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Race/Ethnicity and Stop-and-Frisk: Past, Present, Future

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Abstract

Scholarly debates surrounding stop-and-frisk typically assess the effectiveness and lawfulness of stop-and-frisk. Notwithstanding these efforts, recent reviews have excluded some recent research that addresses its impact on racial and ethnic immigrants. Understanding how the practice of stop-and-frisk affects racial and ethnic immigrants is worth including in reviews of these policies, considering the recent growth of research involving crime and immigrants that largely finds that immigration does not result in higher levels of crime. This review includes recent work showing that overall enforcement – stops and arrests – is higher in immigrant communities despite their lower levels of criminal involvement and recent work exploring differences among first-generation and second-generation immigrants in perceptions of police stops. Finally, some suggestions for the future of stop-and-frisk research are considered.

Terry v. Ohio (1968) established what is commonly known as stop-and-frisk, or a *Terry* stop. This means law enforcement can stop anyone they reasonably suspect has committed, is committing, or will commit a crime and initiate a frisk if they suspect the person is armed and dangerous. Debates surrounding stop-and-frisk typically assess the effectiveness and lawfulness (legality) of these policies (Meares 2014). Studies of effectiveness find stop-and-frisk produces modest and inconclusive reductions in crime (Rosenfeld and Fornango 2014; Smith and Purtell 2008), and legality studies find strong evidence suggesting stop-and-frisk violates Fourth Amendment protections against unreasonable search and seizure and Fourteenth Amendment protections against discrimination (Fagan 2010, 2012; Fagan et al. 2010; Gelman et al. 2007).

Specifically, the empirical evidence points to large racial and ethnic disparities at the hands of stop-and-frisk. Such racial and ethnic inequality in enforcement keep minorities under a constant police gaze, which significantly increases their chances of advancing into the legal system but also reinforcing perceived threats based on race and ethnicity (see Blalock 1967; Eitle et al. 2002; Kent and Jacobs 2005; Parker et al. 2005). Racial and ethnic minorities experience considerable inequalities in areas such as education, housing, and labor. However, inequalities in areas of law enforcement are particularly concerning considering law enforcement are the primary mechanism by which populations enter the legal system, which can limit access to opportunities and resources needed for social mobility – thus further contributing to inequalities in education, housing, and labor (see Alexander 2012).

Notwithstanding the efforts to assess the effectiveness and lawfulness of stop-and-frisk, recent reviews have not included some recent research that includes the use of these practices against racial and ethnic immigrants. Understanding how stop-and-frisk has affected racial and ethnic immigrants is worth including in reviews of stop-and-frisk, considering the growth of research involving crime and immigrants that largely finds that immigration does not result in higher levels of crime (Butcher and Piehl 1998; Davies and Fagan 2012; Kubrin and Ousey 2009; Martinez et al. 2010; Sampson 2008). Such findings would trump the notion that aggressive use of stop-and-frisk would be necessary to combat crime among immigrants because they pose no criminal threat to native-born populations. It is also worthy of inclusion considering the

potential challenges racial and ethnic immigrants face during police–citizen encounters such as fear of deportation and language barriers (Culver 2004; Menjívar and Bejarano 2004) – thus dissuading them from making contact with police. This requires us to acknowledge that their experiences with stop-and-frisk may be different than native-born populations. Finally, such work is important because it allows us to go beyond the traditional Black-White, Latino(a)-White, Black-Latino(a) comparisons by forcing us to consider ethnic studies of stop-and-frisk policies.

This review begins with a history of stop-and-frisk that explores how it went from a tool to protect officers during investigations to a tool to stop crime and segues into a review of contemporary racial and ethnic debates of stop-and-frisk in New York City.[1] It then broadens our understanding of stop-and-friskfs racially and ethnically disparate enforcement by critically evaluating the use of stop-and-frisk on racial and ethnic immigrants using two recent studies conducted in New York City. It argues that stop-and-frisk debates will not be advanced without understanding of the relationship between stop-and-frisk and racial and ethnic immigrants. Finally, some suggestions for the future of stop-and-frisk research are considered.

Stop-and-frisk: from officer protection to crime control

Terry v. Ohio (1968), which established "stop-and-frisk," concluded that law enforcement can stop citizens they reasonably suspect have committed, are committing, or about to commit a crime. Further, law enforcement may frisk, or pat down, the outer clothing for weapons if they suspect citizens to be armed and dangerous. Because frisks are only allowed under certain conditions, not all stops lead to frisks. Essentially, the Court (Supreme Court) ruled that stop-and-frisk is not a violation of the Fourth Amendment's protection against unreasonable searches and seizures, while at the same time advancing police investigatory abilities. Finally, the Court showed considerable support for the safety of police officers in allowing for frisks, establishing frisk as a measure that ensures officers are safe during investigations (*Terry v. Ohio* 1968).

As Fagan and Davies (2000) point out, moving from allowing officers to investigate suspected crimes and frisk suspected criminals for safety reasons, to a stop-and-frisk policing strategy to reduce crime, is ironic. Factors that contributed to this transformation were increased judicial support of crime control measures, the War on Drugs, and scholarly persuasion. First, in order for police to be able to perform "*Terry* stops," stops involving stop-and-frisk, they must have the legal support to do so. Among the Court, Chief Justice Rehnquist's reign (1986–2005) is particularly cautionary to the legacy of stop-and-frisk (Steiker 2013). Pufong and Kluball (2009) reviewed 26 stop-and-frisk cases during the Rehnquist Era, finding the Court consistently showed conservative support for usage of stop-and-frisk. A few standout cases include *Hiibel v. Sixth Judicial District Court of Nevada Humboldt County* (2004), which validated state statutes requiring citizens to identify themselves upon law enforcement request so long as the stop was premised on reasonable suspicion, and *Illinois v. Wardlow* (2000) justifying stop-and-frisk based on the location of the stop among other factors. Pro-policing stances of the Rehnquist era mirrored enhanced sentencing statutes that sided with crime control over civil liberties, helping fuel the get-tough-on-crime approach synonymous with the War on Drugs (Alexander 2012).

Proactive-policing strategies began to get scholarly attention as increased crime rates followed *Terry* (Epp et al. 2014). Wilson and Boland (1978) were among the first to argue that we shift from random patrol to aggressive community approaches that maximize interactions and observations. However, the seminal piece done by Wilson and Kelling (1982) introducing the theory of "broken windows" provided the justification for aggressive policing strategies in low income communities. The broken windows theory of crime posits that quality-of-life crimes, such as vandalism, changes the physical character of an area but may result in social disorder and more

serious crime (Wilson and Kelling 1982). Broken windows offered another opportunity to supplement harsher sentencing practices and broader police authority from legal actors, with a tougher policing initiative, broken windows policing (Alexander 2012).

Under broken windows policing, if social disorder leads to more serious crime, then arrests should be targeted at low-level offenses that visibly convey social disorder such as loitering, drinking in public, pan handling, and prostitution (Kelling and Cole 1996; Silverman 1999). This style of policing took center stage in New York City during the 1990s and was coined "quality-of-life policing" (Bratton and Knobler 1998; Spitzer 1999). Within quality-of-life policing, the NYPD had a few goals, two of which were to combat low-level disorder and to stem gun violence. To achieve these goals, the NYPD encouraged stop-and-frisk to get guns off the streets and maintain order (*Daniels v. City of New York* 2003; Spitzer 1999).

Racially and ethnically disparate enforcement of stop-and-frisk in New York

Beginning in the 1990s, the use of stop-and-frisk became a primary mechanism to combat low-level disorder and to stem gun violence in New York City (*Daniels v. City of New York* 2003; Spitzer 1999). Once in place, it was not long before stop-and-frisk's racial and ethnic consequences came to light, helping shed initial insights into the racial and ethnic inequalities faced in the use of stop-and-frisk. After two high profile cases of police misconduct on African-Americans involving complaints of police harassment and the physical assault of Abner Louima and the killing of Amadou Diallo, New York Attorney General Elliot Spitzer released a report on the use of stop-and-frisk. Among the findings:

> The NYPD "stopped" 9.5 blacks for every one "stop" which resulted in the arrest of a black, 8.8 Hispanics for every one "stop" that resulted in the arrest of a Hispanic, and 7.9 whites for every one "stop" that resulted in the arrest of one white…After accounting for the effect of differing crime rates, during the covered period, blacks were "stopped" 23% more often than whites, across all crime categories… Hispanics were "stopped" 39% more often than whites across crime categories. (Spitzer 1999, IX–X)

The mounting evidence of racial discrimination led to *Daniels v. City of New York* (2003), which alleged racial bias in the patterns of stop-and-frisk. *Daniels* ultimately led to a consent decree, mandating the NYPD's stop-and-frisk policies and tactics be remediated, and continually monitored to assess the extent of racial inequality due to stop-and-frisk (*Daniels* Stipulation of Settlement 2003).

Contemporary racial and ethnic stop-and-frisk debates

Post-*Daniels* racial and ethnic stop-and-frisk debates focus solely on legality – predominantly whether stop-and-frisk violates Fourteenth Amendment protections against racial and ethnic discrimination. Statistics such as those in Figure 1 are used as context for legalistic debates. From 2004 to 2012, Blacks and Latino(a)s were significantly more likely to be stopped than Whites, constituting 83% of stops. For frisks, the majority of those are also racial and ethnic minorities: 57.3% are Black, 32% are Latino, and 3% are Asian (Avdija 2014). However, Blacks in New York City constituted roughly 23% of the population, Latino(a)s 29% of the population, and Whites 33% of the population (NYC Planning 2011). Thus, Black and Latino(a)s were stopped and frisked more than their proportion of the city's population (see also Fagan 2010).

Advocates defend disparities by suggesting they reflect higher crime rates among racial and ethnic minorities and that police are dispersed where the crime happens – within racial and ethnic communities and not in white communities (Bratton and Knobler 1998; MacDonald

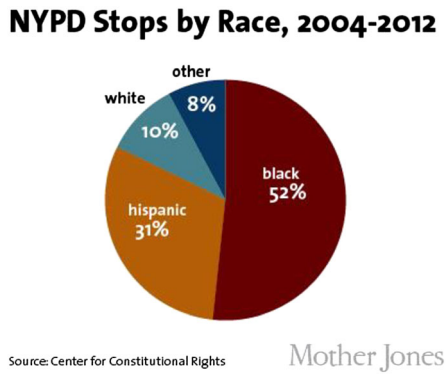

Figure 1 NYPD stops by race, 2004–2012. Adapted with permission from Mother Jones.

2001, 2009). Advocates also claim disparities are due to a few problem police officers, or "bad apples," that stop racial and ethnic minorities at rates significantly above those of their peers (Ridgeway 2007). Countering these arguments, Fagan (2010, 21) finds that "both in the neighborhoods and among individuals, Black and Hispanic persons in New York City in 2010–12 are more likely to be stopped than are White citizens after controlling for crime, the concentration of police, and local social conditions." This evidence suggests that the racial inequality in the use of stop-and-frisk cannot be explained simply by a few problem officers or the amount of crime that is committed by racial and ethnic minorities but is more suggestive of a systemic racialized enforcement of stop-and-frisk.

There are also substantial racial inequalities experienced across suspect crime types. While marijuana usage has been found to be equal across racial and ethnic groups, or in some cases higher among Whites (Johnston et al. 2005; National Survey on Drug Use and Health 2007; Saxe et al. 2001), "officers stop Blacks on suspicion of marijuana possession at a rate of 14.83 per 1,000 population, while Hispanics are only stopped 5.41 times per 1,000 population, and Whites are stopped only 1.96 times per 1,000 population" (Geller and Fagan 2010, 23). For suspected violent and weapons crimes, Non-Hispanic Black, Hispanic Black, and Hispanic White New Yorkers were three times more likely than their white counterparts to be stopped and frisked relative to each group's participation in these types of crimes (Gelman et al. 2007).

Hit rates, or the rate at which physical evidence of a crime is seized per *Terry* stop, based on race and ethnicity is also used in legal debates. Between 2004 and 2012, Blacks represented 2.3 million of all stops, Latino(a)s 1.4 million, and Whites only 435,000. However, there were 143 stops per seizure for Blacks, 99 stops per seizure for Hispanics, and 27 stops per seizure for Whites (Figure 2). Given the low hit rates for racial and ethnic minorities, stop-and-frisk opponents argue stops against racial minorities cannot be reasonably justified. Overall, empirical evidence finds stop-and-frisk violates the Fourteenth Amendment (Fagan 2010, 2012; Fagan et al. 2010; Gelman et al. 2007), and ten years after *Daniels*, a civil liberties victory was won in *Floyd v. City of New York* (2013). The court ruled that the NYPD violated Fourteenth Amendment protections against racial and ethnic discrimination.

Stop-and-frisk and racial/ethnic immigrants

A larger gap in racial and ethnic pedestrian stops that needs to be given attention is racial and ethnic *immigrants*. The literature has at least been able to tackle issues related to whether immigration is related to crime, showing that immigration is not positively related to crime (Butcher

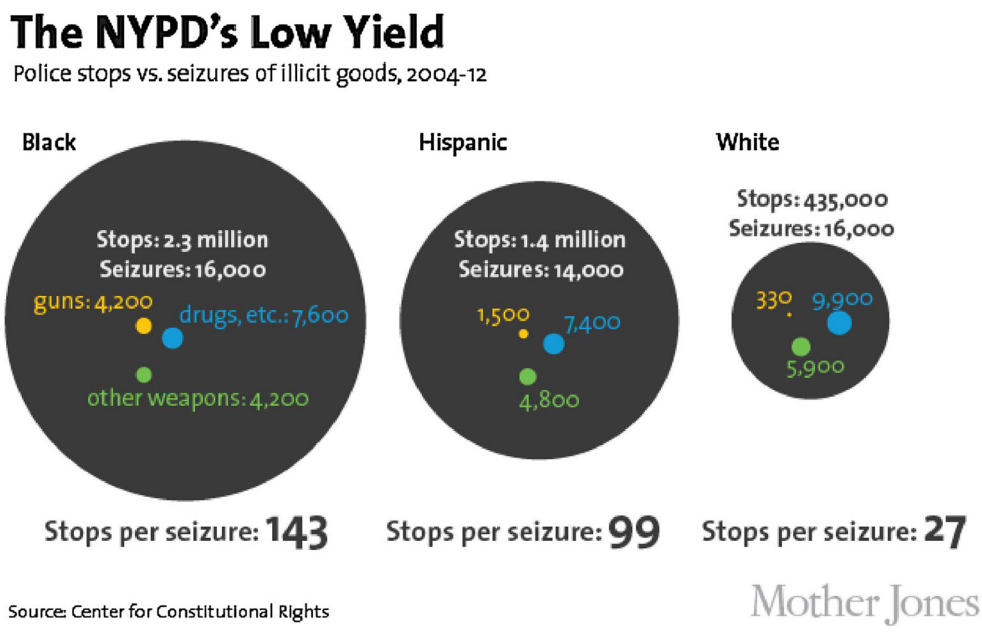

Figure 2 The New York City Police Department's hit rate by race, 2004–2012. Adapted with permission from Mother Jones.

and Piehl 1998; Davies and Fagan 2012; Kubrin and Ousey 2009; Martinez et al. 2010; Sampson 2008). Such findings would trump the notion that stop-and-frisk would be necessary to combat crime among immigrants because they pose no criminal threat to native-born populations. Immigrants, however, encounter their own unique challenges with police, such as fear of deportation and language barriers (Culver 2004; Menjívar and Bejarano 2004), that would prevent them from making contact with police. This requires us to acknowledge their experiences with stop-and-frisk may be different than native-born populations and specifically whether similar racial and ethnic inequalities in stop-and-frisk are observed among immigrant populations.

Davies and Fagan (2012) found that in New York City, overall enforcement, stops, and arrests disproportionately fall on racial and ethnic immigrant communities despite lower levels of crime in these areas. After comparing racial and ethnic immigrant groups, Latin and Asian immigrant neighborhoods were associated with higher enforcement ratios and lower crime rates, but this was not found to be statistically significant. Total and violent crime rates are lower, and enforcement was lower in areas where foreign born persons of African descent are higher. White immigration also showed lower enforcement and lower crime rates, but the effects are not that strong. This protective effect may be due to White immigrants in New York City settling in areas with low crime rates and greater access to economic wealth and resources. In explaining the disproportionate levels of enforcement in immigrant neighborhoods overall, Davies and Fagan (2012) note that law enforcement may be acting on a neighborhood immigrant stigma where officers interpret disorder and crime to be high among immigrant neighborhoods allowing for coercive police practices. They also note that immigrant communities tend to be adjacent to high crime areas where higher levels of enforcement can spillover to immigrant communities. Nonetheless, higher levels of enforcement in immigrant communities in New York City do not appear to be justified based on their levels of crime.

Racial and ethnic immigrants may also be less likely to be educated on pedestrian stops, something officers may very well know and take advantage of. Education on pedestrian stops may largely reflect immigrant comparisons to their relationship to police and criminal justice systems from their countries of origin (Culver 2004; Kirk et al. 2012; Menjívar and Bejarano 2004; Rengifo and Fratello 2014; Wachholz and Miedema 2000). In learning how to deal with police, immigrants are likely to learn through experiences with police, or legal socialization (Fagan and Tyler 2005), which in turn may shape their perceptions (Davis and Hendricks 2007; Davis et al. 1998; Vidales et al. 2009). Rengifo and Fratello (2014) found that among those stopped by police in New York City, first-generation immigrants are more likely to perceive the police as effective, and second-generation immigrants perceive police as less legitimate. However, they did find that among all groups (i.e. native born, first generation, second generation), that less fair perceptions of stops are associated with more negative perceptions of effectiveness. So, while first-generation immigrants may tend to hold more positive perceptions of police, these perceptions can erode after having spent some time in America and having more interactions with police (Davis and Hendricks 2007; Kirk Et al. 2012; Menjívar and Bejarano 2004; Rengifo and Fratello 2014), and in the context with stop-and-frisk.

Conclusion

In questioning the processes guiding why police stop racial and ethnic immigrants more than white immigrants, we should also highlight the context. If Latino immigrant groups are stop-and-frisked more, is this due to attempts to combat undocumented immigrants? If racial and ethnic Muslim immigrant groups are stop-and-frisked more, is this due to attempts to combat terrorism, or would *Terry* stops for immigrant groups simply be due to "Brown Threat," or post 9/11 portrayals of Latino(a)s and Middle Eastern Muslims as dangerous to social and economic well-being (see Rivera 2014)? For example, Vidales et al. (2009) found that Latino(a)s held more negative perceptions of the police, find the police less helpful, feel less accepted in the community, are less likely to report crimes, and have more contacts with police after an attempt to have local Costa Mesa police enforce immigration laws. Using context, they were able to draw conclusions about negative perceptions of police that would not have been explained otherwise. Context not only informs why certain groups would be targeted but would inform the specific techniques used to target them. Overall, racial and ethnic studies on stop-and-frisk are still in its early stages, and post-*Daniels* research has potential to draw attention to other critical areas. We should continue to explore processes guiding pedestrian stops that allow us to understand how police can make and carry out stops (see Fagan and Geller 2015; Gau 2013; Kessler 2009). For example, we need to continue to address stop-and-frisk, but we should also consider conducting research on consensual encounters. Consensual encounters allow officers to approach anyone to talk to them, to ask questions, or request to search persons and their belongings without reasonable suspicion. Because consensual encounters are guided by voluntary actions of the citizen, the Fourth Amendment does not apply should someone willingly consent to questioning, searches, or frisks. Furthermore, while citizens are free to leave during consensual encounters, one survey of 406 Boston residents falsifies the idea that citizens would feel free to leave, shows that even citizens that are aware they are free to leave are still likely to feel as though they are not, and shows that these outcomes are fairly equal across all racial and ethnic categories (Kessler 2009). Thus, attention on stop-and-frisk must confront the totality of ways police can approach citizens.

Also, we need more comprehensive data on the use of stop-and-frisk to draw definitive national conclusions on racially and ethnically disparate enforcement of stop-and-frisk. While

stop-and-frisk has become synonymous with New York City, other cities such as Boston, Chicago, Detroit, Los Angeles, Philadelphia, and Seattle all use stop-and-frisk to combat crime. While preliminary data have been available from these cities, we do not have comprehensive data sets on these cities for scholarly use. Furthermore, we need racial and ethnic distinctions in stop-and-frisk outcomes beyond Black-White and Latino(a)-White comparisons. These distinctions alone become problematic because police may be underreporting the amount of Latino(a)s they stop by noting Latino(a)s as either White or Black (American Civil Liberties Union Foundation of Massachusetts 2014). Better reporting of race and ethnicity would help substantially and should be a priority if we are going to adequately evaluate stop-and-frisk, as Asians and Latino(a)s are the fastest growing racial and ethnic populations in the United States (Brown 2014). Finally, more data would advance discussions of the social inequality faced by racial and ethnic minorities due to law enforcement tactics and the consequences of such inequality.

Short Biography

Jose Torres is a PhD candidate in Sociology at Virginia Tech. His research broadly examines the areas of urban policing, community policing, policing and social control, police effectiveness, and race/ethnicity and policing. His current projects include residential perceptions of banishment in public housing, testing the effectiveness of banishment in public housing, and using agent-based modeling to test the effectiveness of eliminating race-based sentencing disparities. Jose holds an MA in Criminal Justice from Norfolk State University.

Notes

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[1] New York City provides the most comprehensive stop-and-frisk data to draw conclusions. Other cities such as Los Angeles, Boston, Chicago, Philadelphia, and Newark also report stop-and-frisk data. There are limitations in assessing their data as they relate to pedestrian stops. Los Angeles combines pedestrian and traffic stops (Ayres and Borowsky 2008). Boston, Chicago, Philadelphia, and Newark data are based on small sample sizes, or analyses are not finalized to draw definitive conclusions (American Civil Liberties Union Foundation of Illinois 2015; American Civil Liberties Union Foundation of Massachusetts 2014; American Civil Liberties Union Foundation of Pennsylvania 2015; Ofer and Rosemarin 2014).

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