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Review of

White Privilege and Black Rights: The injustice of U.S., Police Racial Profiling and Homicide

By Naomi Zack

Forthcoming in *Ethics* 2016.

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This is a difficult book. It is written by a philosopher, but the questions with which it is centrally concerned are not obviously susceptible to philosophical answers: 'how do the injustice of the police killing of innocent young African American men work? Why are such homicides not punished? What can be done about this?' (xv). The lens through which these questions are approached is a critique of the concept of 'white privilege'. So part of the difficulty of this book is understanding what the two parts of its title have to do with each other, when there are plenty of countries, such as the United Kingdom, France, Germany or Denmark, where white people are advantaged compared to non-whites, but where police are not generally known to shoot unarmed black people. Indeed, even in the contemporary US, people who have long worried about the racism of their society, and about police violence against racial minorities, can still be deeply shocked, as was Zack, by the killings which motivate her book. So the connection between 'white privilege' and 'black rights' is not obvious, nor is it always easy to see why it might be helpful to use the former to think about the injustice of racial profiling and homicide.

According to Zack, 'The term "white privilege" is misleading. A privilege is special treatment that goes beyond a right. It's not so much that being white confers privilege but that not being white means being without rights in many cases. Not fearing that the police will kill your child for no reason isn't a privilege. It's a right. But I think that is what "white privilege" is meant to convey, that whites don't have many of the worries nonwhites, especially blacks, do.'

http://opinionator.blogs.nytimes.com/2014/11/05/what-white-privilege-really-means/?_r=1

This position, which Zack sets out in her interview with George Yancy in the *The New York Times*, is reiterated and developed in this book. Thus, Zack claims that often 'what is called a "white privilege" that nonwhites lack, is a *right* that is protected for whites and not for nonwhites' (4) -for example, the ability to walk down to the grocery store without worrying about being stopped, searched or killed by the police. Zack describes privileges as 'something desirable, an extra perk or reward' (3) and seems to believe that one receives these perks as a 'result of some prior higher standing or superiority, for example, privileges to use the sauna and tennis courts, enjoyed only by members of the country club. To admit that one has a privilege, even if it is understood that the privilege is undeserved....is to implicitly flatter oneself'. (3) While Zack believes that much talk of white privilege is a misdescription of advantages that white people have because black people's legal rights are not properly enforced, she thinks that the advantages white people have because of the legacy of white supremacy are examples of privileges, properly so-called, though they are unfair and need to be rectified. For example, white people on average have larger incomes than black people and very, very much greater wealth than black people, even when they are not particularly wealthy.

These wealth and income disparities are part of the uncorrected legacy of slavery and segregation, amongst other factors and, according to Zack, reflect the fact that white people still tend to give benefits to white people that they do not give to black people, such as educational and occupational opportunities, prizes, gifts and honours. (19). According to Zack, White people tend to ignore the way that their choices favour other white people at the expense of non-white people in general, and black people in particular, and therefore fail to identify and take responsibility for the ways that they avoidably replicate the unjust advantages of white people. While Zack accepts that individuals cannot alter institutional realities by themselves, she thinks that talk of 'white privilege' by white people tends to be self-indulgent and, while apparently self-blaming, actually casts white people as helpless beneficiaries of an unfair system, rather than what they (also) usually are – people whose apparently innocent choices (of friends, of recreations, of places to live etc) tend to favour white people, like themselves.

We need not accept Zack's definition of a privilege, I think, to sympathise with her claims that the failure to recognise and protect black people's moral and legal rights is not best thought of as a white privilege. After all, even on the Hohfeldian view of a legal privilege, which simply implies the absence of a legal duty not to do whatever the privilege consists in, we would be wrong to treat the ability of white people to go to a grocery store without fear as though it were a privilege – something which one might conceivably have a duty not to do, were it not for the privilege. As US District Court Judge, Shira Scheidlin maintained, in a sentence quoted by Zack (31): 'No one should live in fear of being stopped whenever he leaves his home to go about the activities of daily life'. However, it is not clear that we can distinguish, as sharply as Zack wishes, two different aspects of white advantage: 'The first is the easier access whites have to upward socioeconomic mobility and the goods of life available only to the more advantaged in society. The second is the greater likelihood whites have in getting their basic rights protected by government officials and those with power and authority'. (9) Conceptually and empirically, it is hard to make this distinction without a discussion of the relationship between property rights and 'basic rights' - and this is not something that Zack's book offers. It is therefore unclear what working assumptions about the relationship between wealth and the ability to protect one's legal rights Zack is assuming, nor what inequalities of property, if any, she believes might be justified philosophically.

Zack thinks talk of 'white privilege' has become a pervasive way for some white people – mainly female, feminist academics, it seems - to describe and try to analyse their socially advantaged situation compared to non-white people. Presumably, this is meant to be an attractive way of trying to think about one's situation as an advantaged white person *because* it denies that white people are entitled to these advantages, while recognising that one is a *beneficiary* of their existence. So understood, the discourse of white privilege seems to be consistent with at least two contrasting ways of understanding its relationship to black rights.

The first, which Zack adopts, sees white privilege as, in large part, a misdescription of the disadvantages which black people suffer consequent on failures adequately to enforce legal rights which are already part of established legal documents, such as the US Constitution, and which can be held equally by people no matter their race. Removing black disadvantages relative to white people, on this model of the relationship between 'white privileges' and 'black rights' is a matter of political will, but not something that requires radical changes in the legal codes or ideas about fundamental rights which are common in the U.S. The right to vote is the paradigmatic right on this model of black rights, less because of its importance to democratic government, or to the ability to realise social change, but because it can be protected and enforced for black people without taking away or threatening the recognised rights of white people – or of those of people who are racialized

as neither white or black. Likewise, Zack believes, freedom from profiling by the police, freedom from unaccountable policing, and freedom from homicide by the police are all things which can and should be protected for black people without depriving white people of the recognised legal protections which are due them. Rights apply universally to people, she believes – there are no rights to which black people are entitled because they are black, rather than white. (31) So, protecting black people’s lives is mainly a matter of enforcing universal rights, and then undoing whatever unjustified privileges/advantages - access to a good education is the paradigmatic example she gives - which are the legacy of (State, rather than Federal) laws which forbade relations of equality between black and white people, (hence the legal prohibition of inter-racial marriage struck down by the U. S. Supreme Court in *Loving v. Virginia*), which required the legal segregation of white and black people, and which tolerated practices of subordination, such as the norm that black people must sit at the back of the bus.

However, on another picture of the relationship between white privilege and black rights, white privilege simply *is the obverse of the disadvantages suffered by those who are coded ‘black’* in existing hierarchies of colour and morphology. To think of white privilege this way is to see it as part of a zero-sum system of rewards in which gains to people *qua* white can only come at the expense of losses to people *qua* black – even if societies, such as the contemporary U.S. may also contain people who are racialized neither as black nor white (indigenous peoples, for example) and some who, perhaps, have no consistent place on existing hierarchies of colour, and therefore no predictable relationship to either white privilege or black disadvantage (perhaps people who are Jewish or Asian).

On such a picture of race relations, black rights can only be secured by removing the unjust advantages of white people consequent on the legacy of white supremacy, and there would be nothing special or distinctive about the non-recognition or enforcement of black people’s legal rights in this respect. What the right to vote means, on such a picture, cannot be read off a legal document, or the formal qualities of the right. It depends not merely on whether you need to produce a picture ID in order to enter the voting booth, (17) but on what it is that you can do with your vote – or not. So understood, the right to vote in the contemporary US is fundamentally unjust not because black people are being deprived of the ability to exercise it by unfair conditions (though that is true, and matters, as Zack claims), but because it is, at present, merely the legal right to choose between two groups composed largely of very wealthy white middle-aged men, and the party machines that support them, or to choose one of the alternatives with no chances of gaining power, who are therefore incapable of protecting the legitimate interests of anyone at all. Whether justice in voting is merely a matter of correctly defining and enforcing universal rights, as Zack thinks, (perhaps through some form of proportional representation or cumulative voting), or whether it requires temporary or, even, permanent forms of group rights, as political theorists like Iris Marion Young, Jane Mansbridge, Melissa Williams and Anne Phillips suppose, depends on the conception of *political* rights that one holds, and is not implicit in the very concept of a (moral or legal) right. But whatever justice in voting requires, this second view of American race-relations implies that it cannot be reduced to the fair enforcement of a formally specified legal right, because our equal claims to political authority require voters to have an adequate range of electoral choice, such that people who are racialized in different ways can nonetheless, see and treat each other as equals.

Zack’s picture of the relationship between white privilege and black rights, then, depends on our willingness to adopt a particular, but often implicit, picture of the political sociology of the US, as well as a particular, largely stipulative, understanding of terms such as ‘privilege’ and ‘right’. Her arguments about race relations in the US can therefore be hard to follow, and can distract from her

analysis of the injustice of racial profiling and homicide. This is unfortunate, because Zack effectively shows that black people are particularly likely to be stopped, charged and imprisoned for offenses that white people also commit, and that these differential conviction rates support ideas about appropriate policing which seriously disadvantage black people relative to white people.

If one defines bias, or discrimination, in police practices in terms of a baseline set by conviction rates amongst the population – national or local – one is likely to accept, and even to endorse as fair practices of policing which suppose that black people are more likely to break the law than white people, and so to deserve greater surveillance and scrutiny than white people. (47-48) One need not be a racist to suppose this, Zack assumes, merely ignorant of, or indifferent to, the results of recent research on racial disparities in ‘hit’ rates amongst those stopped by police, as well as the much greater tendency of white male police officers to stop black men than white men in otherwise similar circumstances.

Moreover, as Zack insists, an obsession with the racial makeup of convicted criminals obscures the fact that most people, regardless of their age, race, sex or religion, will not commit a crime. ‘If 14 out of 15 or more than 93% of African American men are not “in” the criminal justice system compared to more than 97% of Hispanic men and 99% of white men, then racial profiling that relies on the racial proportions of convicted criminals ignores the rights of the overwhelming majority who are law-abiding – in all races’. (55). Doubtless, police fail to catch (or sometimes to look for) many people who have committed serious crimes, including murder, rape, extortion and blackmail. However, in the decade 2002-12 there were 4.4 million stop and frisk in New York City, and half of those stopped were black. Overall, 2.2 million black people were stopped by police in that decade and 90% of them were innocent. As Zack says, ‘That is a lot of innocent people!’ (57). Indeed, even when pre-emptive policing involves stopping, patting and questioning known petty criminals, that policing is often carried out on the presumption of something like ‘constant guilt’. (61) Those subject to this constant police surveillance, including youngsters age 13-19 in a 1999 -2000 study of St. Louis, Missouri, report experiences of policing, and reactions to it, more appropriate to ‘residents under siege by a hostile occupying army, than members of a community interacting with those sworn to preserve peace’. (61)

Zack shows that the practice of racial profiling cannot be understood as a reasonable response to significant racial disparities in crime. As others have argued, it is unclear that such disparities exist - rather than being an artefact of racially biased police searches, racially biased ideas about the which acts, behaviours and people who merit legal condemnation, and the predictable consequence of a criminal justice system which places enormous pressure on people to plead guilty, rather than to insist on their innocence. Moreover, the practice of preventive racial profiling itself fosters the idea that black people are so dangerous that it is appropriate to stop, frisk and question them without a warrant as they go about their lives. As critics of racial profiling have long insisted, violence against black men is over-determined by this combination of pre-emptive profiling and the continuing power of racist ideas about the strength and lack of self-control typical of black people. Violence by white policemen against black people – and even violent homicide – is therefore not a matter of a few bad apples, as Risse and Zeckhauser implied, or extraneous to the practice of racial profiling, but the predictable and endogenous result of taking a relatively small group of young black men as an accurate guide to the criminal proclivities of other black people.

Zack’s book is principally concerned with the homicide of black men by white men, and the reasons why those white men are then held to have broken no law, even when the innocence and the youth of their black victims has been clearly established. However, racist ideas about black women, too, can be lethal, and innocent black women, as well as men, have died at the hands of police officers

convinced that their desperate struggles to breathe, or to make themselves understood, were evidence of hostile intent, or wrongdoing. For example, Dorothy Roberts' *Killing the Black Body* shows how the incarceration of pregnant drug-addicted black women, coercive efforts to sterilise poor black women and girls, and hostility to 'welfare queens' play on the nexus of ideas about the threat black people pose to white people, which figure in arguments for the profiling of black men. The pre-emptive surveillance and policing of black women, described by Roberts, occurred by medical personnel at pre-natal clinics and hospitals, rather than by uniformed officers policing the streets. The consequences of these racist fears in the one case, as in the other, end up as statistical claims about the differences between white and black people, based on the ways in which the latter are tracked, arrested, and convicted for crimes when the former are not.

Zack's book, then, is a timely contribution to philosophical thinking about race, and the violence it inflicts on the lives of racialized minorities. From a European – and particularly, from a British - perspective, of course, it is also a timely reminder of the dangers posed by guns in America, and the racialized character of gun ownership and use. The tragedy of police violence against black people is all the more poignant when one notes, as Zack does, that 'gun sales after the St. Louis Grand Jury's refusal to indict Officer Darren Wilson for the killing of Michael Brown...spiked during the weekend following that Thanksgiving. For that Black Friday alone, the FBI reported over 175,000 "checks", compared to 58,000 for a typical day in 2013.....We don't know the race of those who bought the guns, of course, but immediately after Michael Brown was killed, spikes in gun sales for "home defense" were reported, and no black concerns about home invasion were reported'. (26-27). Thus, some of the people most reliant on the police to defend them, and least likely to buy and carry a gun, will be killed by police officers who will suffer no legal penalties for confusing an innocent black man with a dangerous criminal.