The Injustice of Discrimination[1]

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Abstract:
Discrimination might be considered unjust on account of the comparative disadvantage it imposes, the absolute advantage it imposes, the disrespect it shows, or the prejudice it shows. This article argues that each of these accounts overlooks some cases of unjust discrimination. In response to this state of affairs we might combine two or more of these accounts. A promising approach combines the comparative disadvantage and absolute disadvantage accounts.

1. Introduction

Most people agree that discrimination, understood as differential treatment of members of racial, ethnic, religious, sexual, sexual-orientation, and disability groups ('groups', for short) on the basis of their respective group memberships or associated differences, is usually morally wrong, unjust even. But there is little consensus on the question of *why* in these cases it is wrong or unjust. It is my purpose in this article to make a modest contribution to answering that question. Most writers assume that discrimination is wrong where it is wrong either on account of the comparative disadvantage it imposes on discriminatees, the absolute advantage it imposes on them, the disrespect it shows for them, or the prejudice about them it shows. I argue that, for each of these views, there is a kind of case which seems clearly to be an instance of wrongful and unjust discrimination, but which the view does not identify as such. This suggests that some combination of the above considerations is necessary for any overall account of unjust discrimination.

My focus on the *injustice* of discrimination, as opposed to its wrongfulness or badness, is on account of three considerations. First, those who are concerned with combating discrimination are not primarily interested in moral censure, but rather with policy. As such, it seems that discrimination's injustice is at the fore of their concerns. Second, the particular considerations that I advance, those of the comparative and absolute disadvantages of discriminatees, are most naturally interpreted as considerations of justice, as they rely, in their most plausible forms, on a substantive account of distributive justice. Thus, insofar as they are a basis for identifying wrongful discrimination, they will also be a basis for identifying unjust discrimination. As the conditions

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for the latter are, if anything, more demanding, and as the latter is directly relevant to policy, it is worth emphasising that the argument I present has not merely moral but justicial implications. Finally, in spite of its more obvious relevance to policy, the injustice of discrimination is a neglected topic relative to its wrongfulness. Given this, while my concern is with the injustice of discrimination, I will, of necessity, discuss under this heading views which explicitly address only its wrongfulness. They remain relevant as it seems clear that, while in some contexts injustices might arise in the absence of wrongdoing,[2] wrongfulness is a necessary condition of unjust *discrimination,* which necessarily involves acts or omissions. In other words, an account of the wrongfulness of discrimination is also a large part of an account the injustice of discrimination.

The article is arranged as follows. Section 2 motivates the focus of the article by showing that what I refer to as discrimination is not always unjust, or even wrongful, and thus that it makes sense to distinguish just from unjust discrimination. Section 3 introduces one pair of accounts of the injustice of discrimination, which say that discrimination is unjust where it disadvantages discriminatees in comparative or absolute terms. Section 4 introduces another pair of accounts of the injustice of discrimination, which say that discrimination is unjust where it shows disrespect or prejudice towards discriminatees. Sections 5 and 6 argue that the above four accounts of the injustice of discrimination are each susceptible to powerful counterexamples. Section 7 notes that, given the failure of the individual accounts, an appealing response is to combine some of them, and offers support for a combination of the comparative disadvantage and absolute disadvantage accounts.

2. Is discrimination necessarily unjust?

Some writers assume, as I do, that discrimination is not always wrong or unjust.[3] Others, however, use 'discrimination' in some stronger way such that it is necessarily wrong or unjust.[4] However, these latter writers do not usually object to 'reverse', 'positive', or 'compensatory' discrimination, which offers favourable treatment for members of groups with historical and ongoing disadvantages (Nagel 1973; Dworkin 1977: ch. 9). Rather, they place it in the different but related category usually called 'affirmative action'. Thus, their disagreement with the assumption of this article that discrimination is not always unjust is not a substantive disagreement, but a verbal one. My question of 'is this an instance of unjust discrimination, or of just discrimination?', is just their question of 'is this an instance of discrimination, or of non-discrimination (for instance, affirmative action)?'. While I will pose the question in my way in the remainder of the article, I am not thereby making any contentious moral claim about the status of discrimination itself.

Assuming this terminology, there can clearly be cases of just discrimination. Furthermore, these cases are not restricted to cases of affirmative action. It might, for instance, be plausibly maintained that discrimination *in favour* of members of certain groups, even if these groups are and historically have been advantaged, is not itself un-

2 For instance, some 'telic egalitarians' believe that 'it is unjust or unfair that some people are born less able, or less healthy, than others' (Parfit 1997: 208 n. 11).

3 This is suggested by the very titles of Alexander 1992; Arneson 2006; Hellman 2008.

4 Thomas E. Hill (1995: 174) defines discrimination as necessarily impermissible, while Judith Jarvis Thomson (1973: 384) and Sophia Moreau (2010: 145) understand 'discrimination' in such a way as to imply injustice. Similarly, Thomas Scanlon (2008: 74) treats discrimination as 'unidirectional. It applies only to actions that disadvantage a group that has been subjected to widespread denigration and exclusion'.

just. Usually it is unjust because it has the effect – be it intentional or otherwise – of discriminating *against* members of other groups. But in unusual cases where this effect is absent it is hard to identify any injustice.

Suppose, for instance, that you and I are marooned on a desert island. I have two coconuts and you have none, and there is no other source of nutrition on the island. You happen to be a member of the same group as me, and I discriminate in favour of you and give you one of my coconuts. Had you been a member of a different group I would have kept my coconuts for myself. But there are actually no members of any other group on the island, so no one is harmed by my discrimination, and you are significantly benefitted. Even if my intentions are in some sense wrong, it is hard to identify any wrong*doing* on my part in this case (at least, assuming, as we can, that I am not to blame for my attitudes).[5] There is therefore no injustice.

Those who are concerned with combating discrimination need not, then, be concerned with combating discrimination per se, but rather with combating unjust discrimination. As we shall see in the next two sections, people differ on exactly what it is about unjust discrimination that makes it unjust.

3. Disadvantage accounts

Some writers hold that wrongful discrimination is wrong on account of the disadvantage that is thereby imposed on the discriminatee (Lippert-Rasmussen 2006a, 2006b; Segall 2012a, 2012b). Here, (dis)advantage should be understood as a placeholder for whatever it is that ultimately (dis)benefits individuals. Common candidates for advantage are resources, welfare, and capabilities; candidates for disadvantage are shortfalls in these.

To see the general appeal of the view that wrongful discrimination is wrong because it disadvantages discriminatees, it may be noted that in my earlier coconut case, no one was discriminated *against.* My act of discrimination benefited someone, but harmed nobody. The general view that says that discrimination is wrongful where it disadvantages someone does not say that there is injustice where I discriminate solely in favour of someone, as in the coconut case. That seems intuitively plausible, I would suggest.

Those who endorse this view divide into those who believe that the relevant kind of disadvantaging is comparative – the wrong consists in the disfavoured individual(s) becoming worse off relative to the disfavoured individual(s) than she would have been were there no discrimination – and those who believe the relevant kind of disadvantaging is absolute – the wrong consists in the disfavoured individual(s) becoming worse off in non-comparative terms than she would have been were there no discrimination. Call these views, applied to the question of why unjust discrimination is unjust, the *comparative disadvantage account of the injustice of discrimination* and the *absolute account of the injustice of discrimination.* The difference between these views is apparent from the reasons they give for opposing my actions in a three-person version of the coconut case, where, on discriminatory grounds, I decline to divide my spare coconut between two other people, giving all of it to the one of them who is a member of a group to which I belong. The comparative view says that it is unjust for the discriminatee to be made worse off relative to the recipient of my coconut than she would have been were she not discriminated against, i.e. discrimination has resulted in her having one-half less of a coconut than does the recipient. The absolute view says that it is unjust for the discriminatee to be made worse off than she would have been

5 For the irrelevance of intentions to permissibility see Thomson 1991, 1999; Scanlon 2008.

were she not discriminated against, i.e. discrimination has resulted in her having one-half less of a coconut simpliciter.

While the two disadvantage accounts, as stated above, can cope with the coconut cases, they seem less plausible in another kind of case. Where there is a group that has been historically discriminated against, and continues to be discriminated against, a policy of discrimination that favours that group – that is, affirmative action – may be just. Though this is controversial in many actual cases of affirmative action, that is probably on account of a lack of empirical clarity about the extent of the disadvantage being targeted for correction, the effectiveness of affirmative action as a policy for correcting it, and the extent of the disadvantage thereby imposed on otherwise more advantaged groups. There are hypothetical cases where affirmative action seems straightforwardly justified. Suppose that every member of one group, Advantaged, has ten units of resources and ten units of welfare, and every member of another group, Disadvantaged, has one unit of resources and one unit of welfare. Suppose further that the members of each of the two groups have made identical choices, have identical Lockean property rights insofar as there are any such rights (which have been violated to Advantaged's advantage and Disadvantaged's disadvantage), and that in any other regard the reader cares to consider, there is no case for Advantaged to have more resources or welfare than Disadvantaged. Finally, suppose that you may legally discriminate against Advantaged and in favour of Disadvantaged by allocating, say, jobs to members of Disadvantaged in some cases where there is a better qualified member of Advantaged. Such a measure will narrow, though not remove, the gap in resources and welfare between individual members of Advantaged and Disadvantaged, and as it happens it will also maximize overall levels of resources and welfare. In such circumstances it is very hard to see any basis for refusing to engage in a policy of affirmative action. But the disadvantage accounts of discrimination would describe such a policy as unjust, as it will disadvantage some individuals (members of Advantaged) on discriminatory grounds in both comparative and absolute terms. That is, discrimination will make members of Advantaged worse off relative to (though not *than*) members of Disadvantaged, and worse off simpliciter.

This suggests that the disadvantage accounts must be revised such that discrimination is treated as unjust not wherever it disadvantages the discriminatee, but wherever it disadvantages the discriminatee *unjustly.* Kasper Lippert-Rasmussen (2006a: 175) notes that

> [o]ne could say that an instance of discrimination is bad when it makes the discriminatee worse off than she would have been had she not been subjected to it. … Another possibility would be to say that an instance of discrimination is bad when it makes the discriminatee worse off than she would have been in a just, or the morally best, outcome.

The non-wrongfulness of at least some affirmative action shows that the more simple former possibility is not very plausible. The latter possibility is more promising, as there are many theories according to which affirmative action does not necessarily make 'the discriminatee worse off than she would have been in a just … outcome'.

This interpretation of the account may seem to render it trivial, but it does not. The account continues to insist that disadvantaging of the discriminatee is a necessary condition for unjust discrimination, and as we will see later, this is not obvious or uncontroversial. It just adds a further condition, which may itself be disputed (for instance,

by those opposed to affirmative action), that the disadvantaging must have made the discriminatee worse off than justice says she should be. And how exactly we interpret justice here adds a further level of controversy. We may, for instance, say that justice requires equality of opportunity for welfare (Arneson 1989; but cf. Knight 2012), in which case discrimination which makes someone worse off in a way that increases inequality of opportunity for welfare will be unjust (Segall 2012a). Alternatively, we may say that justice requires that priority be given to the worst off (Parfit 1997), in which case discrimination which makes someone worse off in a way that worsens the condition of the worst off will be unjust (cf. Lippert-Rasmussen 2006b). Either of these interpretations of justice is consistent with affirmative action in the kind of case that I have suggested calls for it - affirmative action would neither further inequality of opportunity between Advantaged and Disadvantaged, nor worsen the position of the worst off (Disadvantaged). I will therefore treat disadvantage accounts as incorporating the condition that, for disadvantaging on the basis of discrimination to be unjust, the disadvantaging itself must be unjust.

A final complication with advantage views should be mentioned. I initially divided these views into comparative and absolute forms on the basis of the kind of disadvantaging of discriminatees with which they are concerned. However, as the best interpretation of the views requires an account of justice, and accounts of justice themselves often refer to comparative or absolute advantage, these views are best divided on the basis of whether the account of justice appealed to is comparative or absolute. In particular, I will consider a form of comparative disadvantage account that interprets justice as equality of opportunity, and a form of absolute disadvantage account that interprets justice as priority for the worst off.

4. Non-disadvantage accounts

There are at least two major non-disadvantage accounts of the wrongfulness of discrimination. One account sees this wrongfulness where discrimination shows contempt for, demeans, or disrespects discriminatees (Cavanagh 2002: pt. 3; Hellman 2008).[6] Thomas Scanlon writes that instances of discrimination are 'wrong … because of their meaning – the judgment of inferiority they express and thereby help to maintain'.[7] The second non-disadvantage account says that discrimination is wrongful where it is based on unwarranted hostility towards, or significantly prejudiced moral or empirical beliefs about, the discriminatee.[8] Richard Arneson says that 'wrongful discrimination occurs only when an agent treats a person identified as being of a certain type differ-

6 Joshua Glasgow's 'Disrespect Analysis of racism' implies that *racist* discrimination is morally wrong on account of disrespect given his positions (1) that racism consists in racial disrespect, (2) 'that racism is always at least defeasibly morally condemnable', and (3) that '"disrespect" itself connotes a moral negative' (see Glasgow 2009: 81, 77-8, 88).

7 Here Scanlon (2008: 73) says that instances of discrimination are also wrong 'because of their consequences – the exclusion of some people from important opportunities', which suggests that he endorses a hybrid of this account and a disadvantage account. Matthew Clayton (2012: 10-12) seems to have a similar view.

8 Peter Vallentyne (2006: 982-83) defines 'invidious discrimination' as 'the treatment of an individual less favourably because of some feature one believes the individual to possess, where (1) the person is not morally or prudentially responsible for having the feature in question; and (2) the treatment is based on *(a) a mistaken belief in the moral inferiority of those having the feature, (b) a significantly mistaken empirical belief about people having the feature, or (c) hatred of those having the feature'*. However, though he thinks invidious discrimination 'is the most despicable kind of discrimination', his position explicitly '*does not* view invidious discrimination as intrinsically unjust' (Vallentyne 2006: 982, 987).

ently than she otherwise would have done from unwarranted prejudice or animus against persons of that type', where prejudice involves beliefs that have been 'formed in some culpably defective way' (Arneson 2006: 787, 788). Call these views, applied to the question of why unjust discrimination is unjust, the *disrespect account of the injustice of discrimination,* and the *prejudice account of the injustice of discrimination.*

How do these accounts relate to advantage? Of course, any account should allow for empirical connections between disadvantage and disrespect.[9] But while disrespect may itself disadvantage individuals in the sense of the previous section, it does not necessarily do so. The question, then, is whether we should be concerned about disrespectful actions per se, or with disrespectful actions that impact on their victims. On one version of the disrespect account, which seems to be favoured by Scanlon, what makes discrimination wrong is not the mere expression of disrespect, but its wider effects – for instance, racial discrimination's exclusionary effects. On another version of the view, favoured by Deborah Hellman (2008: 6, 8), 'to demean is to treat another in a way that denies her equal moral worth', and the 'equal moral worth of all persons' is a 'bedrock moral principle'. Thus, to demean is wrongful 'whether or not the person affected *feels* demeaned, stigmatized, or harmed' (Hellman 2008: 8, see also 27).

Yet more clearly than is the case with respect, prejudice, as something internal to the discriminator, does not itself always disadvantage individuals. Usually the prejudice view is construed as marking any prejudice-based discrimination as wrongful. Still, one may take the view that what is bad about prejudice is its effects on its victims. At any rate, on the disrespect account and the prejudice account, discrimination is unjust not just due to its disadvantaging effects, but rather due to any disrespect or prejudice involved in it, or the combination of these with bad effects.

However exactly they are construed, there is some intuitive plausibility to the disrespect and prejudice views. In the original two-person version of the coconut case, where I give the coconut to a member of my group for discriminatory reasons and no one else is present, there is no candidate for being subject to disrespect or prejudice. Thus these accounts say, plausibly, that there is no injustice in that case. And this view seems plausible also in the three-person version, as it seems likely that I disrespect and have prejudice towards the person who receives no coconut, on account of their group membership, and that there is injustice, as the disrespect and prejudice accounts maintain. Furthermore, unlike the disadvantage account, it does not need revision in order to accommodate affirmative action. There is, I would suggest, nothing inherently disrespectful or prejudiced about discriminating against members of Advantaged. The fact Advantaged is so much better off than Disadvantaged, and that we can find no basis for justifying this, means that such discrimination can be respectful and free of prejudice.

Larry Alexander (1992: 161) comments that 'biases premised on the belief that some types of people are morally worthier than others are intrinsically morally wrong because they reflect incorrect moral judgments', which suggests that he endorses a version of the view under consideration. But he also mentions insults in many places (Alexander 1992: 162, 171, 181, 192, 193), which suggests that he may endorse a hybrid of the two views discussed in this section.

9 'A psychological consequence of the systematic attachment of social disadvantage to a certain inborn feature is that both the possessors of the feature and others begin to regard it as an essential and important characteristic, and one which reduces the esteem in which the possessor can be held' (Nagel 1973: 360).

5. Disadvantage accounts tested

So far, we have seen little to choose between the disadvantage and non-disadvantage accounts. In this section I present reasons for doubting that either of the disadvantage accounts can plausibly be the whole story about unjust discrimination, as they fail to identify some cases of unjust discrimination.

I first consider the comparative disadvantage account, construed as the position that discrimination which comparatively disadvantages while increasing inequality of opportunity is unjust. A natural way of objecting to such equal opportunity accounts of anti-discrimination norms involves presenting examples in which there is discrimination but seemingly no inequality of opportunity. Sophia Moreau (2010: 172; see also Lippert-Rasmussen 2012) asks us to '[s]uppose that a country authorized restaurants to discriminate against clientele on the basis of religion, provided that within any particular area there were an equal number of restaurants accessible to people of any given religion – for instance, thirty restaurants for Christians, thirty restaurants for Jews, thirty restaurants for Muslims, and so on'. Such a scenario clearly seems to be an instance of (1) discrimination (2) that is unjust and bad, and (3) that nevertheless secures equality of opportunity.

Shlomi Segall (2012a: 82) disagrees in the course of his defence of the view that '[d]iscrimination is bad *as such,* … because and only because it undermines equality of opportunity'. Specifically, he resists (1) and (2), claiming that this is not a situation of discrimination, where he is using discrimination in such a way that it is necessarily bad. To motivate this idea, he notes that Moreau-type cases involve (equally distributed) dignitary harm, and that a variation on these cases need not:

> Suppose that group A is viewed as quirky and idiosyncratic by group B, but its judgment is highly esteemed by groups C to E. And suppose that group B is viewed as quirky and idiosyncratic by group C (the group it will end up discriminating against), but highly valued by everyone else, and so forth. It might be the case that when A discriminates against B (and B against C, and so forth) it causes a slight reduction in B's self-respect but an increase in C's through E's self-respect (and one whose accumulated amount is larger than the decrease in B's) (Segall 2012a: 95).

Clearly, this situation is similar to Moreau's, but with an overall increase in self-respect, rather than a loss. Why might that support the idea that, in Moreau's case, there is no discrimination? Segall comments that in his case

> [w]e have … what seems like multiple discrimination (consistent, recall, with equality of opportunity) which results, on the whole, in an increase in the absolute amount of self-respect in society (or, at the very least, no reduction in that absolute amount). Is there something bad about this state of affairs? Perhaps there is, but if so, it does not seem to me to be for reasons of discrimination (but if anything, to something like social cohesion) (Segall 2012a: 95).

The idea, I take it, is that, as there is (seemingly) no discrimination in Segall's case, there is not any in Moreau's case, as they are relevantly similar, and thus it is no problem that equality of opportunity recognizes no unjust discrimination.

I find Segall's argument unconvincing, for two reasons. First, we might dispute whether the two cases really are relevantly similar. The presence of a significant loss of self-respect, which is very likely also to have negative welfare effects,[10] does seem even pre-theoretically to make it more likely that (bad) discrimination is present. Thus, even if we allow that there is no (bad) discrimination in Segall's case, it is still quite plausible for us to say that there is some in Moreau's. Second, we might dispute whether there is really no (bad) discrimination even in Segall's case. Segall's characterizes the case as one in which 'when A discriminates against B it causes a slight reduction in B's self-respect', which is obviously in my sense discriminatory, but more to the point, a strong candidate for making the case one of bad discrimination given the loss (in self-respect and presumably welfare) for B. Now it is true that B's loss is offset not only by gains for others, but by B's own gains from other acts of discrimination. But that the badness is offset by goodness does not plausibly make it the case that there is not 'something bad about this state of affairs'. Even in Segall's case, there seems to be discrimination that is at least pro tanto bad.

I accordingly find Segall's defence of his equality of opportunity view of bad discrimination unsuccessful.[11] But it might seem that there is some promise to an alternative defence against Moreau's example, which is to deny (3) that there is equality of opportunity. Among Christians, some will go to restaurants often, while others will use their leisure time differently. If Christians are prevented from dining in some restaurants, the restaurant-going Christians will, all else being equal, not have equal opportunities (for welfare, for instance) with non-restaurant-going Christians (at least, assuming that the latter do not suffer discrimination in their favoured leisure activities).

However, this response relies on individual-level differences that do not necessarily obtain. Specifically, it relies on the discrimination affecting some good that some want and others do not. But in some cases discrimination may regard something that everyone wants. Suppose that, as part-time magistrates, Smith racially discriminates against Jones, Jones racially discriminates against Brown, and Brown racially discriminates against Smith. In each instance this is through denial of a cash award of a given size that is assigned to members of other racial groups who present identical cases. If everyone wants the cash to the same extent, it seems that the upshot will be that there is no inequality of opportunity. Thus, though all three individuals are disadvantaged comparatively, this is not unjust on the equality of opportunity metric, and so there is no unjust discrimination on the comparative disadvantage account. But notwithstanding that view, there is, I submit, actually clear unjust discrimination in play here. In particular, it seems relevant that (we can reasonably assume) there is a loss of self-respect and (thus) advantage for each individual, compared to the scenario in which nobody discriminates and simply decides the cases on their merits. I conclude, therefore,

10 Segall himself seems to assume this, given his concern with respect in this and other examples and that he says that 'by "equality of opportunity" I mean not equality of opportunity for a certain job or position, but rather overall equality of opportunity (e.g. equality of opportunity for welfare)' (Segall 2012a: 83).

11 Elsewhere Segall (2012b: 43-45) deals with a related case by introducing a separate norm of non-discrimination. This does not of course offer a defence of equality of opportunity itself, far less the comparative disadvantage account.

that the comparative disadvantage account, construed in terms of equality of opportunity, fails to capture at least some instances of unjust discrimination.

Next to be considered is the absolute disadvantage account. This obviously deals adequately with cases, such as those discussed above, in which there is widely spread absolute disadvantage. The problematic cases for it are those in which there is disadvantage, but it falls in such a way that it is overlooked by the theory of justice the account relies on. As I am assuming that the absolute disadvantage account appeals to an account of justice that gives priority to the worst off, we should consider cases in which the worst off do not suffer disadvantages. Consider, for instance, a case in which an admissions tutor at a university racially discriminates against an applicant, and in favour of an applicant who is as well off as that applicant. As the decision has no direct bad effect on the worse off – the two applicants start equally well off – the absolute disadvantage account only recognizes injustice here if there are disadvantaging side-effects (for instance, a loss of self-respect that has a welfare cost for the discriminatee). If the discriminatee is of particularly strong character and suffers no psychological harm, the absolute disadvantage account will therefore recognize no injustice in the discrimination. Here it seems that the absolute disadvantage account, construed in terms of priority for the worst off, clearly fails to identify some unjust discrimination as unjust.

6. Non-disadvantage accounts tested

We have found that each of the disadvantage accounts overlook some instances of unjust discrimination. Do the non-disadvantage accounts fare better?

I first consider the disrespect account, which as we have seen, comes in two forms: one which treats disrespect that has bad effects as necessary and sufficient for unjust discrimination, and another which treats mere disrespect as necessary and sufficient for unjust discrimination. The main difficulty with this account, in either form, stems from the central feature of making disrespect a necessary condition for unjust discrimination. Consider employers who refuse to employ a certain racial group, explicitly on the ground that they consider them to be too good for the unskilled jobs they have to offer (see Lippert-Rasmussen 2012: 69). Even though there are jobs going, they would sooner leave them vacant. Given the rationale offered, it seems clear that this is not disrespectful, but the effects could be catastrophic for the group concerned. Suppose, for instance, that these views reflect the employers' upbringings at a time when this group was predominantly employed as artisans, in trades that have now disappeared. This group will now be destitute as a result of the employers' actions, which they will not alter, being very set in their views of the dignity of the group, even when made aware of the consequences. The absence of disrespect does not seem sufficient to prevent this from being a case of unjust discrimination.

Hellman offers a response to a case in which insurers, in non-demeaning fashion, deny medical insurance to those with genetic predispositions for disease that may seem relevant to the above case. She claims that, in the medical insurance case, any wrongness lies 'not in the norm of equality but rather in a violation of the demands of justice. This is not wrongful discrimination' (Hellman 2008: 18). This response is somewhat similar to Segall's response mentioned in the previous section, in that it is claimed that, while something bad may be at hand, it is not wrongful discrimination. So it might be claimed that my employment example may involve wrong without being wrongful discrimination. It is unclear to me whether Hellman intends to be *defending* her position in the above quotation, rather than just describing it, but it is clear that

this cannot be the basis for a successful defence of the respect account, for two reasons.

First, Hellman's ground for claiming that the denial of insurance is not wrongful discrimination is that this denial does not violate the 'bedrock moral principle' of the 'equal moral worth of all persons', as it is not demeaning (Hellman 2008: 6). But this would obviously be circular if presented as a justification of her particular account of wrongful discrimination. If one did not accept that a necessary condition of wrongful discrimination was the presence of demeaning acts, the absence of such acts would not show that there was no wrongful discrimination.

Secondly, even were this possible defence not circular, it seems to rely on the denial of medical insurance that is wrongful for reasons other than violation of the equal moral worth of persons not being an instance of wrongful discrimination. Hellman allows that the insurance case may involve wrong, so her position relies on the insurer's actions being non-discriminatory. Perhaps that is so in that case, as those with particular genetic predispositions may not be a group in the relevant way. But that is a feature peculiar to that case. My example of employment denied on the basis of the applicant's race seems quite clearly to be a case of discrimination. As it is also wrongful, it is a case of wrongful discrimination. Hellman's response that there is no wrongful discrimination in the insurance case as there is no demeaning act is only prima facie plausible because she has selected a case in which there may be no discrimination. This is exposed by cases in which there is no demeaning act, but (wrongful) discrimination is nevertheless present.

I move on, then, to the prejudice account. Here we can be brief, as the problem is rather similar to that with the disrespect account, and arises in the same example. None of the employers in my example 'treats a person identified as being of a certain type differently than she otherwise would have done from unwarranted prejudice or animus against persons of that type'. For obvious reasons, the employers show no animus towards the racial group who they deem too good for their jobs. There is no prejudice, as the employers' beliefs have not been 'formed in some culpably defective way'. Thus on Arneson's account, it seems there is no wrongful discrimination. There would also be no wrongful discrimination on the possible variant of the account that I mentioned, which requires prejudice that results in disadvantage for wrongful discrimination. As this account just adds a further (disadvantage) condition that must be satisfied for there to be wrongful discrimination, it too would fail to recognize wrongful discrimination in the employment example, as its other (prejudice) condition is not satisfied. But it is, I have suggested, quite clear that the discrimination in that case is both wrongful and unjust.

I conclude, therefore, that the disrespect and prejudice accounts, just like the comparative disadvantage and absolute disadvantage accounts, each fail to identify some instances of unjust discrimination.

7. Disadvantage accounts combined

I have argued that each of the four putative accounts of unjust discrimination return 'false negatives' – there are cases in which unjust discrimination is present which they fail to recognize. The obvious conclusions to draw from this are either that some other account altogether is required, or that the best account will be a hybrid combining two or more of the above accounts. I do not here have space to consider the former option, but can briefly consider the latter. At least one combination has little promise. It would

be possible to combine the two non-disadvantage accounts.[12] But as these two accounts were susceptible to the same example, combining them will simply compound the problem.

This leaves as credible the combination of non-disadvantage accounts with disadvantage accounts, and the combination of disadvantage accounts with each other. My view is that the latter is the most plausible hybrid.[13] This allows both the sources of unjust discrimination that the disadvantage accounts individually overlooked in section 5 to be recognized. The absolute disadvantages that the comparative disadvantage account overlooked in the magistrate case would be recognized by the absolute disadvantage account grounded in priority for the worst off, as these disadvantages would make the worst off even worse off, and so be a basis for unjust discrimination. And the comparative disadvantage that the absolute account overlooked in the university case would be recognized by the comparative disadvantage account grounded in equality of opportunity, as the candidate being denied a university place on unchosen (racial) grounds would violate equal opportunity, and so be a basis for unjust discrimination.

A critic of this approach would point out that, in the latter case, it does not identify the fact that racial discrimination has occurred as a special reason for saying that there is unjust discrimination. To treat racist discrimination as just one sort of violation of equal opportunity may seem to give it insufficient importance. Nevertheless, it can be replied that the reason why race is a *particularly* inappropriate basis for differential treatment is the fact that comparative and absolute disadvantage considerations tend to converge in condemning such differential treatment. Differential treatment on the basis of race is both unchosen (so such differential treatment breaches equality of opportunity) and typically, on account of the disrespect it expresses, reduces absolute advantage levels, especially (given the common targets of racism) those of the worst off. If that is right, we can explain the wrong of racist discrimination purely in terms of disadvantage.

To undermine this claim, the critic must show cases in which (1) unchosen characteristics are a legitimate basis for differential treatment even though such treatment does not promote absolute advantage levels, or (2) chosen characteristics are an illegitimate basis for differential treatment even though such treatment does promote absolute advantage levels. I am not aware, however, of any such cases in the literature. Larry Alexander opposes the idea 'that basing discrimination on immutable traits such as race or gender is what makes discrimination wrong' on the basis of 'the many instances where discrimination based on immutable traits is not regarded as wrong (for example, refusing to hire the blind as truck drivers), and by those instances of wrongful discrimination involving mutable characteristics (for example, barring Moslems from the basketball team)' (Alexander 1992: 151). But refusing to hire blind truck drivers clearly promotes absolute advantage levels (including those of the worst off), so it is not a case where (1) unchosen characteristics are a legitimate basis for differential treatment *even though such treatment does not promote absolute advantage levels.* Similarly, barring Moslems from basketball teams clearly reduces absolute advantage levels (including those of the worst off), so it is not a case where (2) chosen character-

12 This may be Alexander's view; see note 8 above.

13 This reflects my overall position on distributive justice; see Knight 2009: ch. 6. For a similar position on discrimination see Lippert-Rasmussen 2006b.

istics are an illegitimate basis for differential treatment *even though such treatment does promote absolute advantage levels.*[14]

Much more would, of course, have to be said to provide a full defence of this account. Such a defence would have to explain just how comparative and absolute considerations should be brought together, and why this approach is superior to accounts which combine disadvantage and non-disadvantage considerations.[15] My purpose has rather been to urge that, while some kind of pluralism is required, the need to bring in non-disadvantage considerations is not as strong as it may seem. I have suggested that one plausible approach to identifying unjust discrimination appeals to a combination of comparative and absolute disadvantage considerations.

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14 It can additionally be argued that, in most cases, religious beliefs are not relevantly chosen, given their acquisition in childhood.

15 See note 7 above.

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