Luara Ferracioli (UvA)
Forthcoming Economics & Philosophy

Born Free and Equal?: A Philosophical Inquiry into the Nature of Discrimination,
Kasper Lippert-Rasmussen, Oxford University Press, 2014, 317 pages.

In a time of strained racial relations in the United States and continued inequality
between men and women in the social domain, a careful and systematic philosophical
understanding of the nature of discrimination is an important step toward imagining a
more just world. Kasper Lippert-Rasmussen's book makes a significant contribution
to such understanding.

His book consists of three parts. The first provides a conceptual analysis of
discrimination. The second makes a case for a desert-prioritarian account of what
makes certain forms of discrimination *prima facie* morally wrong. And the third
identifies some strategies for eliminating or neutralizing the bad effects of
discrimination. I will discuss each part in turn.

1. The Concept of Discrimination

The aim of the first part of the book is to "seek to formulate explicit criteria for
discrimination" (p. 13). Lippert-Rasmussen begins with the idea that discrimination
against someone in its most generic sense is simply "disadvantageous differential
treatment" (p. 15). As he points out, in this sense "there is not even a presumption that
someone who engages in generic discrimination acts wrongly" (p. 15). This is a good
starting place, but as Lippert-Rasmussen notes, it is not the concept of discrimination
we are interested in. It is far too broad for that.

It might be thought that we can go from this generic sense of discrimination to
the sense we are interested in by claiming that discrimination is morally objectionable
disadvantageous differential treatment (p. 24). This brings us to something like the
dictionary definition of discrimination as "unjust or prejudicial treatment of different
categories of people" (OED). But Lippert-Rasmussen rejects this idea because "it
implies that nepotistic decisions are discriminatory" and "it implies that wrongful,
idiosyncratic differential treatment constitutes discrimination" (p. 24). Here is his
example:

> Yvonne and Zack both apply for admission to a graduate program at an Ivy
> League university. Xavier, the admissions officer, has an idiosyncratic liking for
> people from Omaha, especially those who did well in sports at high school and
> who live in a country the name of which contains at least one "s." Yvonne, but
> not Zack, happens to be distinguished in all these regards and, accordingly,
> Xavier unjustly admits her rather than Zack. (p. 25)

Lippert-Rasmussen claims that this is not a case of discrimination in the relevant
sense, although it is a case of objectionable disadvantageous differential treatment. He
therefore claims that what is needed for discrimination in the relevant sense is that
those who receive objectionable disadvantageous differential treatment are members
of some socially salient group. He says: "Of course, it would have been a case of
discrimination if Yvonne had been white (…), and Zack had been black (…) and if
Xavier admitted Yvonne because he prefers whites" (pp. 25-26). His preferred
definition of discrimination is therefore what he calls *group discrimination*, which is,

roughly, disadvantageous differential treatment on the basis of membership of a socially salient group. And, as he points out, "group discrimination is not wrong by definition" (p. 28). This means that there might be cases of discrimination in the relevant sense that are not morally problematic.

It is at this point that I wonder whether Lippert-Rasmussen has really located the relevant concept of discrimination. On the one hand, there seem to be cases of discrimination in the relevant sense where the social salience condition is not met. On the other hand, it *does* seem to be an essential part of our concept of discrimination that it is morally problematic. Consider, for example, the following case.

> Yvonne and Zack both apply for jobs at an Ivy League university. Xavier, the chair of the search committee, has an idiosyncratic disliking for people with attached ear lobes. Zack, but not Yvonne, has attached ear lobes. Xavier judges Zack's CV as slightly better than Yvonne's but hires Yvonne instead for fear of feeling uncomfortable around Zack.

It is clear that Zach is not a member of a socially salient group. And still, it seems like he was discriminated against in the relevant sense. So the social salience condition does not seem to be necessary for picking out the correct instances of discrimination. How about the claim that the concept of discrimination need not carry any condemnatory force? Recall how the dictionary definition of discrimination offers us a moralized reading of the term. This seems much closer to common usage of the term than Lippert-Rasmussen's definition. In particular, if we focus on public discourse around inequalities in the workplace, racial profiling, and so on, we can see that interlocutors typically use the concept of discrimination to pick out a practice that is *prima facie* morally wrong. Practices that seem *prima facie* benign are typically described as differential treatment, as when we describe the practice of reserving a bus seat for people with a disability. In fact, it would sound quite strange for an able-bodied person to observe that this involved a form of discrimination against him. Yet, Lippert-Rasmussen's account would qualify this practice as discrimination, without yet saying anything about whether this particular act is of the kind that is morally problematic.

My worry is simply that Lippert-Rasmussen's account can come across as an unnatural way of carrying out an inquiry into the nature of a practice that is so politically salient. It is tantamount to carrying out a treatment of the nature of sexism, by first providing a morally neutral definition of sexism, and then asking what makes certain kinds of sexism morally wrong. After all, we cannot escape the fact that common usage of sexism in public discourse has the sort of condemnatory force that does a lot of moral work. This is why the best way to proceed with an analysis of the nature of sexism would be to first acknowledge that there is such a thing as differential treatment of the sexes (i.e., separate toilets in public spaces), and then proceed to ask what kinds of differential treatments amount to sexism and why (by, say, providing a set of necessary and sufficient conditions that render differential treatment between the sexes *prima facie* morally wrong). The exact same strategy should be employed when analyzing the concept of discrimination.

To be sure, we know that when such verbal disagreements arise, we can make a stipulation about our use of the term, and then get into the more pressing business of either identifying what kinds of actions are discriminatory (if we stay close to a common usage of the term), or by asking what makes certain kinds of discrimination morally problematic (if we follow Lippert-Rasmussen strategy). Either way we get

the normative work done. The problem, though, is that outside the philosophical profession, interlocutors are unlikely to embrace terms that depart a great deal from their everyday usage. So the extent to which the point raised in this section should concern Lippert-Rasmussen depends on whether or not he would like non-philosophers to engage with his work.

2. What Makes Discrimination Wrong?

The second part of the book is the strongest. Lippert-Rasmussen does an excellent job of showing why the two dominant accounts of what makes certain kinds of discrimination wrong are unsatisfactory. On the first, discrimination is wrong because it is a result of false beliefs or objectionable intentions on the part of the discriminator. On the second, discrimination is wrong because it expresses some problematic objective meaning. Lippert-Rasmussen provides a number of convincing arguments against both accounts. For instance, with regards to the first, he shows that we are typically disposed to judge the outcome of different acts of discrimination the same way irrespective of the beliefs of the discriminator. With regard to the latter, he notes that members of society do not see many discriminatory acts as involving any kind of objectionable objective meaning. He then moves on to offer a harm-based account that locates the harm of certain discriminatory acts in the fact that they contravene the demands of desert-prioritariansm of the kind defended by Richard Arneson.

According to desert-prioritarianism, "a given amount of well-being has greater moral value when it accrues to a badly off, deserving person than it does when it accrues to a well-off, underserving person" (p. 166). The upshot is that discrimination becomes more morally problematic the more harm it imposes on members of socially salient groups, the more vulnerable they are, and the more deserving they are of receiving benefits as opposed to harms.

Though I am sympathetic to desert-prioritarianism, it is concerning that, as Lippert-Rasmussen acknowledges, discrimination may be morally required in cases where it maximizes moral value (p. 174). Here is a case that seems particularly troubling. Suppose we could bring about a world where women worked only part-time. Suppose further that in such a world, people with a disability, the elderly and children would receive better care and would lead better lives as a result. Now, this is not such a far-fetched scenario, in the sense that widespread sexism could motivate enough citizens to bar women from full-time employment if the benefits were indeed significant. Lippert-Rasmussen's consequentialism would say that doing so is required if this arrangement would do the best job of maximizing moral value. Yet, it seems that morality cannot condone a world where half of the population are barred from full-time employment, no matter the benefits to vulnerable members of society. Instead of demanding second-class citizenship for women, morality would require a world that does a worse job of maximizing value, but where everyone is treated equally. This sort of case, I think, shows that Lippert-Rasmussen's account needs to be supplemented by constraints against members of society ever being treated as second-class citizens.

3. Discrimination and Public Policy

In the last part of the book, Lippert-Rasmussen asks what can be done to neutralize the negative effects of discrimination. In particular, he discusses the more salient

3

issues of proportional representation, discrimination in punishment, discrimination in the private sphere, racial profiling and reaction qualifications (i.e., characteristics that contribute to a person's success in the workplace by causing a positive reaction in customers). I will focus on Lippert-Rasmussen's treatment of discrimination in the private sphere. In particular, I want to put pressure on his contention that private discrimination is morally on a par with public discrimination.

Lippert-Rasmussen starts his discussion of private discrimination by raising the following puzzle: "why should it not be morally wrong for private individuals to do what it would be morally wrong for the state to do?" (p. 263) That is, he is interested in the question of why members of society should get away with not marrying, befriending etc., other individuals on the basis of socially salient features. He then looks at some potential explanations as to why acts of private discrimination are more likely to be tolerated by members of society—such as the fact that often the harmful effects are negligible, or that toleration is required to protect privacy—and concludes that they all fail to justify such an asymmetry. He then moves on to apply desert-prioritarianism to different legal arrangements affecting the private sphere, thereby concluding that the consequences of legal regulation must dictate whether or not discrimination in the private sphere ought to be legally regulated.

I certainly agree with Lippert-Rasmussen that there is a puzzle to grapple with here. However, I think that the first step in his argument is too quick. There might indeed be a moral difference between differential treatment in the public and private spheres that explains the asymmetry mentioned earlier and justifies more cautious use of law in the private sphere, even in cases where legal regulation could maximize moral value. That is, there might be something special about differential treatment in the areas of marriage, friendship and other intimate relationships that make them *prima facie* morally permissible.

Here is a suggestion. When it comes to individuals' choice of romantic partners and friends, there is no moral requirement that they assess potential candidates on the basis of non-arbitrary properties. Indeed, what makes these sorts of relationships distinct from other non-intimate relationships is precisely the fact that people are attracted to one another for all sorts of arbitrary features, including socially salient features such as race, sex, and sexual orientation. Now, it is important to emphasize that the point here is not only that we are psychologically incapable of being guided by principles of justice when it comes to choosing who we would like to date or be friends with. The point here is also normative: that the ability to indulge in one's "arbitrary" preferences in intimate relationships is partly what makes them valuable.

Think of sexual fetishes. One such fetish is the sexual attraction towards persons without a limb. If I lacked a limb, I would much rather be in a romantic relationship with someone who had such a fetish than with someone who thought it appropriate to apply the principles of prioritarianism to his choice of romantic partner. In fact, I would think that such a prioritarian suitor has simply failed to grasp the distinct aspects of romantic relationships that make them valuable.

Now, Lippert-Rasmussen could respond to this point by arguing that many people would feel offended if it were pointed out to them that they their romantic advances where rejected on the grounds of race. He could say that this counts as evidence that in fact principles of justice must apply to our choices of intimate partners as well. To this, I would respond by arguing that, while understandable, such responses are inappropriate. The same way that as a heterosexual female, I should not feel offended by a homosexual male who refuses my advances, a black person should

4

not feel offended if a white person does not reciprocate her attraction. Given widespread racism at the societal level, it may be tempting to interpret the lack of attraction to someone of another race as an instance of racism, but such mere lack of attraction does not qualify as such. And the opposite is also true, since the mere fact that a white person is attracted to people of other races does not show that she is not in fact a racist. She might find non-whites sexually attractive but still think of them as socially inferior and not deserving of equal moral concern.

But what about friendship? Here things get messier, but it still seems morally permissible for people to indulge in all sorts of arbitrary features when it comes to their choice of friends. It might well be that Mary needs Bec's friendship more than Anna, or that Mary is more fun than Anna, but that Bec simply feels more confortable around Anna than she does around Mary. But what if this is because Anna is white and Mary is black? Don't we think that Bec acts wrongly here?

As I see it, our tendency to condemn Bec is a result of an implicit suspicion that she has racist dispositions that will inevitably lead to harm in other domains. But suppose that Bec is not so disposed and takes on a lot of personal costs when it comes to advancing the position of black people in society (i.e., she goes on anti-racist rallies, convinces co-workers that they ought to engage in affirmative action, etc.). It is just that when it comes to her choice of friends, she prefers to develop intimate relationships with people of the same race. It seems to me that Bec conforms to the principles of justice even though she holds arbitrary preferences in matters of friendship.

I want to finish by putting some pressure on Lippert-Rasmussen's treatment of discrimination as carried out by religious associations. Recall that he believes we ought to enact legal arrangements that maximize moral value as dictated by desert prioritarianism. So the question of whether we should ban a religious association from (say) barring women from employment depends on whether such legislation would lead to chaos or would in fact improve the condition of the worse-off. But there is a crucial question here, which is whether or not such religious associations provide important public goods and/or are partly funded by the state (Cordelli 2011; Brettschneider 2012). If they do, then it seems like justice requires that they not be allowed to discriminate against women, irrespective of whether this arrangement would maximize moral value. If, on the other hand, the group only offers religious services and is self-funded, then they should be allowed to set their membership and leadership criteria as they like, including barring women from joining and/or taking leadership roles.

Despite these criticisms, *Born Free and Equal?* is obligatory reading for anyone interested in the nature of discrimination and its relation to social inequality and oppression. I would also recommend the book to readers who enjoy philosophical work that is based on careful engagement with the literature, creative thinking, and well-crafted arguments.

Luara Ferracioli[*]

REFERENCES

Brettschneider, C. 2012. *When the State Speaks, What Should It Say?: How Democracies Can Protect Expression and Promote Equality*. Princeton University Press.

Cordelli, C. 2011. The Institutional Division of Labor and the Egalitarian Obligations of Nonprofits. *Journal of Political Philosophy* 20:131-155.

Luara Ferracioli is an assistant professor in Political Theory at the University of Amsterdam, and works primarily on philosophical issues relating to immigration, gender and procreation. She has published in *The Journal of Ethics & Social Philosophy*, the *Journal of Moral Philosophy* and *Review of International Studies*.

---

* Department of Political Science, University of Amsterdam, Postbus 15578 1001 NB Amsterdam, The Netherlands. Email: l.l.ferracioli@uva.nl. URL: http://www.uva.nl/en/about-the-uva/organisation/staff-members/content/f/e/l.l.ferracioli/l.l.ferracioli.html.