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Pluralist Theories of Wrongful Discrimination

Dale Smith

Melbourne Law School, University of Melbourne, Australia
Email: dale.smith@unimelb.edu.au

Abstract

In *Faces of Inequality*, Sophia Moreau offers a pluralist theory of discrimination, according to which discriminatory conduct involves one or more of (at least) three types of wrong. She claims, further, that each of these wrongs represents a failure to treat some people as the equal of others. I argue that this further claim is mistaken. I also suggest that there may be no need for a pluralist theory of discrimination to identify a property that is shared by the different types of wrong recognised by the theory (beyond the fact that each is present in cases of wrongful discrimination).

Résumé

Dans *Faces of Inequality*, Sophia Moreau propose une théorie pluraliste de la discrimination, selon laquelle un comportement discriminatoire implique un ou plusieurs torts, identifiés parmi au moins trois types. Elle ajoute que chacun de ces torts représente un manquement à l'obligation de traiter une personne comme l'égale des autres. Je soutiens que cette seconde affirmation est erronée. Je suggère également qu'il n'est peut-être pas nécessaire pour une théorie pluraliste de la discrimination d'identifier une propriété partagée par les différents types de torts reconnus par la théorie (au-delà du fait qu'ils sont tous présents dans les cas de discrimination répréhensible).

Keywords: discrimination; Sophia Moreau; equality; deliberative freedoms; autonomy

1. Introduction

In cases where one person wrongfully discriminates against another, we might think that there is a single type of wrong that is committed.[1] Much writing on the topic of discrimination seeks to identify what that type of wrong is. However, there is another possible view, according to which acts of wrongful discrimination involve some

[1] Unless otherwise indicated, I use "wrong" (and cognate words such as "wrongfully") to refer to conduct that one has a (certain type of) *pro tanto* reason not to engage in. I shall assume that one does not always have a *pro tanto* reason not to engage in discriminatory conduct, and hence that the "wrongful" in "wrongful discrimination" is not redundant.

combination of wrongs. On this alternative view, a single discriminatory act may instantiate multiple types of wrong and/or different discriminatory acts may instantiate different types of wrong.

We might label theories of wrongful discrimination that recognise only a single type of wrong "monist" theories, and theories that claim that there is some combination of wrongs "pluralist" theories. In her wonderful new book, *Faces of Inequality*, Sophia Moreau offers a pluralist theory of wrongful discrimination. She argues that acts of wrongful discrimination involve one or more of three types of wrong.[2] First, they may unfairly subordinate members of a social group to which the discriminatee belongs. Second, they may infringe the discriminatee's right to deliberative freedom — that is, "the freedom to deliberate about one's life, and to decide what to do in light of those deliberations, without having to treat certain personal traits, or other people's assumptions about them, as costs, and without having to live with these traits always before one's eyes" (Moreau, 2020, p. 34). Third, they may deny the discriminatee access to certain "basic goods" — that is, goods access to which is necessary for one to be, and to be seen to be, a full and equal participant in one's society (Moreau, 2020, pp. 125–126).

Moreau offers rich and instructive accounts of each of these types of wrong. However, she also claims that they have something important in common — namely, they each represent a way in which one may fail to treat some people as the equals of others. Moreau's theory of wrongful discrimination may be a pluralist one, but the plural elements are united under the banner of equality.

I think Moreau is right to offer a pluralist theory of wrongful discrimination. As she poignantly illustrates, acts of wrongful discrimination impact discriminatees in many different ways. For this reason alone, it would be surprising if those acts instantiated only a single type of wrong. This suggests that there is reason, as Moreau claims, to strive for a pluralist theory that is "able to capture the rich, multifaceted nature of discriminatees' complaints" by not trying "to reduce the wrongness of discrimination to some single set of harmful effects" (Moreau, 2020, p. 154).

However, I have reservations about the type of pluralist theory Moreau offers, especially her claim that each of the three types of wrong she discusses represents a different way in which one may fail to treat some people as the equals of others. One question is whether Moreau's theory is truly a pluralist one. One might think that Moreau identifies a single "master" wrong present in cases of wrongful discrimination — namely, the failure to treat some people as the equals of others — while recognising three ways in which one can commit that master wrong. And one might wonder whether this is a monist, rather than a pluralist, theory.[3]

I am not sure that this line of enquiry is especially profitable. As Moreau says, what matters most is whether her claims about wrongful discrimination are true, not whether they amount to a monist or a pluralist theory (Moreau, 2021, p. 608). So,

[2] Moreau allows that there may be further types of wrong present in acts of wrongful discrimination, beyond the three she discusses (Moreau, 2020, p. 11).

[3] Alternatively, one might conclude that if Moreau's account is a pluralist one, then so are many accounts that might otherwise have been thought to be monist ones: see Kasper Lippert-Rasmussen (2021, pp. 580–581).

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while I will briefly return in Section 2 to the question of whether Moreau's theory is really a pluralist one, my focus will be on whether she is correct to claim that the three types of wrong she identifies each involves a failure to treat some people as the equals of others. In exploring this issue, I shall assume, *arguendo*, that Moreau is right that acts of wrongful discrimination are wrongful because they unfairly subordinate, infringe a right to deliberative freedoms, and/or deny access to a basic good.[4]

I begin, in Section 2, by considering in more detail what is meant to be the connection between the three types of wrong Moreau identifies and the failure to treat some people as the equals of others. In Section 3, I express some doubts about whether the three types of wrong can each be understood as involving a failure to treat some people as the equals of others. In Section 4, I consider whether there is any need for a pluralist theory of wrongful discrimination to identify some feature that each of the different types of wrong identified by the theory share in common (beyond the fact that they are all present in cases of wrongful discrimination).

2. Concepts and Conceptions

At several points, Moreau states that unfair subordination, infringement of a right to deliberative freedoms, and denial of access to a basic good represent three ways in which one can fail to treat some people as the equals of others (e.g., Moreau, 2020, pp. 11, 121, 153). This way of describing the relation between equality and the three types of wrong Moreau identifies gives rise to the concern, mentioned in Section 1, about whether her theory really is a pluralist one. It suggests that there is a single master wrong present in cases of wrongful discrimination, though there may be more than one way of committing that wrong.

However, Moreau offers an alternative explanation of the relation between equality and the three types of wrong. This explanation appeals to the distinction between a *concept* and a *conception* (Moreau, 2020, pp. 158–159). Moreau presents her accounts of unfair subordination, infringement of a right to deliberative freedoms, and denial of access to a basic good as different conceptions, or interpretations, of the concept of wrongful discrimination.[5] The idea seems to be that it is a conceptual truth about wrongful discrimination that it involves a failure to treat some people as the equals of others, and Moreau's accounts of unfair subordination, infringement of a right to deliberative freedoms, and denial of access to a basic good are different conceptions of the concept of wrongful discrimination, so understood.

Her invocation of the concept/conception distinction may help to explain why Moreau characterises her theory as a pluralist one. She regards the claim that wrongful discrimination involves a failure to treat some people as the equals of others as common ground among different accounts of wrongful discrimination. This is reflected in her suggestion that theories of wrongful discrimination (not only her

[4] I therefore set to one side the concerns that Colin Campbell and I have previously expressed about Moreau's account of deliberative freedoms (Campbell & Smith, 2017).

[5] The passage in which this idea is introduced is unclear as to whether the relevant concept is the concept of *wrongful discrimination* or the concept of *failing to treat some people as the equals of others*: see Moreau (2020, pp. 158–159). I think it makes more sense to say that the relevant concept is that of wrongful discrimination, and this is how I present Moreau's view in this article.

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own, but most other theories as well) seek to answer what she calls "the question of inequality" — namely, "[w]hen we disadvantage some people relative to others on the basis of certain traits, when and why do we wrong them by failing to treat them as the equals of others?" (Moreau, 2020, p. 7).[6] This suggests that the claim that wrongful discrimination involves a failure to treat some people as the equals of others does not operate in her theory as a master principle. Rather, that claim is a conceptual truth that any account of wrongful discrimination must acknowledge.[7] All the moral work — or, at least, all the moral work that is not conceptual in nature — is done when identifying what it *is* to fail to treat some people as the equals of others. Here, Moreau holds that there are plural answers: to fail to treat some people as the equals of others is to unfairly subordinate them, to infringe their right to deliberative freedoms, and/or to deny them access to a basic good.[8]

In other respects, however, Moreau's use of the concept/conception distinction is puzzling. It seems implausible to claim that it is a conceptual truth that wrongful discrimination involves a failure to treat some people as the equals of others. Many theorists reject equality-based accounts of wrongful discrimination. Those theorists may be mistaken, but it seems unlikely that they are all conceptually confused or fall outside the scope of ordinary discourse about wrongful discrimination.[9]

True, one could reject an equality-based account of wrongful discrimination while allowing that it is a conceptual truth that wrongful discrimination involves a failure to treat some people as the equals of others. However, to do so, one would have to deny that the failure to treat some people as the equals of others is what makes acts of discrimination wrongful. This is an odd position to hold. If one thinks that acts of wrongful discrimination involve a failure to treat some people as the equals of others, one is likely to think that this fact features in the explanation of why those acts are wrongful. Conversely, if one explains the wrongfulness of those acts in terms of some other value (e.g., liberty), one is unlikely to accept that those acts necessarily involve a failure to treat some people as the equals of others.

Moreau offers other arguments for recognising a close connection between wrongful discrimination and equality. For example, she points out that "most anti-discrimination laws … explicitly use the language of equality" (Moreau, 2020, p. 4). While this is true, it is not clear what significance we should accord to it. Moreau claims that it is important that an account of wrongful discrimination fit, at least roughly, with basic features of anti-discrimination law (Moreau, 2020, pp. 27–28). However, in assessing that claim, it may be helpful to distinguish between doctrines of anti-discrimination law and any theoretical claims that anti-discrimination law makes. We might agree with Moreau that legal doctrine has helped to shape our understanding of wrongful discrimination without feeling the need to attach much weight to theoretical claims made in anti-discrimination statutes (e.g., that the aim of anti-discrimination law is to promote equality).

[6] For the argument that we can view most other theories of wrongful discrimination as seeking to answer the question of inequality, see Moreau (2020, pp. 21–22).

[7] If it does not, the account is conceptually confused or, at least, is "outside the community of useful or at least ordinary discourse about" the topic (Dworkin, 1986, p. 71).

[8] For another passage suggesting this understanding of Moreau's position, see Moreau (2020, p. 24).

[9] See footnote 7 above.

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There is another puzzling feature of Moreau's use of the concept/conception distinction. Different conceptions of the same concept are usually understood to be mutually exclusive, in the sense that only one conception can be correct. This is true of John Rawls' use of the distinction, which Moreau cites (Rawls, 1971, pp. 5–6, cited in Moreau, 2020, pp. 158–159). When introducing the distinction, Rawls does not expressly state that different conceptions of the same concept are mutually exclusive. However, he introduces the concept/conception distinction when discussing disagreement about principles of justice, and he proceeds to argue for his preferred conception of justice — justice as fairness — over competing conceptions, such as utilitarianism.

Something similar is true of Ronald Dworkin's use of the distinction in *Law's Empire*. At the level of the concept of law, Dworkin suggests, we can say that law is concerned to restrict the use of coercion by the state to ways "licensed or required by individual rights and responsibilities flowing from past political decisions about when collective force is justified" (Dworkin, 1986, p. 93). He then considers different conceptions, or interpretations, of that concept — conventionalism, pragmatism and law as integrity — each of which accepts this general characterisation of law. However, he clearly treats those conceptions as mutually exclusive, arguing for law as integrity over conventionalism and pragmatism.

By contrast, Moreau's accounts of the three types of wrong she identifies are meant to be complementary, not mutually exclusive. She claims that a failure to treat some people as the equals of others may involve any or all of those types of wrong. So, it is not the case that one conception represents the correct understanding of the concept of wrongful discrimination and the other conceptions should be rejected.

(Moreau allows that there can be conflicts between the three types of wrong, and she offers illuminating discussions of cases in which conflicts arise (Moreau, 2020, pp. 144–147, 169–174). However, the important point for present purposes is that Moreau maintains that the three conceptions of wrongful discrimination that she discusses can all be accepted simultaneously, even if conflicts can arise between the different types of wrong. By contrast, for Rawls and Dworkin, one cannot accept more than one conception of the same concept.)

My point is not that Moreau's understanding of the concept/conception distinction is mistaken. My worry is a different one. Whether or not her understanding of the distinction is tenable, it differs from other people's understanding. Why is this a problem? I have suggested that Moreau's invocation of the concept/conception distinction is meant to clarify the relation between her claim that wrongful discrimination amounts to a failure to treat some people as the equals of others and her claim that wrongful discrimination involves unfair subordination, infringement of a right to deliberative freedoms, and/or denial of access to a basic good. It is unclear whether Moreau's use of the concept/conception distinction can do this clarificatory work if she has a heterodox understanding of that distinction.

There is another way Moreau could go. Instead of saying that the three types of wrong represent three different conceptions of the concept of wrongful discrimination, she could say that she offers a single conception, according to which acts of wrongful discrimination involve one or more of the three types of wrong she identifies. This would be a pluralist conception of wrongful discrimination, and

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one that is a rival to both monist conceptions and other pluralist conceptions. Moreau would then be using the concept/conception distinction in more or less the same way as Rawls and Dworkin. However, she would have to abandon her claim that unfair subordination, infringement of a right to deliberative freedoms, and denial of access to a basic good each amount to a different conception of the concept of wrongful discrimination.

3. Is Moreau's Pluralism a Unified One?

We might describe Moreau's version of pluralism as a "unified" pluralism,[10] since she claims that the three types of wrong that are present in acts of wrongful discrimination are related by their shared connection to the idea of failing to treat some people as the equals of others. In Section 2, I expressed some uncertainty about exactly what that connection is meant to be. In this section, I raise some doubts about whether there is a connection, of the sort Moreau suggests, between failing to treat some people as the equals of others and the three types of wrong she identifies.

Obviously, uncertainty about what sort of connection Moreau has in mind will impact any discussion of whether that connection exists. Nevertheless, I shall suggest that at least one of the three types of wrong Moreau discusses does not involve a failure to treat some people as the equals of others. If so, the idea of failing to treat some people as the equals of others cannot provide a unifying feature that ties together the different types of wrong that Moreau claims are present in cases of wrongful discrimination.

I shall not contest Moreau's claim that unfair subordination involves a failure to treat some people as the equals of others.[11] Nor shall I discuss denials of access to a basic good. Moreau defines basic goods in a way that connects them to equality, since a basic good is a good access to which is necessary for someone to be, and to be seen to be, a full and equal participant in the life of that person's society. Rather, I will focus on the other type of wrong she discusses — namely, the infringement of a right to deliberative freedoms.

In earlier work, Moreau denied that deliberative freedoms should be viewed through the lens of equality. What matters, she suggested, is that we each have the deliberative freedoms to which we are entitled, not that we each have the same deliberative freedoms as other people (Moreau, 2010, pp. 151–152). This suggests that the wrongfulness of infringing someone's right to deliberative freedoms is unrelated to a failure to treat that person as the equal of others.

While Moreau's earlier account needed to be modified to fit within the pluralist framework of *Faces of Inequality*, it is not obvious why this aspect of her account had to change.[12] The earlier thought seems right. The interest that gives rise to the right to deliberative freedoms is an interest in being able to live one's life in a way

[10] This label is suggested by the heading to Section 5.1 of *Faces of Inequality*.

[11] Though I am sympathetic to the suggestion that subordination is best understood, not in terms of equality, but in terms of dignity. Note, however, that Moreau may have a capacious understanding of equality, which incorporates dignity-based concerns. For a passage suggesting that understanding, see Moreau (2020, pp. 6–7).

[12] I discuss one possible motivation in Section 4.

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that is protected from certain types of interference.[13] This interest is important, and deserving of protection, irrespective of whether other people's ability to live their lives has been interfered with. Moreover, it is plausibly regarded as an interest in non-discrimination, because of the types of interference it is concerned with — namely, interferences in one's deliberations, and actions, that relate to one's age, disability, race, sex, etc.

Moreau does, of course, offer an argument in *Faces of Inequality* for regarding an infringement of someone's right to deliberative freedoms as a failure to treat that person as the equal of others. Infringing someone's right to deliberative freedoms, Moreau suggests, involves failing to treat that person as capable of being autonomous (Moreau, 2020, p. 75). Yet, societies that value non-discrimination also tend to place a high value on the capacity for autonomy. In such a society, infringing someone's right to deliberative freedoms amounts to a failure to respect that person's (socially prized) capacity for autonomy, and hence amounts to a failure to treat that person as an equal participant in that society (Moreau, 2020, p. 98).[14] Thus, infringing a right to deliberative freedoms "is only an instance of failing to treat someone as an equal because we live in societies that so value autonomy that failing to treat someone as a person capable of autonomy amounts to failing to treat them as an equal" (Moreau, 2020, p. 148).

This is a subtle and intriguing argument. However, it cannot be the case that infringing someone's right to deliberative freedoms is wrongful only in societies that highly prize the capacity for autonomy. If, as Moreau suggests, infringing someone's right to deliberative freedoms involves failing to treat that person as capable of being autonomous, then this is wrongful in any society. The ability to direct, to the extent possible, the course of one's own life is valuable, and failing to recognise someone's possession of that valuable ability is a failure to recognise that person's full moral worth. This is true irrespective of whether one's society highly prizes the capacity for autonomy (and irrespective of whether *other* people are treated as capable of being autonomous).[15]

Moreover, infringing someone's right to deliberative freedoms does not only fail to treat that person as capable of being autonomous. Typically, it amounts to an actual infringement of that person's autonomy. Moreau characterises autonomy in terms of "deciding what is important for you, and living your life as far as is possible in accordance with those decisions" (Moreau, 2020, p. 90). An infringement of one's right to deliberative freedoms often prevents one from living one's life in accordance with the decisions one has made. In some cases, it impedes discriminatees in deciding what is important for them in the first place. This actual infringement of autonomy is

[13] This way of making the point presupposes an interest-based account of rights. For one such account, see Joseph Raz (1986, Chapter 7).

[14] Moreau sometimes suggests that what is valued in these societies is people's *equal* capacity for autonomy. However, even if we grant this, it does not allay the concerns I raise below.

[15] Explaining why it is that the capacity for autonomy is valuable is a difficult undertaking. However, I shall take it for granted that "because society treats it as valuable" is not an adequate explanation. (Nor do I think it is the explanation Moreau would offer.) Note also that one can accept that the capacity for autonomy is valuable for those people who have it, while recognising the moral worth of those people who do not have it.

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wrongful, and its wrongfulness is independent of one's society's attitude towards the capacity for autonomy.

For these reasons, the wrongfulness of infringing someone's right to deliberative freedoms is not limited to societies that value highly the capacity for autonomy. Yet, according to Moreau, it is only in those societies that infringing someone's right to deliberative freedoms fails to treat that person as an equal. This suggests that the wrong of infringing a right to deliberative freedoms bears no necessary connection to equality. That wrong can be present in societies that do not value the capacity for autonomy, and hence in which infringing someone's right to deliberative freedoms does not fail to treat that person as an equal participant in society. Thus, it is, at best, only sometimes true that infringing someone's right to deliberative freedoms involves a failure to treat that person as an equal.

Moreau might respond that her account of wrongful discrimination is limited to societies that value non-discrimination. These are societies in which the capacity for autonomy is highly prized, and hence in which there is a connection between infringements of a right to deliberative freedoms and equality. However, this would be a peculiar limitation on a theory of wrongful discrimination. Discrimination can also be wrongful in societies that do not value non-discrimination. Indeed, this is part of the explanation of why those societies are morally problematic. (It would be harder to criticise a society for failing to value non-discrimination if discrimination could not be wrongful in that society.) This suggests that a theory of wrongful discrimination that is limited to societies that value non-discrimination lacks explanatory power, since it cannot account for an important set of instances of wrongful discrimination — namely, those that arise in societies that do not value non-discrimination.

Alternatively, Moreau may wish to say that, in a society that values non-discrimination, infringement of a right to deliberative freedoms involves two types of wrong. It amounts to a failure to treat the discriminatee as capable of autonomy, which is wrongful in itself, irrespective of whether that capacity is highly valued in society. But, in societies in which this capacity *is* highly valued, failing to treat the discriminatee as capable of autonomy gives rise to a further wrong, because it fails to treat the discriminatee as an equal participant in society. However, even if we grant this, only the second type of wrong bears a necessary connection to equality. Hence, Moreau would still fail to make good on her claim that each of the types of wrong inherent in acts of wrongful discrimination involves a failure to treat some people as the equals of others. (Note also that, on this view, infringing someone's right to deliberative freedoms is not itself a wrong. Rather, the relevant wrongs are failing to treat the discriminatee as capable of being autonomous and, in some societies, failing to treat the discriminatee as an equal participant in society.)

So far, I have focused on Moreau's explanation of how infringements of a right to deliberative freedoms are connected to equality. She contends that infringing someone's right to deliberative freedoms amounts to a failure to respect that person's capacity for autonomy. She further claims that, in societies that value that capacity, the infringement amounts to a failure to treat the person as an equal participant in society. I have argued that this is problematic because infringing a right to deliberative freedoms can also be wrongful in societies that do *not* value the capacity for

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autonomy. In these societies, infringing that right does not amount to a failure to treat the other person as an equal, in the way Moreau claims.

However, perhaps there is some other way in which Moreau could establish a connection between equality and the infringement of a right to deliberative freedoms. At times (e.g., Moreau, 2020, pp. 92, 113), she seems to suggest that there is an infringement of a right to deliberative freedoms only if there is a failure to respect the other person as someone equally capable of autonomy. This suggests a different way of establishing a connection between the right to deliberative freedoms and equality. It suggests that, when we consider whether there has been a breach of a right to deliberative freedoms, the question is not just whether the discriminator interfered with the discriminatee's deliberative freedoms, but whether (by doing so) the discriminator failed to respect the discriminatee as someone equally capable of autonomy.

It is tempting to respond that this is to win the argument through definitional fiat. However, Moreau suggests an argument in favour of this understanding of the right to deliberative freedoms. She contends that we do not always have a right that our deliberative freedoms not be interfered with. Whether we have that right depends, in part, on what effect it would have on other people's interests. Asking whether the potentially discriminatory policy fails to respect us as people equally capable of autonomy is meant to provide a test for when our interest in deliberative freedoms gives rise to a right, in the face of the other person's competing interests (Moreau, 2020, p. 92).

However, even if we accept the need for such a test, it is not clear why the test needs to refer to equality. We might simply ask whether the potentially discriminatory policy fails to respect us as people capable of autonomy, omitting the reference to equality. If the answer to that question is yes, does this not warrant treating our interest in possessing deliberative freedoms as prevailing over the competing interests? If so, there is no need to appeal to considerations of equality to solve the problem with which Moreau is concerned. (Perhaps the failure to respect our capacity for autonomy does *not* warrant treating our interest in possessing deliberative freedoms as prevailing over competing interests. But, if so, why think that things will be different if there is a failure to respect us as people *equally* capable of autonomy?)

4. Is a Unifying Feature Necessary?

In the previous section, I argued that equality cannot serve as a unifying feature for the three types of wrong Moreau discusses. At least one of those types of wrong — infringement of a right to deliberative freedoms — need not involve a failure to treat some people as the equals of others. True, Moreau can avoid this conclusion by limiting the scope of her theory to those societies that value non-discrimination. However, this would be to abandon the search for a *general* theory of wrongful discrimination.

One possible conclusion is that we need to look elsewhere to find a unifying feature for the different elements in a pluralist account of wrongful discrimination. However, this may be the wrong conclusion to draw from the discussion in Section 3. Perhaps we should instead abandon the attempt to find a unifying feature

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of the sort Moreau seeks. In the present section, I suggest that a pluralist theory of wrongful discrimination may not need to identify some feature that each of the plural elements share in common, beyond the fact that each represents a way in which discriminatory conduct may be wrongful.

Moreau suggests that a pluralist theory fails to portray wrongful discrimination as a unified phenomenon unless it identifies some feature that the plural elements share in common. In the absence of such a feature, the theory cannot explain "why all of these different wrongs [i.e., the different types of wrong identified by the theory] are all instances of wrongful *discrimination*, as opposed to diverse wrongs that have nothing to do with each other" (Moreau, 2020, p. 154). Alternatively, it risks being a mere list of harmful effects of discrimination — or a list of circumstances in which discrimination is wrongful — rather than amounting to a *theory* of wrongful discrimination.

Moreau's concern may be warranted when it comes to some types of pluralism. Consider a pluralist theory that claims that different discriminatory acts instantiate different wrongs, such that act A involves wrong X, act B involves wrong Y, and act C involves wrong Z. In the absence of some explanation of what ties X, Y, and Z together, this type of pluralism may lack explanatory power.[16] In particular, it may fail to explain why we treat acts A, B, and C as belonging to a single category — the category of *wrongful discrimination* — despite the fact that each act instantiates a different wrong.

However, it is less clear that Moreau's concern is warranted when it comes to other types of pluralism. Consider a pluralist theory that claims that paradigmatic acts of wrongful discrimination are such that each act instantiates the same set of wrongs. (This set, let us assume, consists of unfair subordination, infringement of a right to deliberative freedoms, and denial of access to a basic good.) There may be acts of wrongful discrimination that instantiate only some of the wrongs in that set, but these are marginal cases. (Describing these cases as "marginal" is not meant to imply that the discriminatee does not have a legitimate complaint. It is meant to indicate only that these are not paradigmatic instances of wrongful discrimination, but rather are classified as instances of wrongful discrimination because of their relation to paradigmatic instances.)

This type of pluralist theory has a ready explanation for why we treat central cases of wrongful discrimination as belonging to a single category. Pre-theoretically, they are each regarded as a paradigmatic instance of wrongful discrimination and, upon closer scrutiny, they are found to instantiate the same combination of wrongs. It is the presence of this combination of wrongs that provides the theoretical justification for grouping paradigmatic cases of wrongful discrimination together, without there needing to be anything that these different wrongs share in common (other than the fact that they are each present in paradigmatic cases of wrongful discrimination). Thus, on this view, what is distinctive about paradigmatic acts of wrongful discrimination is the combination of wrongs they instantiate, rather than there being some unifying feature that is shared by each of those wrongs.[17]

[16] Moreau is clearly concerned about the explanatory power, or lack thereof, of a pluralist theory: see Moreau (2020, pp. 32–33).

[17] In the text, I sketch a general position, which could be modified in various ways. For example, I would suggest that what the combination of wrongs is varies depending on whether the case is one of direct or

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Things are more complicated when we consider marginal cases, which do not instantiate all of the wrongs present in paradigmatic cases of wrongful discrimination. Deciding whether a case is related in the right way to paradigmatic cases, so as to amount to a marginal case of wrongful discrimination (as opposed to not amounting to wrongful discrimination at all), may prove challenging. However, to count as a marginal case, it will need to be related in the right way to paradigmatic cases (perhaps, by instantiating *some* of the wrongs present in those cases). So, a story can be told about why a marginal case counts as a case of wrongful discrimination, even though it does not share some unifying property with all other cases of wrongful discrimination (and may share nothing in common with some other marginal case, except that both are related in the right way to paradigmatic cases).

Moreau would reject this second type of pluralist theory.[18] She would want to insist that we group acts of wrongful discrimination together, not because paradigmatic cases involve the same combination of wrongs and marginal cases are related in the right way to paradigmatic cases, but rather because those acts fail to treat some people as the equals of others.[19] And it is certainly true that the second type of pluralist theory faces a challenge in providing an adequate account of what the right type of relation is between paradigmatic cases and marginal cases. However, the second type of pluralist theory does not need to identify some feature that the plural elements share in common. If I was right to argue in Section 3 that Moreau's attempt to identify such a feature fails, this advantage may be a significant one. At the very least, it may warrant further exploration of the alternative sketched above.

5. Conclusion

Faces of Inequality is a truly excellent book. It combines remarkable philosophical rigour and insight with a deep and sensitive understanding of the phenomena being theorised. In doing so, it significantly advances our understanding of wrongful discrimination, not least by offering a sophisticated pluralist account of the types of wrong present in cases of wrongful discrimination. I have argued that Moreau fails in

indirect discrimination: see Campbell and Smith (2023, pp. 323–328). One might ask what, then, do direct and indirect discrimination have in common, such that they are both instances of *discrimination*. Elsewhere, Campbell and I have sketched the beginnings of an answer to that question (Campbell & Smith, 2023, p. 327).

[18] Interestingly, Moreau might agree that paradigmatic cases of wrongful discrimination involve all three types of wrong she discusses. She states that most acts of wrongful discrimination involve both unfair subordination and an infringement of a right to deliberative freedoms, and many acts of wrongful discrimination also involve a denial of access to basic goods (Moreau, 2020, p. 36). She also says that cases in which only one of the three types of wrong is present "are unusual cases, rather than representative ones" (Moreau, 2020, p. 163). However, even if Moreau might agree on this point, she would reject other features of the second type of pluralist theory.

[19] Moreau acknowledges that some types of non-discriminatory conduct also involve a failure to treat some people as the equals of others. She distinguishes these types of conduct from acts of wrongful discrimination on the basis that the latter involve a failure to treat some people as the equals of others *by disadvantaging some people on the basis of certain traits (age, disability, race, sex, etc.)*. Note, though, that this sits uneasily with her further claim that the relevant traits play only a heuristic role in cases involving denial of access to a basic good (Moreau, 2020, pp. 148–150).

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her attempt to identify a feature that unites those types of wrong. However, she has much of value to say about those types of wrong. Moreover, the failure to identify a unifying feature may not be such a problem, if I am right in suggesting that no such feature is needed.

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