignoring individual differences seems to be a way of each doing his or her share in bringing about a common good and thereby expressing her commitment to the relevant common good. Annabelle Lever puts it as follows: "one can recognize, more or less cheerfully, that a common ideal of fairness requires those who benefit from a public good to share in the cost of maintaining and preserving it. Fortunately, this seems to be the attitude of most people caught up in generalized security checks at cinemas, department stores or, even, at university libraries" (Lever 2005: 110).

Finally, many think that when on patrol in say a wealthy, white area of town, police officers should ignore information about the likelihood that someone who, because of her race, does not look like she lives in the area when they decide who to keep an eye on, even if the relevant information is useful in reducing property crimes. The idea is that the police must send the message that people are welcome in the area whatever their race. Really, this is only the converse phenomenon of how many people think racial profiling expresses mistrust and antagonism. So it seems false to say that we think that we have a claim to be treated as individuals as such. Perhaps it is better to say that we have a claim not to be treated as something other than individuals, when such treatment involves treating us worse than we would otherwise have been treated.

So could there be cases of *non-racial* profiling that one would see as not being humiliating? I think many types of profiling of young males are of this kind. Generally, young males do not consider it humiliating that they attract more attention from the police than old ladies and for a good reason it seems. Indeed, police attention signals that they are powerful and potentially dangerous.

Could there be cases of non-humiliating *racial* profiling? Much depends on what we put into “could” here. While I would be inclined to think that this is quite hard to imagine in the world as we know it, in a sense there is nothing special about race, so there is no reason a scenario of this sort is not possible. So let us elaborate a bit on the scenario just described. Suppose, for instance, that the population is divided into ageing European people and young non-European immigrants. In this situation, race might become a very reliable proxy for age, and age already *is* a very reliable proxy for involvement in certain kinds of crime and in this situation statistical discrimination on racial grounds might not be humiliating—generally, people might not see differential treatment on the basis of a proxy that correlates with youth and vitality. (Suppose there is widespread fraud with birth certificates and use of plastic surgery to conceal one’s real age such that proxies for age are needed.) But obviously, people who discuss racial profiling do not have such hypothetical cases in mind.

6 Conclusion

Complaints about statistical discrimination, including racial profiling, are sometimes formulated as complaints about the failure to treat people as individuals. I have argued that while we can make sense of the failure to treat people as individuals there is no conceptual relation between statistical discrimination and failing to treat people as individuals. Hence, we cannot explain the wrongness of statistical discrimination through appeal to the requirement to treat people as individuals. In any case, it is not clear that we are under a moral obligation always to treat people as individuals. In some cases failing to do so can send a message of inclusion and solidarity and conveys no humiliating messages.¹¹

¹¹ A previous version of this paper was presented at a conference on Racial Profiling at Carlsberg Academy, Copenhagen, 20 May 2010. I thank Laurence Thomas and the participants in the conference for helpful comments and criticisms.

References

- Applbaum, Arthur Isak. 1996. Response: Racial generalization, police discretion, and Bayesian contractualism. In *Handled with discretion: Ethical issues in police decision making*, ed. John Kleinig, 145–157. Lanham: Rowman & Littlefield.
- Arneson, Richard. 2006. What is wrongful discrimination? *San Diego Law Review* 43: 775–808.
- Cavanagh, Matt. 2002. *Against equality of opportunity*. Oxford: Clarendon Press.
- Corlett, J. Angelo. 1993. Racism and affirmative action. *Journal of Social Philosophy* 24: 163–175.
- Dworkin, Ronald. 2003. Bakke's case: Are quotas unfair? In *Race and racism*, ed. Bernard Boxill, 297–306. Oxford: Oxford University Press.
- Feinberg, Joel. 1984. *Harm to others*. Oxford: Oxford University Press.
- Hellman, Deborah. 2008. *When is discrimination wrong?* Cambridge: Harvard University Press.
- Lever, Annabelle. 2005. Why racial profiling is hard to justify: A response to Risse and Zeckhauser. *Philosophy & Public Affairs* 33: 94–110.
- Levin, Michael. 1992. Responses to race differences in crime. *Journal of Social Philosophy* 23: 5–29.
- Lippert-Rasmussen, Kasper. 2007. Nothing personal: On statistical discrimination. *Journal of Political Philosophy* 15: 385–403.
- Miller, David. 1999. *Principles of social justice*. Cambridge: Harvard University Press.
- Risse, Mathias, and Richard Zeckhauser. 2004. Racial profiling. *Philosophy & Public Affairs* 32: 138–143.
- Scanlon, Thomas. 2008. *Moral dimensions: Permissibility, meaning, and blame*. Cambridge: Belknap Press of Harvard University Press.
- Schauer, Frederick. 2003. *Profiles, probabilities, and stereotypes*. Cambridge: Harvard University Press.
- Thomas, Laurence. 1992. Statistical badness. *Journal of Social Philosophy* 23: 30–41.
- Thomson, Judith Jarvis. 1986a. Remarks on causation and liability. In *Rights, restitution, and risk: Essays in moral theory*, ed. William Parent, 192–224. Cambridge: Harvard University Press.
- Thomson, Judith Jarvis. 1986b. Liability and individualized evidence. In *Rights, restitution, and risk: Essays in moral theory*, ed. William Parent, 225–250. Cambridge: Harvard University Press.
- Wasserman, David T. 1991. Morality of statistical proof and the risk of mistaken liability. *Cardozo Law Review* 13: 935–976.