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INTRODUCTION

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Social Equality and Wrongful Discrimination: Introduction to the Special Issue on Moreau's *Faces of Inequality*

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Abstract

In this introduction, I briefly summarize Sophia Moreau's *Faces of Inequality*. I situate her monograph within two highly contemporary bodies of literature — relational egalitarianism and discrimination theory — to show how it provides important insights for understanding both what it means to treat others as equals in society and how to define wrongful discrimination. Moreau's work on discrimination is of great relevance for philosophers and socio-legal theorists alike as the commentaries from the symposium contributors demonstrate, including Dale Smith, Pablo Gilabert, Andrea Sangiovanni, Daniel Viehoff, Jessica Eisen, Alysia Blackham, and Iyiola Solanke.

Résumé

Cette introduction situe *Faces of Inequality* de Sophia Moreau par rapport à deux familles théoriques contemporaines — l'égalitarisme relationnel et les théories de la discrimination — pour montrer comment ce texte approfondit notre compréhension de ce que cela signifie de traiter les autres comme des égaux et comment l'on devrait conceptualiser la discrimination. Le travail de Moreau sur la discrimination est d'une grande pertinence tant pour les philosophes que pour les théoricien-ne-s sociojuridiques, comme le montrent les commentaires de Dale Smith, Pablo Gilabert, Andrea Sangiovanni, Daniel Viehoff, Jessica Eisen, Alysia Blackham et Iyiola Solanke inclus dans ce numéro spécial.

Keywords: discrimination; social equality; social subordination; freedom; basic goods; political philosophy; socio-legal theories

1. Introduction

Sophia Moreau's *Faces of Inequality* is situated at the crossroads of two highly contemporary bodies of literature. The growing scholarly work on relational egalitar-

ianism[1] has brought the question of what it means to treat others as equals to the forefront of political philosophy. Although most agree that people ought to relate to one another as equals, what this entails in practice remains contentious. Similarly, the current literature on discrimination has highlighted how complex this topic is. Ongoing debates concern how to define discrimination, what the different types of discrimination are, what makes discrimination wrongful when it is, and which actors have a duty not to discriminate against others.[2] Moreau's monograph provides important insights in both areas of research by arguing that discrimination is wrongful because it represents a failure to treat some people as the equals of others.

Moreover, as the commentaries contained in this special issue will demonstrate, Moreau's work is deeply relevant in and beyond philosophy. Her methodology combines rigorous analytical work, careful attention to legal frameworks, along with systematic consideration of the lived experiences of the victims of discrimination. She takes as a necessary starting point that our theory of discrimination should cohere with at least basic features of anti-discrimination law, and that theory should be responsive to the insights of those who have been and are being discriminated against. Hence, as Eisen rightly highlights in this volume (Eisen, this volume, Section 2), Moreau's work provides a fresh and crucial contribution to a literature that tends to be dominated by very abstract considerations by grounding discrimination theory in the social contexts in which discrimination happens. As such, Moreau's contribution to discrimination theory is of great relevance for philosophers and socio-legal scholars alike.

Moreau proposes to define discrimination as a failure to treat some as the equals of others. Yet, she contends that this can mean at least one of three things, and argues that each is sufficient to say that someone is being discriminated against. First, it can mean that a person is unfairly subordinated to others (Moreau, 2020, Chapter 2). This happens when a person is a member of a social group that has a lower social standing in society than that of another social group. Accordingly, she develops a nuanced account of social subordination that highlights that many structural accommodations are present in society, but these accommodations often respond to the needs and perspectives of the groups that are assigned a higher social standing. This underlines that we should be sensitive to how our societies are set up to privilege some groups relative to others, and how our practices can render some groups invisible by effectively excluding them from parts of our social world. Second, discrimination also captures cases where some practices infringe on an individual's right to deliberative freedom — that is, one's right to "deliberate about one's life, and to decide what to do in light of those deliberations, without having to treat certain personal traits (or other people's assumptions about them) as costs, and without having to live one's life with these traits always before one's eyes" (Moreau, 2020, p. 84). This second way of failing to treat someone as an equal notably allows Moreau to tackle difficult situations where we must balance conflicting claims coming for different parties. The case of Muslim taxi drivers who refuse to give rides to visually

[1] See, for instance, Anderson (1999); Fourie et al. (2015), Lippert-Rasmussen (2018).

[2] For general overviews of contemporary philosophical debates on discrimination, see Alexander (2016), Eidelson (2015), Hellman (2008), Lippert-Rasmussen (2014).

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impaired persons with guide dogs due to their religious beliefs is clearly a difficult case and, although some may disagree with Moreau's response, her framework nonetheless provides precious tools to think through such cases. Third, discrimination also obtains for Moreau when a person is denied access to basic goods (Moreau, 2020, Chapter 4). In that, her framework emphasizes that certain basic goods are necessary for a person to be capable of standing as an equal in society, and to be seen as an equal by both others and herself.

Beyond this specification of what discrimination is and when it is wrongful, Moreau's work also tackles two urgent questions concerning what the different types of discrimination are, and which actors have a duty not to discriminate against others. For the first question, it is now accepted wisdom that we can distinguish between direct and indirect discrimination. In short, direct discrimination deals with cases of unequal treatment, while indirect discrimination deals with unequal results.[3] In practice, most jurisdictions — including the US and the UK — treat indirect discrimination as more easily justifiable than direct discrimination, all things considered (Khaitan, 2015, Chapter 6, Khaitan, 2018). In contrast, Canadian courts adopt a unified approach to justifying both forms of discrimination. Through her framework, Moreau contends that it is a mistake to treat both types of discrimination differently; she points out that once we understand discrimination as wrongful when it is linked to one of the three wrongs mentioned above, then we have no principled reasons to consider that one tends to be more justified than the other, all things considered. Hence, Moreau's position offers a defence of the Canadian approach to anti-discrimination law. For her, if we focus on the wrongs of discrimination — either direct or indirect — then there should be no difference between the justificatory factors that should be taken into account (Moreau, 2020, Chapter 6). Therefore, although relational egalitarianism — with its insistence on how people treat and regard one another — may intuitively seem more apt to capture direct discrimination, Moreau's position shows that it can also capture indirect discrimination.

For the second question, Moreau argues, perhaps controversially, that the *pro tanto* moral duty to treat others as equals — including the duty not to discriminate — extends beyond governments and individuals who have taken on a public role (such as employers, providers of public goods and services, etc.) to include individuals in their daily lives (Moreau, 2020, Chapter 7). In other words, individuals have a moral duty not to subordinate others, not to infringe on others' rights to deliberative freedoms, and not to deny others access to basic goods even in their personal decisions. This is so because even our personal decisions have significant impacts and effects on others. For Moreau: "It is not only large organizations such as the state that have the power to change our situations and our social status.

[3] More precisely, Moreau defines direct discrimination in this way: "A practice directly discriminates against a person, P, if the practice treats P less favourably, on the basis of some trait, *t*, than it would treat those who lack *t*, either by explicitly singling out people with *t* or by singling out those who have a different trait, *u*, that is in some way very closely connected to *t*." And she posits that indirect discrimination can be understood in this way: "A practice indirectly discriminates against a person, P, on the basis of trait *t*, if P has *t*, P is disadvantaged by the practice, and although the practice does not explicitly single P out because of *t* or some related trait, *u*, it nevertheless disproportionately disadvantages those who have *t* relative to those who do not" (Moreau, 2020, pp. 15, 17).

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Many of the actions that determine how we stand, relative to others in our society, are performed […] 'close to home'" (Moreau, 2020, p. 228). Of course, the claim here is not that the state should impose stringent legal duties on all not to discriminate — since it would then interfere with individual freedoms and autonomy, notably — but rather that other measures, besides anti-discrimination laws, can be necessary to ensure that all are effectively protected from discrimination and that all can stand as equals in society. Educational policies fostering respectful attitudes, school districting rules promoting diversity, and even generous parental leaves for fathers are then presented as part of a broad social project aiming to combat discrimination and foster equality (Moreau, 2020, p. 239). This argument thus shows that anti-discrimination laws — as they are typically understood — may not be enough to protect the equal status of all in society and it could have far-reaching implications.

Faces of Inequality thus proposes an original way to connect relational egalitarianism and discrimination theory in ways which both advance our understanding of these complex notions and raise important questions, as the commentaries contained in this special issue demonstrate.

2. Commentaries: Philosophical Reflections

On the more philosophical side, the commenters touch on important debates concerning the merits of a pluralist approach to discrimination, the contours of our duty not to discriminate, or how to understand social subordination. Dale Smith argues that Moreau's pluralist approach to discrimination is puzzling on several points. First, because she makes an idiosyncratic use of the concept/conception distinction to argue that failing to treat others as equals can mean either one of three things, as mentioned above. Second, as he discusses, how are we to understand this claim? That is, in what ways are subordination, deliberative freedoms, and basic goods all connected to social equality? After exploring this question, Smith questions whether the three wrongs Moreau identifies are best seen as failures to treat someone as an equal. He zones in on the individual right to deliberative freedom to show that wronging people on that ground need not involve a failure to treat someone as an equal. Third, Smith suggests that it may be unnecessary to try to present a unifying feature — such as relational equality — to capture wrongful discrimination.

Pablo Gilabert, on his part, raises important questions concerning the scope and contours of the duty not to discriminate. He discusses the relation between discrimination and human rights to suggest that we should strengthen Moreau's theory. Gilabert questions the implicit assumption in *Faces of Inequality* that the moral duty not to discriminate applies within a given society only and suggests a cosmopolitan interpretation of this duty. Hence, we should ensure that we treat both our co-nationals and people living in other societies as our equals. This is essential to ensure that addressing local or national inequalities does not come at the expense of addressing global injustices. To explore these issues, Gilabert considers what grounds our duty to treat others as equals, discusses how to identify the content of this duty, and finally presents two qualms about how Moreau's book presents the relation between discrimination and human rights approaches. In these ways,

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Gilabert encourages discrimination theorists to broaden the scope of their research to engage more fully with existing human rights approaches.

In his commentary, Andrea Sangiovanni develops three arguments. First, he argues that restricting deliberative freedoms is neither necessary nor sufficient for there to be wrongful discrimination. He contends that although constraining the right to deliberative freedoms of some is wrongful, it only becomes discrimination once it is connected to social subordination. Second, he explores the connections between Moreau's approach to discrimination and expressivist views. According to expressivist approaches, discrimination is wrong, in short, because it sends the message that some are inferior to others (Eidelson, 2015; Hellman, 2008). Even though Moreau is explicitly critical of these views, Sangiovanni shows how she perhaps overestimates the gap between her approach and expressivism. Third, Sangiovanni points out that more work needs to be done to explain why social subordination is wrong, notably to clearly identify the relevant groups that are wrongfully socially subordinated. As he asks, should we include drug addicts and gamblers in our account of social subordination? How about the talentless and those who are considered to be unattractive? In some sense, these groups are subjected to stereotypes, have less social and political power, and are given less consideration. But, are they discriminated against in our societies? As such, Sangiovanni's contribution helpfully situates Moreau's theory against the background of expressivism and pushes us to think further about how to define wrongful social subordination.

Finally, Daniel Viehoff also explores the importance of social subordination and the role it ought to play in our understanding of discrimination. After a careful critical reading of Moreau's account of social subordination, he argues that what explains its wrongness cannot be unequal consideration or unequal power — the two constitutive components of social subordination — because both can be wrong on their own, without appealing to subordination. Hence, Viehoff suggests that subordination is best understood as a derivative wrong. This means that appealing to social subordination to explain why discrimination is wrong is ultimately otiose. However, Viehoff interestingly suggests that an appeal to social subordination may nonetheless be relevant because it allows us to identify instances of objectionable unequal power (since some will be morally acceptable), to identify persistent patterns of social advantage and disadvantage in society, and because it is of special practical importance since it identifies particular social mechanisms that contribute to unequal consideration and unequal power. Accordingly, although social subordination is not what explains why discrimination is wrongful, it may be an important concept in our moral thinking.

3. Commentaries: Socio-Legal Studies

The second set of commentaries adopts socio-legal perspectives on Moreau's monograph. Jessica Eisen zones in on the methodology deployed in *Faces of Inequality* to highlight that although the focus on the victims of discrimination is most welcome, it may be in tension with other methodological commitments that Moreau holds. Eisen builds on the work of feminists and critical race theorists, and on the work of Mari Matsuda (1992) in particular, to argue that Moreau in fact departs from more critical

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approaches to the law although her work seems, at first sight, to be in line with them. Eisen contends that while feminist and critical approaches also start from the perspective of those subjected to discrimination, these theoretical families tend to be more sceptical of the law as a vehicle for promoting equality. Many authors in these traditions underline the hostile and fundamentally conservative character of law, which tends to support rather than undermine the existing unjust status quo. Hence, a tension is introduced between Moreau's commitments to capture fundamental characteristics of anti-discrimination law and to be sensitive to the perspective of the victims of discrimination. Eisen argues that, by being committed to fundamental aspects of existing anti-discrimination law, Moreau's approach struggles to capture the viewpoints of the victims who are sceptical of the legal apparatus and experience it as hostile to their plights.

Alysia Blackham adopts a more empirical, socio-legal approach to discrimination, and explores how Moreau's more philosophical work resonates with and challenges legal practice. She argues that we should be aware that many if not most actual cases of discrimination never make it to court. Consequently, although she recognizes that attention to lived experiences is essential, case law is likely to present us with a distorted picture of how people effectively experience discrimination. Moreover, Blackham considers how Moreau's work pushes us to pursue more proactive measures to dismantle the structural accommodations that favour privileged groups, to rethink the role of comparisons to establish whether discrimination has taken place, and to challenge the public/private divide, which is common in some Australian jurisdictions. Therefore, Blackham's commentary traces interesting connections between the more theoretical perspective adopted by Moreau and its potential empirical implications.

Finally, Iyiola Solanke, in her text, explores the role that power plays in *Faces of Inequality*. Moreau refers to power when she discusses social subordination, but as Solanke argues, power is also central to understanding wrongful denial of deliberative freedoms and wrongful denial of access to basic goods. Solanke thus complements Moreau's theory with a particular understanding of what power is — that is, the capacity to take action or prevent things from happening — to show that it is essential to see, first, how we can deploy a more nuanced account of the different wrongs present when one is wrongfully denied one's deliberative freedoms, and, second, how both actions and inactions are important mechanisms to explain how people are denied basic goods. This reinforces and pushes forward the idea that the general public is, in a sense, responsible for allowing discrimination. Accordingly, Solanke's text develops an important socio-legal analysis of power and how it intersects with law.

4. Conclusion

The breadth of these commentaries shows how rich and fruitful Moreau's analysis of discrimination is in *Faces of Inequality*. It underlines how cross-disciplinary scholarship is essential on this subject matter; we hope this special issue will contribute to the advancement of knowledge on the complex issue that discrimination is.

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