

No Disrespect – But That Account Does Not Explain What Is Morally Bad About Discrimination

Frej Klem Thomsen, frejkhomsen@gmail.com

Almost everyone agrees that paradigmatic cases of discrimination are morally bad.¹ The employer who refuses to hire women, or the police officer who arrests black citizens while letting white citizens off with a warning for similar offences, these figures are universally (or near enough) condemned.

Underneath this consensus, however, lies a series of further questions where unanimity rapidly evaporates. For example, what *exactly* is discrimination? When should discrimination be legally prohibited? And, perhaps most importantly, *why* is discrimination morally bad (when it is)?

These questions have attracted increased philosophical attention over the past decade, resulting in a rapidly expanding literature.² Among answers to the question of what makes discrimination morally bad (when it is), two accounts in particular stand out. The first, harm-based account holds (roughly) that discrimination is morally bad when and to the extent that it brings about harm to the discriminatee or others.³ The second, disrespect-based account holds (roughly) that discrimination is morally bad when and to the extent that it is disrespectful.⁴

¹ I use moral badness here to denote the quality of there being a *pro tanto* (moral) reason against an action. Since such reasons are defeasible, an action that is morally bad need not be morally wrong all-things-considered. Cf. Lippert-Rasmussen, "The Badness of Discrimination".

² See for example Collins & Khaitan, *Foundations of Indirect Discrimination Law*; Eidelson, *Discrimination and Disrespect*; Hellman, *When Is Discrimination Wrong?*; Hellman & Moreau, *Philosophical Foundations of Discrimination Law*; Khaitan, *A Theory of Discrimination Law*; Lippert-Rasmussen, *Born Free and Equal? A Philosophical Inquiry Into the Nature of Discrimination*, Lippert-Rasmussen, *The Routledge Handbook of the Ethics of Discrimination*; and Moreau, *Faces of Inequality: A Theory of Wrongful Discrimination*. For overviews see Altman, "Discrimination"; Thomsen, "Discrimination".

³ See Arneson, "Discrimination and Harm", Lippert-Rasmussen, *Born Free and Equal? A Philosophical Inquiry Into the Nature of Discrimination*; Berndt Rasmussen, "Harm and Discrimination"; Ishida, "What Makes Discrimination Morally Wrong? A Harm-Based View Reconsidered"; Lippert-Rasmussen, "The Badness of Discrimination"; Lippert-Rasmussen, "Private Discrimination: A Prioritarian Desert-Accommodating Account", Lippert-Rasmussen, *Born Free and Equal? A Philosophical Inquiry Into the Nature of Discrimination*; Thomsen, "Stealing Bread and Sleeping Beneath Bridges - Indirect Discrimination as Disadvantageous Equal Treatment".

⁴ See Alexander, "What Makes Wrongful Discrimination Wrong? Biases, Preferences, Stereotypes and Proxies"; Beeghly, "Discrimination & Disrespect"; Eidelson, *Discrimination and Disrespect*; Glasgow, "Racism as Disrespect". The account at stake is different from and I intend to set aside the related account that holds (roughly) that discrimination is morally bad when and because it *expresses* disrespect of ("demeans", in Deborah Hellman's phrasing) the discriminatee. See Hellman, *When Is Discrimination Wrong?*; Hellman, "Discrimination and Social Meaning"; Shin, "The Substantive Principle of Equal Treatment". It bears mentioning, however, that there are what seem to me overwhelmingly strong arguments against that account. See Arneson, "Discrimination, Disparate Impact, and Theories

Few will deny that causing harm is morally bad, and there are obvious ways in which discrimination can bring about harm, e.g. through offense, stigmatization or the imposition of avoidable, unjust disadvantage. As such, even proponents of alternative accounts tend to acknowledge that one way in which discrimination can be morally bad is that it causes harm.⁵ This is compatible with what we have said of the disrespect-based account so far – “when and to the extent” defines an entailment, and the proponent need claim only that disrespect is sufficient for moral badness, not that it is necessary. Arguably, then, the most defensible version of the disrespect-based account claims only that the harm-based account does not *exhaust* the ways in which discrimination can be morally bad, since discrimination can *also* be morally bad when and because it is disrespectful.⁶

Although one of the most prominent accounts of what makes discrimination morally bad, it seems to me both that the disrespect-based account remains underdeveloped, and that upon reflection it faces objections so powerful that we ought ultimately to abandon it. This article attempts first to provide some clarification of how we can best understand the disrespect-based account, and thereupon to present and develop the objections that jointly show why it should be abandoned.

Section two below clarifies the disrespect-based account, by making precise the meaning of disrespect and disrespectful discrimination. Section three introduces the first challenge, in the shape of the competing thesis that disrespectful discrimination speaks to the moral character and blameworthiness of the agent. Section four sketches a powerful objection launched by Kasper Lippert-Rasmussen, which shows disrespectful discrimination to be intuitively no worse than respectful discrimination, and demonstrates that the objection can be applied to the version of the disrespect-based account developed in section two. Section five adds the objection that disrespect appears to provide the intuitively wrong answer in cases of “right actions for the wrong reasons”,

of Justice”, 91-94; Eidelson, *Discrimination and Disrespect*, 85-90; Ekins, “Equal Protection and Social Meaning”; Lippert-Rasmussen, *Born Free and Equal? A Philosophical Inquiry Into the Nature of Discrimination*, chapter 5.

⁵ See Alexander, “What Makes Wrongful Discrimination Wrong? Biases, Preferences, Stereotypes and Proxies”; Eidelson, *Discrimination and Disrespect*; Slavny & Parr, “Harmless Discrimination”; cf. Beeghly, “Discrimination & Disrespect”, 89.

⁶ In combination with the assumption that what we are looking for is an account of moral badness, this leads to the view summarized by Richard Arneson: “...there are wrong-making characteristics of discrimination, such that if an act of discrimination embodies any of these characteristics, its doing so is a pro tanto consideration against its moral permissibility. [...] These characteristics can be outweighed by countervailing factors, and whether a given act of discrimination is wrong, all things considered, depends on the overall balance of considerations.” Arneson, “Discrimination, Disparate Impact, and Theories of Justice”, 103.

specifically by condemning at least some cases of disrespectful non-discrimination. Section six confronts an argument advanced by Adam Slavny and Tom Parr that there are cases of intuitively bad harmless discrimination, and argues that our intuitions about such cases can be explained without reference to the disrespect-based account. Section seven summarises and concludes with some perspectives on the implications of abandoning the disrespect-based account for our understanding of discrimination specifically and moral theory more generally.

1. What is the disrespect-based account of morally bad discrimination?

Let us assume for the purposes of this article a direct, generic, descriptive definition of discrimination (loosely) based on Kasper Lippert-Rasmussen's work: An agent A discriminates against persons with property P *iff*:

- 1) A treats persons with P differently than she treats (or would treat) persons without
- 2) A's treatment of persons with P is disadvantageous as compared with her treatment of persons without
- 3) The difference in treatment is suitably explained by the fact that persons do and do not possess P (or that A believes this to be the case).⁷

The definition is direct, in that it concerns standard cases of differential treatment, not cases where treatment that does not differentiate on the basis of P nonetheless results in disparate impact.⁸ It is generic, in that it does not delimit discrimination to differential treatment of a particular set of properties, such as gender, race, ethnicity, religion, sexuality, disability and/or age, or the properties that are in the appropriate context "socially salient".⁹ It is descriptive, in that it does not require that an act be morally bad, not even *prima facie*, for it to qualify as discrimination.¹⁰

⁷ Cf. Eidelson, *Discrimination and Disrespect*; Hellman, *When Is Discrimination Wrong?*; Lippert-Rasmussen, "The Badness of Discrimination"; Thomsen, "But Some Groups Are More Equal Than Others - A Critical Review of the Group Criterion in the Concept of Discrimination"; Moreau, *Faces of Inequality: A Theory of Wrongful Discrimination*; Thomsen "Direct Discrimination".

⁸ Thomsen, "Direct Discrimination"; cf. Thomsen, "Stealing Bread and Sleeping Beneath Bridges - Indirect Discrimination as Disadvantageous Equal Treatment"; Cosette-Lefebvre, "Direct and Indirect Discrimination"; Doyle, "Direct Discrimination, Indirect Discrimination and Autonomy"; Khaitan, "Indirect Discrimination"; Lippert-Rasmussen, "Indirect Discrimination is Not Necessarily Unjust".

⁹ Thomsen, "But Some Groups Are More Equal Than Others - A Critical Review of the Group Criterion in the Concept of Discrimination"; cf. Lippert-Rasmussen, *Born Free and Equal? A Philosophical Inquiry Into the Nature of Discrimination*.

¹⁰ Cf. Lippert-Rasmussen, *Born Free and Equal? A Philosophical Inquiry Into the Nature of Discrimination*; Eidelson, *Discrimination and Disrespect*.

I do not want to claim that this is “the right way” to define discrimination, in part because I am not persuaded that there is one right way to define discrimination. It seems to me more true to say that we sometimes speak of discrimination in the sense I give it here, and at other times in narrower senses that restrict it along one of the parameters I have noted above, e.g. discrimination as above that targets socially salient groups specifically, or discrimination as above that is at least *prima facie* morally bad. This diversity of conceptions makes stipulating the sense at stake helpful, and this particular, simple definition will make certain points easy to state. However, nothing in the argument of this article hinges on the stipulated definition; we could, I think, make the same points, only somewhat more clumsily, while employing any reasonable alternative definition.

The question at the heart of moral analysis of discrimination is this: what might make an act of discrimination (as defined above) morally bad? And the answer we want to discuss is **the disrespect-based account**:

Discrimination is morally bad when and to the extent that it is disrespectful.

There are variations on this account in the literature on the ethics of discrimination. In his seminal piece, Larry Alexander argues that: “When a person is judged incorrectly to be of lesser moral worth and is treated accordingly, that treatment is morally wrong regardless of the gravity of its effects. It represents a failure to show the moral respect due the recipient, a failure which is by itself sufficient to be judged immoral.”¹¹

Similarly, in a piece on the definition and moral badness of racism, Joshue Glasgow argues that racial differentiation becomes morally bad racism “if and only if [the act or policy] is racially disrespectful”.¹²

¹¹ Alexander, “What Makes Wrongful Discrimination Wrong? Biases, Preferences, Stereotypes and Proxies”, 159. It is worth noting that Alexander has since rejected the disrespect-based account. See Alexander, “Is Wrongful Discrimination Really Wrong?”.

¹² Glasgow, “Racism as Disrespect”, 81. While Glasgow’s analysis focuses on racism, I believe Lippert-Rasmussen is right to suggest that it is sympathetic to Glasgow’s work to extend it from racism to potentially applying to other groups and forms of discrimination. See Lippert-Rasmussen, *Born Free and Equal? A Philosophical Inquiry Into the Nature of Discrimination*, 116-117.

Finally, in arguably the most sophisticated development of the disrespect-based account, Benjamin Eidelson writes that “...acts of discrimination are intrinsically wrong when and because they manifest a failure to show the discriminatees the respect that is due to them as persons.”¹³

Stated in such general terms, the disrespect-based account requires clarification. Specifically, we need to know what *precisely* disrespect is, as well as what it means for an act of discrimination to be disrespectful. Only once we have filled out these details can we evaluate whether the account is plausible.

What is disrespect?

Answers to the first question generally focus on how the agent responds to the moral status of the discriminatee. To be disrespectful, Glasgow suggests, is “...something like a failure to adequately recognize autonomous, independent, sensitive, morally significant creatures.”¹⁴ Eidelson defines respect in light of his “interest thesis”: “To respect a person’s equal value relative to other persons one must value her interests equally with those of other persons, absent good reason for discounting them.”¹⁵

Alexander’s phrasing, particularly in comparison with the just cited passages by Glasgow and Eidelson, illustrate two possible ways of understanding disrespect. On one interpretation, disrespect consists in the discriminator having a particular mental state related to the moral status of the discriminatee, such as the discriminator *judging* or *believing* that the discriminatee has lower moral status.¹⁶

On a different interpretation, disrespect need not consist in the agent having any particular offending mental state. Disrespect, Eidelson suggests, arises “...not simply by the presence of some positive factor of animus or a defamatory belief, but by the *absence* of appropriate

¹³ Eidelson, *Discrimination and Disrespect*, 73. The disrespect-based account of morally bad discrimination can draw on broader theories of morally bad disrespect. As Eidelson makes explicit, the notion of (dis)respect at stake is similar and indebted to the notion of recognition respect developed by Stephen Darwall, which requires that agents “...take seriously and weigh appropriately the fact that [other persons] are persons in deliberating about what to do.” Darwall, “Two Kinds of Respect”, 38; cf. also Frankfurt, “Equality and Respect”.

¹⁴ Glasgow, “Racism as Disrespect”, 85.

¹⁵ Eidelson, *Discrimination and Disrespect*, 97

¹⁶ Alexander, “What Makes Wrongful Discrimination Wrong? Biases, Preferences, Stereotypes and Proxies”; cf. Arneson, “What is Wrongful Discrimination?”; Beeghly, “Discrimination & Disrespect”, 85.

recognition of someone’s personhood...”¹⁷ On this interpretation, disrespect can consist in the mere failure to have a required mental state related to moral status.

Between the two, the latter, Eidelsonian conception of disrespect is the more powerful version of the account. It can include cases where the discriminator holds an offending mental state, on the grounds that these explain how disrespect is brought about, e.g. that the presence of a false belief about lower moral status causes the agent to fail to adequately recognize the discriminatee’s moral status. However, unlike the first of the two conceptions, it can also include cases where the agent fails to recognize moral status in spite of having no such offending mental state.¹⁸

Moral status, in turn, might be interpreted in different ways. It might pertain, for example, to interests, autonomy, virtues, or desert. For present purposes, I shall assume that we are speaking of disrespect as it pertains to interests.¹⁹

Furthermore, one can assume the Kantian view that all persons and only persons have equal moral status, or the (arguably more plausible view) that there can be differences in moral status and that it is not restricted to persons.²⁰ Between these two alternatives, Eidelson appears to favour the former approach, while Alexander favours the latter.

Finally, *lower* moral status is a relative term, and as such might mean lower absolutely, i.e. lower than the discriminatee actually has, or lower comparatively, i.e. lower than the group that is treated differently.

Disrespect

Mental state is...	Presence of offending state	Absence of required state
Moral property is...	Interests	Autonomy, desert, virtues, etc.
Actual status is...	Equal (Kantian)	Varied

¹⁷ Eidelson, *Discrimination and Disrespect*, 75; cf. Beeghly, "Discrimination & Disrespect", 86.

¹⁸ Cf. Eidelson, *Discrimination and Disrespect*, 98-99; Lippert-Rasmussen, "Respect and Discrimination", 324-325.

¹⁹ Eidelson extensively discusses disrespect that does not adequately recognize a person’s autonomy. I set separate treatment of this version aside here mostly due to constraints of space, but it seems to me that the challenges I present below will (with suitable adjustments) affect other versions. However, for focused critical discussion of disrespect of autonomy, see Lippert-Rasmussen, "Respect and Discrimination"; Lippert-Rasmussen, *Born Free and Equal? A Philosophical Inquiry Into the Nature of Discrimination*.

²⁰ See Lippert-Rasmussen, *Born Free and Equal? A Philosophical Inquiry Into the Nature of Discrimination*, 119-120, 124-125.

Lower than...	Absolutely	Comparatively
---------------	------------	---------------

Even restricting our attention to interests, there are thus eight possible variants of the disrespect-based account. I will suggest below that some versions are more attractive than others, but also that all versions face very serious challenges.

What is disrespectful discrimination?

Before discussing the challenges, we must address the second issue of what it means for discrimination to be disrespectful, that is, what role must disrespect play in relation to discrimination for the action to be disrespectful? Let us review three possible answers. The first of these ties disrespect to beliefs about moral status:

(1) Epistemic background: Discrimination is disrespectful if the discriminator holds a false belief about the lower moral status of the discriminatee, or if she does not hold a true belief about the moral status of the discriminatee.²¹

Epistemic background is vulnerable to two objections. First, many cases of what we might intuitively want to label disrespectful discrimination appear to be compatible with the discriminator holding true beliefs about the equal moral status of the discriminatees because, again, such beliefs need not prevent the discriminator from e.g. giving less weight to the interests of the discriminatees.²² Consider:

Friedrich Wilhelm. FW accurately believes that men and women have equal moral status. However, his repressed neurotic shame at his own sexuality makes him loathe and fear the objects of his attraction. As a result of these feelings, he often fails to adequately recognize women's moral status when acting in spite of his beliefs.

²¹ Either version can further require that the belief be conscious in the discriminator's mind, but this makes no difference to the challenges *epistemic background* faces.

²² Cf. Lippert-Rasmussen, *Born Free and Equal? A Philosophical Inquiry Into the Nature of Discrimination*, 116.

Second, it seems implausible that an action becomes disrespectful because of the presence or absence of a belief even when that belief is causally inert, that is, if the presence or absence of the belief in no way affects the discriminator's actions.²³ Consider:

Statistics. Agents A and B discriminate in identical fashion against members of a group for statistical reasons. A holds a true belief about the equal moral status of the discriminatees. B holds a false belief about the lower moral status of the discriminatees. The beliefs in no way affect the actions of either agent.

It seems very strange to say that B's discrimination is disrespectful while A's discrimination is respectful (supposing that there are no other differences between A and B and their actions than the difference in beliefs). Plausibly, both are disrespectful if they both fail to adequately recognize the moral status of persons from the group at stake, and disrespectful if the opposite.²⁴

As a different suggestion, some might say that discrimination is disrespectful when it treats the discriminatee as if she had lower moral status in the sense that the agent discriminates although there are reasons grounded in the discriminatee's moral status that count against the permissibility of the action. Call this:

(2) Contrary to reasons. Discrimination is disrespectful if the discrimination is contrary to reasons grounded in the discriminatee's moral status.

There are passages in Eidelson's work, where he appears to lean in this direction. Thus, Eidelson claims, "[o]ne acts disrespectfully [...] by failing to act *on* the reasons that would be given by recognition respect."²⁵ One problem for this version is that it seems clear that there can be situations where the reasons grounded in a person's moral status that count against an act are outweighed by other reasons. It sounds strange to say that an agent who carries out the (permissible) act in such cases is being disrespectful, particularly if we suppose that she is conscious of and gives accurate weight to the reasons grounded in moral status. Second, on *contrary reasons*, disrespect presupposes and appears to add nothing to an independent account

²³ See Lippert-Rasmussen, *Born Free and Equal? A Philosophical Inquiry Into the Nature of Discrimination*, 126; 2018a, 325.

²⁴ In the latter case, discrimination might still be morally permissible – perhaps the statistical reasons are valid and sufficient to outweigh the interests of the discriminatees – but the issue at stake here is only whether the discrimination is *disrespectful*.

²⁵ Eidelson, *Discrimination and Disrespect*, 78, my emphasis.

of the relevant reasons. Or as Lippert-Rasmussen puts it: "...the suspicion is that respect turns out to be parasitic on a prior account of what these moral requirements are..."²⁶ As such, we cannot use disrespect to explain the moral badness of discrimination, since it is only possible to determine whether an act is disrespectful once we have established whether it is for independent reasons, in a certain respect, morally bad. Third, even more so than in *epistemic background*, the mental state of the discriminator plays no part. She is disrespectful simply by virtue of acting contrary to certain reasons, regardless of how and why she does so.

We can apply the lessons learned from the failures of the first two suggestions to state a more plausible understanding of disrespectful discrimination. A common thrust of the objections above is that for discrimination to be disrespectful it must *be based upon* disrespect. The cases where the presence or absence of relevant beliefs intuitively make an action disrespectful are cases where this affects what the agent does.²⁷ And the cases where acting contrary to reasons is intuitively disrespectful are cases where the agent does not give these reasons appropriate weight.

The third suggestion thus places greater emphasis on the agent's decision-making, to hold that discrimination is disrespectful not merely when it is contrary to reasons grounded in the discriminatee's moral status, but when the discriminator does not act *for* these reasons.²⁸ Specifically, the disrespect-based account can assume:

(3) Responsive to reasons. Discrimination is disrespectful of the discriminatee if the agent gives reasons grounded in the moral status of the discriminatee lower weight in her decision-making.

²⁶ Lippert-Rasmussen, *Born Free and Equal? A Philosophical Inquiry Into the Nature of Discrimination*, 117; cf. Beeghly, "Discrimination & Disrespect", 92-95; Pettit, "Consequentialism and Respect for Persons".

²⁷ Cf. Lippert-Rasmussen, *Born Free and Equal? A Philosophical Inquiry Into the Nature of Discrimination*, 119: "Accordingly, an act can be based on an assumption about the moral worth of the affected individual if, and only if, this act is somehow motivated by the actor's judgment of the individuals moral worth."

²⁸ Eidelson writes: "...failure to recognize someone as a person of equal value as others *may* be expressed in a belief or cognitive judgment that has a misestimate of her value as its content. Whatever you believe, however, the interest thesis implies that respecting someone as a being of equal value also entails *responding* to her status as a bearer of interests with presumptively equal normative weight. And to act consistently with what that presumption requires – to actually succeed in respecting it – it is not enough to reason in good faith. Your deliberation and action must actually track the relevant moral facts." Eidelson, *Discrimination and Disrespect*, 103.

This seems to me the most attractive of the three suggestions, and I shall assume in the following that it is the understanding of what it means to be disrespectful at stake in the disrespect-based account.

The baseline for lower moral status

We must consider one final issue before turning to the challenges: the choice of baseline for lower moral status. Consider perhaps the two most obvious suggestions, an absolute and a comparative baseline. On **the absolute baseline**:

Discrimination is disrespectful if the discriminator gives reasons grounded in the discriminatee's moral status *lower weight than these reasons actually have*.

On **the comparative baseline**:

Discrimination is disrespectful if the discriminator gives reasons grounded in the discriminatee's moral status *lower weight than she gives to the reasons grounded in the moral status of non-discriminatees*.

Each of these baselines has certain disadvantages.

The main disadvantage for the absolute baseline is that it rules out labelling discrimination as disrespectful of the discriminatee in scenarios where the discrimination is comparatively disrespectful while respectful of the discriminatee according to the absolute baseline. Consider:

Brahmin and Dahlit. Employers 1 and 2 both consistently favour members of group B over members of group D in hiring. Employer 1 does so because she considers D-persons to be morally unworthy, and assigns the reasons grounded in their interests less than their actual weight, while she considers B-persons to be morally worthy, and assigns the reasons grounded in their interests their actual weight. Employer 2 does so because she considers B-persons to be morally super-worthy, and assigns their interests far greater than their actual weight, while she considers D-persons to be morally worthy, and assigns the reasons grounded in their interests their actual weight.

Those attracted to the disrespect-based account will presumably want to say that the two employers' discrimination is equally disrespectful of D-persons. The absolute baseline precludes drawing this conclusion, because employer 2 does not give the reasons grounded in the moral status of D-persons lower than their actual weight. The comparative baseline avoids this issue, because both employers give lower weight to the reasons grounded in the moral status of D-persons than to the reasons grounded in the moral status of B-persons.

The comparative baseline, however, has the disadvantage that it entails labelling discrimination as disrespectful of discriminatees in scenarios where the discriminator gives different weight to reasons grounded in moral status *because* the reasons have different weight. Suppose non-human animals have lower moral status than humans, but that many non-human animals, including all vertebrates, do have moral status.²⁹ Consider:

Babies and parrots. A team of firefighters attempt to rescue inhabitants from a burning house. Each firefighter can carry either a caged parrot or a baby out of the house. Firefighters assign the actual weight to reasons grounded in the interests of babies and parrots respectively. As a result, the firefighters all rescue babies.³⁰

It sounds absurd to say that the firefighters are disrespectful of parrots – surely they ought to grant every set of reasons exactly the weight to which it is entitled – yet that is what the comparative baseline entails.³¹

In light of the disadvantages, neither baseline appears satisfactory. A possible solution is to adopt a combination of the two in the shape of **the comparative ratio of actual to given weight** as baseline:

Discrimination is disrespectful if the discriminator gives the reasons grounded in the discriminatee's moral status lower weight relative to their actual weight *as*

²⁹ This challenge to the comparative baseline is easily overlooked if one assumes the Kantian view that all persons and only persons have equal moral status. The assumption that many animals have moral status seems to me obviously true. However, even Kantians should be willing to admit that the mere conceptual possibility of non-persons with higher or lower moral status makes the disadvantage of the comparative baseline apparent.

³⁰ Cf. Kagan, *The Limits of Morality*, 16.

³¹ Note that as the comparative baseline avoided the first disadvantage, so the absolute baseline avoids this particular problem.

compared to the weight relative to actual weight she gives to the reasons grounded in moral status of non-discriminatees.

We can abbreviate this to say that the disrespectful discriminator *discounts* some status-based reasons but not others, or that she employs different discount rates for different status-based reasons.³² This allows the employers to be equally disrespectful in *Brahmin and Dahlit*, and the firefighters to avoid being disrespectful in *Babies and parrots*. Perhaps there are disadvantages to this suggestion in turn, but I will assume for the purposes of the subsequent discussion that it is the sense of “giving lower weight” at stake in the disrespect-based account.

This completes our review of the disrespect-based account of morally bad discrimination. In the next four sections, I will present three challenges to the account and critically discuss a recent argument in favour of it. Sadly, after all our efforts at detailing it, the analysis in these sections supports the conclusion that we should abandon the disrespect-based account of morally bad discrimination.

2. Weak vs. strong disrespect

The first challenge to the disrespect-based account of discrimination stems from the similarity of two theses. The disrespect-based account, as I have reviewed it above, subscribes to what we can call **the strong disrespect thesis**:

Disrespect is morally relevant in the sense that there is a *pro tanto* reason against an action when that action is disrespectful.³³

Compare **the weak disrespect thesis**:

Disrespect is morally relevant in the sense that it reflects poorly on the agent’s character, and/or makes her liable to blame when the agent’s action is disrespectful.³⁴

³² The discriminator could employ a negative discount rate, which would *magnify* the weight of reasons. In such cases, it remains disrespectful to discount reasons at different rates such that the weight of one type of reason is over-estimated relative to the other. For simplicity, I shall assume we are discussing examples of a positive discount rate.

³³ Cf. Lippert-Rasmussen, *Born Free and Equal? A Philosophical Inquiry Into the Nature of Discrimination*, 160, 173; Eidelson, *Discrimination and Disrespect*, 80-84.

³⁴ Cf. Lippert-Rasmussen, *Born Free and Equal? A Philosophical Inquiry Into the Nature of Discrimination*, 124. I do not mean to presuppose any particular theoretical commitments about the moral role of blame, but it is worth noting that even consequentialists partial to the harm-based account could accept the weak disrespect thesis, and follow the present analysis, on a suitable account of the moral role of blame (e.g. Arneson, “The Smart theory of moral

The distinction between these differing ideas of how mental states are or might be morally relevant is, of course, familiar from broader debates within moral philosophy, in part due to Tim Scanlon's influential work.³⁵ Regardless of one's views on the broader issue, the weak disrespect thesis seems to me very plausible. Clearly, it also possible consistently to hold that both the weak and the strong disrespect thesis are true. However, the combination of the weak thesis' plausibility and similarity to the strong thesis puts obstacles in the path of arguing for the disrespect-based account.

To illustrate these obstacles, consider how we might interpret disrespect according to the weak thesis in the light of different background conditions, i.e. conditions that explain *why* the agent is disrespectful. Specifically, consider what we might say of an agent who gives lower weight to someone's interests in her decision-making i) while holding a true vs. while holding a false belief about moral status, and ii) while justifiably vs. unjustifiably holding a belief about moral status. The concept of justified belief is, of course, notoriously difficult, but let us say for present purposes (very loosely) that an agent justifiably believe that *P* iff the agent believes that *P* because she has reasoned about the evidence for *P* in an epistemically responsible manner. If we assess what these different possibilities mean for how disrespect speaks to the agent's moral character and blameworthiness, there is, it seems to me, a natural hierarchy of sins.³⁶

For a start, consider an agent who discounts status-based reasons because she holds the false but justified belief that the relevant beings have lower moral status. Such an agent might be said simply to be unfortunate. Suppose, for example, that the agent lives in a cultural and scientific environment in which available evidence supports the belief that fish have no moral status, thinks carefully about this evidence, and draws the reasonable conclusion that fish have no moral status. Suppose also (as seems to me very plausible) that this belief is false. If the agent discriminates against fish, she will do so disrespectfully on the account developed above, but she does not display an objectionable moral character, nor does holding her belief in any uncontroversial way make her liable to blame.

responsibility and desert").

³⁵ See Scanlon, *Moral Dimensions: Permissibility, Meaning, and Blame*.

³⁶ I do not mean for this analysis to be comprehensive. I intend only to illustrate a point by covering certain of the most interesting possibilities.

The situation is different for an agent who discounts status-based reasons because she holds the false and *unjustified* belief that the relevant beings have lower moral status. If she reasons in a way that is defective but unbiased, then we can reasonably blame her for her careless reasoning, however, it is simply bad luck that she happened to arrive at this particular false belief.³⁷ If her reasoning process is defective in a way that systematically distorts beliefs in a particular way, e.g. because she employs motivated reasoning to shape negative beliefs about a certain group to fit her animosity towards them, then deriving this particular false belief is not merely unfortunate. In such cases, we might reasonably blame her to a greater degree, and say that both her animosity and her proclivity for motivated reasoning reflect poorly on her character.³⁸

We can also imagine an agent who discounts status-based reasons through sheer negligence, that is, because she omits to entertain the pertinent reasons at all. The agent might, let us suppose, decide too hastily or while distracted. In so doing, we might say that she displays an objectionable recklessness in reasoning, and she is presumably liable to blame, perhaps to roughly the same extent as the careless reasoner above.

Finally, we can imagine an agent who discounts status-based reasons *in spite* of holding and being conscious of the belief that the relevant being has equal or higher moral status. Eidelson suggests in the context of his analysis of the strong thesis, that such disrespect is a form of contempt.³⁹ Plausibly, in some paradigmatic cases of racism or misogyny the discriminator is well aware that discriminatees have equal moral status, but nonetheless consciously and deliberately discounts the weight of reasons grounded in their interests, for example because of animosity towards them. Intuitively, and to the extent that we can meaningfully rank such things, this strikes me as the type of disrespect that reflects most poorly on the agent's character and makes her most liable to blame.

³⁷ Interestingly, on plausible theories of moral luck, we might want to say something similar about an agent who gives *equal* weight to someone's interests based on a true but unjustified belief. See Nagel, *Mortal Questions*, chapter 3; Williams, *Moral Luck: Philosophical Papers 1973-1980*, chapter 2; Zimmerman, "Luck and moral responsibility".

³⁸ Such biased belief-formation plausibly occurs in many cases of e.g. racists and misogynists. As Larry Alexander notes about the related process of generating biased beliefs about other properties: "One who realizes that his biases cannot be justified on their own terms, such as one who realizes the invalidity of his judgment that blacks are inherently morally inferior, may, rather than relinquish the judgment fully, merely replace it with a belief that blacks very frequently have trait X, trait X being a perfectly respectable basis for discrimination. Thus, many irrational proxies are the products of bias-driven tastes for certain erroneous beliefs." Alexander, "What Makes Wrongful Discrimination Wrong? Biases, Preferences, Stereotypes and Proxies", 170.

³⁹ See Eidelson, *Discrimination and Disrespect*, 106.

As is evident from even this cursory analysis, the weak disrespect thesis allows a nuanced moral evaluation of disrespect. Furthermore, it is able to track several differences that proponents of the strong disrespect thesis claim are relevant, as in the difference between disrespect based on biased and merely unfortunate false beliefs, and negligent versus contemptuous disrespect.⁴⁰ This symmetry means that, although the theses are not incompatible, they are often in competition. Specifically, it is or at least often will be possible to explain our moral intuitions about cases with reference to both one and the other. This places a tall stumbling block in the path of arguments for the disrespect-based account, which relies on the strong thesis. When an argument for the account relies on intuitions about disrespect, the proponent must establish that the intuition is at least in part attributable to the factors at stake in the strong thesis, rather than deriving simply from the weak thesis. Barring such clarification, the intuition cannot count as evidence for the strong thesis specifically, because it is possible that the intuition is tracking the moral relevance of disrespect in the sense stated by the weak thesis.

3. Disrespectful discrimination can be at least no worse

The most sophisticated argument against the disrespect-based account of morally bad discrimination in the literature is Kasper Lippert-Rasmussen's demonstration that there are cases of disrespectful discrimination that are intuitively at least no worse than otherwise identical cases of respectful discrimination.⁴¹ Although developed in great detail by Lippert-Rasmussen, it seems to me worthwhile rehearsing it here, in part because the force of the challenge appears to not have been fully appreciated, and in part to show its applicability to the analysis of disrespect set out above.⁴²

Lippert-Rasmussen's argument is (roughly) the following:

⁴⁰ On the former, see Alexander, "What Makes Wrongful Discrimination Wrong? Biases, Preferences, Stereotypes and Proxies"; Arneson, "What is Wrongful Discrimination?"; on the latter, see Eidelson, *Discrimination and Disrespect*.

⁴¹ See Lippert-Rasmussen, "The Badness of Discrimination", Lippert-Rasmussen, "Intentions and Discrimination in Hiring"; Lippert-Rasmussen, *Born Free and Equal? A Philosophical Inquiry Into the Nature of Discrimination*; Lippert-Rasmussen, "Respect and Discrimination".

⁴² Richard Arneson does not discuss it in his critical review of deontological accounts of morally bad discrimination, Adam Slavny and Tom Parr make no mention of the challenge in their recent argument for the disrespect-based account, and Erin Beeghly does not discuss it in her reference article on the account. See Arneson, "Discrimination, Disparate Impact, and Theories of Justice"; Slavny & Parr, "Harmless Discrimination"; Beeghly, "Discrimination & Disrespect".

- 1) All else equal, the presence of a wrong-making factor makes an action intuitively morally worse.
 - 2) There are cases where the presence of disrespect, leaving all else equal, does not intuitively make discrimination morally worse.
- C) Disrespect is not a wrong-making factor for discrimination.

The first premise presupposes that intuition is generally capable of tracking moral differences, but this is widely accepted in applied ethics. The argument is valid, such that if the premises are true, so is the conclusion. This leaves the second premise: are there cases where all else equal the presence of disrespect does not make discrimination intuitively worse?

Lippert-Rasmussen advances a first set of cases against the version of the disrespect-based account associated with Larry Alexander, where disrespect is based on a false belief that the discriminatee has lower moral status. In this set, two persons both conduct painful experiments on animals to provide a small benefit to humans. The *inegalitarian experimenter* justifiably holds the false belief that animals have lower moral status, while the *egalitarian experimenter* justifiably holds the true belief that animals have equal moral status. As Lippert-Rasmussen observes: “If Alexander’s account is correct, the inegalitarian experimenter acts in a way that is disrespectful – he harms animals on the basis of his false belief about the unequal moral status of animals and human beings – unlike the egalitarian experimenter, who holds true beliefs about the comparative moral status of animals and human beings. [...] However, intuitively, *if* there is a difference in terms of wrongfulness between the two acts of experimentation, the case involving what I stipulated to be true – egalitarian beliefs about moral status – is morally more wrong.”⁴³

Benjamin Eidelson objects to this set of cases that both experimenters equally fail to give appropriate weight in their decision-making to the interests of animals: “...Lippert-Rasmussen’s attempt at a controlled comparison [...] fails if the relevant judgment is understood as constituted by taking certain considerations as reasons for certain kinds of acts, rather than as simply a propositional attitude.”⁴⁴ *Pace* Lippert-Rasmussen’s intention, Eidelson claims, the two cases do not differ in that only one involves disrespect.

⁴³ Lippert-Rasmussen, "Respect and Discrimination", 321

⁴⁴ Eidelson, *Discrimination and Disrespect*, 104.

If the two cases are equally disrespectful, how does Eidelson explain the intuition that, if anything, the egalitarian experimenter acts *worse*? Eidelson argues that the experimenter who holds the true belief that animals have equal moral status evinces a particularly egregious form of disrespect, “contempt”, which explains our intuition that her discrimination may be morally worse.⁴⁵

In response, Lippert-Rasmussen has shown that there are comparison cases where contempt does not make disrespectful discrimination morally worse. Consider this (lightly rephrased) version:

Roses. Red and White both perform painful experiments on persons. Each is motivated primarily by conformist reasons, but justifiably holds the false belief that Yorks have lower moral status than Lancasters. Red experiments only on Yorks, in line with her beliefs, while White experiments only on Lancasters, in contravention of her beliefs.

Lippert-Rasmussen concludes: “In Eidelson’s sense, both agents disrespect the individuals on whom they experiment, since both experimenters fail to give proper weight in their deliberations to the value, as perceived by them, of those persons they experiment on. [...] Only the [latter] case involves contempt. Yet it is unclear that the former case is more wrongful than the [former].”⁴⁶

Interestingly, there is an apparently promising response, which abandons Eidelson’s idea that contempt affects permissibility in favour of the weak thesis.⁴⁷ The intuitive difference in the first set of cases is explained, on this response, by the fact that although equally disrespectful, the egalitarian experimenter displays a morally worse character and is more liable to blame. The intuitive similarity in *Roses*, by the fact that while White’s action is contemptuous, it is not based on a disrespectful belief about the discriminatee (White’s belief is disrespectful of Yorks, not of the Lancasters on which she experiments). Thus, White and Red might be intuitively (roughly) equally blameworthy.

⁴⁵ See Eidelson, *Discrimination and Disrespect*, 105-107.

⁴⁶ Lippert-Rasmussen, “Respect and Discrimination”, 328-329.

⁴⁷ Lippert-Rasmussen briefly discusses this possibility in the context of a related challenge, that our intuitions about the weak thesis “drowns out” our intuitions about the strong thesis. See Lippert-Rasmussen, “Respect and Discrimination”, 322-323.

Can we extend Lippert-Rasmussen's line of argument to cover the disrespect-based account in combination with the weak thesis? I believe we can. Consider:

Speciesist scientist. A very serious disease affects many humans but no other animals. Researchers A and B both want to perform painful and dangerous tests for a potential cure. The cure can be tested equally well on either human volunteers or lab-rats. The benefits of the potential cure are such that in spite of the pain and risk it would be morally permissible to test it on human volunteers. Nonetheless, because rats have lower moral status than humans, both choose to test on rats. Compare:

Disrespect: Researcher A discounts the reasons grounded in the interests of rats.

No disrespect: Researcher B does not discount the reasons grounded in the interests of rats.⁴⁸

Intuitively, researcher A's discrimination against rats is not morally worse than researcher B's. If there is any difference between the two, it seems to concern the factors at stake in the weak disrespect thesis. Presumably, A is liable to some blame for giving lower weight to the reasons grounded in the interests of rats.

A possible objection is that we cannot explain why both researchers would choose to experiment on rats when one gives lower and the other equal weight to the reasons grounded in their interests. This is mistaken. Since rats *actually* have lower moral status than humans, the *actual* balance of reasons to which researcher B is responding may favour experimenting on rats. This touches upon a different challenge, which we consider next: does the disrespect-based account allow that agents can do right for the wrong reasons?

4. Can discrimination not be right for the wrong reasons?

The third challenge for the disrespect-based account of morally bad discrimination concerns the counterintuitive implication that intuitively permissible actions can become wrong simply by virtue

⁴⁸ Recall that on the baseline we have adopted, for researcher B to give equal weight to the interests of rats does not mean that she holds their interests to be equal to human interests or to ground equally strong reasons (which would contradict their lower moral status).

of the malignant mental state of the agent.⁴⁹ We can bring the challenge into focus by comparing a trio of cases. Consider:

Study group 1: Adam is a student who is considering whether to invite his fellow students Fatima and Christopher to form a study group. As an extrovert, Adam has no problem forming the group, but his fellow students are shy introverts, who would not form a group without his initiative. Forming a group will benefit all students included. Fatima is Arabic, while Christopher is Caucasian. Because Fatima is Arabic, Adam gives the benefit to Fatima of joining the group less weight than the comparable benefit to Christopher. The difference in weights causes Adam to invite Christopher, but to not invite Fatima.⁵⁰

On the disrespect-based account, Adam's discrimination of Fatima is morally bad *because* disrespectful. This is true even if it would not be morally bad for Adam to not form the group at all.⁵¹

Compare this with a similar case of respectful equal treatment:

Study group 2: As *Study group 1*, except that Adam gives equal weight to benefits to Arabic persons and Caucasian persons. Furthermore, Adam enjoys socializing with Arabic persons. Therefore, Adam invites both Fatima and Christopher to join the group.

Intuitively, Adam's actions in *Study group 2* are morally benign. Perhaps the most obvious difference between the two cases is that Adam does not discriminate against Fatima, but the disrespect-based account entails that another important difference is that Adam does not give lower weight to Fatima's interests. Meanwhile, the introduction of a preference for socializing with Arabic persons does not intuitively affect permissibility, even if this preference is one reason

⁴⁹ Arneson, "Discrimination and Harm", 157-158; Lippert-Rasmussen, *Born Free and Equal? A Philosophical Inquiry Into the Nature of Discrimination*, 126; cf. Parfit, *On What Matters (Vol. 1)*, 216.

⁵⁰ The case is loosely based on a case discussed by Benjamin Eidelson, see Eidelson, *Discrimination and Disrespect*, 96-97.

⁵¹ Consequentialists will conclude that since the group provides only benefits, Adam is obligated to form the group (unless there is an even better action alternative), but friends of the disrespect-based account are likely to think doing so is supererogatory.

why Adam invites Fatima. This is important, because we can now re-introduce disrespect without varying the other factors. Consider:

Study group 3: As *Study group 2*, except that because Fatima is Arabic, Adam gives the benefit to Fatima of joining less weight than the comparable benefit to Christopher. However, the lower weight is exactly balanced by his preference for socializing with Arabic persons, such that Fatima's probability of being invited to join is the same as if she had been Caucasian. Therefore, Adam invites both Fatima and Christopher.

In *Study group 3*, Adam is (by stipulation) as disrespectful of Fatima as in *Study group 1*, in that he equally discounts benefit to her because of her ethnicity. If the presence of disrespect makes an action *pro tanto* morally bad, then *Study group 3* is as bad as *Study group 1* in the specific dimension of disrespect. Yet, intuitively this is not the case. Adam's inviting Fatima in *Study group 3* seems to me not merely to be better than his action in *Study group 1*, which could be explained by the fact that Fatima is disadvantaged in the former case, but to be not in any respect morally bad. *Study group 3* is rather a case of doing the right thing for the wrong reasons, which is to say that it is an action that is not in any particular respect morally bad, but where we might nonetheless find fault with the agent's character and decision-making.⁵² This again suggests that we should adopt the weak disrespect-thesis, which holds only that disrespect is relevant to moral assessment of the agent, but not the strong, which holds that disrespect is relevant to the permissibility of the action.

5. Is disrespectful harmless discrimination intuitively morally bad?

In the above we have considered three challenges to the disrespect-based account of morally bad discrimination. In this penultimate section, we will critically review a recent argument in favour of it, in order to show that it does not support the account.

The argument is due to Adam Slavny and Tom Parr, who present a series of cases that are meant to provide intuitive support for the disrespect-based account, by showing that harmless

⁵² It may also be worth noting that the present argument avoids a counter presented by Tom Parr against a related argument by Richard Arneson. Parr claims that disrespect only affects permissibility when the agent's actions affect the target of disrespect. This condition is not satisfied in Arneson's case, where a spiteful philosopher stabs a Justin Bieber voodoo doll, because this in no way affects the unwitting Justin Bieber, but is satisfied in the *Study group*-cases. Parr, "Revisiting Harmless Discrimination", 2-3; Cf. Arneson, "Discrimination and Harm", 157.

disrespectful discrimination can be morally bad.⁵³ This is an important challenge. Much of the work for friends of the harm-based account consists in showing how apparently harmless, morally bad discrimination is either actually harmful or actually not morally bad (although perhaps discrimination that we have harm-based reason to prohibit or support a norm against).⁵⁴

The most compelling case, developed after considering some possible objections, is:

Cambridge University 3 (CU3): Helen is an admissions officer at Cambridge University. As a result of her racist prejudices, she is averse to spending time around students with dark skin tone. Having read Kasper Lippert-Rasmussen's *Born Free and Equal*, she believes that it would be wrong for her to harm these applicants, so she uses her connections to ensure that qualified dark-skinned applicants are also offered a place at Oxford. (The places Helen secures for these students are *additional* ones such that no one else is denied a place at Oxford as a result of Helen's actions.) Applicants prefer Oxford to Cambridge, and they would not have received an offer from Oxford but for Helen's intervention.⁵⁵

CU3 is constructed so as to ensure that Helen's actions are harmless, indeed even beneficial to the dark-skinned students, on any plausible account of harm. Slavny and Parr believe that: "Despite benefiting the applicants, Helen's actions remain wrongful. Although there may be differing explanations for this wrongfulness, the most promising is that Helen's actions are wrong because they are motivated by the desire not to spend time around dark-skinned students."⁵⁶ According to Slavny and Parr, then, *CU3* establishes both that the harm-based account does not explain all cases of morally bad discrimination, and that there are cases of discrimination that are morally bad *because* of the discriminator's disrespect for the discriminatee.

The first and most immediate challenge for *CU3* is that it is not clear that it need involve disrespect.⁵⁷ On the face of it, Helen's discrimination is best understood as based on a brute desire

⁵³ Slavny & Parr, "Harmless Discrimination"; Parr, "Revisiting Harmless Discrimination".

⁵⁴ See e.g. Arneson, "Discrimination, Disparate Impact, and Theories of Justice"; Thomsen, "Iudicium ex Machinae - The Ethical Challenges of Automated Decision-Making at Sentencing", 2015, Thomsen, "The Art of the Unseen - Three Challenges for Racial Profiling".

⁵⁵ Slavny & Parr, "Harmless Discrimination", 109. I have here reconstructed the case, integrating parts that the authors present in discussing the first and second versions of it.

⁵⁶ Slavny & Parr, "Harmless Discrimination", 109.

⁵⁷ It is also not a case of discrimination *against* dark-skinned applicants on the definition I have adopted, but a case of discrimination *in favour* of dark-skinned applicants. This, I take it, is only a terminological issue, since I have not

not to be around dark-skinned persons. On the disrespect-based account, as I set it out in section two above, desires are not themselves respectful or disrespectful.⁵⁸ Disrespect is a matter of what weight the agent gives to reasons grounded in moral status, not of what the agent likes, prefers or wants. Even desires for or against sharing the company of certain persons need not lead to or be accompanied by disrespect. If I strongly dislike racists and posh snobs, for example, I might prefer to avoid their company, but I need not (I hope) give lower weight to reasons grounded in their moral status. To circumvent this issue, let us suppose that *CU3* is a case of genuine disrespect, that is, that Helen's preference against associating with dark-skinned students is accompanied by, perhaps causally connected with, giving the reasons grounded in their moral status lower weight than she gives reasons grounded in the moral status of light-skinned students.

I have three more serious concerns with *CU3*, however, all of which pertain to the presence of potentially confounding factors. The first is that in spite of Slavny and Parr's efforts to construct the case so as to avoid it, Helen's discrimination might be harmful. Thus, we might think that increased racial segregation can have bad aggregate effects. In the most extreme example, it seems reasonable to suppose that an all-light-skinned Cambridge and an all-dark-skinned Oxford would create or reinforce racial schisms, even if the educations they offer are equally good. A related concern is the risk of causing offense. Recipients of the offers, sensing the underlying motive, may reasonably feel hurt and humiliated. We can eliminate the first of these potential confounders by altering the scenario to avoid any increase in racial segregation, e.g. by supposing that barring Helen's discrimination, dark-skinned students would be under-represented at Oxford and over-represented at Cambridge. However, it seems to me difficult to alter the scenario so as to reduce the risk of offending dark-skinned applicants without introducing deception, which might itself affect our intuitive response to the scenario.

The second confounding factor is the violation of the norms of the admissions-system. I suspect that intuitions might be affected by the notion that Helen's duties as an admissions officer require her to set aside any and all personal preferences. Thus, we might find it similarly intuitively troubling if she gave weight to other, more idiosyncratic desires, such as the desire not to be around persons whose name begins with a consonant, even if we suppose that she in no way

assumed and do not think that there is a moral asymmetry between discrimination against and discrimination in favour of.

⁵⁸ Cf. Eidelson, *Discrimination and Disrespect*, 115-126.

holds such persons to have different moral status or gives less weight to reasons grounded in their moral status.⁵⁹ These professional duties might in turn be related to or based upon a meritocratic norm, which many find intuitively appealing in the context of admissions to higher education. The meritocratic norm, substituting ‘position’ for ‘job’ in David Miller’s formulation, is that “justice demands that the [position] be offered to the best-qualified applicant. We express this by saying that the best-qualified applicant deserves the [position], or, in a slightly different formulation, that the principle involved is one of merit.”⁶⁰ Note that the meritocratic norm is both different from the strong disrespect thesis and not itself a plausible account of what makes discrimination morally bad.⁶¹ It is also worth noting that there are powerful arguments against the meritocratic norm as a principle of justice.⁶² Nonetheless, its intuitive appeal is likely to affect our response to *CU3*.

Third, I think it is indisputable that the factors identified by the weak disrespect thesis affect our intuitions about *CU3*. We can confidently say of Helen’s actions that they reflect her morally bad character, and we can criticize that character, e.g. by blaming Helen for her racist prejudice. I suspect that it is very difficult to tell to what extent our intuition in *CU3* is triggered by the factors at stake in the weak and the strong disrespect thesis respectively.

This might suggest that we are at an impasse. Our intuition is plausibly affected by confounding factors, but it could also be triggered by disrespect. How do we tell whether it is one or the other? One way is to compare *CU3* with other scenarios. Consider:

Cambridge University 4 (CU4). Like *CU3*, except that Helen has no racial prejudice, and does not give lower weight to reasons grounded in the moral status of dark-skinned students. Instead, her offer to dark-skinned applicants is

⁵⁹ Slavny and Parr briefly consider an objection along these lines, and reject it with reference to a sketched case involving a millionaire donating selectively (i.e. to white persons, but not black persons). See Slavny & Parr, "Harmless Discrimination", 111. The problem with this response is, of course, that discrimination here is not harmless. Black persons suffer real costs, in the shape of being deprived of benefits they would otherwise have received, from the millionaire’s differential treatment. They also note that the claim that the case involves a violation of professional duties is compatible with the claim that the case involves morally bad disrespect. The problem with this response is that the objection does not deny the compatibility of these claims. It simply points out that since our intuitions about the case could be caused by either of the moral factors, these intuitions cannot be taken to support the disrespect-based account.

⁶⁰ Miller, *Principles of Social Justice*, 156.

⁶¹ See Lippert-Rasmussen, *Born Free and Equal? A Philosophical Inquiry Into the Nature of Discrimination*, 108-109

⁶² See Segall, "Should the Best Qualified Be Appointed?"

based on her having made a drunken bet with friends that she could subvert the admissions-process along racial lines without being discovered.

CU4 is like *CU3* in that Helen risks causing racial segregation and offense, that she fails to respect her professional duties and the meritocratic norm of the admissions-system, and that we can criticize her moral character. However, she does not give lower weight to reasons grounded in the moral status of dark-skinned students. In fact, we can assume that her careful construction of a beneficial offer is made because she gives their interests exactly the same weight as the interests of light-skinned students, and is genuinely concerned to ensure that they are no worse off for her actions.⁶³ In spite of this, the two cases seem to me intuitively very similar, such that removing disrespect from the scenario has made no discernible difference.

6. Conclusion

In the course of this article I have attempted to clarify the disrespect-based account of discrimination, only to argue that it faces challenges so severe it seems reasonable to conclude we should abandon it.

Disrespectful discrimination, I have argued, is perhaps most appealingly understood as discrimination where the discriminator gives less weight to reasons grounded in the discriminatees' moral status, compared to their actual weight, than she does to reasons grounded in the moral status of non-discriminatees. This version of the account avoids problems plaguing versions that focus on the discriminator's beliefs or the reasons at stake, or which adopt the absolute or comparative baselines.

However, arguments for the disrespect-based account face a serious obstacle in that intuitions that might support it can often be equally or more plausibly explained by reference to the fact that disrespect reflects poorly on the moral character of the discriminator (the weak disrespect thesis). Simultaneously, there are cases of disrespectful discrimination that are intuitively no worse than respectful discrimination, and cases of disrespectful non-discrimination that are not intuitively

⁶³ The same point applies if we adopt one of the alternative versions of the disrespect-based account discussed in section two. For example, it does not appear to me to make any intuitive difference to the moral permissibility of Helen's actions whether we suppose that she holds racist beliefs about differences in moral status or an irresponsible willingness to shirk her professional duties to win a bet.

morally bad because of disrespect. Both types of case suggest that disrespect does not make actions morally bad.

Finally, I reviewed an argument by Adam Slavny and Tom Parr that attempted to show that there are cases of intuitively morally bad harmless discrimination, where the moral badness can best be explained by disrespect. I argued that, in line with the preceding analysis, intuitions about these cases can better be explained by the presence of confounding factors.

It is worth addressing one final point. Where does abandoning the disrespect-based account leave the ethics of discrimination specifically and the debate on the moral relevance of mental states more generally?

For the ethics of discrimination, deontologists need not despair. Although it is often interpreted as such, the harm-based account of discrimination is not consequentialist.⁶⁴ And there remain alternatives to both the disrespect- and harm-based accounts, such as luck-egalitarian or liberal accounts.⁶⁵

The situation is broadly the same with respect to the broader debate. Slavny and Parr argue that arguments for and against the strong disrespect thesis have ties to broader debates such that commitments to deontological accounts of the role of mental states in determining moral permissibility have implications for how we should assess the strong disrespect thesis, and conversely that abandoning the disrespect-based account should be resisted because doing so would weaken the general case for mental states affecting permissibility.⁶⁶ Both claims are mistaken.

The second claim is dangerously close to a fallacy *ad consequentiam*. "So much the worse for the general case for mental states affecting permissibility", one might say. Indeed, those unimpressed with general arguments for the claim that mental states have any such role might consider any such negative implications of abandoning the disrespect-based account a feature, not a bug.

⁶⁴ Sophia Moreau and Slavny & Parr are just two examples of authors who insist on associating the harm-based account with consequentialism. Friends of consequentialism might hope as much. Given the intuitive importance of harm-doing, it would constitute a decisive blow to deontology if only consequentialism could account for its moral relevance. Clearly, however, this is not the case. See Moreau, *Faces of Inequality: A Theory of Wrongful Discrimination*; Slavny & Parr, "Harmless Discrimination"; cf. Arneson, "Discrimination and Harm".

⁶⁵ See Segall, "What's so bad about Discrimination?"; Knight, "Discrimination and Equality of Opportunity"; Moreau, *Faces of Inequality: A Theory of Wrongful Discrimination*.

⁶⁶ Slavny & Parr, "Harmless Discrimination"

While tempting, this response would be misguided. There is no immediate reason why deontologists committed to affirming the claim that mental states affect moral permissibility need to accept the disrespect-based account, and denying it does not conflict with either the general claim or popular specific theories.

Consider for illustration probably the most widely debated version of a theory that mental states affect moral permissibility: the intention principle, which is at the heart of the doctrine of double effect (DDE). The intention principle can be stated in different ways, but one way that fits our purposes here is to say that an action can be morally worse when and because it is performed with a bad intention.⁶⁷

Clearly, the intention principle is not the disrespect-based account, nor does either entail the other. Consider, for example, cases of intentional and unintentional indirect discrimination.⁶⁸ A prospective employer might employ a hiring procedure that disproportionately disfavours women. She might do so without intending to indirectly discriminate against this group, or she might do so while intending this discrimination. Importantly, however, even intentional discrimination against the group need not involve disrespect. She might, for example, believe (let us assume, correctly) that the company's profits will increase as a result of the discrimination, and consider the discrimination an instrument to this goal, while holding members of the group to have equal moral worth. In this case, according to the intention principle, the moral status of the discrimination might vary between the intentional and unintentional cases, without varying in terms of disrespect. Thus, whatever theoretical commitments one might have to the general idea that mental states can affect the moral permissibility of actions, they are not *necessarily* challenged by

⁶⁷ See FitzPatrick, "The Doctrine of Double Effect: Intention and Permissibility"; Liao, "Intentions and Moral Permissibility: The Case of Acting Permissibly with Bad Intentions".

⁶⁸ Some draw the distinction between direct and indirect discrimination on the basis of intentions (or, perhaps, a slightly broader set of mental states). See Altman, "Discrimination". On this way of drawing the distinction, there is no such thing as intentional indirect discrimination. This seems to me an unhelpful way of distinguishing the cases we tend to label direct and indirect discrimination respectively. I prefer to draw the distinction depending on whether the discriminator differentially or equally treats persons, in the sense of employing the relevant property as a distinguishing criterion for performing different actions. See Thomsen, "Stealing Bread and Sleeping Beneath Bridges - Indirect Discrimination as Disadvantageous Equal Treatment". This is compatible with the discriminator directly discriminating in deciding to employ a particular decision procedure, which is itself only indirectly discriminatory (cf. Eidelson, *Discrimination and Disrespect*, 41-45).

the arguments against the strong disrespect thesis specifically.⁶⁹ The disrespect-based account of morally bad discrimination stands or, more plausibly, falls on its own.⁷⁰

⁶⁹ There are what seem to me very persuasive arguments against DDE and the intention principle, such that we have reasons unrelated to the failure of the disrespect-based account to reject both. See Nelkin & Rickless, "So Close, Yet So Far: Why Solutions to the Closeness Problem for the Doctrine of Double Effect Fall Short"; Scanlon, *Moral Dimensions: Permissibility, Meaning, and Blame*; Steinhoff, "The Secret to the Success of the Doctrine of Double Effect : Biased Framing, Inadequate Methodology, and Clever Distractions", Steinhoff, "Wild Goose Chase: Still No Rationales for the Doctrine of Double Effect and Related Principles"; Thomson, "Physician-Assisted Suicide: Two Moral Arguments".

⁷⁰ My work on this article has benefitted from discussing it at seminars with the CEPDISC Centre of Excellence, Aarhus University and the Research Group for Criminal Justice Ethics, Roskilde University. I owe thanks for very valuable comments and discussion on these occasions to Dikke Boisen Andersen, Benjamin Eidelson, Sebastian Holmen, Søren Flinch Midtgaard, Viki Møller Lyngby Pedersen, Thomas Søbirk Petersen, Kasper Lippert-Rasmussen, and Jesper Ryberg. The research was conducted as part of a 1-year visit with CEPDISC, generously funded by the Danish National Research Foundation (DNRF144).

References

- Alexander, Larry. "Is Wrongful Discrimination Really Wrong?" *San Diego Legal Studies Paper* 17-257 (2016).
- Alexander, L.arry. "What Makes Wrongful Discrimination Wrong? Biases, Preferences, Stereotypes and Proxies." *University of Pennsylvania Law Review* 141 (1992): 149-219.
- Altman, Andrew. "Discrimination." In *Stanford Encyclopedia of Philosophy*, edited by Edward. N. Zalta, 2020.
- Arneson, R. J. "Discrimination and Harm." In *The Routledge Handbook of the Ethics of Discrimination*, edited by Kasper Lippert-Rasmussen, 151-163. London: Routledge, 2017.
- Arneson, Richard. J. "Discrimination, Disparate Impact, and Theories of Justice." In *Philosophical Foundations of Discrimination Law*, edited by Deborah. Hellman & Sophia Moreau, 87-111. Oxford: Oxford University Press, 2013.
- Arneson, Richard. J. "The Smart theory of moral responsibility and desert." In *Desert and Justice*, edited by Serena Olsaretti. Oxford: Clarendon Press, 2007.
- Arneson, Richard. J. "What is Wrongful Discrimination?" *San Diego Law Review* 43 (2006): 775-808.
- Beeghly, Erin. "Discrimination & Disrespect." In *Routledge Handbook to the Ethics of Discrimination*, edited by Kasper Lippert-Rasmussen, 83 – 96. London: Routledge, 2017.
- Berndt Rasmussen, Katarina. "Harm and Discrimination." *Ethical Theory and Moral Practice* 22, no.4 (2019): 873-891.
- Collins, Hugh and Khaitan, Tanurabh, eds. *Foundations of Indirect Discrimination Law*. Oxford: Hart Publishing, 2018.
- Cosette-Lefebvre, Hugo. "Direct and Indirect Discrimination." *Public Affairs Quarterly* 34, no.4 (2020): 340-367.
- Darwall, Stephen L. "Two Kinds of Respect." *Ethics* 88, no.1 (1977): 36-49.
- Doyle, Oran. "Direct Discrimination, Indirect Discrimination and Autonomy." *Oxford Journal of Legal Studies* 27, no.3 (2007): 537-553.
- Eidelson, Benjamin. *Discrimination and Disrespect*. Oxford: Oxford University Press, 2015.
- Ekins, Richard. "Equal Protection and Social Meaning." *The American Journal of Jurisprudence* 57, no.1 (2012): 21-48.
- FitzPatrick, William. J. "The Doctrine of Double Effect: Intention and Permissibility." *Philosophy Compass* 7, no.3 (2012): 183-196.
- Frankfurt, Harry. "Equality and Respect." *Social Research* 64, no.1 (1997): 3-15.
- Glasgow, Joshua. "Racism as Disrespect." *Ethics* 120 (2009): 64-93.

- Hellman, Deborah. *When Is Discrimination Wrong?* Cambridge: Harvard University Press, 2009.
- Hellman, Deborah. "Discrimination and Social Meaning." In *The Routledge Handbook of the Ethics of Discrimination*, edited by Kasper Lippert-Rasmussen, 97-107. Abingdon: Routledge, 2018.
- Hellman, Deborah and Moreau, Sophia, eds. *Philosophical Foundations of Discrimination Law*. Oxford: Oxford University Press, 2013.
- Ishida, Shu. "What Makes Discrimination Morally Wrong? A Harm-Based View Reconsidered." *Theoria* 87, no.2 (2020): 483-499.
- Kagan, Shelly. *The Limits of Morality*. Oxford: Oxford University Press, 2002.
- Khaitan, Tarunabh. *A Theory of Discrimination Law*. Oxford: Oxford University Press, 2015.
- Khaitan, Tarunabh. "Indirect Discrimination." In *Routledge Handbook of the Ethics of Discrimination*, edited by Kasper Lippert-Rasmussen, 30-41. London: Routledge, 2017.
- Knight, Carl. "Discrimination and Equality of Opportunity." In *Routledge Handbook of the Ethics of Discrimination*, edited by Kasper Lippert-Rasmussen, 140-150. London: Routledge, 2017.
- Liao, S. Matthew. "Intentions and Moral Permissibility: The Case of Acting Permissibly with Bad Intentions." *Law and Philosophy* 31, no.6 (2012): 703-724.
- Lippert-Rasmussen, Kasper. *Born Free and Equal? A Philosophical Inquiry Into the Nature of Discrimination*. Oxford: Oxford University Press, 2013.
- Lippert-Rasmussen, Kasper. "Indirect Discrimination is Not Necessarily Unjust." *Journal of Practical Ethics* 2, no.2 (2014): 33-57.
- Lippert-Rasmussen, Kasper. "Intentions and Discrimination in Hiring." *Journal of Moral Philosophy* 9 no.1 (2012): 55-74.
- Lippert-Rasmussen, Kasper. "Private Discrimination: A Prioritarian Desert-Accommodating Account." *San Diego Law Review* 43 (2007): 817-856.
- Lippert-Rasmussen, Kasper. "Respect and Discrimination." In *Moral Puzzles and Legal Perplexities: Essays on the Influence of Larry Alexander*, edited by Heidi M. Hurd, 317-332. Cambridge: Cambridge University Press, 2018.
- Lippert-Rasmussen, Kasper. "The Badness of Discrimination." *Ethical Theory and Moral Practice* 9 (2006): 167-185.
- Lippert-Rasmussen, Kasper, ed. *The Routledge Handbook of the Ethics of Discrimination*. Abingdon: Routledge, 2017.
- Miller, David. *Principles of Social Justice*. Cambridge MA: Harvard University Press, 1999.
- Moreau, Sophia. *Faces of Inequality: A Theory of Wrongful Discrimination*. Oxford: Oxford University Press, 2020.
- Nagel, Thomas. *Mortal Questions*. Cambridge: Cambridge University Press, 1979.

- Nelkin, Dana K. and Rickless, Samuel C. "So Close, Yet So Far: Why Solutions to the Closeness Problem for the Doctrine of Double Effect Fall Short." *Noûs* 49, no.2 (2015): 376-409.
- Parfit, David. *On What Matters (Vol. 1)*. Oxford: Oxford University Press, 2011.
- Parr, Tom. "Revisiting Harmless Discrimination." *Philosophia* 47 no.5 (2019): 1535-1538.
- Pettit, Phillip. "Consequentialism and Respect for Persons." *Ethics* 100 no.1 (1989): 116-126.
- Scanlon, Thomas. *Moral Dimensions: Permissibility, Meaning, and Blame*. Cambridge: Belknap Press, 2008.
- Segall, Shlomi. "Should the Best Qualified Be Appointed?" *Journal of Moral Philosophy* 9 no.1 (2012): 31-54.
- Segall, Shlomi. "What's so bad about Discrimination?" *Utilitas* 24 no.1 (2012): 82-100.
- Shin, Patrick S. "The Substantive Principle of Equal Treatment." *Legal Theory* 15, no.2 (2009): 149-172.
- Slavny, Adam and Parr, Tom. "Harmless Discrimination." *Legal Theory* 21 no.2 (2015): 100-114.
- Steinhoff, Uwe. "The Secret to the Success of the Doctrine of Double Effect: Biased Framing, Inadequate Methodology, and Clever Distractions." *The Journal of Ethics* 22 no.3-4 (2018): 235-263.
- Steinhoff, Uwe. "Wild Goose Chase: Still No Rationales for the Doctrine of Double Effect and Related Principles." *Criminal Law and Philosophy* 13 no.1 (2019): 1-25.
- Thomsen, Frej K. "The Art of the Unseen - Three Challenges for Racial Profiling." *The Journal of Ethics* 15, no.1 (2011): 89-117.
- Thomsen, Frej K. "But Some Groups Are More Equal Than Others - A Critical Review of the Group Criterion in the Concept of Discrimination." *Social Theory and Practice* 39 no.1 (2013): 120-146.
- Thomsen, Frej K. "Stealing Bread and Sleeping Beneath Bridges - Indirect Discrimination as Disadvantageous Equal Treatment." *Moral Philosophy and Politics* 2 no.2 (2015): 299-327.
- Thomsen, Frej K. "Discrimination." In *Oxford Research Encyclopedia of Politics*, edited by William R. Thompson. Oxford: Oxford University Press, 2017.
- Thomsen, Frej K. "Direct Discrimination." In *Routledge Handbook of Discrimination*, edited by Kasper Lippert-Rasmussen, 19-29. London: Routledge, 2018.
- Thomsen, Frej K. "Iudicium ex Machinae - The Ethical Challenges of Automated Decision-Making at Sentencing." In *Principled Sentencing and Artificial Intelligence*, edited by Jesper Ryberg & Julian V. Roberts. Oxford: Oxford University Press (2022).
- Thomson, Judith J. "Physician-Assisted Suicide: Two Moral Arguments." *Ethics* 109 no.3 (1999): 497-518.
- Williams, Bernard. *Moral Luck: Philosophical Papers 1973-1980*. Cambridge: Cambridge University Press, 1981.

Zimmerman, Michael J. "Luck and moral responsibility." *Ethics* 97, no.2 (1987): 374-386.