Please cite published version.

Discrimination and the Value of Lived Experience

in Sophia Moreau’s *Faces of Inequality*

Erin Beeghly

Associate Professor, University of Utah

erin.beeghly@utah.edu

ABSTRACT

In *Faces of Inequality: A Theory of Wrongful Discrimination*, Sophia Moreau embarks on a classic philosophical journey. It’s what philosophers nowadays call *an explanatory project*. The goal of explanatory projects is to deepen our understanding of wrongful actions and what they share in common. In this review essay, I argue that Moreau’s book embodies a valuable explanatory project that ought to be on the radar of lawyers, legal theorists, and philosophers. After sketching the book’s arguments, I explain why they are so refreshing. The remainder of the essay proceeds in a more critical mode. First, I argue that book’s explanatory aspirations fall short, and I sketch a framework for a more radically pluralistic theory of wrongful discrimination. This framework has the power to embrace Moreau’s compelling view that discrimination wrongs people by failing to treat them as equals while also recognizing a rich array of other discriminatory wrongs found in lived experience. Second, I argue that *Faces of Inequality* will disappoint readers looking for a truly inclusive account of wrongful discrimination. I end by emphasizing the book’s contribution to political philosophy and its ambition to provide a truly liberatory theory of what we owe to each other as moral and political equals.

Key words: discrimination, oppression, feminism, critical race theory, political philosophy, egalitarianism, sexism and racism, queer theory

1. INTRODUCTION

In *Faces of Inequality: A Theory of Wrongful Discrimination*, Sophia Moreau embarks on a classic philosophical journey. It is what philosophers nowadays call *an explanatory project.[[1]](#footnote-1)* All such projects are variations on Socrates’ enterprise in the *Euthyphro*. One begins with phenomenon that people tend to think of as wrong or unjust—such as murder, slavery, lying, stereotyping, or in this case, discrimination. One then poses the proverbial philosophical question “Why?” Why is the thing in question wrong? Is it in fact always wrong? Or, is it only sometimes wrong? The payoffs of explanatory projects are diverse. Some are revisionary. They push us to think in new ways about morally troubling phenomena. We might end up realizing that something was wrong for reasons that we never thought of, or that it is only sometimes wrong, rather than always wrong. Other explanatory projects end up vindicating commonsense intuitions. Whether revisionary or not, the goal of explanatory projects is to deepen our understanding of wrongful actions and what they may or may not share in common with each other. The final product is a theory offering a systemic understanding of the phenomenon under investigation.

In this review essay, I argue that *Faces of Inequality* embodies a valuable explanatory project and contribution to discrimination theory that ought to be on the radar of lawyers, legal theorists, and philosophers. After sketching the book’s arguments, I explain why they are so refreshing. The remainder of the essay proceeds in a more critical mode. First, I argue that book’s explanatory aspirations fall short, and I sketch a framework for a more radically pluralistic theory of wrongful discrimination. This framework has the power to embrace Moreau’s compelling view that discrimination wrongs people by failing to treat them as equals while also recognizing a rich array of other discriminatory wrongs found in lived experience. Second, I argue that *Faces of Inequality* will disappoint readers looking for a truly inclusive account of wrongful discrimination. I end by emphasizing the book’s contribution to political philosophy and its ambition to provide a truly liberatory theory of what we owe to each other as moral and political equals.

2. WHAT IS DISCRIMINATION?

*Faces of Inequality* opens with examples of discriminatory treatment, which vividly illustrate the kind of phenomenon in which Moreau is interested: “harassment of and violence against Muslims, medical staff that refuse to treat transgender people or the children of gay couples; the persistent gender wage gap; the lack of safe drinking water on indigenous reserves in countries such as Canada when other communities in these same countries have easy access to it.”[[2]](#footnote-2) Given these examples, a reader might jump to the conclusion that Moreau’s theory concerns *unlawful* discrimination.

*Faces of Inequality* is about so much more. To discriminate, according to Moreau, is to “disadvantage some people relatively to others” and, hence, to treat persons unequally. It is not just the state or individuals occupying formal institutional roles such as public officials and employers that have the power to discriminate.[[3]](#footnote-3) Anyone can discriminate, at any time. She asks readers to consider “someone deciding whom to date, or the example of a host deciding whom to invite to a party.”[[4]](#footnote-4) “If we don’t want to date someone because of their race,” she says, “that’s our prerogative, just as if we don’t wish to invite a particular person to our party because of their sexual orientation, we should be given the freedom to do this.”[[5]](#footnote-5) Yet, she says, “we must be careful here.”[[6]](#footnote-6) We can’t infer that such choices are not discriminatory from the fact that the state shouldn’t regulate them. Morally wrongful discrimination exceeds legal parameters. Indeed, wrongful discriminatory treatment may be pervasive in everyday social life under conditions of oppression. “We can accept that people ought to have considerable freedom to make personal decisions as they see fit, without interference from the state, or pressure from other people,” Moreau eloquently argues, “quite consistently with recognizing that each of us nevertheless has a moral duty to treat persons as equals, and that we exhibit some kind of moral failing when we do not treat others as equals.”[[7]](#footnote-7)

3. THE ARGUMENT AND ITS STANDOUT FEATURES

Let me now say more about the book’s overall structure. Chapter 1 introduces Moreau’s definition of discrimination and defends her methodology. She argues that any plausible theory of wrongful discrimination must begin with the following question:

*The question of equality:* when we disadvantage some people relative to others on the basis of certain traits, when and why do we wrong them by failing to treat them as equals of others?[[8]](#footnote-8)

Thereafter the question of equality becomes a launching pad from which Moreau introduces three ways in which discrimination can wrong persons by failing to treat them as equals. Chapter 2 advances the claim that wrongful discrimination unfairly subordinates people. Chapter 3 argues that wrongful discrimination makes people’s real or perceived group membership burdensome in ways that limit their autonomy, thereby violating their right to deliberative freedom. Chapter 4 explores the ways in which discrimination can wrong people in a third way, namely, by denying them access to basic goods such as clean water. After investigating these three wrongs, Moreau explains in Chapter 5 how they fit together and why her theory qualifies as pluralistic, rather than unified. She also articulates the theory’s considerable benefits, including the philosophical and legal puzzles that it solves. Chapter 6 defends a controversial feature of her account, namely, that it offers the same explanation of wrongful direct and indirect discrimination. In Chapter 7, Moreau concludes by arguing that states have a duty to treat persons as equals, but that individuals—like you and me—do too. Hence, we all have a duty not to discriminate, even in our private lives.

This overview alone ought to entice readers to read *Faces of Inequality*. Moreau’s arguments are elegant, efficient, and engaging. She seamlessly weaves together philosophical analysis and legal discussions of discrimination law. The result is an impressive book at once commonsense and groundbreaking, which expands her already significant contributions to the literature.

Let me say more about three exciting features of Moreau’s view. First is this: her focus on lived experience and real-life examples. From the very beginning, Moreau takes a stand. “There is a serious risk,” she argues,

in trying to analyze discrimination in abstraction from its social context and without paying particularly close attention to the views of those who have experienced it. We risk frustrating an important aim of discrimination law. This is to help us, as a society, give underprivileged groups a chance *to have their voices heard*—a chance to be considered for who they are rather than for who we think they are, and a chance to become the people who do the considering, who are in the positions of power and who determine the agendas for our workplaces, the policies for our educational institutions, the values for our communities.[[9]](#footnote-9)

Perhaps some readers will consider the above statement and just nod their heads in agreement, as if Moreau were preaching to the choir. Of course, lived experience matters, who would disagree? In fact, many of her interlocutors do. Analytic philosophers tend to be enamored with farfetched thought experiments. They often argue that real cases are too messy to test our concepts and use fantastical examples with little, if any, connection to reality.

Instead of remaining silent on the issue, Moreau tries to argue her readers out of that orientation. I cannot think of a writer in this corner of the philosophical literature who makes such an impassioned plea. She says that typical methodologies threaten to *silence* and *disempower* underprivileged groups, and the individuals in them. In contrast, her methodology aims to make visible the experiences of marginalized persons. She also argues that excessive abstraction leads to unreliable theories of wrongful discrimination. “When we try to test a theory of discrimination by appealing to happenings of fictitious societies,” she writes, “. . . or scenarios of discrimination that are so abstract . . . we bracket the complex social contexts in which real acts of discrimination occur. And these social contexts are, I shall argue, the key to understanding discrimination.”[[10]](#footnote-10)

Reading these passages, I was thrilled to find Moreau arguing for her methodology so forcefully. As a theorist steeped in feminist theory and critical philosophies of race and ethnicity, I am used to hearing writers argue for the importance of marginalized voices. Such arguments are, however, less common among writers developing general theories of wrongful discrimination.

A second invigorating feature of the book is Moreau’s defense of pluralism. Unified theories have been long assumed to be the gold standard in philosophy. A unified theory of wrongful discrimination would identify one or more properties shared by all cases of wrongful discrimination. For example, it might be that wrongful discrimination is always disrespectful,[[11]](#footnote-11) or always harms people in a particularly significant way,[[12]](#footnote-12) or always impedes people’s ability to flourish.[[13]](#footnote-13) Increasingly, theorists have begun to move away from unified accounts, opting instead for pluralistic theories of wrongful discrimination.[[14]](#footnote-14) Pluralistic theories hold that wrongful discrimination can be wrong in different ways, and for different reasons.

Though Moreau is not unique in advancing a pluralistic theory, she articulates principled reasons for embracing pluralism, something other theorists have not done to the same extent. Her basic objection is that unified theories are excessively reductive and require theorists to ignore “certain key features of our anti-discrimination laws”;[[15]](#footnote-15) moreover, they distort lived experience. Because people who face discrimination have a range of objections to being treated as inferior, a theory of wrong discrimination must reflect this complexity.

Moreau also persuasively defends her theory against the objection that non-unified theories lack explanatory power. “Will these explanations still seem too different, too disjointed, to be coherent?” she writes, “We can only answer this question once we see the different explanations, the different components of this pluralist theory.”[[16]](#footnote-16) The beauty of her theory is its answer to this challenge. On her view, all wrongful discrimination treats people as inferiors; hence there is a single, unified reason that discrimination is wrong, when it is. However, the theory is also pluralistic because there are three “faces” of inequality, each of which is special. Perhaps the move sounds like having your cake and eating it too. It kind of is, but in a good way. Who wouldn’t want the best of all worlds, namely, a theory that provides both unity and explanatory reach, something that pluralism best delivers?

A third stimulating aspect of her analysis is this: the unity of direct and indirect discrimination. “Our laws,” Moreau observes, “treat wrongful direct and indirect discrimination as though they were two forms of the same phenomenon: discrimination.”[[17]](#footnote-17) On her view, the law gets it right by asserting continuity here. To support the claim, she uses an example drawn from the Canadian military. “Some of the worst examples of military culture,” she notes, “involve direct discrimination: [such as] frequent use of sexualized language and sexual jokes targeting women’s body parts . . .”[[18]](#footnote-18) However, misogyny in the military is also facilitated in more suble ways: for example, by cadet training programs that say nothing about appropriate conduct of fellow soldiers, and reporting procedures for harassment and sexual assault that don’t require confidentiality, a fact that discourages victims from coming forward.[[19]](#footnote-19) Though these policies were not created to disadvantage anyone, she notes, they work in practice to disproportionately disadvantage women and LGBTQ+ individuals. And here is the crux of the matter. Whether or not a practice or policy explicitly targets a group of people, it is discriminatory when it treats people worse than others because of certain traits, and it qualifies as wrongful discrimination if the policy or practice either (a) subordinates people, (b) violates their deliberative freedom, or (c) deprives them of basic goods.

Moreau’s view will no doubt be controversial. Some theorists deny that indirect discrimination is actually discrimination.[[20]](#footnote-20) Others grant that it is discrimination but contend that direct and indirect discrimination are wrong for different reasons.[[21]](#footnote-21) Consider Deborah Hellman’s view. She contends that direct discrimination is wrong if and only if it is demeaning.[[22]](#footnote-22) To demean is to send the message that a person or group is morally less than or not fully human. In contrast, Hellman argues that indirect discrimination is wrong—when it is—because it compounds social injustice.[[23]](#footnote-23) It is not my aim here to litigate disputes between Moreau and her many likely critics. My point is a simple one. In *Faces of Equality*, readers will find a robust defense of indirect discrimination as well as a spirited case for the normative symmetry of direct and indirect discrimination.[[24]](#footnote-24)

4. PUSHING TOWARDS A MORE RADICAL PLURALISM

I began by noting that Moreau opens her analysis with what she calls “the puzzle of equality.” The puzzle of equality says that the key problem of discrimination theory is the question of how discrimination wrongs people by failing to treat them as equals. Moreau distinguishes her starting point from another contender, which she dubs “the wrongful differentiation question.”[[25]](#footnote-25) According to the wrongful differentiation question, the key problem of discrimination theory is to explain when and why treating people *differentially* wrongs them. On her view, a wrongful differentiation approach fails to cohere with lived experience and provides an uninformative starting point for philosophical analysis.

While some readers may be convinced by this argument, I was not. No doubt equality and inequality play a substantial role in our thinking about wrongful discrimination. But equality is not the be-all-and-end-all of what’s wrong with discrimination, and Moreau fails to provide evidence that equality is a necessary element of all legitimate objections to discriminatory treatment.

Consider the objection that discrimination can wrong persons by failing to treat them as individuals. This objection has played an important role in the history of queer activism. “All too often,” reads a flyer created by LGBTQ+ activists in 1965, “there is a tendency to be concerned with the rights of homosexuals so long as they somehow appear to be heterosexual, whatever that is. The masculine woman and the feminine man are looked down upon . . . but *the Janus Society is concerned with the worth of an individual and the manner in which he or she comports himself.*”[[26]](#footnote-26) At a different protest one year later, Barbara Gittings—trailblazing organizer for the early U.S. lesbian rights group Daughters of Bilitis—carried a sign emblazoned with a similar-sounding message. Her partner, photographer Kay Tobin Lahusen, snapped a shot of Gittings with a sign, which read, “Homosexuals should be judged as individuals.”[[27]](#footnote-27)

A small but growing literature is devoted to interpreting the alleged moral imperative to treat persons as individuals and assessing its validity. Some writers have argued that the so-called moral imperative in question doesn’t exist. In “What is Wrongful Discrimination?” for example, Richard Arneson rejects the ideal, reasoning: “[t]here is nothing morally untoward about responding to individuals on the basis of statistical indicators their broad characteristics suggest.”[[28]](#footnote-28) Pushing back against such dismissals, others defend the claim that discrimination may wrong people by failing to treat them as individuals.[[29]](#footnote-29) They motivate their efforts by noting that treating persons as individuals is a popular ideal that has been deployed by activists of all kinds to fight wrongful discrimination.

Though Moreau ignores this debate, she should not. *Faces of Inequality* is playing an explanatory game. Explanatory projects succeed or fail based on how well they explain the wrongness of the phenomenon in question. When Barbara Gittings hoists a sign demanding that “Homosexuals should be treated as individuals” as a way of protesting discriminatory employment laws in the U.S., she is advancing an explanation of what’s wrong with discrimination. Moreover, in the space of explanations, it’s a popular and intuitive one. Moreau builds it into the desiderata for a theory of wrongful discrimination that the best theory dovetails with lived experience. “The perceptions of victims of discrimination,” she writes, “are appropriately treated as a check on theories of discrimination.”[[30]](#footnote-30) She tells readers: “victims of wrongful discrimination are likely to have some insights into the nature of their complaints.”[[31]](#footnote-31) Indeed she grants their complaints presumptive legitimacy, noting “it is difficult for me to see how they [i.e., people who are treated in discriminatory ways] could be wholly mistaken about the nature of their complaints.”[[32]](#footnote-32) Given how seriously she takes the perspectives of marginalized individuals, she has a good reason to take Barbara Gittings’ stated objection seriously. So we must ask: why doesn’t discrimination wrong people by failing to treat them as individuals? And how does this presumptive wrong relate, if at all, to the ideal of equality?

One might argue that Moreau has an easy response to these questions. Think about the notion of deliberative freedom. The right to deliberative freedom consists in the right to:

. . . deliberate about one’s life, and to decide what to do in the light of these 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 without these traits always before one’s eyes.[[33]](#footnote-33)

Maybe treating persons as individuals is a constitutive part of respecting their deliberative freedom and, thus, treating persons as equals.

Though the response sounds promising, its viability is unclear. Consider one prominent account of treating persons as individuals offered by Kasper Lippert-Rasmussen. On his view, discrimination wrongs persons by failing to treat them as individuals when it disadvantages them based on less than all relevant, reasonably available information.[[34]](#footnote-34) Other writers root the imperative of treating persons as individuals in the value of autonomy. Here is Benjamin Eidelson:

In forming judgments about Y, X treats Y as an individual, if and only if,

(Character Condition) X gives reasonable weight to evidence of the ways Y has exercised autonomy in giving shape to her life, where this evidence is reasonably available and relevant to the determination at hand.

(Agency Condition) if X’s judgments concern Y’s choices, these judgments are not made in a way that disparages Y’s capacity to make these choices as an autonomous agent.[[35]](#footnote-35)

According to Eidelson, discriminators may wrong the people against whom they discriminate by violating one or both above conditions. So doing, they fail to treat persons as individuals and, thereby, disrespect them.

If we take the above views seriously, it is hard to see how the ideal of treating persons as individuals could fit into Moreau’s tripartite, equality-focused theory. Failing to treat someone as an individual doesn’t necessarily violate a person’s deliberative freedom. Violating a person’s deliberative freedom entails doing things that connect to other agents’ thinking and practices, and in a way that creates significant costs for the person targeted by discriminatory treatment. Wider social inequalities are always at play. This is not true of failing to treat persons as individuals. You can wrong someone by failing to treat them as an individual if you judge them by partial information when you could have used better evidence.

Moreau could in theory advance an interpretation of treating persons as individuals that fits nicely within her theory. But I am skeptical of such a move. On Moreau’s view, the moral wrongs of discrimination begin and end with the ideal of equality. To see why one might be skeptical of such an explanatory reduction, consider philosophical work that is not about discrimination per se.

In “The Diversity of Objections to Inequality,” Thomas Scanlon asks why we care about social and political inequalities. He writes, “when I ask myself why I think it is so important that these inequalities should be eliminated, I find that my reasons for favoring equality are in fact quite diverse, and that most of them can be traced back to fundamental values other than equality itself.”[[36]](#footnote-36) Scanlon catalogues his objections to inequality as follows:

1. Inequalities cause incredible suffering, which could be ended if huge gaps in resources were remedied.[[37]](#footnote-37)
2. Inequalities cause the worse off to be treated as inferior, and to internalize feelings of inferiority.[[38]](#footnote-38)
3. Inequalities inhibit autonomy, giving some people “an unacceptable amount of control over the lives of others.”[[39]](#footnote-39)
4. Inequalities frustrate fairness in society at large.[[40]](#footnote-40)

According to Scanlon, only the second objection is egalitarian in nature. The rest—including his autonomy-based objection—reflect concerns that are not about equality per se. Hence he concludes that there is not a unified explanation of what’s wrong with inequality. When inequalities are wrongful, they can be wrongful in different ways and for different reasons. His reflections entail that one must attend to ideal of equality, but also look beyond it, to understand why social inequalities are wrongful, when they are.

Though Scanlon is focused on social inequalities writ large, every objection he cites applies to wrongful discrimination. Because of this symmetry, it is tempting to apply his reasoning to discrimination theory. A plausible hypothesis emerges: discrimination can wrong people by failing to treat them as equals—just as Moreau says—but it may wrong people in other ways as well.

In Iris Marion Young’s “Five Faces of Oppression,” a similar kind of view emerges.[[41]](#footnote-41) According to Young, oppression has five distinct “faces”: exploitation, marginalization, cultural imperialism, powerlessness, and violence. Each element of oppression involves unequal treatment. Yet Young doesn’t argue that we must analyze what’s wrong with oppression exclusively through the lens of equality. Discussing marginalization, she emphasizes that people who are excluded from the labor system are treated as if there is “a sufficient warrant to suspend [their] basic rights to privacy, respect, and individual choice.”[[42]](#footnote-42) This statement underscores the ethical importance of respect and autonomy. She also argues that even if marginalized persons “were provided with a comfortable material life within institutions that respected their freedom and dignity, injustices of marginality would remain in the form of uselessness, boredom, and lack of self-respect.”[[43]](#footnote-43) Note that Young has no interest in arguing that equality is the thread that connects all these wrongs. Instead, she embraces a pluralistic picture, according to which oppression is objectionable for diverse reasons.

Though Young is talking about oppression, the same pluralistic impulse applies to discriminatory treatment. Yes, discrimination involves unequal treatment. But why must our reasons for objecting to discriminatory treatment always have to do with equality, as Moreau claims? The injustice of being treated as inferior is only *one of the many reasons* that people object to discrimination. At the New York Public Library, for example, where Barbara Gittings and Kay Tobin Lahusen donated their correspondence and photographs, one finds Gittings with her 1966 sign: “Homosexuals should be judged as individuals.” One also sees protestors with other messages: “Homosexual citizens want equality of job opportunity,” “Support homosexual civil rights,” “The Pursuit of Happiness is an Inalienable Right for Homosexuals Also,” “Stop Cruel Treatment of Homosexuals,” “End Official Persecution of Homosexuals.”[[44]](#footnote-44)

Perhaps when everything is said and done, all the above objections can be reduced to the wrong of failing to treat persons as equals. Or, maybe we can find a way to privilege the wrong of failing to treat persons as equals, raising it above the scrum of non-egalitarian objections. Yet these conclusions—if they can be successfully established— ought to be hard-won argumentative achievements. In *Faces of Inequality*, they function more like unquestioned axioms.

Why is this a problem for Moreau? Because of her two core commitments: explanatory pluralism and respect for lived experience. In explaining why we need a pluralistic theory of wrongful discrimination, she writes:

All of the recently developed monist theories seem capable of explaining wrongful discrimination only by disregarding or re-describing some of the complex features of discrimination. Each requires us to bracket some of the lived experience of victims of discrimination and some of the goals of grassroots organizations fighting to eliminate discrimination, and each requires us to reinterpret or ignore certain key features of our antidiscrimination law.[[45]](#footnote-45)

Take this statement to its logical conclusion. If monist theorists are problematic because they seem to work only by “disregarding or re-describing some of the complex features of discrimination” and by “bracketing some of the lived experiences of victims discrimination,” Moreau’s theory is objectionable for the same reasons. On her view, discrimination is wrong if and only if it fails to treat persons as equals. Other ethical objections are ignored, dismissed, or re-inscribed within her equality-focused framework. Moreau never talks about failing to treat persons as individuals, even though this objection plays an outsized role in commonsense thinking about wrongful discrimination. She does not explicitly analyze the possibility that discrimination might be *intrinsically* harmful or incorporate into her theory the idea that wrongful discrimination is disrespectful.

To acknowledge the diversity of objections to wrongful discrimination, a more radically pluralistic theory of wrongful discrimination is required. Contractualism as developed by Scanlon provides a framework for pursuing this more radical pluralism.[[46]](#footnote-46) According to contractualism, wrongful actions and judgments are ones that we can reasonably reject. To explain why someone can reasonably reject being treated in a particular way, one cites the specific reasons that an individual could use to reject the treatment. These reasons explain why treating the person in that way would be wrong. If people only ever could reasonably reject discriminatory treatment for one reason, that would be evidence in favor of a unified theory of wrongful discrimination. In contrast, if people reasonably reject discriminatory treatment based on a diversity of reasons which vary depending on the case, that fact justifies a pluralistic theory. A contractualist framework has the power to embrace Moreau’s compelling view that discrimination wrongs people by failing to treat them as equals while also recognizing a rich array of other discriminatory wrongs.

Equality is not absent from a contractualist picture. It matters in at least two ways. First, it is the glue that holds the theory together. In *What We Owe Each Other*, Scanlon presumes that we stand in relationships of moral equality with other humans.[[47]](#footnote-47) As equals and as beings with autonomy, we owe each other a certain kind of regard. Each of us therefore is entitled to a veto over how others treat us. However, from this fact, it does not follow that all wrongful action is wrong because it fails to treat persons as equals. Scanlon’s view—which he refers to as “the buck passing” view—is that policies, actions, or judgments are wrong when people could reasonably reject them, and the reasons that people could reasonably reject them explain why they are wrongful. Here we find the second way in which equality figures into the theory. *Sometimes* people can reasonably reject being treated in certain ways on egalitarian grounds, e.g., because it is objectionable to be treated as an inferior. In such cases, we can explain what’s wrong with the treatment by appealing to the ideal of equality. But it does not follow that failing to treat persons as equals is the sole wrong of discrimination. On a contractualist view, discrimination is likely wrong for a multitude of reasons.

If we are open to a more radically pluralistic theory of wrongful discrimination, what can we gain? A great deal of clarity, if I am right. Consider the objection that wrongful discrimination is motivated by prejudice. Moreau argues that prejudice has a role to play in her theory. But her discussion is limited to two pages, and she presumes a narrow notion of prejudice, according to which prejudices are hateful, irrational views of groups.[[48]](#footnote-48) No mention is made of the rich history of theorizing prejudice in psychology, sociology, and philosophy. By centering prejudice as an objection, one could explore different ways of conceptualizing prejudice and examine the role it might play in the best account of wrongful discrimination. The same goes for other ethical objections too, including the objection that discrimination wrongs people by failing to treat them as individuals. Not only would a more radically pluralistic theory better amplify the voices of marginalized groups, it has the potential to offer more complete and illuminating explanations of discriminatory injustice.

Perhaps the most productive way to think about my larger point is in terms of frames. Frames hide certain things, while revealing others. Moreau’s starting point—the question of equality—highlights the importance of equality in our thinking about wrongful discrimination, while concealing other ethical wrongs. With these additional objections hidden, Moreau is able to develop an incisive tripartite theory of how and why discrimination wrongs people. Yet much is also lost within this picture.

5. LOOKING BEYOND THE LAW: GIVING CREDIT WHERE CREDIT IS DUE

Let me return to a virtue of Moreau’s work. She is excellent at connecting philosophical and legal discussions of discrimination. Indeed, *Faces of Inequality* is a testament to her skill at threading legal and philosophical narratives into an elegant, cohesive whole. At the same time, the approach has serious costs.

Moreau’s analysis privileges the law over other sources of insight. In Chapter 1, she justifies the methodology by noting that discriminatory treatment has its root in “a complex set of social circumstances.”[[49]](#footnote-49) These circumstances are due to the following fact: humans have historically divided the social world into different groups based on gender, race, ethnicity, religion, and ability, and some of these groups “have come to command greater deference than others and to possess more power than others.”[[50]](#footnote-50) “Anti-discrimination laws,” Moreau observes, “have evolved as a shared public response to the differences in status to which these social circumstances have given rise.[[51]](#footnote-51) “It seems reasonable to suppose,” she continues, “that, at least for the most part, the basic features of antidiscrimination law will be sensitive to the morally objectionable features of these practices.”[[52]](#footnote-52) Her conclusion: any exploration of wrongful discrimination “ought therefore to treat basic features of anti-discrimination law as a necessary starting point.”[[53]](#footnote-53)

It is interesting that Moreau comes to this conclusion. I would make a different inferential leap. If the law articulates public objections to morally wrongful discrimination, we should be asking: “Why did the public find discriminatory treatment unacceptable? What ethical objections have people raised in their fight against oppressive social practices before anti-discrimination laws existed? What objections still hold sway in the public imagination?”

To answer these questions, we must look *outside* the law and search for the source of its insights. In memoir and fiction, individuals’ lived experiences of discriminatory treatment are vividly explored and analyzed. In history, we find archival research documenting the struggles of marginalized persons and social movements. In journalism and sociology, one finds copious research on the harms of discrimination and everyday experiences of oppression. In psychology, researchers document the patterns of thought that give rise to—and continue to cement— injustice. Why not privilege these sources of knowledge, where lived experience is represented more freely and authentically, instead of the legal system?

This is one of the book’s ironies. Though Moreau says lived experience matters, her analysis proceeds in an impersonal mode that privileges legal narratives and renders the voices of people who experience discriminatory wrongs hard to hear.

One might object that this criticism is unfair. Moreau does allow people to speak in their own voices. In Chapter 3, she introduces Caster Semenya, an African sprinter who was banned from competing in races because she has naturally high levels of testosterone that exceed parameters set for female athletes by the International Association of Athletics Foundation. When questioned by reporters about her refusal to take testosterone-reducing drugs, Semenya says, as Moreau notes: “I don’t want to be someone I don’t want to be. I don’t want to be someone people want me to be. I just want to be me” and “I am who I am.”[[54]](#footnote-54) Likewise, when discussing basic goods in Chapter 4, Moreau quotes an applicant in the case of *Halpern v. Canada*, Julie Erbland. In her official statement, Erbland told the court: “I want the family that Dawn and I have created to be understood by all of the people in our lives and by society. If we had the freedom to marry, society would grow to understand our commitment and love for each other.”[[55]](#footnote-55) Moreau quotes another applicant, Carolyn Rowe, who says: “We would like the public recognition of our union as a ‘valid’ relationship and would like to be known officially as more than just roommates.”[[56]](#footnote-56)

I welcomed these moments in the text. They were all too rare, however. In Chapter 3, there is a single page of text—in effect, one paragraph—with direct quotations from Caster Semenya. In Chapter 4, direct testimony from Erbland and Rowe is found in a single paragraph. The remaining analysis of Chapters 3 and 4—over seventy pages in total—proceeds in a third-person mode. When discussing *Craig v. Masterpiece Cakeshop*, for example, Moreau recounts the facts of the case.[[57]](#footnote-57) Two gay men ordered a cake for their wedding, and the baker refused to fill the order because he had religious objections to same-sex marriage. One explanation for taking the baker to court, she suggests, is that “Phillips’s refusal to bake them a cake had *made their sexuality an issue* during their wedding planning.”[[58]](#footnote-58) Moreau is careful not to put words in their mouths. She frames her suggestion as a hypothetical: “ifthis is what Craig and Mullins were objecting to, when they said they had been wrongly discriminated against, then they were objecting to an infringement of what I would have called *deliberative freedom.*”[[59]](#footnote-59) Yet we never get to hear what Craig and Mullins think about their own situation, and how they conceptualize the wrong done to them.

Not only would a more first-person approach be more faithful to Moreau’s avowed commitment to the value to lived experience, it would give credit where credit is due. Think about the notion of “deliberative freedom.” It is a concept that Moreau innovated.[[60]](#footnote-60) But the phenomenon under discussion is not new. Black theorists have long explored the ways in which stereotypes limit Black agency, using their own and others’ lived experiences as proof.[[61]](#footnote-61) Moreau tacitly builds on this influential tradition when she introduces the concept of “deliberative freedom” and analyzes it, but without crediting them. Likewise, Moreau’s chapter on subordination would not be possible but for decades of feminist and queer theorists, many of whom are also scholars of color, writing about first-person experiences of injustice.[[62]](#footnote-62) Moreau gives them the skimpiest of acknowledgements.[[63]](#footnote-63)

To pinpoint what is happening in similar situations, Emmalon Davis has used the concept of “epistemic detachment.”[[64]](#footnote-64) “When epistemic detachment occurs,” Davis writes:

the intercommunal pool is expanded to incorporate new epistemic resources (e.g., concepts, interpretations, stories, and meanings), but the participatory role of marginalized contributors in the process of knowledge production is obscured.[[65]](#footnote-65)

Not only are agents “unjustly estranged” from their own knowledge, other people may take credit for what they have produced.[[66]](#footnote-66) When this happens, “the benefits associated with the agent’s contributions are funneled away from her and are instead concentrated in the hands of the powerful.”[[67]](#footnote-67) Davis calls this second, compounding harm “epistemic misdirection.” Together these two elements constitute “epistemic appropriation.” When epistemic products are appropriated by the powerful, a number of injustices may follow. One notable injustice is what Kristie Dotson has called “epistemic exclusion.” “An epistemic exclusion,” she argues, “ . . . is an infringement on the epistemic agency of knowers that reduces her or his ability to participate in a given epistemic community.”[[68]](#footnote-68)

Here, then, is my worry. On one hand, Moreau is careful to acknowledge that she is building on the knowledge of marginalized individuals. For example, when introducing the concept of deliberative freedom, she writes:

Part of the reason that I am drawn to include denials of deliberative freedom in an account of what makes discrimination wrongful is that the loss of deliberative freedom is a salient feature of the lives of people who suffer from systemic discrimination. It is something that they mention very often when describing their experiences . . . For instance, if you are African American, you can never enjoy the luxury of forgetting about your race. You carry the burden of other people’s assumptions about race wherever you go . . . It affects the way in which African Americans make their decisions and the options available to them.[[69]](#footnote-69)

In this passage, Moreau eloquently describes the suffering of African Americans. Yet these individuals remain anonymous. It is as if their insights are so self-evident and that no one needs to be credited for them.

It’s not true, though. Black activists and intellectuals have worked diligently over the course of the last century to document the harrowing nature of Black experience in the United States and elsewhere. Describing a childhood experience of discrimination, W.E.B. Du Bois writes in *The Souls of Black Folks*: “it dawned on me with a certain suddenness that I was different from the others . . . but shut out from their world like a vast veil.”[[70]](#footnote-70) In this moment, Du Bois realizes that he is perceived as lesser compared to his white classmates. “It is a peculiar sensation,” he proceeds to say, “this double-consciousness, this sense of always looking at one’s self through the eyes of others, of measuring one’s soul by the tape of a world that look on in amused contempt and pity.”[[71]](#footnote-71) Writing half a century later in 1952, Frantz Fanon describes the same feeling when a white child sees him and yells: “Look, a Negro!” “I cast an objective gaze over myself,” writes Fanon, “and discovered my blackness, my ethnic features: deafened by cannibalism, backwardness, fetishism, racial stigmas, slave traders, and above all, the grinning *Y a bon Banania*. Disoriented . . . I transported myself on that particular day far, very far, from my self, and gave myself up as an object.”[[72]](#footnote-72) Racial stereotypes hang over Fanon, terrorizing him as he tries to regain his footing.[[73]](#footnote-73) This experience is the essence of what Moreau labels “deliberative unfreedom.” A person cannot plan even the most banal aspect of their day without the fear of racial stereotypes being foisted upon them.

This is also what one finds in the celebrated fictional work of Ralph Ellison and Toni Morrison. “I turned,” says Ellison’s nameless narrator in *Invisible Man*, “the glass hot in my hand, my face feeling as though it would explode. Why was everyone starting at me as I though I were responsible? Why in the hell were people staring?”[[74]](#footnote-74) Everyone is staring at him—the only Black man in the room—because bouncers are hauling an intoxicated white man out of the party. Minutes earlier the man demanded that the narrator sing a spiritual for everyone. The white man is kicking up a huge fuss, singing minstrel songs as he is ejected from the space. The narrator’s humiliation is palpable, and it builds to a crescendo in the scenes that follow. Similar fates are visited upon Toni Morrison’s characters in *The Bluest Eye.[[75]](#footnote-75)* “She looks up,” says one of the novel’s omniscient narrators, describing am interaction between a young Black girl, Pecola Breedlove, and the white owner of a candy store, “and sees the vacuum where curiosity ought to lodge.”[[76]](#footnote-76) “And something more,” the narrator continues, “The total absence of human recognition—the glazed separateness. She does not know what keeps his gazed suspended . . . She has seen it in the eyes of all white people. So. The distaste must be for her, her blackness.”[[77]](#footnote-77) Pain radiates from the text, as does the girl’s growing sense of alienation.

I could go on all day. So many Black writers and theorists have fought to bring their experiences and perspectives into the public view. The texts that I have cited above are exceedingly famous. Discussing one of them would have revealed that Moreau’s work is in conversation with, and builds on, the work of Black scholars and writers who have explored the experiential dimensions of wrongful discrimination. Instead Moreau rests her argument on generalized observations about racialized experience. She also cites survey data mentioned in Sylvia Law’s article “White Privilege and Affirmative Action.” Law writes:

Black people invariably note their race and white people almost never do. Surveys tell us that virtually all Black people notice the importance of race several times a day. White people rarely contemplate the fact of their whiteness—it is the norm.[[78]](#footnote-78)

Here, again, we find Black people’s experiences represented in *Faces of Inequality* but in a way that doesn’t actually recognize the history of Black scholarship on the subject, or allow the authentic voices of ordinary Black people to be heard.

I would also note that many BIPOC theorists of discrimination *within* legal theory and political philosophy are also excluded from the text. Here I offer one characteristic example: legal theorist Angela Onwuachi-Willig. Her work is highly relevant to *Faces of Inequality*. For example, in “Reconceptualizing the Harms of Discrimination,” Onwuachi-Willig argues that U.S. antidiscrimination doctrine “is unable to lead us to true racial equality” because it characterizes the harms of discrimination too narrowly.[[79]](#footnote-79) She calls attention to “the full harms of white supremacy, which include not only the detrimental effective of experiencing discrimination for Blacks but also the dehumanizing effects of perpetrating discrimination, whether voluntarily or involuntarily, for Whites.”[[80]](#footnote-80) Though Onwuachi-Willig states her position in terms of race, it generalizes. Any adequate account of morally wrongful discrimination, if she is correct, ought to recognize the fact that discrimination that subordinates hurts *everyone* in a society, privileged and marginalized alike.

Let me say more about this claim. Onwuachi-Willig grants that Black people—not white people—were targeted by Jim Crow laws. Her view is nonetheless this: to understand *what’s morally wrong* with such laws, we cannot simply appeal to the fact that Black people were treated as inferior. Discrimination harms discriminators too, in part, by treating them as superior. For example, Jim Crow laws inculcated in whites an unjustified sense of racial superiority, fostered prejudices that reduced their knowledge of the world, warped whites’ relationships in damaging ways, and made whites complicit in injustice.[[81]](#footnote-81) Such harms must be recognized if one hopes to explain what’s morally wrong with discrimination and to fight the legacy of Jim Crow. This not an idiosyncratic, off-the-wall point, but a well-worn insight of theorists of liberation, including Frantz Fanon, James Baldwin, and women of color feminists such as Audre Lorde.[[82]](#footnote-82)

I would also note that theorists working on *specific kinds* of wrongful discrimination—such as hair discrimination, discriminatory immigration policies, discrimination in the criminal justice system, queer discrimination, and so on—find themselves less likely to be cited or discussed in *Faces of Inequality*. Perhaps it’s nothing more than the manifestation of a common hierarchy in philosophy. The general is valued above the particular. Or perhaps Moreau believes that she is having a different conversation than theorists who write about specific forms of discrimination. Whatever the explanation, it is a missed opportunity. Theorists working on specific areas of discrimination law are a racially and ethnically diverse group. Their research is highly relevant to a general theory of wrongful discrimination. Not citing or engaging these scholars is problematic. It means that they are disproportionally cut out of the intellectual conversation and their valuable insights are ignored.

I began this review by noting how refreshing this book is. I still believe that, despite my criticisms. *Faces of Inequality* promises to shift conversations about the philosophy of discrimination in a positive way. Moreau does extremely valuable work in analyzing how discrimination fails to treat persons as equals. Nonetheless Moreau is vulnerable to the same kind of criticisms that have dogged Miranda Fricker since the publication of *Epistemic Injustice*.[[83]](#footnote-83) Rachel McKinnon writes:

. . . in a deep irony, while Fricker’s work is extremely important in detailing the concept and structure of epistemic injustice, this topic finally achieved wider uptake with Fricker’s work, largely with her 2007 *Epistemic Injustice: Power and the Ethics of Knowing*, but the large body of, primarily, black feminist thought isn’t acknowledged. Moreover, moving forward, whose work we engage with is a matter of epistemic justice: much of the work on issues of epistemic injustice by women of color often isn’t cited or engaged with significantly.[[84]](#footnote-84)

Reading *Faces of Inequality*, an analogous critique emerges. Much of the work on wrongful discrimination by BIPOC theorists is not cited in this book, or engaged with significantly. Read the text and Moreau’s citations, and it would appear—falsely—that white scholars have done the majority of important research on wrongful discrimination. “Whose work we engage with is a matter of epistemic justice,” notes McKinnon.

I do not offer this critique from a place of self-satisfaction or sanctimony. When Kristie Dotson argues that “avoiding unwarranted epistemic exclusion is an exceeding difficult task” and “may well be impossible,” I believe her.[[85]](#footnote-85) Humans’ cognitive limitations entail that we cannot track all of the implications of the positions that we hold, says Dotson. I would add that conversations are also exclusionary by their very nature. Some people are always on the inside of a conversation, others on the outside. Disciplinary siloes make the problem worse. Yet I would still argue, with Dotson, that we can demand “more responsible epistemic conduct capable of *reducing* epistemic oppression, without also harboring unrealistic expectations . . .”[[86]](#footnote-86) Not only is it possible to be more conscientious about what we borrow from others and who is being excluded from our scholarly conversations, I would argue that theorists like Moreau have a special responsibility to do so. By committing herself to the value of lived experience and claiming to amplify the voices of historically marginalized individuals, Moreau situates herself in a lineage of thinkers that include feminist philosophers, critical theorists of race, disability theorists, and queer theorists. Questions of exclusion and appropriation thus take on special ethical urgency for Moreau as a theorist, and they gesture towards a way in which *Faces of Inequality* could have done better.

6. TOWARDS A LIBERATORY THEORY OF WRONGFUL DISCRIMINATION

*Faces of Inequality* offers its readers a vision of what a liberatory theory of wrongful discrimination could be like. Such a theory would provide “underprivileged groups a chance *to have their voices heard*—a chance to be considered for who they are rather than for who we think they are,”[[87]](#footnote-87) and it would effectively analyze the ethical wrongs of discrimination so that they may be recognized and remedied.

As readers of this review will gather, I believe that Moreau’s theory fails to fully live up to its liberatory aims. A theory with greater liberatory potential would embrace a more radically pluralistic view of the wrongs of discrimination and would feature philosophical analysis that is more attentive to first-person experiences of injustice and the work of scholars with marginalized identities, both inside and outside of legal theory. Even so, *Faces of Inequality* puts its readers on the right path. My suspicion—and my hope—is that this book will have a big impact on the discipline in years to come.

In closing, I want to emphasize something that I noted at the outset of this review. Moreau’s analysis applies not only to unlawful discrimination. She also argues that “each of us, as individuals, owes a duty to every other member of society, to treat them as equals.”[[88]](#footnote-88) Treating persons as equals requires three things, if she is right:

not subordinating them to others by marking them out as inferior or rendering their needs invisible, or contributing to their ongoing social subordination; not infringing their right to a particular deliberative freedom; and not denying them access to a certain basic good, in circumstances where you have the power to give them such access.[[89]](#footnote-89)

The double purpose of *Faces of Inequality* thus rises into view. It is just as much a theory of wrongful discrimination as it is an ambitious exploration of what we owe to others as moral and political equals. “The real motivation for egalitarians,” writes Samuel Scheffler, “lies in a commitment to a certain ideal of society, a conviction that members of society should relate to one another on a footing of equality.”[[90]](#footnote-90)

In this way, Moreau’s explanatory project generates a weighty set of everyday prescriptions. Think about the imperative not to subordinate. If you perceive others in a way that is shaped by pernicious group stereotypes, you are enacting wider ideologies that serve the purpose of keeping people “in their place.” Hence you are exercising a mechanism of subordination. Indeed stereotyping—even if it happens “in your head”—can be inherently subordinating. After all, a person’s thinking can express, as Moreau puts it, “censure of the subordinated group, or of lack of deference towards them, a way that marks them out as inferior.”[[91]](#footnote-91) Moreau never argues that discrimination occurs in thought or perception. Yet something like that claim emerges now and again, for example, when she describes a poster created by Toronto’s Transit Authority. Though the ridership of Toronto’s subway is racially diverse, the poster depicts a train filled with non-descript white riders. When Moreau calls to complain, she is told “Ma’am the artists are just drawing what they see.”[[92]](#footnote-92) This failure to see, or notice, is part of problem Moreau is diagnosing.

Such implications hang in the air during her last chapter, rich with possibilities. For readers willing to take up these threads, one find productive connections between Moreau’s work and emerging research on the ethics of belief and perception,[[93]](#footnote-93) as well as the rich history of reflection on the ethical dimensions of thought in feminist philosophy and critical theories of race.[[94]](#footnote-94) One also faces a series of difficult questions, which Moreau leaves unanswered. How is it possible to relate to persons as equals in a world shaped by centuries of group oppression and continuing social hierarchy? How does one live up to one’s moral duties when that means rooting out patterns of thought and action that facilitate subordination? These difficulties have long haunted activists and theorists of liberation. “When the architecture of a land is built on a chorus of violence,” observes poet and cultural critic Hanif Abdurraqib, “it takes an unnatural amount of work to undo every lineage of harm and then honor the harmed with anything resembling equality.”[[95]](#footnote-95)

There are no easy answers here, as impassioned debates about the best strategies for addressing social injustices show.[[96]](#footnote-96) Fanon argued that the only way to fix the deliberative burdens he and other colonized people faced was to revolt, burning colonial institutions to the ground.[[97]](#footnote-97) Du Bois argued that the problem of the “color line” was in large part a problem of ongoing capitalist exploitation.[[98]](#footnote-98) Ending the problem of double consciousness, on his view, meant dismantling exploitative economic practices and institutions.

Maybe this is the true lesson of *Faces of Inequality*, albeit not the one that Moreau reveals until the book’s final pages. If we seek to end wrongful discrimination, we must not only fight discriminatory laws and practices that subordinate members of marginalized groups, violate deliberative freedom, and rob people of basic goods. While such battles are essential, they cannot reshape the social landscape on their own. Personal changes are also required to achieve justice. Individuals must cultivate habits of thought and action that promote egalitarian social relationships. The fabric of the world itself also must be altered so as to put people in economic and social positions where they are capable of standing in relationships of equality with each other. “We need to think at much greater length,” writes Moreau in her conclusion, “about the ways in which the state can support individuals, in discharging their duty to treat people as the equals of others. Antidiscrimination law is only one of those ways.”[[99]](#footnote-99)

ACKNOWLEDGEMENTS

I am grateful to Cheshire Calhoun, David Dyzenhaus, Benjamin Eidelson, Adam Hosein, and Joshua Rivkin for conversations and comments on the issues in this essay. I thank Sophia Moreau for inviting me to the symposium on Discrimination and Subordination at the University of Toronto in November 2019, where I first had the opportunity to read and informally discuss her book.

1. For reflection on the nature of explanatory projects, see Sarah Stroud, “Lying as Infidelity: A Quasi-Rossian Account,” in *Oxford Studies in Normative Ethics*, Volume 7, ed. Mark Timmons, 73-97 (Oxford: Oxford University Press, 2008). [↑](#footnote-ref-1)
2. Sophia Moreau, *Faces of Inequality: A Theory of Wrongful Discrimination*. (Oxford: Oxford University Press, 2020), 1. [↑](#footnote-ref-2)
3. Ibid., 211-212. [↑](#footnote-ref-3)
4. Ibid., 223. [↑](#footnote-ref-4)
5. Ibid.., 229. [↑](#footnote-ref-5)
6. Ibid. [↑](#footnote-ref-6)
7. Ibid. [↑](#footnote-ref-7)
8. Ibid., 7. Moreau’s emphasis. [↑](#footnote-ref-8)
9. Ibid., 30. Moreau’s emphasis. [↑](#footnote-ref-9)
10. Ibid., 29. [↑](#footnote-ref-10)
11. Deborah Hellman, *When is Discrimination Wrong?* (Cambridge, MA: Harvard University Press, 2008). [↑](#footnote-ref-11)
12. Kasper Lippert-Rasmussen, *Born Free and Equal: A Philosophical Inquiry into the Nature of Discrimination* (Oxford: Oxford University Press, 2014); Richard Arneson, “Discrimination and Harm,” in *The Routledge Handbook of the Ethics of Discrimination,* ed. Kasper Lippert-Rasmussen, 151-163 (New York, NY: Routledge, 2017). [↑](#footnote-ref-12)
13. Tarunabh Khaitan, *A Theory of Discrimination Law* (Oxford: Oxford University Press, 2015). [↑](#footnote-ref-13)
14. Larry Alexander, “What Makes Wrongful Discrimination Wrong? Biases, Preferences, Stereotypes, and Proxies,” *University of Pennsylvania Law Review* 141 (1992): 149–219; Thomas Scanlon, *Moral Dimensions: Permissibility, Meaning, Blame*. (Cambridge, MA: Harvard University Press, 2008); Benjamin Eidelson, *Discrimination and Disrespect* (Oxford: Oxford University Press, 2015); Adam Hosein, “Freedom, Sex Roles, and Antidiscrimination Law,” *Law and Philosophy* 34 (2015): 485-517; Erin Beeghly, “Discrimination and Disrespect,” in *The Routledge Handbook to the Ethics of Discrimination*, ed. Kasper Lippert-Rasmussen, 83–96. (New York: Routledge, 2017); Adam Hosein, *Discrimination, Inclusion, and Social Progress*, unpublished manuscript. [↑](#footnote-ref-14)
15. Moreau, *Faces of Inequality*, 25. [↑](#footnote-ref-15)
16. Ibid., 33. [↑](#footnote-ref-16)
17. Ibid., 19. [↑](#footnote-ref-17)
18. Ibid., 200. [↑](#footnote-ref-18)
19. Ibid. [↑](#footnote-ref-19)
20. For example, see Eidelson, *Discrimination and Disrespect*, 39-70. [↑](#footnote-ref-20)
21. For further discussion and references, see Michael Selni, “Indirect Discrimination and the Anti-discrimination Mandate,” in *Philosophical Foundations of Discrimination Law*, eds. Deborah Hellman and Sophia Moreau, 250-268 (Oxford: Oxford University Press, 2013): 250. Selni frames the normative difference between direct and indirect discrimination like this: “Discrimination typically involves some element of fault, but disparate impact theory moves away from issues of fault to distributive remedial concerns.” [↑](#footnote-ref-21)
22. Hellman, *When is Discrimination Wrong?* [↑](#footnote-ref-22)
23. Deborah Hellman, “Indirect Discrimination and the Duty to Avoid Compounding Injustice,” *Foundations of Indirect Discrimination Law*, eds. Hugh Collins and Tarunabh Khaitain, 105-122 (London: Bloomsbury, 2018). [↑](#footnote-ref-23)
24. This is an especially valuable service in light of existing threats to indirect discrimination legislation in the United States, including provisions of the Voting Rights Act. *Brnvitch v. Democratic National Committee*, 595 US\_ (2021). [↑](#footnote-ref-24)
25. Moreau, *Faces, of Inequality*, 4. [↑](#footnote-ref-25)
26. Cited in Susan Stryker, *Transgender History* (New York: Perseus Books, 2008), 62-63. My emphasis. [↑](#footnote-ref-26)
27. For the backstory of these protests, see Eric Cervini, *The Deviant’s War: The Homosexual vs. The United States of America* (New York, NY: Picador, 2021). [↑](#footnote-ref-27)
28. Richard Arneson, “What is Wrongful Discrimination?” *San Diego Law Review* 43 (2006): 775 – 1071 at 787. For discussion of other theorists skeptical of the ideal, see Erin Beeghly, “Treating Persons as Individuals,” *Ergo* 26 (2018): 687-711. [↑](#footnote-ref-28)
29. Kasper Lippert-Rasmussen, “‘We are all Different’: Statistical Discrimination and the Right to Be Treated as an Individual,” *Journal of Ethics* 15 (2001): 47-59; Eidelson, *Discrimination and Disrespect*; Beeghly, “Failing to Treat Persons as Individuals”; Benjamin Eidelson, “Respect, Individuality, and Colorblindness,” *The Yale Law Journal* 129 (2020): 1600-1675; Xiaofei Liu and Ye Liang, “What It Means to Respect Individuality,” *Philosophical Studies* 179 (2020): 2579-2598. [↑](#footnote-ref-29)
30. Moreau, *Faces of Inequality*, 28-29. [↑](#footnote-ref-30)
31. Ibid., 28. [↑](#footnote-ref-31)
32. Ibid.. [↑](#footnote-ref-32)
33. Ibid., 84. [↑](#footnote-ref-33)
34. Lippert-Rasmussen, “We are All Different,” 54. Here is how he puts it: “X treats Y as an individual if, and only if, X’s treatment of Y is informed by all the relevant information, statistical or non-statistical, reasonably available to X.” [↑](#footnote-ref-34)
35. Eidelson, *Discrimination and Disrespect*, 216. [↑](#footnote-ref-35)
36. Thomas Scanlon, “The Diversity of Objections to Inequality,” in *The Difficulty of Tolerance: Essays in Political Philosophy*, 202-218 (Cambridge, MA: Harvard University Press, 2003), 202. [↑](#footnote-ref-36)
37. Ibid., 203. [↑](#footnote-ref-37)
38. Ibid., 204. [↑](#footnote-ref-38)
39. Ibid., 205. [↑](#footnote-ref-39)
40. Ibid., 205-6. [↑](#footnote-ref-40)
41. Iris Marion Young, “Five Faces of Oppression,” in *Justice and The Politics of Difference,* 39-65 (Princeton, NJ: Princeton University Press, 2011). [↑](#footnote-ref-41)
42. Ibid., 54 [↑](#footnote-ref-42)
43. Ibid., 55. [↑](#footnote-ref-43)
44. Barbara Gittings and Kay Tobin Lahusen Gay History Papers and Photographs, New York Public Library Archives, New York, NY. Accessed at: https://digitalcollections.nypl.org/collections/barbara-gittings-and-kay-tobin-lahusen-gay-history-papers-and-photographs#/?tab=navigation&scroll=100 [↑](#footnote-ref-44)
45. Moreau, *Faces of Inequality*, 25. [↑](#footnote-ref-45)
46. Thomas Scanlon, *What We Owe To Each Other* (Cambridge, MA: Harvard University Press, 1998). Scanlon’s own theory of wrongful discrimination is pluralistic. He argues that discrimination is when it is either disrespectful or harmful. See Scanlon, *Moral Dimensions*. I push Scanlon’s framework in an even more radically pluralistic direction. See Erin Beeghly, *What’s Wrong with Stereotyping?* Manuscript. Moreover, I argue that my theory might do “double duty” as a theory of wrongful discrimination. See Erin Beeghly, “Stereotyping as Discrimination. Why Thoughts Can Be Discriminatory,” *Social Epistemology* 35, no. 6 (2021): 547-563. [↑](#footnote-ref-46)
47. Scanlon, *What We Owe To Each Other*. [↑](#footnote-ref-47)
48. Moreau, *Faces of Inequality*, 187-88. For a broader notion of prejudice and what might be gained from considering it, see Endre Begby, P*rejudice: A Study in Non-Ideal Epistemology* (Oxford: Oxford University Press, 2021). [↑](#footnote-ref-48)
49. Moreau, *Faces of Inequality*, 27 [↑](#footnote-ref-49)
50. Ibid. [↑](#footnote-ref-50)
51. Ibid., 27-28. [↑](#footnote-ref-51)
52. Ibid., 28. [↑](#footnote-ref-52)
53. Ibid. [↑](#footnote-ref-53)
54. Cited in ibid., 80. [↑](#footnote-ref-54)
55. Cited in ibid., 129. *Halpern v. Canada (Attorney General*), [2003] 65 O.R. (3d) 161, O.J. No. 2268 (Ont. C.A.), [↑](#footnote-ref-55)
56. Cited in ibid. [↑](#footnote-ref-56)
57. Ibid., 182. *Masterpiece Cake Shop Ltd* et al *vs. Colorado Civil Rights Commission, et. al.*, 584 U.S. \_\_ (2018). [↑](#footnote-ref-57)
58. Ibid., 83. Moreau’s emphasis. [↑](#footnote-ref-58)
59. Ibid., 84. Moreau’s emphasis. [↑](#footnote-ref-59)
60. Sophia Moreau, “What is Discrimination?” *Philosophy and Public Affairs* 38 (2010): 143-179. [↑](#footnote-ref-60)
61. W.E.B Du Bois, *The Souls of Black Folks* (Mineola, NY: Dover Publications, 1994); Toni Morrison (ed), *James Baldwin, Collected Essays* (New York, NY: Library of America, 1998); Frantz Fanon, *Black Skin, White Masks,* trans. Richard Philcox (New York, NY: Grove Press, 2008); Ida B. Wells, *The Light of Truth: Writings of an Anti-Lynching Crusader*, edited by Mia Bay (New York: Penguin Classics, 2014). [↑](#footnote-ref-61)
62. For example, see Linda Martín Alcoff, *Visible Identities: Race, Gender, and the Self* (Oxford: Oxford University Press, 2006); Audre Lorde, *Sister Outsider: Essays and Speeches by Audre Lorde* (Berkeley, CA: Crossing Press, 1984); Cherríe Moraga and Gloria Andalzúa (eds), *The Bridge Called My Back: Writings by Radical Women of Color*, 4th edition (Albany, NY: SUNY Press, 2015); Combahee River Collective, “The Combahee River Collective Statement,” *in How We Get Free: Black Feminism and the Combahee River Collective*, edited by Keeanga-Yamahtta Taylor, 15-28 (Chicago, IL: Haymarket Books, 2017). [↑](#footnote-ref-62)
63. Moreau, *Faces of Inequality*, 56. [↑](#footnote-ref-63)
64. Emmalon Davis, “On Epistemic Appropriation,” *Ethics* 128 (2018): 702-727. [↑](#footnote-ref-64)
65. Ibid., 705. [↑](#footnote-ref-65)
66. Ibid., 723. [↑](#footnote-ref-66)
67. Ibid. [↑](#footnote-ref-67)
68. Kristie, Dotson, “A Cautionary Tale: On Limiting Epistemic Oppression,” *Frontiers* 33 (2012): 24-47 at 24. [↑](#footnote-ref-68)
69. Moreau, *Faces of Inequality*, 85-86. [↑](#footnote-ref-69)
70. Du Bois, *Souls of Black Folks*, 2 [↑](#footnote-ref-70)
71. Ibid. [↑](#footnote-ref-71)
72. Fanon, *Black Skin, White Masks*, 92. [↑](#footnote-ref-72)
73. For further discussion, see Lewis Gordon, *Bad Faith and Antiblack Racism (*Amherst, NY: Humanity Books, 1995); George Yancy, *Black Bodies, White Gazes: The Continuing Significance of Race* (Lanham, MA: Rowman and Littlefield, 2008); Helen Ngo, *The Habits of Racism: A Phenomenology of Racism and Racialized Embodiment* (Lanham, MA: Lexington Books, 2017); Nathifa Greene, “Stereotype Threat, Identity, and the Disruption of Habit,” in *An Introduction to Implicit Bias: Knowledge, Justice, and the Social Mind*, eds. Erin Beeghly and Alex Madva (New York, NY: Routledge, 2020). [↑](#footnote-ref-73)
74. Ralph Ellison, *Invisible Man* (New York, NY: Vintage International, 1980), 312. [↑](#footnote-ref-74)
75. Toni Morrison, *The Bluest Eye* (New York, NY: Vintage International, 1970). [↑](#footnote-ref-75)
76. Ibid., 48. [↑](#footnote-ref-76)
77. Ibid., 48-49. [↑](#footnote-ref-77)
78. Cited in Moreau, *Faces of Inequality*, 86. [↑](#footnote-ref-78)
79. Onwuachi-Willig, “Reconceptualizing the Harms of Discrimination: How *Brown V. Board of Education* Helped to Further White-Supremacy,” *Virginia Law Review* 105 (2019): 343-369 at 345. [↑](#footnote-ref-79)
80. Ibid., 344. [↑](#footnote-ref-80)
81. For compelling examples and analysis, see José Medina, *The Epistemology of Resistance: Gender and Racial Oppression, Epistemic Injustice, and Resistant Imagination* (Oxford: OUP, 2013). One of Medina’s compelling points is that discrimination i*n favor of* is also epistemically, morally, and politically problematic. [↑](#footnote-ref-81)
82. Fanon, *Black Skin, White Masks*; Morrison (ed), *James Baldwin*: *Collected Essays;* Lorde, *Sister Outsider.* [↑](#footnote-ref-82)
83. Miranda Fricker, *Epistemic Injustice: The Power and Ethics of Knowing* (Oxford: Oxford University Press, 2007). [↑](#footnote-ref-83)
84. Rachel McKinnon, “Epistemic Injustice,” *Philosophy Compass* 11 (2016): 437-446 at 439. [↑](#footnote-ref-84)
85. Dotson, “A Cautionary Tale,” 24. [↑](#footnote-ref-85)
86. Ibid., 25. Dotson’s emphasis. [↑](#footnote-ref-86)
87. Moreau, *Faces of Inequality*, 30. Moreau’s emphasis [↑](#footnote-ref-87)
88. Ibid., 226. [↑](#footnote-ref-88)
89. Ibid. [↑](#footnote-ref-89)
90. Samuel Sheffler, “The Practice of Equality,” in *Social Equality: On What It Means to Be Equals*, eds. Carina Fourie, Fabian Schuppert, and Ivo Wallimann-Helmer, 21-44 (Oxford: Oxford University Press, 2015), 22. [↑](#footnote-ref-90)
91. Moreau, *Faces of Inequality*, 65. See also Niko Kolodny, “Rule over None II: Social Inequality and the Justification of Democracy,” *Philosophy and Public Affairs* 42 (2014): 287-336. [↑](#footnote-ref-91)
92. Cited in ibid., 70. [↑](#footnote-ref-92)
93. Rima Basu, “The Wrongs of Racist Beliefs,” *Philosophical Studies* 176 (2018): 2497-2515; Renée Jorgenson Bolinger, “The Rational Impermissibility of Accepting (some) Racial Generalizations.” *Synthese* 197(2018): 2415-2431. <https://doi.org/10.1007/s11229-018-1809-5>; Sarah Moss, *Probabilistic Knowledge* (Oxford: Oxford University Press, 2018); Beeghly, “Stereotyping as Discrimination.” [↑](#footnote-ref-93)
94. Iris Murdoch, *The Sovereignty of the Good* (New York: Routledge & Kegan Paul, 1970); María Lugones, *Pilgramages/Peregrinajes: Theorizing Coalition Against Multiple Oppressions* (Lanham, Maryland: Rowman & Littefield, 2003); Patricia J. Williams, *The Alchemy of Race and Rights: Diary of a Law School Professor* (Cambridge, MA: Harvard University Press, 1992); Fanon, *Black Skin, White Masks*; Phia Salter and Glenn Adams, “Towards a Critical Race Psychology.” *Social and Personality Psychology Compass* 7 (2013): 781-793. [↑](#footnote-ref-94)
95. Hanif Abdurraqib, *A Little Devil in America: Notes in Praise of Black Performance* (New York, NY: Penguin, 2021), 180. [↑](#footnote-ref-95)
96. The spirited debate about how to fix racial segregation exemplifies my point. See Elizabeth Anderson, *The Imperative of Integration* (Princeton, NJ: Princeton University Press, 2010); Sally Haslanger, “Distinguished lecture: Social structure, Narrative and Explanation,” *Canadian Journal of Philosophy,* 45 (2015): 1-15; Tommie Shelby, *Dark Ghettos: Injustice, Dissent, and Reform* (Cambridge, MA: Harvard University Press, 2016); Alex Madva, “Individual and Structural Interventions,” in *An Introduction to Implicit Bias, Knowledge, Justice, and the Social Mind*, eds. Erin Beeghly and Alex Madva, 233-270 (New York, NY: Routledge, 2020). [↑](#footnote-ref-96)
97. Frantz Fanon, *The Wretched of the Earth*, trans. Richard Philcox (New York, NY: Grove Press, 2004). [↑](#footnote-ref-97)
98. Du Bois, *The Souls of Black Folks*. [↑](#footnote-ref-98)
99. Moreau, *Faces of Inequality*, 250. [↑](#footnote-ref-99)