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Why Benefitting a Person Cannot Constitute a Form of Discrimination

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Abstract. The purpose of this article is to discuss whether a person can be discriminated against by means of an action intended to benefit him or her. The discussion is triggered by a recent court decision according to which women may be entitled to compensation for a policy that made them better off in some respect because of its assumed effect on the perpetuation of harmful stereotypes about women. I reject this view, arguing that such effects are neither necessary nor sufficient for an act to be discriminatory. If people stand to directly benefit from some act, they cannot claim discrimination on the basis of such benefit.

1. Introduction

Can a person be discriminated against by means of an action intended to *benefit* her? To the best of my knowledge, this question has been neglected in the growing literature on discrimination.[1] Obviously, discrimination can *contingently* result in a benefit to the person being discriminated against (the "discriminatee"), for example, when it serves to strengthen the discriminatee's character and help her to achieve a more fulfilling life than she might otherwise have enjoyed.[2] In such cases, the moral wrongness of the discrimination persists in spite of such contingent benefits. But what about cases in which the positive consequences for the person ostensibly being discriminated against are not contingent but intentional, namely, when the purpose of the assumed discriminatory action is to be of benefit to somebody? Can such an action still be *discriminatory*?

This discussion was triggered by a recent court decision in Israel in which, for the first time insofar as I am aware, the above question was made the subject of a court ruling.[3] Let me start with a brief description of the case.

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[1] The past decade or so has witnessed a resurgence of philosophical interest in the topic. See Hellman 2008; Lippert-Rasmussen 2014; Moreau 2020; and Segev 2014.

[2] Such cases would fall within the ambit of what has been called "fortunate misfortune." See Smilansky 1994.

[3] Class Action 8214-05-14 (Central District) *Ronen Meirav v. IDI Insurance Company Ltd*. (published in *Nevo*, 30 August 2016) (approval of class action); Class Action 8214-05-14 (Central District) *Ronen Meirav v. IDI Insurance Company Ltd*. (published in *Nevo*, 23 August 2018) (judgment), hereinafter the "*IDI* case" (all quotations from the *IDI* case are my translations).

As part of a vehicle insurance policy, IDI Insurance Company Limited (hereinafter "IDI") incorporated a provision into the coverage allowing the policyholder to request roadside service to change a tyre in the event of a puncture, but making the service subject to payment of 80 shekels (approximately $24). This provision was qualified by a further clause stating that in the case of a female driver, there would be no charge for the service. The question facing the court was whether this clause constituted wrongful discrimination and, if so, whether the applicant, Mr. Meirav, should be allowed to file a class action lawsuit in this matter on behalf of all those affected by the alleged discrimination. The statute upon which the claim relied was the Prohibition of Discrimination Law (2000),[4] which in section 3(a) provides as follows:

> Whoever's occupation it is to provide goods or services to the public or to manage a place open to the public shall not discriminate in the provision of these goods or services, in granting entry to the place, or in providing the services at that place, on grounds of race, religion, ethnicity, nationality, country of origin, sex, sexual preference, political affiliation, age, personal status, parenthood, or the wearing of IDF or emergency-service uniforms or their emblems.

The district court in Lydda ruled that the above clause was discriminatory, not only toward male drivers but also toward female drivers, and ordered the respondent to pay 1.1 million shekels (approximately $320,000) into a fund promoting gender equality and the empowerment of women. The principal question which I shall consider in this article is whether it makes sense to speak of women as victims of discrimination in such circumstances. I will try to defend the following claims:

(i) Benefitting disadvantaged groups (because they are disadvantaged) carries the risk of conveying a problematic message about them to members of such groups as well as to the general public. Hence it is sometimes overall wrong—but not always: There are times when such benefitting is the right course of action.
(ii) Even when such benefitting is morally wrong, it should not be conceptualised as discriminatory.
(iii) Legally speaking, members of disadvantaged groups should never be compensated—on the basis of the various statutes regarding discrimination—for *benefits* awarded to them.

Before I start my argument, a methodological note is in order concerning the relation between conceptual claims regarding which actions are discriminatory and normative claims regarding how the law ought to be interpreted. I'll be assuming that the former are part of what we should consider when we come to the latter. That is to say, if the best theory for some concept entails that a certain understanding of it is preferable to others, that provides us with a good reason to interpret the concept as it appears in the law in that light. A good reason is not a decisive one, and there might be other reasons that override it, for instance, a tradition of legal precedents that adopted a different reading of the concept. But, generally speaking, compatibility with the best theory of some concept—autonomy, dignity, equality, or discrimination—is

[4] Full title: Prohibition of Discrimination in Products, Services, and Entry into Places of Entertainment and Public Places Law, 5761-2000 (in Hebrew, all translations mine).

an advantage of a legal interpretation of the concept. To conclude, then, the answer to the question of what discrimination is, or of what the best way to understand the notion is, is relevant to how the law should be read and, in that sense, to what the law should be.

Let me add that accordance with the way some concept is used in common parlance is just *one* criterion for the adequacy of a theory about the nature of the concept, not the *only* criterion. With regard to a theory of autonomy, Gerald Dworkin has shown the importance of other criteria as well: logical consistency, empirical possibility, value conditions, ideological neutrality, and normative relevance—in addition to what he calls "judgmental relevance" (Dworkin 1988, 7–9). I believe that these criteria apply to other concepts as well, including that of discrimination. I also believe that my account of this concept satisfies the conditions set out by Dworkin. In particular, it accords with the way in which people use the concept, and it sheds light on why discrimination is perceived as morally wrong.[5]

2. Discrimination and Benefit

Can one claim discrimination even when the condition of the group allegedly subjected to discrimination is actually (and nonaccidentally) improved compared to the condition of others? In our focal example, the lot of the female drivers insured by IDI was improved by entitling them to a free change of tyres for which male drivers had to pay. How could such an arrangement be discriminatory against *them*?

To underline the difficulty, consider a policy that granted female drivers (but not male drivers) not only a free tyre change, but also $20 in cash to cover the expenses or damage incurred by them as a result of the puncture, for example, loss of income from missing an appointment. It is difficult to see how a person who received $20, while others who are similarly situated did not, could complain that she was a victim of *discrimination*.

This difficulty did not go unnoticed by Judge Grosskopf, who wrote the opinion in the *IDI* case. He conceded that the clause under discussion improved the position of the female drivers in the short-term, but, in his opinion:

> It exacerbates the situation of women and perpetuates pernicious stereotypes about their abilities. A patronizing attitude toward women, which sends the message that they are not capable and should not perform jobs that are defined as "masculine" creates distance between us and an egalitarian society and hampers the realization of gender equality.[6]

Female drivers insured by IDI were therefore discriminated against by virtue of the fact that the policy reinforced and perpetuated negative stereotypes about them and impeded progress towards a more egalitarian society.

According to the court, then, one *can* (wrongfully) discriminate against people by according a benefit to them. Of course, it is not the benefit in itself that constitutes the discrimination, but its assumed effects on the relevant group, in terms of the strengthening of harmful and degrading stereotypes against it.

[5] Dworkin's other criteria are also satisfied, but I won't be arguing for that here.
[6] *IDI* case, approval of the class action, par. 32.

I can see the appeal of this position, but I think it should be rejected. To see why, consider the following case.

Submarines. The military authorities are considering whether to allow women to join a unit to which they have so far been denied access, for example, the submarine unit.[7] Suppose there are grounds for concern that the male soldiers in the unit will not welcome the new recruits. Suppose, too, that there are grounds for a broader concern that, as a result of this decision, various bodies in and outside the army will react against what they will perceive to be an inclination towards "radical" feminism, with a resulting backlash in the struggle for equality and a return to various forms of discrimination against women that have already been overcome. Despite all this, and driven by the ideal of gender equality, the military authorities decide to permit women to join the submarine division—and these feared outcomes indeed occur.

In this example, the decision to allow women to serve with the men in the submarines reinforces negative stereotypes and increases discrimination against women. Moreover, this outcome was predictable. Nonetheless, the decision was not in itself discriminatory. On the contrary, its aim was to *prevent* discrimination against women in the allocation of a particular good (service in submarines, or perhaps freedom to choose where to serve). The fact that, in the end, the decision led to an increase in discriminatory acts against women and to greater stereotyping against women does not mean that it was in itself discriminatory.

Let me elaborate further on this point. Feminist literature has pointed to many practices that reinforce problematic stereotypes of women. One of many examples is the expectation that women wear high heels, particularly at certain events such as weddings, or when performing certain tasks, for example, flight attendant duties. It is widely acknowledged that such shoes, especially when the heel is thin and high, are uncomfortable and unhealthy (Moore et al. 2015). According to some feminists, the fact that so many women wear high heels despite the attendant discomfort is due to social pressure associated with the image that such shoes are "feminine," "classy," or "sexy," and is a consequence of men's desire to shape women and their bodies in a certain way. For the sake of discussion, let us grant this claim. What follows from it is that anyone who manufactures, sells, or advertises high-heeled shoes reinforces negative stereotypes about women, limits their autonomy, and, in general, contributes to a less egalitarian society. But surely this does not mean that anyone who manufactures, sells, or advertises high-heeled shoes also *discriminates* against women—either those who wear these shoes or those who do not but suffer from the gender stereotypes that are reinforced by those who do.

Consider another example. One of the social institutions that both manifests and enhances the problematic power relations between men and women is that of the secretary. Almost all secretaries are women, and it is rare to find male secretaries except in the context of senior positions, such as secretary of state (who is not really a secretary in the usual sense of the word). Given that the vast majority of the "bosses" in charge of secretaries are men, and given that secretaries

[7] In the past, service in submarines was open only to men. This has changed recently, and the American fleet, for example, has opened its ranks to women as well. See McDermott 2018. In contrast, the navies of other countries still restrict submarine service to men.

are required to provide a variety of services ("Please summarize this document"; "Please bring us coffee from downstairs"; "An important guest is arriving tomorrow: Please dress appropriately"), the outcome is an institution that perpetuates the hierarchy between genders. It is no wonder that the service that some (male) employers expect to receive from their (female) secretaries occasionally goes beyond the examples cited above and approaches varying degrees of intimacy or sexual favours. If I am right in this analysis, the institution of secretary makes a nontrivial contribution to the image that women are meant to serve men, to limitations on their autonomy, and to an atmosphere of exploitation and harassment. But again, it does not follow that when a man hires a secretary for his office in good faith, he thereby discriminates against her.

To further clarify the point, think of stereotypes about *men*. As a result of the huge (and justified) attention given to problematic stereotypes about women, which limit their autonomy and cause various types of harm, it is often forgotten that there is a similar problem regarding men: There are stereotypes that limit their autonomy, channel them into "masculine" professions and behaviour, and so on.[8] Nevertheless, no one would say that the mere fact that an institution—like the military—preserves or reinforces these stereotypes constitutes *discrimination against men*.

How does one determine that some policy is deleterious to some group, say women, and therefore qualifies as discriminatory? One good indication is that women oppose it. Conversely, if women are satisfied with an action or policy directed at them, for example, if they are happy to receive a voucher for a beauty salon on Mother's Day and willingly use it, there are grounds for thinking that it confers a benefit upon them and is therefore not discriminatory. Rejecting such evidence on the basis of a false consciousness ascribed to women (or other groups) should be reserved to very rare cases.

Back to my main point. The fact that an action or a practice leads to some negative outcome, especially in terms of negative attitudes towards members of a disadvantaged group, is not a sufficient condition for its being discriminatory towards them.[9] Discrimination is a special type of wrong, manifested by a denial of some goods (admission to medical school, wage level, etc.) directed at the discriminatees vis-à-vis others who are relevantly similar. Because of the message conveyed by this behaviour, discrimination typically causes negative consequences for the group, including other acts of discrimination, but these consequences are not part of what makes an act discriminatory. Consider a converse case to that described earlier: An employer engages in clear and overt discrimination against Muslim job applicants by consistently preferring Christian applicants to them. This creates public outrage, resulting in a significant reduction in discrimination against Muslims. Clearly this positive outcome does not justify withdrawing the claim that the employer's action was one of wrongful discrimination.

[8] For how such stereotypes seriously harm men, see Benatar 2012.

[9] If it were true, we would have to consider the odd possibility that *Brown v. Board of Education*, 347 U.S. 483 (1954), a milestone in the struggle *against* discrimination, was itself discriminatory—against *blacks*. This is because this decision might be seen as conveying the degrading message that blacks cannot take responsibility for their own education. For the idea that only in largely segregated institutions is it possible to develop genuine respect for blacks, see Johnston 1993, 1401.

I conclude that an act which takes care not to discriminate (as in *Submarines*) does not become discriminatory just because it results in an increase in discrimination and prejudice towards the relevant group, and an act that is discriminatory (in employment, admission to a university, sale of apartments, and so on) is not divested of this character even if in practice it leads to a reduction in overall discrimination in society. What determines whether or not some act is discriminatory towards a particular person, P, is whether P's condition is worsened in terms of some good compared to others, and whether this harm results from P's affiliation to a group which is viewed negatively by the discriminator. When P is not disadvantaged, and *a fortiori* when P's situation is improved as a result of the action or policy in question, one cannot speak of discrimination against her, even if the action or policy has (typically long-term) detrimental consequences in reinforcing negative stereotypes and in deepening social inequality. *Inter alia*, this means that black applicants to university who benefit from programs of affirmative action cannot complain of being themselves victims of discrimination on the grounds that such programs express and reinforce problematic stereotypes, such as that blacks are less competent than whites.[10]

The proposed analysis accentuates what one might call the deontological nature of discrimination. According to deontology, in order to determine that acts such as betrayal, rape, or murder are morally impermissible, it is not necessary to examine their outcome. The deliberate killing of an innocent person is morally wrong regardless of whether it increases or decreases the overall balance of happiness or, indeed, the overall number of *killings*. The same logic applies to discrimination. Discrimination expresses a failure to properly respect the discriminatees and is therefore wrong regardless of its consequences—regardless, in particular, of whether it increases or decreases the number of discriminatory acts in society or the spread of racism, chauvinism, or Islamophobia. In subscribing to this general view of discrimination, I place myself in the company of philosophers who believe that it is the discriminator's mental state (= his or her disrespectful attitude) that explains the wrongness of discrimination (Eidelson 2015; Hellman 2008; Shin 2009; Wasserstrom 1995).

I am, of course, familiar with consequentialist accounts of the wrongness of discrimination (see Arneson 2018 and Lippert-Rasmussen 2014, chap. 6), but for reasons I can't spell out here, I think they are less convincing. I would just note how *Submarines* poses a helpful counterexample to such accounts. Consequentialist accounts will probably say that since opening the submarine unit to women was expected to increase discrimination and oppression in society, which indeed it *did*, it was a discriminatory act, which seems to me unreasonable.

The answer to the question posed at the beginning of this section is, therefore, that female drivers who were insured by IDI (and *a fortiori* those who enjoyed the free tyre change service) were not victims of discrimination. As the policy *benefited* them

[10] My position on this matter differs from that of Segall (2012, 92). In his view, affirmative action is *pro tanto* discriminatory because it tends to stigmatize those who benefit from it; however, as it may improve integration in the future, it does not ultimately constitute wrongful discrimination. In contrast, according to my proposal: (a) Stigmatization is not a sufficient condition for discrimination, and (b) even if it were, the discriminatory nature of the act would not be transformed merely because it was predicted to produce good results in the future.

(as compared to male drivers), there is no basis for claiming that it also *discriminated* against them.

The clause under discussion was motivated by what the court called a "marketing gimmick."[11] IDI hoped that by exempting female drivers from the obligation to pay the service fee for a tyre change, more women would be attracted to purchase its car insurance. In this respect, it resembled a ladies' night promotion, in which women are offered free entry to bars or a discount on beer. As Rank (2005) shows, in some states in the United States, such evenings are legitimate, whereas in others they are not. But the debate about ladies' nights revolves around whether they constitute impermissible discrimination against *men* (who have to pay more to enter the bar or for beverages). No one in this debate has argued that they (also) constitute wrongful discrimination against *women*.

In concluding this section, I should add that it is only for the sake of discussion that I accepted the assumption that the insurance policy in question had a genuine (negative) impact on the status of women. My own assessment is that this assumption is unfounded. What creates and perpetuates problematic images of men and women in society is first and foremost the fact that men and women play different social roles, for example, the reality that almost all car mechanics are men, that in almost all households the men are responsible for car maintenance and usually also for driving, and that very few women (compared to men) are able to deal with car breakdowns or to replace a tyre. It is these realities that make people think that such a division of roles is natural and necessary. The fact that a particular insurance policy contains a clause providing a free tyre change service for women has, at most, a marginal causal effect on the reinforcement of these images. And even more remote is the possibility that this clause would lead to "women not even trying to change a tyre and lead to the exclusion of women from any activity that involves physical exertion."[12]

3. Psychological Harm, Humiliation, and Discrimination

In response to the argument of the previous section, one might contend that it offers too narrow an understanding of the concept of harm. It connects harm to (the reduction of) welfare, and it understands welfare in terms of material goods, such as money, employment, and so on. But welfare also includes various mental states, which can be hurt even without material harm, for example, through humiliation. This arguably was the case with the female drivers insured by IDI, per Judge Grosskopf. In his view, due to the discrimination these drivers were exposed to, they suffered the "subjective psychological harm of humiliation,"[13] as well as "injury to their sensibilities,"[14] and were thus entitled to compensation.

This response can be taken as assuming that the "currency" of discrimination—to borrow Jerry Cohen's (1989) expression in a closely related context—does not have to be goods such as money or employment, but can also be self-respect. That is to say, in some cases of discrimination, members of one group receive a smaller share of a certain good (self-respect) than members of another group who are relevantly

[11] *IDI* case, judgment, par. 9.
[12] *IDI* case, judgment, par. 61(A).
[13] *IDI* case, approval of class action, par. 44.
[14] *IDI* case, judgment, par. 54.

similar. To put the point in negative terms, the claim would be that members of one group (female drivers, in the present case) receive a greater share of some painful emotional state (a sense of humiliation) than members of another group (male drivers) and hence are rightly considered victims of what the court called "short-term discrimination" and are entitled to compensation.

The problem with this proposal is that the emotional pain of humiliation is the *outcome* of discrimination (more precisely the outcome of what is *perceived* as discrimination) in the allocation of some good, not the *currency* of discrimination itself. Indeed, the court speaks of the subjective psychological harm as caused "*by* the discrimination." The point is that if the psychological harm is the *outcome* of the (perceived) discrimination, it is necessary to point to some other good with regard to which members of one group are discriminated against as compared to members of another group. In the absence of such a currency, and given that in material terms the condition of the alleged discriminatees is improved, there is no basis for the charge of discrimination.

This criticism is similar to one I have developed elsewhere against arguments concerning hurt feelings (Statman 2000b). I argued that the mere fact that a person feels hurt, that she has a subjective sense of being disrespected, is insufficient to establish a moral demand that the assumed offender refrain from engaging in the perceived offensive behaviour. For example, the fact that a pride parade inflicts emotional pain on some people—those who strongly object to the message sent by this parade—is not sufficient to establish a moral claim to call off the parade, unless its opponents can show that the parade is problematic for other reasons, for instance, because it violates their religious freedom. If the opponents cannot establish these claims, their emotional pain cannot do the normative work. Back to the *IDI* case: In order for the alleged emotional pain of the female drivers to carry normative weight, those alleging such pain have to show that it ensued from wrongful discrimination that is independent of this pain, and has a different currency. Since no such currency exists in the case of the female drivers, they cannot claim discrimination.

Another possibility is that the currency of discrimination is not a subjective sense of humiliation, but humiliation in an objective sense. As I explain elsewhere (Statman 2000a), one can speak of humiliating behaviour even when the object of the humiliation is not aware of it. Perhaps this is the kind of harm which underlies the claim that the female drivers were discriminated against. Compared to the male drivers, who were treated with respect, female drivers were victims of a disrespectful and patronizing attitude (whether or not they were aware of it and suffered a subjective affront to their dignity).

For the sake of discussion, let us accept that the clause in the insurance policy that exempted women from the tyre change service charge was indeed degrading in the objective sense of the term. Nonetheless, it would be a mistake to see it as also discriminatory. Degrading people is morally disgusting, yet not all degradation is *discrimination*, the former capturing a particularly disturbing category of disrespectful acts. Thus, people often have a negative and disrespectful attitude towards others simply because the latter are members of a group which is perceived as inferior. The very existence of this attitude is a moral flaw, to which apparently only few are immune.[15] They may express this attitude through offensive words, insulting gestures,

[15] The implicit association test has demonstrated that almost everyone is prejudiced against members of some groups. See Banaji and Greenwald 2013.

and the like, and this would be another, more serious moral failure. They may express it with even more grievous acts, such as beating or murder, which, of course, would be much worse. And it may be manifested in actions that are detrimental to these people relative to others—for example, paying them lower wages, refusing to admit them to university, preventing them from living in certain areas, and so on. According to the proposition I am defending here, discrimination refers only to the latter kind of moral failure.

According to this proposition, the disrespectful message conveyed in cases of discrimination is indirect. The white employer does not necessarily *say* to the black candidate that she is inferior, does not curse her, or the like. On the contrary, in terms of customary social practices, he may treat her in a civil and polite manner. The disrespectful attitude is reflected in the denial of benefits given to others equally situated.[16] When no such denial occurs, then even when the employer's behaviour vis-à-vis his employees is motivated by prejudice and racism, there is no *discrimination*, as when a white employer goes out of her way to hire blacks and improve their conditions just to conceal from others, as well as from herself, her negative attitude toward blacks.

In order to see why direct expressions of disrespect, like insults, do not, as such, constitute discrimination, consider the following case: An employer steals a unique ring from one of his employees, and the reason he allows himself to do so is connected to her affiliation with an ethnic group which he perceives negatively. This is a criminal offense, and given that it is a hate crime, the offending employer deserves a particularly severe penalty. But it would be strange if his act was also conceptualized as discrimination against the employee and if he were required to pay her compensation on that basis. "Direct" humiliation by using, for instance, names with derogatory connotations, is analogous to stealing.

The idea that discrimination does not occur whenever a person is made worse off compared to others, but only when certain types of denial of goods occur, has to do with the fact that these types of harm are typically (though not necessarily) related to the discriminator's social or professional role. Section 3 of the Prohibition of Discrimination Law in Israel makes this clear: A potential offender is "whoever's occupation it is to provide goods or services to the public or to manage a place open to the public" and, consistently with this, the discrimination the law seeks to prevent is discrimination "in the provision of these goods or services, in granting entry to the place, or in providing the services at that place." Discrimination occurs when, in providing a product or service, or in allowing entry (mainly to a club), the condition of one person is worsened in comparison to the condition of others by virtue of the group affiliation of the former. It does not occur when the person providing the service offends those who seek to consume the service or product in other ways—for example, if the person providing the service steals from them, sexually harasses them, or degrades them by insulting them. Similarly, a judge discriminates by means of the

[16] My analysis implies that "separate but equal" policies, and certainly "separate but more equal" policies, are not discriminatory, even if they may be objectionable for a variety of reasons. Therefore, in Hellman's example (2008, 26–8), regarding a school principal who seats black students on the right of the hall and white students on the left, I agree that the principal's behaviour is offensive, but I do not think it is discriminatory—*a fortiori* if the chairs on the right side are more comfortable, so that the condition of the black students is made actually better than that of the white students, in terms of the good being allocated, namely, seats in the hall.

sentence she imposes, by giving or refusing a litigant the opportunity to argue before her, and so forth, and a lecturer discriminates by means of the grades she gives, by agreeing or refusing to allow students to speak in class, and the like. These examples confirm my proposal that discrimination does not occur any time a person acts in a harmful manner towards members of a disadvantaged group in a way that degrades them or entrenches their inferior status in society. Rather, it typically occurs when the agent performs that act within the framework of her role (in the broad sense of the term) and in respect of those goods and opportunities whose allocation is part of that role.

I cannot develop a full-fledged theory of discrimination here, but it's worthwhile to shed light on two points. The first concerns my view of what makes wrongful discrimination wrong. After exploring several routes to answer this question (Alexander 1992 and 2015), Larry Alexander subsequently concludes that all current answers fail and that his "quest to discover what makes wrongful discrimination is at an end, at least for the moment" (Alexander 2016, 13). One of the answers he engages with anchors this wrongness in the discriminator's mental state, namely, his or her disrespectful attitude toward the discriminatee. In Alexander's view, this can't explain the wrongness of discriminatory acts because, in general, "if an act is otherwise objectively permissible, the actor's attitude in performing that act does not render it impermissible" (ibid., 3), while if it is objectively impermissible, the actor's mental state drops out as part of the explanation for this impermissibility. In short, assessments of acts are distinct from assessments of mental states or of character. This view has been famously defended by Ross and by Mill, followed by several philosophers in the twentieth century.[17] However, to the extent that it maintains that motives are *never* relevant to the rightness or the permissibility of acts, it is indefensible. The point has been argued by others, such as Scanlon (2008), Stocker (1970 and 1973), and Sverdlik (1996). One of the cases used by Sverdlik to illustrate his position concerns an otherwise permissible act which is made wrong when motivated by racism (Scanlon 2008, 69–74; Sverdlik 1996, 341). For instance, while it is permissible to blame a student for being late in submitting her paper, it is impermissible to do so if the blame is motivated by the professor's racial bias against the student. Thus, the professor's deplorable mental state turns an otherwise permissible act into an impermissible one. In my view, this is how the wrongness of discrimination should be understood. When discrimination is wrong, it is because of the disrespectful attitude that it manifests vis-à-vis the discriminatee(s).

Second, a disrespectful attitude is only a necessary condition for discrimination, not a sufficient one. Some people might be ashamed of having such an attitude, and they work hard to make sure it doesn't affect their behaviour, while with others it might play out in all kinds of ways. As explained above, discrimination is a distinct way of expressing disrespect for somebody qua member of a perceived inferior group, namely, by giving her a worse treatment, in terms of some good, than that afforded to others who are similarly relevant.

[17] For references, see Sverdlik 1996, sec. I.

4. Is a Benefit Which Reinforces Negative Stereotypes Always Wrongful?

So far, I have argued that an action that materially improves the condition of members of a disadvantaged group (compared to members of a nondisadvantaged group) does not constitute discrimination against them even if, in the long run, it perpetuates harmful prejudices against them. However, this does not put an end to the discussion. Even if discrimination is not the right term to describe the action in question, it might still be morally wrong. Similarly, from a legal point of view, even if the action does not fall within the scope of antidiscrimination laws, it might fall within the province of other branches of the law, particularly administrative or constitutional law. Thus, even if the recipient of the benefit is not entitled to compensation for discrimination, she (or others) might have grounds for demanding that the relevant body refrain from such actions, certainly in the case of public bodies, but probably also in the case of hybrid public-private entities, such as insurance companies.

I concede that there may be instances where such benefits are morally wrong, but identifying them is harder than one might think, and therefore caution is needed when using the force of law to prevent them. To illustrate the point, think about attitudes toward the elderly. Prevalent prejudices about them include the beliefs that the elderly are physically weak, that they have difficulty standing for any length of time, that they are technologically challenged, and so on. Suppose a young woman sees an old man boarding the bus and gives him her seat. He may be happy and thank her for her kindness, but he may also resent her for having stereotypically perceived him as "old" even though he is in excellent physical shape and has no problem standing for ten minutes on the bus. Moreover, one might think that not only is *he* harmed by this gesture, but so are all elderly people, because the young woman's behaviour reinforces the above stereotypes about the elderly.

There seems to be a sort of a catch here which applies any time one seeks to benefit others, particularly if the latter are members of a disadvantaged group. On the one hand, many genuinely need this help, and therefore it should be offered. On the other hand, the very act of offering help conveys the message that its recipient is weak and dependent, that she is not a full and competent member of the social community. This message is humiliating and painful and has implications for the way in which the entire disadvantaged group is perceived.

This catch not only exists in interpersonal relationships, as in the above example, but also in relationships involving institutions. Think of an airline that wishes to make it easier for the elderly to board the aircraft and invites them to board before everyone else. For many elderly passengers, this would provide a great relief, but for others the relief would be accompanied by a sense of humiliation caused by being singled out as "old." The situation would be further exacerbated if airline officials approached passengers who looked old to ensure that they were aware of their right to board first. Again, for some elderly passengers, such an initiative would be welcome because without it they might not know about the new airline policy, resulting in their experiencing the hardship of standing in a long queue carrying their baggage, potentially reinforcing their own sense of inadequacy. For other elderly passengers, this explicit invitation to board first would be experienced as insulting.

To which I should add that in many cases there is no certainty about the relevant causal connection. Suppose that in order to combat the stereotype that female drivers are unable to manage on their own when their car breaks down, men stop offering them help in such situations. While this may undermine the above stereotype, as women would have no choice but to learn how to repair their cars by themselves, it may also have the opposite effect. Women might refrain from investing the time and effort needed to learn how to change a tyre, or, in any case, might find it difficult to perform the task given the tools available in most vehicles. As a result, they might find themselves standing helplessly at the side of the road near their broken-down vehicle, a sight which, in the minds of passing male (and female) drivers, will just *strengthen* the problematic stereotypes that we are seeking to uproot. The same with the elderly. Failure to offer the elderly help in order to fight the prejudice against them might make some of them *really* helpless in terms of the relevant action (operating a smartphone or carrying a heavy bag), which in turn will strengthen this damaging prejudice.

All this places us in a dilemma with no simple solution. On the one hand, as many female drivers would be happy to receive help with a tyre change,[18] maybe it would be a good idea for passing drivers—typically *male* drivers—to stop and offer them help in fixing their car. On the other hand, doing so might humiliate such female drivers by conveying the message that they are helpless and reinforce a general prejudice about women in society as weak, vulnerable and dependent on men. It would be unreasonable to suggest that in such dilemmas regarding women or the elderly, offering help is always morally wrong because it perpetuates stereotypes and entrenches prejudices. Such a proposition would result in sacrificing individuals who currently really need help in changing a tyre, carrying shopping bags, or operating their smartphones, for the sake of an attempt to advance an historical process culminating in society treating women, the elderly, and other disadvantaged groups with equal respect. However, it would be equally unreasonable to say that, in these dilemmas, offering help is always the right thing to do. Sometimes the cost, in terms of the violation of dignity and the reinforcement of negative stereotypes, outweighs the benefit.

The question at the centre of this section was whether a policy that favours women (or members of other disadvantaged groups) is wrongful, regardless of whether or not it should be regarded as discriminatory, because of its degrading message and because of its causal contribution to the strengthening of problematic stereotypes about them. I have tried to show that this question has no definitive answer. Although such a policy is sometimes wrongful, at other times the provision of benefits to members of a disadvantaged group is desirable or at least acceptable.

5. Summary

As far as I know, the *IDI* decision was the first time that a court granted compensation—on grounds of discrimination—to claimants that (noncoincidentally) *benefitted* from the alleged discriminatory act. The basis for this surprising decision

[18] According to a survey carried out in the United States in 2014, a third of female drivers acknowledge that they cannot change a tyre, compared to only 6 percent of men. See Woodyard 2014.

was the thought that, in the long run, the benefit would harm the relevant group by increasing the spread of prejudice and discrimination against it. To appreciate how far-fetched this decision was, I compared it to two close dilemmas, one concerning ladies' nights and the other affirmative action. At ladies' nights, women receive benefits that men don't, for instance free entry or a free drink. Arguably, such benefits are degrading to women, perpetuating the view that women are not full agents of their own but are companions to their male partners, or nice objects to have in the club to make it more attractive. Yet no woman has ever filed a suit for compensation on the basis of discrimination for these benefits. Similarly with affirmative action. No female candidate who got a job thanks to an affirmative action program has ever dreamt of suing the employer who hired her for discrimination on the basis of the claim that hiring her was degrading to her and would intensify negative stereotypes and discrimination against women more generally.[19] In both of these cases, it was *men* who filed claims for compensation—for having to pay for what women got for free,[20] or for losing a job or an opportunity to a female candidate who would not have gotten it had she not been a woman (Coston and Kimmel 2013). By contrast, in the *IDI* case, it was those who *benefitted* from the insurance policy, namely, the female drivers, who were seen as discriminatees and thus as entitled to compensation.

The purpose of my paper has been to explain why this decision was wrong and to exploit this critical discussion to make some general observations on the nature of discrimination. In particular, I utilized this discussion to highlight what I referred to as the deontological nature of discrimination. A person is a victim of wrongful discrimination when her condition is made worse off relative to some good, in comparison to others who are similar to her in the relevant respects, and when this is due to her affiliation with a group perceived by the discriminator (consciously or less so) as less worthy of respect. When both of these conditions are satisfied, (wrongful) discrimination occurs even if, in the long run, the discriminator's act or policy reduces stereotypes and discrimination against the relevant group. By the same token, when either of the conditions is not satisfied, there is no discrimination even if the act or policy at hand leads to an increase in negative stereotypes and in discrimination against the relevant group.

A central distinction which I tried to establish is between acts of discrimination and their consequences. Discriminatory acts do not lose their nature as such even if they are predicted to mitigate future discrimination, just as acts which are expressly *non*-discriminatory—particularly those that benefit their recipients—do not become discriminatory only because, in the long run, they reinforce discrimination against the relevant group.

I have emphasized that discrimination is just one way among many others to express disrespect towards people. In other words, acting disrespectfully towards some somebody is only a *necessary* condition for acting in a discriminating manner, not a sufficient one. What's unique about discrimination is that the disrespect plays itself out in a treatment of the discriminatee that, in relation to some good, is less favourable than the treatment accorded to others similarly situated.

[19] For the fear that affirmative action will "foster harmful and divisive stereotypes" or reinforce racialist thinking, see, for instance, *Bush v. Vera*, 517 U.S. 952 (1996).
[20] See the cases mentioned by Rank 2005.

The fact that a particular act does not constitute *discrimination* leaves open the question of whether it is morally wrong or not, as well as the question of what legal measures should be taken—if any—to block it. The proposition I put forward here was that sometimes it is indeed morally wrong to accord benefits to members of disadvantaged groups, such as women, even if the benefit is motivated by good intentions—morally wrong because of the deleterious effect of doing so on the self-image of the beneficiaries, and because it perpetuates problematic stereotypes, which in turn reinforce discrimination against women. However, in other cases, such benefits are permissible and even desirable, namely, when the beneficiaries gain from them and when the benefits have no significant (negative) impact on the general norms prevailing in society. When women consume a benefit willingly, this is usually evidence that the benefit is morally all right. In any event, if an arrangement directly benefits members of disadvantaged groups, it will rarely be appropriate to resort to legal measures to rule out such an arrangement out of a concern that the benefit will worsen their situation in the long term. In the same vein, it is almost impossible to think of cases where it would be right to *compensate* members of a disadvantaged group for a benefit that they received by virtue of their group affiliation—elderly people invited to board a plane first, or women granted "feminine" gifts on Women's Day or free tickets to football games (Liddle 2015). They can claim compensation only if they are discriminated against to their detriment—if, for example, the elderly are made to board last so as not to delay the rest of the passengers, or if women receive gifts on Family Day which are worth less than those given to men.

Elsewhere (Statman 2001), I have proposed a narrow interpretation of the notion of (injury to) dignity, one which is more compatible with its use in everyday language. I argued that such a narrow interpretation may prove more effective in defending human dignity than a wide one. The logic of that argument applies also to its close relative—the concept of discrimination. A narrow interpretation which makes it easier to identify discriminatory acts and deal with them may prove to be more effective in overcoming discrimination and in promoting a society that shows equal respect to all its members.

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