What Machines Can Teach Us: New Study Finds IRS Audits Black Taxpayers at Higher Rates

A recently unveiled study has concluded Black taxpayers are 2.9 to 4.7 times more likely to be audited by the Internal Revenue Service (IRS) than their non-Black counterparts. [1] The troubling finding again raises important questions about structural bias in the American tax and legal system. This is especially true considering that the IRS does not know the race of the taxpayers it decides to audit. [2] To overcome the fact that the IRS does not account for race, the study's authors had to overcome several methodological and machine learning challenges to estimate the race of taxpayers selected for audits. [3] Interestingly, proponents of color-blind policy making, or jurisprudence have often argued such procedures will result in outcomes void of racial or structural bias.[4] Evelyn Smith, a co-author of the study, says the study proves that such an idea is "absolutely not true." [5]

Furthermore, the phenomenon of machine bias is not new in the American legal or regulatory system. In 2016, ProPublica released an investigative analysis of COMPAS, a risk assessment tool used by courts to determine a defendant's likelihood of committing a future crime. [6] In its investigation, ProPublica found that COMPAS, which also did not account for race, falsely labeled Black defendants as future criminals at twice the rate of white defendants while simultaneously mislabeling white defendants as lower risks than Black defendants. [7] Undoubtedly, machine bias presents a much larger problem than just discriminatory tax audits.

So, what is the solution? In short, experts say it comes down to achieving "algorithmic fairness", or the goal of designing discrimination out of machine learning algorithms. [8] Other experts, however, argue such a goal is impossible considering competing definitions of "fairness" and their associated tradeoffs. [9] Perhaps as mathematical ethicist, Lily Hu, posits, the conundrums stemming from the use of algorithms in social spaces "is an inherently political problem, not a technological one." [10] Alas, while the resolution of machine bias may require a political solution, the machines have imparted a valuable lesson: a color-blind approach to racial

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[1] Jim Tankersley, *Black Americans Are Much More Likely to Face Tax Audits, Study Finds*, N.Y. TIMES (Jan. 31, 2023), https://www.nytimes.com/2023/01/31/us/politics/black-americans-irs-tax-audits.html; Hadi Elyzan et al., *Measuring and Mitigating Racial Disparities in Tax Audits*, (Stanford Inst. Econ. Policy Rsch., Working Paper, 2023), https://siepr.stanford.edu/publications/measuring-and-mitigating-racial-disparities-tax-audits.
[2] *Id.*
[3] *Id.*
[4] *See* Theodore R. Johnson, *How Conservatives Turned 'Color-Blind Constitution' Against Racial Progress*, THE ATLANTIC (Nov. 19, 2019), https://www.theatlantic.com/ideas/archive/2019/11/colorblind-constitution/602221/.
[5] Tankersley, *supra* note 1.
[6] Julia Angwin et al, *Machine Bias*, PROPUBLICA (May 23, 2016), https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing.
[7] *Id.*
[8] Natalia Mesa, *Can The Criminal Justice System's Artificial Intelligence Ever Be Truly Fair?*, MASSIVE SCIENCE (May 13, 2021), https://massivesci.com/articles/machine-learning-compas-racism-policing-fairness/.
[9] *Id.*
[10] *Id.*

discrimination cannot effectively address the pervasive issue of racism in our society. That task remains with us, not the machines.