

Quixotics Unite! Engaging the Pragmatists on Rational Discrimination

Oscar H. Gandy, Jr.,
Herbert I. Schiller Term Professor
Annenberg School for Communication
University of Pennsylvania

Submitted for publication in
Theorizing Surveillance. The Panopticon and Beyond
David Lyon, Editor

August 11, 2005

Introduction

Although there are moments within the ebb and flow of talk about the human genome that focus on the amount of genetic material we share in common with all living things, especially among those defined as human (Tishkoff & Kidd, 2004), the real interest and attention these days is focused on those fractions of genetic material that set us apart, that distinguish between us, and when we get right down to it, that allow us to discriminate between those who have “the right stuff,” and those who don’t (Jones & Smith, 2005).

The pursuit of difference is part and parcel of the drive to understand and manage uncertainty and risk through differentiation, classification, and identification. Bowker and Star (1999) have argued quite convincingly that “to classify is human”; it’s what we have come to do. However, our tendency toward limiting out attention to those who classify and the techniques they develop and use often leads us to ignore the consequences that befall the objects of classification. We do so at our collective peril.

While they recognize that classifications are “powerful technologies” that tend to become “naturalized” Bowker and Starr (1999, 319) offer little hope for the persons who are the objects of classification to do more than recognize how they are a part of this “thicket of classification” that not only describes, but defines the “possibilities for action” that make sense in this environment (Bowker and Star, 1999, 326). Classification becomes one of the structural features of contemporary society that shape life chances (Dahrendorf, 1979) beyond those which we traditionally assume to flow from our locations within the social structure. Risk classification is rapidly emerging as the most important forms of constraint on autonomous social choice in modern society (Baker, 2003).

I have been moved toward this view in part by some of the arguments laid out by Frederick Schauer (2003) against the use of race and gender as components in predictive models and decision systems. While all decisions involving choices made by powerful actors usually result in an unequal distribution of harms, Schauer reminds us that these negative consequences tend to be especially problematic when they are cued by race and gender because these markers of difference are readily available, and tend to be overused.

In addition, because of the ways in which past decisions are linked to future options, hardships tend to cluster, and contribute to what is increasingly being discussed as cumulative disadvantage (Blank, Dabady & Citro, 2004, 233-238). Critics also suggest (Andrews, 2001; Carlson & Stimeling, 2002) that using some information, such as that provided by genetic tests may also provide a “pretext for further discrimination” Dolgin (2000, 787). Unlike Dolgin, however, I do not suggest that the most important concerns are those associated with pretext or subterfuge; the problem that confronts us is the routine and apparently legitimate use of classifications that may include, but are not limited to race as a basis for excluding, denying, or on some other way restricting the life chances (Dahrendorf, 1979) of substantial numbers of persons.

For those who choose to resist the limitations on action that systems of classification impose on its objects, it becomes important to discover the best way out of a bag that seems to draw tighter against resistance. I have come to believe even more strongly in the wake of 9/11 that crying out against the invasion of privacy or the weight of social stigma will not suffice to mobilize the public will. An alternative construction of collective concerns will have to be found. I believe that the rallying cry of a social movement that will be capable of challenging this march toward the valorization of invidious distinction will have to be “It’s discrimination stupid!” (Gandy, 1995).

Classification

Bowker and Star (1999, 10) define classification as a “spatio-temporal segmentation of the world.” This is obviously quite broad. My concern, of course is with something a bit more specific--the classification of persons into categories often associated with risk, or hazard, or potential loss. Such classifications increasingly expand the organization of difference to include predictions about paths to the future. Through such classifications, persons with a disease, like tuberculosis, can be assigned a trajectory reflecting the usual “course” of the disease, and the prognosis for the sort of life such a person might enjoy (Bowker and Star, 1999, 170-1). The application of surveillance and classification as an aid to the management of cardiac patients is illustrated well in the chapter by Dubbeld (this volume).

Although we continually expand the classes and categories of persons as we learn more and more about what sets us apart, some distinctions tend to remain. Classification by race is one of those distinctions that seem to resist attempts to replace them.

Progressive social theorists attempted to define away the foundations of racism by transforming race into a social construct rather than a meaningful distinction with some basis in science (Littlefield, Lieberman & Reynolds, 1982). Not surprisingly they find themselves once again embroiled in a high stakes debate, only this time over the use of geographic origins as a substitute marker of difference (Gannett, 2001; Gannett, 2004).

Where the task is only the assignment of persons to one of three populations (East Asian, African and European), the current rate of success is quite high, exceeding 95% with 150 markers. The problem, of course, becomes one of deciding just how much precision is actually required for a decision. For those in need of greater certainty, we are told that one need only add more polymorphisms to the clustering model and then even “members of ‘admixed’ American populations, such as Hispanics, African-Americans and European-Americans can be accurately identified” by origin (Jorde & Wooding, 2004, S31).

Racial identification by statistical program obviously represents a distinct departure from the ways in which people have traditionally identified themselves as members of racial and ethnic groups (Cornell & Hartmann, 1998; Dolgin, 2000; Gandy, 2000). The possibility that the identification of groups by “highly reliable estimates” of geographic origin, as well as by “reliable predictors” of behavior will become the norm is the source of mounting concern about discrimination (Andrews, 1999; Rothstein, 1999a).

Evaluating social technology

I would like to suggest that we think about classification as a social technology. Like any other technology, its use ought to be justified on the basis of its effectiveness. We ask: does it do what it is supposed to do? This criterion for assessment may reasonably be extended to include a determination of its reliability; how often, or how well does it work? In some cases, the evaluation of some technology or technique is likely to be comparative; we want to know how well it works in comparison with available alternatives.

Here assessments become more troublesome as more and more aspects of a comparison may be seen as relevant. We might ask how easy it is to use, in comparison with available alternatives. And of course, we will want to know about its relative cost. It may or may not matter to us as individuals whether the “true” costs of alternatives have been modified by taxes, subsidies, or monopolization. Of course, our consideration of costs should not be limited to the costs of acquisition. It should include the costs of operation; the variable costs of resources acquired and used up in the production of decisions about how to act. These costs are part and parcel of our assessment of efficiency as it relates to the productive use of scarce and valuable resources.

Of course, we have more recently been invited to identify the competitive market as the social technology best able to manage such choices (Aune, 2001). In the absence of such an idealized market, it becomes important to examine the assumptions of the received theory and then to consider the extent to which they are not met. Among the most critical departures from the ideal is the dependence of decision makers on incomplete and perhaps strategically biased information (Kleindorfer, Kunreuther & Shoemaker, 1993, 350-1).

The assessment of technologies along the lines just described becomes more complicated as function of the extent to which its use serves more than one goal or function. It is generally recognized that it is difficult to maximize several objectives at the same time, especially when the outcomes may be incompatible. The difficulties that we associate with maximizing incompatible outcomes are amplified when our evaluations of the process rely on historically distinct, if not orthogonal criteria, such as efficiency and equality (Kleindorfer, Kunreuther & Shoemaker, 1993, 354-358).

What is far less often considered are the unintended and therefore unanticipated consequences of the use of technological systems (Tenner, 1996). These “externalities” are often quite substantial. Among the most important external costs are those that are generated on those occasions when the “device” does not work as well as it might; when it makes a mistake, or affects systems, activities, and relationships well beyond the expected boundaries of concern.

Of course, it is important to consider that all devices always operate with some degree of error; perfection is never really obtained. However, the costs of those errors are

rarely considered, and the distribution of those costs is beyond consideration by any but the most severely distracted (or quixotic if you will allow). In addition, decisions about efficiency and effectiveness are not quite the same as those we might make if considerations of justice, fairness, or other social values (Roemer, 1996) must also be included in our decisions about the use of technology.

But it is precisely this set of considerations that should be come into play as we evaluate the use of racial profiles and other discriminatory techniques to make decisions about the quality of the lives some of us may get to lead.

Discrimination

Obviously, by choosing to use the term discrimination, rather than talking about choice, or selection, I am engaging in an act of strategic communication, which may make my motives suspect . As a term, discrimination bears the weight of its history. Discrimination is felt as a pejorative. It implies an injustice, an unwarranted harm.

Discrimination involves differential treatment of objects, including persons, on the basis of their membership in disfavored groups. While discriminatory choices can be made in favor of members of some group, our concerns usually focus on those who are discriminated against, or suffer as a result of choices made. While Bowker and Star (1999) say without hesitation that classification is what we do, they are strangely silent on discrimination, which seem logically to follow, if not to lead as the motivating force guiding classificatory efforts these days. Sufficient evidence for this claim can be found in the chapters by French, and Bigo (this volume).

Our challenge is to determine the basis upon which discriminatory acts, enabled by the development of classificatory techniques ought to be subject to “strict scrutiny” as a matter of law, and perhaps to active restraint as a matter of politically vetted common sense.

Rational Discrimination

In discussing the economics of information, Roger Noll (1993) makes a distinction between decisions made by a private firm on the basis of racial prejudice, referred to among some economists as a “taste for discrimination” (Sunstein, 1997,153),

and similar decisions thought to be less troublesome when based on a statistical generalization. Noll provides the example of a bank that charges higher interest rates to borrowers from one community than another on the basis of a 2% difference in default rates. This is a decision that is thought to make good business sense because, as he suggests, “the identity of a person, because it is correlated with a useful attribute, even if the correlation is extremely weak, is nonetheless a valuable signal to the decision maker. To ignore the signal (and not to discriminate) is then costly, inducing decision makers to discriminate while honestly proclaiming themselves not to be prejudiced” (Noll, 1993, 41). Noll notes, however that while the “ethical distinction” between the two kinds of decisions may be “nonexistent,” the economic consequences are not.

On the other hand, Sunstein (1997, 155) suggests that people would act on the basis of “irrational prejudice” if they acted on a belief that members of a group have characteristics that they in fact do not; a belief that many or most of the members of the group have those characteristics, when only a relatively small number actually do, or even using “fairly-accurate group based generalizations when more accurate classifying devices are relatively inexpensive and available.” Sunstein suggests that other more common uses of stereotypes are “not only pervasive; they are entirely legitimate in most settings....People may use stereotypes not because they are very accurate but because they are less costly to use than any more individualized inquiry.”

But Sunstein invites reflection on the fact that our laws still seek to restrict racial and other forms of discrimination even though they may be “rational.” Even though our laws allow other forms of rational discrimination, including that which is based on widely varying probability estimates; legislators in many areas seek to limit discrimination on the basis of race and other bearers of information. We need to understand why this line is drawn in the shifting sands of social policy, especially with regard to decisions made by government agencies.

Rational discrimination informed by statistical inference within the criminal justice system is best represented by claims made by, or through references to the perspectives of an idealized “Intelligent Bayesian” (Armour, 1997, 35-60). The Intelligent Bayesian uses available racial statistics, without regard to, or understanding of the factors that generate the data being brought to bear on the decision (Best, 2001;

Gandy, 2001). The fact of disproportionate arrest and imprisonment of Africa American males is offered as proof of criminality, and a justification for pre-emptive strikes in self-defense against whatever risks might be assumed. The Intelligent Bayesian has become a lightening calculator of risk as it relates to race, and his willingness to use deadly force in moments of stress has been demonstrated in the courts, and in the laboratory as well (Kang, 2005,1525-8). As we see in the examples provided by Bigo, Los and Walby (all this volume), the impact of risk modeling as an aspect of institutional rationality is a substantial multiple of the impact of individual Bayesians.

For example, the Commonwealth of Virginia reportedly “encourages its judges to sentence nonviolent offenders the way insurance agents write policies, based on a short list of factors with a proven relationship to future risk (Bazelon, 2005). Using a risk assessment scale developed by the state’s sentencing commission, judges determine whether a defendant goes to prison, or is given an alternative that might include probation or house arrest. As a result, the state has been able to reverse the rate of growth in its prison population, without suffering what would be seen as an unacceptable increase in recidivism. Indeed, for those whose scores exceeded an upper limit, sentencing guidelines were adjusted to triple the years served by the average offender (Bazelon, 2005, p. 19).

The fact that this particular risk assessment model makes use of age and gender as predictors raises questions about the limits of permissible discrimination on the basis of immutable characteristics. The fact that the Commonwealth of Virginia has hesitated to include race in its model should not be assumed to reflect its limited utility as a predictor, or even the fact that race is so closely associated with poverty and related dimensions of cumulative disadvantage (Blank, Dabady and Citro, 2004). What we observe is the fact that the use of race as an aid to law enforcement has become politically charged in light of rising concerns about racial and ethnic profiling (Harris, 2003).

Racial Profiling

Racial profiling has emerged as an especially harmful form of discriminatory classification, despite the fact that it has achieved a rather spectacular level of notoriety.

Because of its basis in actual, or imagined data regarding the base rates or probability of some set of target behaviors, racial profiling can be understood as a form of

statistical discrimination (Blank, Dabady & Citro, 2004). We understand that profiling is a form of rational discrimination in which one or more characteristics of an individual or their behavior are used as a basis for selection, and subsequent investigation “to determine whether they have committed or intend to commit a criminal act...or other act of interest” (Blank, Dabady & Citro, 2004, 186).

Racial profiling refers to those cases in which a person’s apparent race or ethnic group membership is used as a basis for selection (along, or in combination with other characteristics). The use of race as a factor in a predictive model means that “race is perceived by police officials doing the profiling as a negative trait that marks the bearer of that trait as a person more likely to cause a criminal problem than similarly situated people without the trait” (Kennedy, 2001, 3).

Racial profiling is generally used to refer to a set of routine practices used by police in the “prosecution, identification, and prevention of crimes” (Risse & Zeckhauser, 2004, 138), although as we will discuss, it is a label that also applies in a great many other domains (Squires, 2003), including the delivery of health care (Lillquist & Sullivan, 2004).

I want to suggest that racial profiling in all these domains is problematic. Schauer (2003) helps us to understand why. Schauer explores the moral, ethical, and technical criteria that might be used in deciding when the use of race or other sensitive characteristics can be justified, or balanced against what might be called the common good (Etzioni, 1999, 2-4). A number of critical considerations are identified: 1) whether the characteristic is “statistically sound”—that is, it bears some non-random association with the behavior of interest; and 2) whether the association is strong or weak, reflecting the extent to which the activity or behavior is characteristic of most, many, or merely a few members of the population. Schauer notes that many characteristics of persons may be statistically linked with a racial group without their being a “universal” tendency among members of that population group (Schauer, 2003, 96). As a result, the issues raised by the use of “non-spurious” but “non-universal” characteristics of racial and ethnic groups are moral, ethical, and intensely political.

Like gathering proof of racial discrimination more generally, gathering evidence for the existence and impact of racial profiling is difficult. Since the practice is either

illegal, or unpopular, it is unlikely that law enforcement personnel will admit to using race as a predictor of criminality. It does not mean, however, that racial profiling has been will soon be eliminated. Indeed, some observers suggest that “racial profiling is likely to continue as a lawful form of police practice for the foreseeable future, so long as it is implemented with sufficient politeness and subtlety to avoid a clear confrontation with the racial logic that it embodies” (Kennedy, 2001, 7). It falls to the critic to make a statistical case—to identify a disparity in relative risk ratios among similar age cohorts across racial or ethnic groups. Unfortunately, even a compelling body of statistical evidence of discrimination may not lead a court to declare that an unconstitutional harm exists (*McCleskey v. Kemp*, 1987). The U.S. Supreme Court has suggested that rather than inferring risk from a historical pattern, defendants claiming bias should have to provide evidence of purposeful racial discrimination in their own individual case (Kennedy, 2001, 13).

Racial Profiling in the delivery of health care

The basis for concerns about the use of racial profiling in the administration of justice are readily identified, and they are also relatively clear in the case of redlining and discrimination in the housing market (Squires, 2003), but they are far from obvious when they are examined in the context of a health care system being assigned responsibility for continuing and substantial health disparities along racial lines (Lillquist & Sullivan; Shields, et al., 2005). Yet, the public is reluctant to interpret these disparities as being the products of racial discrimination (Gandy and Li, 2005; Williams, 2001, 392-5).

Assigning responsibility becomes especially problematic in the context of disparities in health that are attributable to genetic predispositions because of the historic associations between genetics and racist assumptions regarding biological inferiority (Cho and Sankar, 2004; Duster, 1990; Lillquist & Sullivan, 2004; Rotini, 2004; Stevens, 2003).

Lillquist & Sullivan (2004) identify a number of examples of what they call racial profiling in the medical arena. They suggest that statutory limitations on the use of racial classification in the offering of contracts should raise critical questions about the development and testing of drugs designed to be used solely, or primarily by African

Americans. Although the history of the transformation of a failed drug into a marketing success is marked by claims of statistical misrepresentation (Kahn, 2003), the fact that this particular discrimination is framed as actually providing an advantage to African Americans has helped to fend off harsher critiques.

If the goals of the equal protection clause of the Fourteenth Amendment are taken seriously, however, selecting individuals for clinical trials and even for preventive screening on the basis of race should raise concerns and invite government scrutiny because there are other valid criteria for selection that do not make use of this historically troubled classification (Lilliquist & Sullivan, 2004, 403).

A similar point is made by Stevens (2003, 1059) who suggests that “In light of the vast similarities among most people, and the very common and similar causes of most diseases afflicting us, and given known interventions for addressing these that are not currently being pursued, it is not at all ‘clear’ that it is ‘important’ to know more about individual-level variations in order to significantly improve the country’s health.”

Because the threats to health associated with exposure to environmental toxins can be attributed far more directly to racism and other forms of discrimination than to differences in genetics, it makes little sense to focus on one while ignoring the other (Popescu & Gandy, 2004).

Fortunately, there is a growing awareness that genetic research may actually exacerbate health disparities in the United States, and some suggest that such disparities may serve as “one critical measure against which the enormous public investment in genetics research ought to be judged” (Shields, et al., 2005, 98).

The Genetic Threat Horizon

In the world of health insurance, a little knowledge is a dangerous thing. A surprisingly high proportion of all those who apply for individual health insurance are denied coverage by some carrier (Greely, 1992). This denial is usually based on the information that the applicant provides, or is accessed by the insurer from a common database. The numbers of applicants who might be denied insurance, or be offered policies with specific exclusions on the basis of information about genetic predispositions to some medical risk is expected to grow.

It is important to keep in mind that information about behavior, or lifestyle is not information about a person's health status, but about the probability that they will become ill, or incapacitated because of their risk-related behaviors (Murray, 1997). Thus, there may indeed be a basis for distinguishing between exclusionary, or limiting decisions based upon a medical condition and those based on a higher than average risk of developing some medical condition at some point in the future.

Unfortunately, our concerns about genetic discrimination extend far beyond the boundaries of the health care system. Rothstein (1999b) identifies a number of policy concerns that extend concerns about privacy and discrimination to the workplace, and other settings in which people uninformed about the complex of factors that link the presence of genetic markers and a host of behavioral expressions, may nevertheless make decisions that limit the opportunities people may take advantage of. Widespread knowledge of the possible uses of genetic information for identification, classification and evaluation contributes to the growing demand that such testing is performed, and that all sorts of people are informed about the results of those tests (Carlson & Stimeling, 2002, 211).

Efforts to limit the use of this information once gathered appear destined to fall further and further behind the new discriminatory applications that appear each day. Rothstein (1999b) doubts that traditional anti-discrimination legislation will be up to the task. As he sees it: "since the mid-1960s there have been laws enacted prohibiting discrimination based on race, color, religion, sex, national origin, and age. Nobody would seriously contend that discrimination on the basis of these factors has been eliminated, and discrimination on the basis of these criteria do not have the actual or perceived economic incentives that discrimination on the basis of future health status do" (Rothstein, 1999b,475).

The New Eugenics

The medical community is understandably concerned about the rapid growth in direct-to-consumer marketing of genetic testing. Already having lost the battle to control the marketing of prescription drugs to consumers, physicians are preparing for the next onslaught of requests for referrals or administration of a widening array of diagnostic and

predictive tests designed to identify and evaluate the genetic status of patients, and patients to be (Gollust, Hull and Wilfond, 2002).

Genetic testing has quickly become a prominent feature of the new surveillance (Marx, 2002; Nelkin & Andrews, 2003; Silva, 2005). Genetic information provides a basis upon which segments of the population can be marked as deficient—a damaged race (Rosen, 2003).

Because of its association with the eugenics movement and the abuse of sterilization taken to an extreme under Nazi rule (Kevles, 1992, 10-11), the emergence of a market for prenatal, and pre-implantation genetic diagnosis raises concerns about the moral and ethical basis upon which decisions about reproduction will increasingly come to be made (Alexander, 2002).

The fact that the ability to identify markers of genetic risk far exceeds the ability to intervene to correct or modify these risks has led to the emergence of a new form of preventative medicine. One avoids facing the problems of “genetically compromised” persons by preventing them from being born in the first place (Silva, 2005, 102).

It seems likely that concerns about liability, as well as social responsibility will serve to increase the pressure on individuals to pursue the imperfect knowledge of the future that rests within in their genomic arrays.

The availability of genetic tests will increase the pressure on individuals to have their genetic status determined. This will be only a part of the new genetic responsibility. It will also include a responsibility to share, or make this information available to others who will claim, or will be thought to have a right, and perhaps a responsibility to know. This responsibility seems most likely to arise in the context of reproductive decisions, where the transmission of this genetic material to a new person raises questions about one’s responsibility for the assignment of risk.

It is not always the case that knowledge of one’s future is a good thing. Rawl’s “veil of ignorance” assumes that individuals will make just social decisions if they are unaware of the “genetic traits” and other “morally arbitrary” resources or constraints that will be theirs in the future (Roemer, 1996, p. 175). Will it be only the rich (or those who have good reason to expect that they will be rich) who can or should allow less than perfect children to be born? Will public policies be established which will shape the

social distribution of such decision-making in the future? These are some of the questions that Schauer's (2003) analysis begins to explore

Cumulative Disadvantage

Schauer reminds us that the standards for evaluating the “difference” or the predictive utility of some model or criterion will vary with a host of factors, including the social, economic, and political costs of being wrong. But, as Schauer and others (Etzioni, 1999) also remind us, the costs of being wrong have to be weighed against the costs of not acting until we are certain.

The critical concern that Schauer (2003) identifies as it applies to the use of race, gender, age and ethnicity is the fact of their visibility, or their availability. It is this accessibility that makes it likely that these identifiers will be used more often than their contribution to the reduction of uncertainty would suggest (Gandy, 2001). Thus, Schauer concludes that “the strongest argument against including race is not that race is irrelevant, although it may sometimes be, but that race, even if relevant, is so likely to be overused that it is necessary to prohibit its use—to mandate its underuse—just to ensure that things come out even in the end” (Schauer, 2003, 196).

To come out even is what an accountant expects to find when income, expenses and reserves are added up. Social accounts are not so easily kept. Part of the challenge we face, at least theoretically, if not practically, is including all the relevant costs on both sides of the balance. How likely are we to include the costs to society that flow from further stigmatization of African Americans and other people of color (Major & O'Brien, 2005) by stopping them along the side of the road, or pulling them out of the line at airports in order to subject them to more intensive assessment?

Part of the problem within the economics of regard that Loury (2002) has begun to develop is the fact that the people we value less to begin with are assured of being seen as less valuable in the future because of the ways in which they are treated today. It is for this reason that the expressive harms that flow from the reproduction and use of negative stereotypes complicate the rational calculus of choice.

By granting that statistical discrimination may be rational, Loury, and others who would question the wisdom of this rational path suggest that an “iron gate” will almost

certainly appear to block further progress. Loury (2002) offers the case of the taxi driver who refuses to pick up African American male passengers out of a fear of being robbed. Ironically, this seemingly rational action is likely to increase this particular risk by ensuring that most of the right meaning Black males who can do otherwise will abandon the hopelessness of waving at passing cars. This means, of course, that unless the driver's doors are securely locked, the next passenger to open the door and claim a seat may claim his wallet as well. As Loury (2002, 31) puts it "the drivers' own behaviors have created the facts upon which their pessimistic expectations are grounded." These "feedback effects" or "self-fulfilling prophecies" abound within the literature on the reinforcement of stereotypes (Schneider, 2004, 215-224). Unfortunately, they are just beginning to be explored in the context of the administration of justice (Armour, 1997).

Cumulative disadvantage is the result of repeated and unique discriminations that pile misery upon hardship for many who have been classified by race (Blank, Dabady & Citro, 2004, 223-246). Risse and Zeckhauser (2004) argue that racial profiling is troublesome not because it is profiling, but because it aggravates hardships occasioned by racism.

We may understand the consequences for individuals that flow from racial profiling in the household mortgage and property insurance markets, but we tend to forget about the ways in which these harms are likely to accumulate and spread within communities that become effectively, if not actually redlined (Squires, 2003, 403). In this way, the aggregation of racial statistics makes it possible for people to be victims of racial discrimination even though they are not themselves members of a devalued race (Popescu & Gandy, 2004). The weight of cumulative racial disadvantage anchors the markers of differential value that geodemographic profiles release into the market (Elmer, 2004, 82-89; Monmonier, 2002, 140-153). It is often enough to merely live among African Americans to be assessed a share of the "Black Tax" (Armour, 1997, 13-18).

How likely are we to use an appropriate valuation scheme to combine the harms to dignity, the harms to the economy, and the harms to the public sphere that are produced each time we use race as a marker of spoiled identity? Do we even consider the costs to ourselves or to society more generally, in terms of the opportunities forgone

when stigmatization reinforces a set of aversive responses that have become automatic (Kang, 2005)?

Moving quixotically beyond race

While we have seen some evidence to suggest that there are indeed some brave souls who are willing to demand restrictions on the use of race, and perhaps even gender as inputs in discriminatory models, despite their predictive value, the general sense is that this is an uphill battle. It seems even less likely that there is a social movement to be formed around the theme of cumulative disadvantage. Yet, that is what it means to be quixotic. That's what it means to pursue an impossible dream.

Racism, and the burdens of racism clearly exist, and racial profiling only compounds the harm. The same is true of sexism, and the burdens of gender discrimination argue against the use of gender within decision models common to a whole host of insurance markets and other structures of opportunity.

Quixotics will have to work to identify other particularly salient "isms" that might be identified as a basis for mobilizing resistance against the use of group membership as a basis for decisions about the allocation of resources and opportunity.

Risse and Zeckhauser (2004) suggest that some of the "harm" produced by racial profiling is to be found in its expressive character. Powerful actors within society who act with the consent of the majority express disrespect and disregard for African Americans by treating them disproportionately as suspects. They identify other forms of profiling that are not seen as morally suspect because they do not seem to affect a core basis for individual identity formation. Our identities are not likely to be tied up with our status as a "vacation traveler" even though that objective status may subject us all to increased surveillance during holiday seasons.

The challenge for quixotics is to identify the bonds, linkages, or ligatures, including the rising authority of insurance-dependent decisions based on actuarial assumptions that help to shape the "life chances" that identifiable groups of persons encounter (Dahrendorf, 1979, 31). This is particularly important despite the fact that as "insurance has become an accepted mode of governance, it has become increasingly difficult to raise questions in the political realm, for instance about who should drive and

how drivers should behave” (Heimer, 2003, 301). At the same time Heimer also suggests that new forms of social solidarity may be an unintended consequence of the rise of such power among insurers.

We are reminded that Weber was ultimately a critic of rationalization, and the evils that it brings. He also felt that opposition to these bad effects was likely to develop as the basis for social movements, even though these movements would ultimately fail. Giddens suggests that Habermas actually extended Weber’s thoughts along these same lines. But Giddens concluded that Habermas was being quixotic because there was nothing in his analyses that might lead to a different conclusion regarding the path and consequences of rationalization (Giddens, 1987, 251-2).

It is not clear that a social movement based on the development of risk profiles generated by insurers as Los (this volume) describes, or on the basis of the more acute risks that terrorism represents (Bigo, this volume) will ever develop into an effective counterforce to profiling and rational discrimination.

Of course, it does seem quixotic to select the actuarial assumption as a windmill against which to tilt. Gigerenzer and his colleagues (1989, 255) make it pretty clear that “numbers rule the world” in that “probability theory has become the arbiter of practical rationality, not merely its mathematical codification.”

It is not that the predictions that guide the choices of those with the power to choose are false, or off the mark. Rather it is that those who choose to discriminate on the basis of those predictions also choose to ignore alternative futures that might also be predicted with greater confidence if our attention had been directed toward those ends.

It is the responsibility of the quixotics among us to help them see the light.

Quixotics unite!

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