Subordinating differential treatment: Discrimination and its problematic nature

Word Count: 2995 words

I. Introduction: Three puzzles about discrimination

Discrimination has been regarded as a severe form of moral wrongdoing, which is reflected by the existence of an abundance of anti-discrimination laws and anti-discrimination movements. It is usually defined as some forms of differential treatment that disadvantages some people because of their membership in certain social groups, such as gender, race, disability, sexual orientation, etc. This general definition of discrimination can be used to capture a wide range of cases. It includes instances of discrimination perpetrated intentionally or non-intentionally, done by a single agent or by the institution or structure, based on biased, wrongful beliefs or statistically valid evidence.

One clarification before moving on. The daily usage of the term “discrimination” is ambiguous. The term discrimination can also be used in a value-natural way, which means distinction and differentiation. For example, “discriminate between the good and bad wine.” However, in this paper, I will be using discrimination as a moralized concept, meaning “wrongful discrimination.” This usage is better aligning with our attitude to “against discrimination,” which is the central focus of this paper. When referring to neutral usage, I will use words such as “distinction,” “differentiation,” and “differential treatment.”

Several puzzles arise from the definition of discrimination, “some forms of differential treatment that disadvantages some people because of their membership in certain social groups.” First, we do not count all forms of group-based differential and disadvantageous treatment as discrimination. For example, the requirement that one must reach a certain age to get a driver license may be counted as age-discrimination based on the presented definition. However, we don’t regard these policies as wrongfully discriminatory against younger people. Call this the Demarcation
Problem: What marks the difference between discriminatory and other types of group-based differential and disadvantageous treatment?

Second, given the definition presented, it is unclear why discrimination is a form of wrongdoing that warrants a particular focus. There are six human rights conventions on the elimination of discriminations while there are a few morally wrong that receives similar attention and regulation. Call this the Distinctiveness Problem: What makes discrimination morally objectionable in a distinctive way that can account for the special attention it receives?

Third, the “because of one’s membership in certain social groups” part seems to be essential for the definition of discrimination, but it is unclear why it is so. Call this Group-based Problem: Why is the group-based component necessary? What role does the group-based feature play?

The goal of this paper is to provide an account of the wrongful discrimination which can answer these three puzzles. I propose a subordination account of discrimination, arguing that a group-based differential and disadvantageous treatment is discriminatory when its function is to support the subordinating social hierarchies in which human beings are classified and ranked as having different social standing. Comparing to other wrongdoings which also involve treating people unfairly or disrespectfully, the appeal to “group” as a classifying basis plays an essential role in enduring the subordinating social hierarchies and, therefore, makes discrimination distinctively worrisome. This understanding of discrimination, I shall argue, would expand the concern from unfair distributions of resources to other kinds of acts also function to support the social hierarchies.

In section II, I begin with examining an influential account of discrimination by Deborah Hellman, according to which a group-based differential treatment is discriminatory when and because it demeans people. Despite its attractiveness, in section III, I argue that the demeaning account is unsatisfactory as it fails to answer all three puzzles. In section IV, I present my subordination account of discrimination and explain how it answers the puzzles.
II. The demeaning account of discrimination

When being asked, “Why is discrimination wrong?” two types of answers often arise. The first type of proposals questions the epistemic justification of the used criteria for differential treatment is arbitrary or irrelevant to the appropriate evaluation. For example, judging someone as not qualified for a job because of one’s race or gender seems to be based on an arbitrary and irrelevant criterion. The second type of answers focuses on the relationship between individuals and groups. It suggests that classifying individuals based on their group membership is disrespectful since it treats someone as mere functions of their group memberships rather than autonomous agents.

While it is true that the victims of discrimination might be wronged in these two aspects, the problematic nature of discrimination is not well accounted for by these two types of proposals. Consider the following two scenarios:

[Scenario A] An office serves people based on their names. People whose names begin with A-M can use a fast track and be prioritized served.

[Scenario B] An office serves people based on their gender. Men can use a fast track and be prioritized served.

In both scenarios, people are distinguished based on their membership in certain groups, and some are therefore treated disadvantageously comparing to the others. While classifying people based on their name initial and gender are as arbitrary and disrespectful to their autonomy, we don’t regard both cases as similarly morally worrisome. While scenario B would be considered as a clear example of gender discrimination against women and be seen as distinctively morally objectionable, we might be uncertain whether to count scenario A as a case of discrimination. We might say that such a distinction is arbitrary or unfair, but we won’t regard it as morally worrisome as scenario B.
The reflection shows that to analyze the problematic nature of discrimination, what we need to ask is not just: “Why is discrimination wrong?” but also “How is the wrongness of discrimination distinctive from other types of group-based differential and disadvantageous treatment?”

Hellman\(^1\) suggests that the answer has to do with the different social meanings expressed by the differential treatment. According to Hellman’s demeaning account, a differential treatment counts as discrimination when it “demeans” people. To demean, she says, “is to treat another as not fully human or not of equal moral worth.”\(^2\) What makes demeaning wrongful, Hellman suggests, is exactly because of its failure to treat people as of equal moral worth. There are two required dimensions for a differential treatment to demean: it needs to express a denigrating message that someone or group is of less moral worth (the expressive dimension) and it needs to be expressed by someone with sufficient social power to put down the other (the power dimension). Regarding the expressive dimension, Hellman suggests that the meaning conveyed by a differential treatment would be highly dependent on the social-historical contexts that it takes place. In a society where it has historically and current injustice toward people of social group P (P-persons), the differential treatment that disadvantage P-persons would tend to convey the demeaning message that P-persons are of less moral worth.

Based on the demeaning account, the difference between scenario A and B can be explained by whether the differential treatment is demeaning. Due to the historical and current injustices toward women, the differential treatment in scenario B would tend to express the demeaning message that women are of less moral worth. As it is conducted by a governmental office, which is with sufficient social power, this differential treatment demean women. In contrast, as there were no historical or

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\(^1\) Hellman (2008), (2017).
\(^2\) Hellman (2008), p. 35.
current injustices toward people based on their name’s initials, the disadvantageous treatment in scenario A, while arbitrary and overgeneralizing, hardly convey the demeaning message.

III. Problems with the demeaning account

Despite its attractiveness, I argue that the demeaning account is unsatisfactory as it fails to answer the three puzzles about discrimination. On the one hand, in identifying demeaning expression as a necessary condition for discrimination, the demeaning account fails to capture some salient cases of discrimination and thus fails to give a satisfactory answer to the Demarcation Problem. On the other, the demeaning account is insufficient in explaining the wrongness of discrimination. By identifying the wrongness of discrimination merely as “failing to treat people as of equal moral worth,” it does not address the Distinctiveness and the Group-based Problem.

To see that demeaning expression is not necessary for differential treatment to be discriminatory, consider the following cases:

[Scenario C] An office serves people based on their names based on a malicious intention that that whose names start with N-Z is of less moral worth and thus should be treated worse. People whose names start with A-M would be prioritized served.

[Scenario D] An office serves people based on their heights. People who are taller would be prioritized served. It turns out that men are mostly prioritized than women.

Scenario C is very similar to Scenario A. The only difference is that we now know that the differential and disadvantageous treatment against people whose names begin with N-Z is based on a malicious intention that intends to demean them. As there is no social-historical background against people based on their names, the demeaning account would predict that there would be no demeaning message get expressed in scenario C, and, therefore, regard it as a form of permissible differential treatment. However, knowing that this disadvantageous treatment is based on the
malicious intention to treat those people badly, it seems that we would then tend to think scenario C as a case of wrongful discrimination, or at least more discriminatory than scenario A.

Now consider Scenario D, which has the same effect as scenario B: women, in general, are disadvantageously treated, comparing to men. As there is no historical injustice toward people based on their heights, the demeaning account would have difficulty in counting this case as discrimination. However, regardless of the intention and the meaning associated with one’s height, given its disproportionally disadvantageous impact on women, who is a social group experience historical and current injustices, we might think that this treatment should be counted as a discriminatory treatment against women.

Besides its restrictive focus on the expressed message, the demeaning account misdiagnoses the reasons that make demeaning expression morally objectionable, which leads to its failure to address the Distinctiveness and the Group-based Problem. According to the demeaning account, discrimination is wrong because the demeaning message that it expressed “fails to treat people as of equal moral worth,” which violates a bedrock moral principle that all persons are with equal moral worth and should be treated accordingly.

However, this understanding seems insufficient to capture the problematic nature of discrimination. For one thing, there are many other wrongdoings, for example, insult, which also disrespects the victim’s dignity and violates the principle of equal moral worth. Understanding the essential wrongness of discrimination as the violation of equal moral worth cannot account for its moral distinctiveness. For another, this explanation doesn’t tell us why it is important to define discrimination as a wrong done to persons “based on certain group membership.” Without accounting for the role of the group-based component and the moral distinctiveness of discrimination, the demeaning account of discrimination it unsatisfactory.

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3 Hellman (2008)
IV. A proposal: Subordination account of Discrimination

The analysis above revealed that the phenomena of discrimination are quite disjunctive. What we regard as discriminations are differential treatments accompanied by one of these three factors: malicious intention, demeaning expression, or disparate impact. While one way we can do is to simply accept the plural facets of discrimination and go for a pluralist theory of discrimination, without explaining how the different facets are coherently connected, the account would appear ambiguous or lack theoretical coherence.

The goal of this section is to propose an account of discrimination which recognizes the plural facets in considering the wrongness of discrimination and provides a coherent way to connect them. Furthermore, I shall argue that this account can answer the three problems of discrimination, and, therefore, provides a promising account of discrimination.

To identify the problematic nature of discrimination, I suggest that we try to approach it from the opposite side. In other words, we should ask: “What is the point of the anti-discrimination movements?” In anti-discrimination movements, “the pursuit for equality” is often used as a slogan. But what kind of equality are they pursuing? In her paper, “What is the Point of Equality?” Anderson argues that the core motivation behind egalitarian justice is not about equal fortune, nor the equal distribution of resources, but rather the equal status in how people relate with each other. Negatively, egalitarian justice opposes social hierarchies which classify human beings and rank them as superior and inferior. Positively, it aims for re-establishing democratic equality, a form of social order in which every member stands in relations of equality with each other.

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4 In fact, these three aspects correspond to three major camps of theories on discrimination: intention-based accounts, meaning-based accounts, and harm-based accounts.
5 Anderson (1999).
In light of Anderson’s analysis, I suggest that the purpose of anti-discrimination movements is opposing to the subordinations done in virtue of group membership. What the anti-discrimination campaigns aim for is not eliminating arbitrary classifications nor opposing understanding someone based on the social group they belong to. These interpretations of the goal of anti-discrimination movements would make the spirit of “pursuit of equality” quite puzzling. Instead, the point of anti-discrimination movements, echoing the egalitarian ethos, is to eliminate subordinating social hierarchies which regard human beings as with different class and to pursue democratic equality.

Based on these observations, I suggest that the distinctively problematic nature of discrimination lies in its tendency to support subordinating social hierarchies between different groups of people, preventing democratic equality from happening. By “subordinating social hierarchies,” I mean to refer to arrangements of superior and subordinate rankings based on some socially constructed classification. In a society with social hierarchies, people are classified as belonging to different “kinds” and ranked as having different social standings accordingly. Patriarchal structure, which classifies people into men and women and ranks men as superior to women, would be one salient example of subordinating social hierarchy. Similarly, classifications and rankings regarding race, sexual orientation, disability are some other examples of subordinating social hierarchies that are pervasive in current societies.

The subordination account would then give answers to the three problems. First, regarding the Demarcation Problem. According to the subordination account, a group-based differential treatment counts as discrimination when its function is to support the existence of subordinating social hierarchies, either in the form of perpetuating some existent hierarchies or introducing new forms of hierarchies. In contrast, if a group-based differential treatment does not have the function to

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6 In fact, the we might doubt that the requirement that we should never treat people based on their certain group membership is just overdemanding and epistemically implausible. It seems that some ways of generalization, is essential for both epistemic and practical reasons.
support the existence of subordinating hierarchies, then it is not discriminatory. This account of discrimination provides a way to understand the plural facets of discrimination and allows a degree view about its wrongness. While malicious intention, demeaning message, and disparate effects might seem quite different, they are all important factors that fuel the existence of subordinating hierarchical structures. Whether a group-based differential treatment is discriminatory, and how discriminatory it is, depend on considering these aspects altogether.

Another important implication drawing from the subordination account is that it marks the important differences between objectionable discrimination and affirmative actions. Although affirmative actions also consist in group-based differential treatments, as its function is to combat the subordinating hierarchies, it is not only non-objectionable but might even be required in the pursuit of democratic equality.

Second, the subordination account answers the Distinctiveness Problem by pointing out the problematic nature of objectionable discrimination is not failing to treat people equally but establishing social hierarchies between different groups of people. With the existence of social hierarchies, the influence on people is more systematic and pervasive, and it might have impacts on the material distributions as well as the ideological value associated with different groups of people.

The answer to the Distinctiveness Problem sheds light on the role that social-group plays in constituting the distinctive wrongness of discrimination. When discrimination takes place, people of different groups are not only treated as having unequal value but treated as having unequal value “because of the group they belong to.” The appeal to the group as a classifying basis for treating people differently strengthens the idea that there are different “kinds” of people and is used as an excuse or justification for the rankings of unequal status. An analogy can be drawn with the comparison between an insult and a slur. While an insult shows disrespect toward someone but not based on one’s group membership, a group-based slur not only disrespect the individuals but also
convey value ascriptions and implications about hierarchies between groups of people. Both slurs and discriminations are subordination done to individuals in virtue of group membership. The appeal to “group” as a classifying basis plays an essential role in perpetuating subordinating social hierarchies and, therefore, marks discriminations, as well as slurs, as distinctively worrisome.

The subordination account responds to the three puzzles of discrimination. Identifying the distinctive nature of discrimination in its function to support the existence of subordinating social hierarchies, the subordination account provides a coherent way to accommodate the seemingly disjunctive nature of the phenomena of discrimination. Also, by recognizing the essential role that group-based component plays in sustaining the subordinating hierarchies, it explains our distinctively negative moral evaluation and special attention toward discrimination.

V. Conclusion

In this paper, I pointed out three puzzles associated with the definition of discrimination. I have argued that the demeaning account is unsatisfactory in addressing these puzzles and proposed my subordination account to answer them. According to my subordination account of discrimination, a group-based differential and disadvantageous treatment is discriminatory when its function is to support the subordinating social hierarchies in which human beings are classified and ranked as having different social standing. This view not only provides a coherent way to accommodate the seemingly disjunctive nature of discrimination but also has an important implication on the moral differences between objectionable discrimination and affirmative actions.
References


