

Discrimination and Injustice

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Abstract: The paper offers a systematic analysis of the relation between discrimination and justice, a surprisingly neglected topic. It examines the relation between discrimination and various types of injustice—corrective, retributive, distributive and relational—and concludes that while discrimination often leads to various sorts of injustice this is not always the case. If some act or policy is an instance of discrimination, it is not necessarily unjust, and if some act or policy is an instance of injustice, it is not necessarily discriminatory. So injustice isn't what makes wrongful discrimination wrong.

Key words: direct discrimination, indirect discrimination, relational justice, distributive justice, Lippert-Rasmussen

1. INTRODUCTION

People often refer to injustice and discrimination as separate notions.¹ But discrimination is also often referred to as a type of, or as an instance of, injustice. Shlomi Segall, for instance, says that he's not "searching for what distinguishes discrimination *from other incidents of injustice*" (2012: 83, italics added).

In this brief paper, I seek to analyze the relation between these two notions. A lot has been written on the relation between discrimination and harm (see, e.g., Lippert-Rasmussen 2013, Parr and Slavny 2016, and Arneson 2018), but less on that which obtains between discrimination and injustice. The central question on the table is whether all cases of discrimination are cases of injustice, and, if so, what *kind* of injustice. There is also the opposite question about whether cases of injustice are necessarily also cases of discrimination, but the answer to this one seems rather obvious, namely, that they are *not*.

For the question to be interesting, one must assume that 'justice' is not co-extensive with 'morality', but occupies a unique territory within morality. So, an act can be immoral, wrong or vicious, without at the same time being unjust. Within the moralized notion of discrimination, which is the one I'll be assuming throughout the paper (unless otherwise stated), discriminatory acts are by definition *immoral*—but that doesn't mean that they are also *unjust* in the narrow sense(s) of the term.

Since there are different notions of justice—mainly corrective, retributive, distributive and relational—that are irreducible (let us assume) to each other (or to some other notion), the analysis will have to refer to all of them.

If the answer to our central question is affirmative, it would suggest the possibility that injustice is the wrong-making property of discrimination. To the best of my knowledge, this possibility has not been explicitly raised in the philosophical debate on the grounds for the wrongfulness of discrimination, although a closely related view has been discussed. I refer to what Lippert-

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Rasmussen calls the ‘Simple Desert Account,’ which says that “Discrimination is wrong because it involves a mismatch between what people deserve and what they receive” (2023a).² Since such a mismatch is an obvious example of injustice, this account would be an example of the view I have in mind. However, my focus here is broader: I aim to explore the relationship between discrimination and all notions of injustice. Thus, if all discriminatory acts are found to be unjust according to one or more of these notions, it would suggest that injustice is likely the wrong-making property of discrimination. On the other hand, if the answer to our central question is negative, this possibility would be excluded. We would then need to turn to other accounts for the wrongness of discrimination, accounts that attribute it to the harm it causes (Lippert-Rasmussen 2013), the violation of individuals’ equal entitlement to freedom (Moreau 2020), or the disrespect it conveys to the discriminated (Eidelson 2015). Any discussion of these accounts, of course, lies beyond the scope of this paper.³

Most of the paper focuses on direct discrimination rather than indirect discrimination. When I say that A (directly) discriminates against B, I mean that A treats B disadvantageously compared to C, who is similarly situated, in terms of some good, opportunity, etc., because A has a negative attitude towards B,⁴ typically rooted in A’s negative attitude towards the social group to which B belongs (Jews, gays, women etc.).⁵ In line with most philosophers, I am assuming that discrimination is “necessarily comparative” (Altman 2016). Admittedly, not everybody accepts this assumption; Jonker (2019), for instance, proposed moving “beyond the comparative test for discrimination.”⁶

This inquiry appears to have no immediate practical implications as its goal is just to deepen our philosophical understanding of the relationship between discrimination and injustice. However, if the conclusion reveals a strong connection between these two concepts, it could have an impact on how we approach borderline cases where it’s unclear whether or not wrongful discrimination has occurred. That said, if I may offer a hint, this will ultimately not be the case.

2. CORRECTIVE, RETRIBUTIVE, AND DISTRIBUTIVE INJUSTICE

Let’s begin with corrective injustice. Deliberately refraining from compensating somebody I negligently or intentionally harmed is unjust, but it is not necessarily discriminatory because my refusal to pay damages might have nothing to do with any “problematic” properties of the damaged party, like her race or religion. I might *always* try to avoid paying the damages I bring about, thus treating all those I harm equally (and unjustly). The same is true of refusing to pay back a loan. Such refusal would be unjust, but would not in itself be discriminatory; I might refuse all debtors equally.

Similarly with punishment. To impose a harsher punishment than deserved on all those who committed a certain crime is unjust (=a case of retributive injustice), but not discriminatory. In other words, deviating from what is mandated by desert is not discriminatory as long as the deviation is across the board.

What is common to these two notions of justice is that they are non-comparative. A person is unjustly treated if she is not compensated for a damage negligently done to her, regardless of whether others are compensated or not for damage done to *them*; and a person is unjustly treated if she receives a harsher punishment than she deserves, again regardless of whether *others* receive such a punishment. Thus, when the notion of injustice is non-comparative, in a corrective or a retributive context, injustice is not a sufficient condition for discrimination.

It is not a necessary condition either. When a judge discriminates in punishment, for example, by imposing a harsher treatment on Muslims than on non-Muslims *because* they are Muslims, that need not mean that the Muslims receive a harsher punishment than they deserve. The judge might be giving the Muslims precisely what they deserve, thus realizing retributive justice in their regard, while giving the non-Muslims *less* than they deserve. Hence, in terms of retributive justice,

an unjust punishment need not be discriminatory and a discriminatory punishment need not be unjust.⁷

In response, one might argue that while individual criminals who are objects of discrimination may still receive the punishment they ultimately deserve, discriminatory punitive systems almost inevitably lead to retributive injustice. However, even this need not always be the case. Consider a place like Syria, where a small minority—the Alawites, comprising about 10 percent of the population—controls the country. According to one testimony, 40 percent of Syrian judges are Alawites (Ekman 2017: 38). Suppose, quite realistically given the high level of corruption,⁸ that these judges tend to discriminate in favor of Alawites. Yet, precisely because of this bias, they make a special effort to impose on non-Alawite criminals exactly what they deserve. In an attempt to maintain at least minimal public trust, these judges may strive to appear as justice-seeking while upholding a discriminatory attitude in cases involving Alawites. In such hypothetical circumstances, the Syrian punitive system would undoubtedly be discriminatory, but it might still achieve more justice overall than any other realistic alternative.⁹

I do not deny that, often, discrimination in the context of punishment or compensation does lead to the respective types of injustice, but it need not. Nor do I deny that the imposition of a deserved punishment out of a deplorable motivation might wrong the convict, if one accepts that motivation can affect permissibility, as I do (Avraham and Statman 2013). It is simply not necessarily a case of (corrective or retributive) *injustice*.

All of which seems to show that at least in these contexts, injustice isn't the wrong-making property of discrimination. Hence, maybe unsurprisingly, if there is a tighter link between discrimination and injustice, it concerns *distributive* injustice. This notion of justice *is* comparative, which seems to sit well with the comparative aspect of discrimination. Yet, strictly speaking, distributive injustice does not necessarily constitute discrimination. According to luck egalitarians, for instance, if one person is better off than another due to factors beyond one's control, that is unjust, even if the two persons don't know of each other and their condition is not a result of human action. The point is that for discrimination to occur, we need more than an unjust state of affairs. We need an *action* (or an omission) by some agent who deliberately brings that state of affairs into existence (or refrains from doing what he or she should do) *because* of her negative attitude towards the discriminatees. (For the sake of argument, let's assume that collective entities like countries can also be agents in the required sense.) Thus, an unjust distribution of goods, resources or opportunities, is not, for that reason alone, discriminatory. As Michael Foran put it (2019: 915), "a lack of fair distribution on its own is not sufficient to prove discrimination."

People do talk sometimes of discriminatory states of affairs, but I take this only as a way of repeating or emphasizing the assumed unjust character of these states of affairs. I conjecture that for *discrimination*, there must be a *discriminator*. (I'm aware of course of 'structural discrimination', cases in which there is no such agent, but this would be a version of indirect discrimination to which I turn soon.)

But when discrimination *does* occur in the distribution of goods or opportunities, doesn't that imply that the distribution is unjust? Not necessarily. Suppose I impose higher taxes on some group because I despise its religion. Suppose also that members of this group are, regardless, richer than they deserve to be on most accounts of distributive justice. Given these suppositions, this discriminatory scheme of taxation would make the distribution of goods in the world more just, not less.¹⁰

Consider, similarly, a typical case of discrimination in hiring: a racist employer, A, chooses to hire candidate B over candidate C after only a superficial glance at their CVs, simply because B is white and C is Black. However, B is ultimately the more deserving candidate. Professionally, she is much better suited for the job, and, even morally, she is more deserving—because C was dishonest

on her CV or is, in general, a worse human being than B. By acting against C in a clearly discriminatory manner, A would realize a more just world; a world in which people get what they deserve.

For the sake of illuminating the relation between discrimination and distributive justice, I read the latter in terms of (the realization of) desert, which of course not all theories of distributive justice accept (see especially Rawls 1971). I did so because the tendency to formulate complaints about injustice in distribution in terms of failure to give to one what one deserves is ubiquitous,¹¹ hence makes it easier to see the force of my examples against regarding discrimination as necessarily leading to distributive injustice. But my point applies to all theories of distributive justice, at least to all *telic* theories (to borrow a term from Parfit 1998). On such theories, distributive justice characterizes *states of affairs* involving the distribution of goods among people. My argument is that there is no necessary connection between discrimination and the realization of such distributively just states of affairs, whatever those may be. Unjust distribution of goods and opportunities is not necessarily discriminatory and discrimination in the distribution of goods and opportunities is not necessarily unjust.¹² Thus, distributive injustice too is not the wrong-making property of discrimination.

Finally, for the sake of examining the relation between discrimination and injustice, I assumed that the corrective, retributive and distributive notions of injustice were distinct from each other, and I showed that none of them stands in a strong relation to discrimination. If these notions are *not* independent,¹³ for example, if distributive justice can be reduced to the same concept of desert that underlies retributive justice, then all the more so. If, judged separately, distributive justice and retributive justice do not assume or entail discrimination, it's hard to see how this might change if one notion was reduced to the other.

3. RELATIONAL INJUSTICE

As stated in Section 1, discrimination is about failing to treat equally people who are similarly situated, for instance, paying black employees less than white employees for carrying out the same tasks, just because they are black. This seems to entail that, by definition, discrimination constitutes relational injustice which is all about failing to treat people as equals.¹⁴

The opposite does not apply, namely, it is not the case that all acts of relational injustice are also discriminatory. Some are, for example, when somebody hires A, rather than B, because of B's assumed lower social status, but some are not as, for example, when a professor insists that his students—all of them—bow down slightly before him every time they meet him in his office or on campus. One might argue that the latter case is also one of discrimination because the professor doesn't insist that *all* people bow down to him but only his students, hence they are discriminated against. But that would be an implausibly wide view of discrimination which, in the end, would allow one to regard any immoral action as discriminatory in the following way: When A wrongs B, for instance, steals from her, she does not of course steal from all others, which would imply that she is treating B worse than she treats others for no good reason, thus discriminating against her. Such an understanding of discrimination would undermine the usefulness of the concept in capturing the nature of discrimination as a distinct way of expressing disrespect for somebody qua member of a perceived inferior group, by giving her worse treatment, in terms of some good, than that afforded to others who are similarly relevant.¹⁵

4. INDIRECT DISCRIMINATION

While direct discrimination necessarily involves a discriminator motivated by a problematic view of the discriminatee, “indirect discrimination is defined by the absence of any such mental state” (Lippert-Rasmussen 2022: 84). Instead, indirect discrimination is characterized by its connection to past injustices suffered by its recipients (Hellman 2018; 2023). These past injustices are varied

and often encompass many of the types mentioned earlier. Members of a group subject to indirect discrimination have frequently been victims of unjust punishments, denied compensation for damages, deprived of a fair share of social goods and opportunities, and, importantly, not treated as social equals.

Hence, with regard to indirect discrimination, it is the case that if some act/policy is an instance of it, its victims will have necessarily suffered past injustice, with the current act of (indirect) discrimination standing in some special relation to it; *compounding* it (Hellman 2018), or *implicating oneself* in it (Lippert-Rasmussen 2023b).

This result is a bit surprising because we tend to regard direct discrimination as morally worse than indirect discrimination, a view which encourages the thought that it is also more *unjust*. But it is actually indirect discrimination that has this stronger relation to injustice.

5. CONCLUDING THOUGHTS

a. Direct discrimination often results in various forms of injustice (in the narrow sense of the term, which is not synonymous with *immorality*), but not always. If some act or policy is an instance of (wrongful) direct discrimination, it is not necessarily unjust, and if some act or policy is an instance of injustice, it is not necessarily discriminatory. So injustice isn't what makes wrongful discrimination wrong.

b. If some act/policy is unjust, for instance, in terms of retribution, that constitutes a powerful reason against it, and will usually lead to an all-things-considered verdict in this vein. If it also turns out to be discriminatory, i.e., to stem from a disrespectful attitude towards its addressees, that would further aggravate the wrongness. If, by contrast, it turns out not to be unjust, but is nonetheless discriminatory, that would provide us with a strong reason to morally condemn the discriminator. Whether or not an act flowing from a discriminatory motivation would be morally wrong depends on one's view on whether motivation can affect permissibility.

c. Unlike direct discrimination, indirect discrimination necessarily presupposes past injustices, and its wrongness lies precisely in its connection to those injustices. However, since the discriminator's motivation may be innocent in the relevant sense—that is, not based on prejudice against the affected group (e.g., gays, Jews, women, etc.)—we should not typically assign moral blame to the individual responsible for the relevant acts or policies. Correspondingly, the victims of such acts or policies should not generally direct their complaints at the actual discriminator. Instead, their grievances should be aimed at society as a whole—typically at the majority group—both for the past injustices inflicted upon them and for the ways in which the effects of these injustices are allowed to persist in the present.

NOTES

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1. In October 2024, the string “injustice and discrimination” yielded approximately 7,300 results on Google Scholar, and 8,800 for “discrimination and injustice.”
2. Lippert-Rasmussen cites Paul de Font-Reaulx, David Miller, Louis Pojman, and George Sher as proponents of this account.
3. See also Re'em Segev's intriguing proposal (Segev 2021) that discrimination may be wrong due to every foundational moral reason.

4. Paradigmatic cases of such negative attitude involve the discriminator culpably holding false beliefs about the discriminatee. For example, the discriminator may believe that Jews are inferior human beings. In less typical cases, discriminators may hold erroneous beliefs about the discriminatees, though the error is, in a sense, innocent, because these beliefs are widely accepted in their society, such as believing that women are unsuitable for certain jobs. In more controversial instances, the discriminator's negative attitude may stem from a true generalization, as when someone prefers a 20-year-old over a 70-year-old for a position at a gaming company.
5. For the sake of the present discussion, I leave open the question of whether discrimination might *benefit* its addressees. See Statman 2021.
6. Lippert-Rasmussen et al. 2024 recently conducted an empirical study to see whether this comparative understanding is reflected in the folk concept of discrimination as well. Surprisingly, they found that it is not; people “are more disposed to classify a situation as discriminatory when there is no comparator than when there is one” (1400–1401).
7. For a similar distinction between discrimination and retributive injustice, see Lippert-Rasmussen 2010, who argues that sentencing discrimination is consistent with all those who are punished receiving exactly the punishment they deserve.
8. See the section on bribery and corruption in Ekman 2017: 29ff.
9. This paragraph was written before the events of December 2024.
10. For a similar move, see Lippert-Rasmussen 2023a, who argues that sometimes discrimination brings about a better match between desert and what people get.
11. This is probably related to what Malcai and Segev (Forthcoming-b) refer to as the “imperialism of desert.”
12. For an opposite view, see Segev 2014: 48: “Wrongful discrimination consists of allocating a benefit in a way that involves distributive injustice.”
13. See, for example, Malcai and Segev Forthcoming-a and Forthcoming-b.
14. It is usually assumed that the moral obligation to treat all people as equals presupposes that people *are* in fact moral equals, but this assumption has been challenged by Bengtson and Lippert-Rasmussen 2023. For the sake of the present discussion, I remain neutral on this issue.
15. Not everybody agrees that discrimination is tied to disadvantageous treatment on the basis of membership in supposedly inferior groups. See, e.g., Eidelson 2015.

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