Dialogue (2024), **63**, 85–94
doi:10.1017/S0012217323000215

CAMBRIDGE UNIVERSITY PRESS

ARTICLE

Special Issue: Canadian Philosophical Association 2022 Book Prize

Faces of Inequality: Reflections on Exceptional Developments

Alysia Blackham

Melbourne Law School, University of Melbourne, Victoria, Australia
Email: alysia.blackham@unimelb.edu.au

Abstract

In *Faces of Inequality*, Sophia Moreau puts forward a pluralistic theory of how discrimination wrongs people. I approach Moreau's ideas not as a legal philosopher or theorist, but as an empirical and socio-legal scholar of equality law. In this commentary, I pick up on five provocations that emerge for me from Moreau's work: on reasonable accommodations, on comparison in equality law, on the public/private divide, on the justification of discrimination, and on discrimination as a personal wrong. While Moreau's work is grounded in the common themes or shared features that emerge from equality laws across jurisdictions, I consider what these themes mean for the *un*common ground, drawing on exceptional developments in discrimination law in some Australian jurisdictions, and our experience with the "exceptional" protected characteristic of age.

Résumé

Dans *Faces of Inequality*, Sophia Moreau propose une théorie pluraliste de la manière dont la discrimination cause du tort aux individus. J'approche les idées de Moreau non pas en tant que philosophe ou théoricienne du droit, mais plutôt comme sociologue du droit à l'égalité et spécialiste empirique. Mon commentaire aborde cinq provocations ressortant du travail de Moreau, qui ont trait aux accommodements raisonnables, au rôle de la comparaison dans le traitement juridique de l'égalité, à la distinction public/privé, à la justification de la discrimination et à la discrimination en tant que tort personnel. Alors que le travail de Moreau est fondé sur les thèmes communs ou les caractéristiques partagées qui émergent des lois sur l'égalité de différentes juridictions, je l'examine en relation avec l'exceptionnalité, en m'appuyant sur les développements uniques relatifs à la discrimination sur l'âge dans certaines juridictions australiennes, et sur notre expérience avec la caractéristique protégée « exceptionnelle » qu'est l'âge.

Keywords: equality; age discrimination; reasonable accommodations; comparison; justification

1. Introduction

In *Faces of Inequality*, Sophia Moreau puts forward a pluralistic theory of how discrimination wrongs people. She identifies three ways in which those impacted by discrimination might not be treated as the equals of others: in being subjected to unfair subordination, in being denied access to deliberative freedoms, and in being denied access to basic goods. Moreau's work is deeply nuanced and thought-provoking; it is a critical piece of reading for anyone working in or thinking about equality and discrimination.

I approach Moreau's ideas not as a legal philosopher or theorist, but as an empirical and socio-legal scholar of equality law; my approach to discrimination law contrasts markedly with Moreau's philosophical approach. In this commentary, then, I want to pick up on five key threads or provocations that emerge for me from Moreau's work: on reasonable accommodations, on comparison in equality law, on the public/private divide, on the justification of discrimination, and on discrimination as a personal wrong.

Moreau's work is grounded in the common themes or shared features that emerge from equality laws across jurisdictions (Moreau, 2020, p. 27) — the common ground, as it were. For Moreau, the shared features of discrimination law can and should inform theory (Moreau, 2020, pp. 13–14). These shared features are: that discrimination occurs on the basis of a personal trait or protected grounds; that there are two types of discrimination, direct and indirect; that discrimination is often structured or framed as a personal wrong against those impacted by discrimination; and that a practice does not need to be shown to be morally valuable for us to be protected from exclusion from it (Moreau, 2020, p. 13). While using these features as a starting point, Moreau acknowledges that they require further scrutiny — indeed, her theory casts light on whether these features are normatively desirable or necessary as part of our framework of discrimination law. In this commentary, though, I want to consider what the ideas emerging from Moreau's work mean for the *un*common ground, with a focus on exceptional developments in discrimination law in some Australian jurisdictions, and our experience with the "exceptional" protected characteristic of age.

2. Voice and Case Law

Moreau's work particularly resonates with me in that it attempts to give voice to those who are impacted by discrimination, including through the use of case law and real-world complaints of discrimination to develop and test theory (Moreau, 2020, pp. 28–30, 104). For Moreau, this gives a fuller and more accurate picture of discrimination as it manifests in practice (Moreau, 2020, p. 30), and certainly when compared with the use of hypothetical scenarios as an alternative (Moreau, 2020, p. 29). The social world, and lived experiences of discrimination, are therefore both a check on and a critical tool to inform theories of discrimination and the harm it causes (Moreau, 2020, pp. 28–29).

In this, though, I would sound a word of caution: as socio-legal and law-in-context scholars are keen to emphasize, few potential complaints of discrimination are pursued, and it is rare — exceptional, even — for such complaints to progress to the courts. Most matters — in many jurisdictions — are resolved via confidential

https://doi.org/10.1017/S0012217323000215 Published online by Cambridge University Press

conciliation (Blackham & Allen, 2019), often with a non-disclosure agreement attached (Allen & Blackham, 2019). Those who are impacted by discrimination may be more likely to "lump it" or leave, or avoid future harm, than to make a complaint (Blackham, 2022b). Giving voice to those impacted by discrimination is therefore fraught, and case law likely provides a distorted picture of how discrimination manifests in practice. We must be attuned, then, to the instances of discrimination that do not make it into the public sphere — the matters that are abandoned or never pursued.

3. On Reasonable Accommodations

Moreau makes a compelling case for rethinking our framing of reasonable accommodations. For Moreau, privilege is accommodated by existing structures and systems that are in place (Moreau, 2020, p. 43); these are "structural accommodations" of privilege. Structural accommodations make the needs of privileged groups seem "normal," and those of other groups seem "exceptional" (Moreau, 2020, p. 43). Structural accommodations are one way of perpetuating unfair subordination (Moreau, 2020, p. 62), and can perpetuate direct and indirect discrimination (Moreau, 2020, p. 65). Indeed, structural accommodations often render those without privilege invisible — and inferior (Moreau, 2020, p. 71). While those who lack this privilege can request reasonable accommodations, there can be significant costs in asking for change (Moreau, 2020, p. 71).

Moreau's arguments, building on the work of feminist, critical race, and disability scholars, prompt us to reframe the use of reasonable accommodations in equality law. In some Australian jurisdictions, for example, the right to request reasonable accommodations extends to all protected grounds, and has been reframed as a positive duty to accommodate individual needs. The *Anti-Discrimination Act 1992* (NT) s 24, for example, has been amended by the *Anti-Discrimination Amendment Act 2022* (NT) to become a positive obligation, rather than a negatively framed penalty for a failure to accommodate. It reads:

(1) A person must reasonably accommodate a special need that another person has because of an attribute.
(2) For subsection (1):
    a) reasonable accommodation of a special need of another person means making adequate or appropriate provision to accommodate the special need; and
    b) reasonable accommodation of a special need takes place when a person acts in a way that reasonably provides for the special need of another person who has the special need because of an attribute.
(3) Whether a person reasonably provided for the special need of another person depends on all the relevant circumstances of the case including, but not limited to:
    a) the nature of the special need; and
    b) the cost of accommodating the special need and the number of people who would benefit or be disadvantaged; and

https://doi.org/10.1017/S0012217323000215 Published online by Cambridge University Press

c) the financial circumstances of the person; and
d) the disruption that accommodating the special need may cause; and
e) the nature of any benefit or detriment to all persons concerned.

This provision extends to all protected grounds; it potentially offers a far more inclusive approach to reasonable accommodations than what is present in other jurisdictions. However, the provision still frames these requests as relating to the "special needs" of those with a protected trait; it says nothing about dismantling the systems and structures that perpetuate privilege and exclusion. It also does little to address the costs of requesting change, which we expect those who are least privileged to bear. This flags, then, the extent to which discrimination and inequality are bound up in power, structures, and systems, rather than individual traits — a point to which I return below. It shifts our focus, too, to the use of legal tools that require *proactive* responses to inequality, rather than relying on individual complaints or requests for change — as, for example, through the use of positive duties to advance equality and eliminate discrimination (Blackham, 2021, 2022b, Chapter 7).

4. On Comparison in Equality Law

For Moreau, discrimination is wrongful when it fails to treat someone as the equal of others (Moreau, 2020, pp. 157–158). This approach appears to be inherently comparative; it hinges on people being *un*equal, or treated as unequal, for discrimination to be wrongful. However, Moreau's approach to comparison is more nuanced. For Moreau, comparison — and, more specifically, the comparator requirement — will have different roles and purposes in different contexts (Moreau, 2020, p. 177). We use comparison to consider whether someone has not been treated as the equal of others, and this will depend on whether someone has not been treated as the equal of others due to unfair subordination, infringing a right to a deliberative freedom, or in access to a basic good (Moreau, 2020, p. 177). The comparison, then, depends on the relevant wrong (Moreau, 2020, p. 178), and comparisons are relevant, but not dispositive (Moreau, 2020, p. 178).

This is a helpful and informative approach — far superior, certainly, to the over-emphasis on comparison and the comparator requirement that can emerge in discrimination law.[1] This raises broader questions, though, regarding the extent to which we might move beyond comparison in discrimination law. The comparator requirement arguably reflects a focus on Aristotelian formal equality, and a preoccupation with ensuring that like be treated alike (Smith, 2008a, pp. 5–6). This approach seeks to ignore or minimize difference, emphasizing instead "relevant" considerations or criteria (Smith, 2008a, p. 6). The issue, of course, is how we determine who is "alike," and which considerations are "relevant" or "irrelevant" (Smith, 2008a, p. 6). The framing of the comparator typically reflects the dominant culture. As Sandra Fredman argues,

[1] See, for example, the distorted approach in *Purvis v New South Wales (Department of Education and Training)* [2003] HCA 62; 217 CLR 92 (Campbell, 2007; Rattigan, 2004; Smith, 2008a).

https://doi.org/10.1017/S0012217323000215 Published online by Cambridge University Press

> the apparent commitment to neutrality masks an insistence on a particular set of values, based on those of the dominant culture. This is because the basic premise, namely that there exists a "universal individual", is deeply deceptive … the apparently abstract individual is clothed with the attributes of the dominant culture, religion or ethnicity. (Fredman, 2001, p. 154)

Using a narrow comparator and conception of who is "alike" reduces our model of direct discrimination to purely advance formal equality; any notion of substantive equality is excluded (Smith, 2008a, p. 7). Moreau, though, goes beyond this; in her process of comparison, we might consider comparative power and authority, structures, and systems that normalize and accommodate privileged groups, and the costs accruing to those of particular groups (Moreau, 2020, p. 177). Even this nuanced process of comparison, though, still positions those who are impacted by discrimination against a normative and privileged other who should be their "equal."

So, then, can we move beyond this process of comparison? Can *equal*ity law move beyond a focus on "equals"? Discrimination statutes in Victoria[2] and the Australian Capital Territory (ACT)[3] define direct discrimination as requiring *unfavourable* treatment, rather than *less favourable* treatment. This means that there is arguably no comparator requirement in Victoria or the ACT.[4] In *Casino Canberra Limited v Kidman*,[5] the ACT Civil and Administrative Appeal Tribunal considered what was meant by "unfavourable treatment." The Tribunal held that "unfavourable treatment" is "treatment that is disadvantageous or detrimental to the complainant. … [It] may encompass acts or omissions which result in some detriment, being loss, damage or injury to the complainant."[6] This is a question of fact, with an objective, not comparative, test.[7] The ACT statute therefore "does not invite a comparison between the way in which a person who has a particular attribute is treated compared with a person without that attribute or who has a different attribute."[8] It is enough, then, to establish discrimination "if a person receives any objectively negative outcome, regardless of what they might have reasonably expected, and it is established that

[2] *Equal Opportunity Act 2010* (Vic) s 8.

[3] *Discrimination Act 1991* (ACT) s 8(2).

[4] In *Aitken v State of Victoria* [2013] 46 VR 676, the Victorian Court of Appeal held that it was "an unresolved question of law in Victoria" as to whether a comparator was still required to satisfy the unfavourable treatment test: at 687 [45]–[46]. This was cited favourably in *Kuyken v Chief Commissioner of Police* (2015) 249 IR 327, 355–356 [93]. In *Kuyken*, it was not suggested that the Victorian Civil and Administrative Tribunal was wrong in failing to require a comparator: at 356 [95].

[5] [2022] ACAT 22.

[6] *Casino Canberra Limited v Kidman*, [2022] ACAT 22 [85].

[7] *Casino Canberra Limited v Kidman*, [2022] ACAT 22 [88].

[8] *Prezzi, Patricia Anne and Discrimination Commissioner* [1996] ACTAAT 132 (8 February 1996), [22]. Cf. Senior Member Anforth in *D & Commissioner for Social Housing* (Discrimination) [2010] ACAT 62 (1 October 2010), [101], where it was held that "unfavourable" is inherently comparative, but with the relevant comparison being not with another person without a protected attribute, but by reference to a person's reasonable expectations. This view has not found favour with later decision-makers: see *Complainant 201931 v Australian Capital Territory (Represented by Access Canberra)* (Discrimination) [2021] ACAT 9 (8 February 2021), [100], where a broader approach was preferred, such that "if a person receives any objectively negative outcome, regardless of what they might have reasonably expected, and it is established that the negative outcome was caused by their protected attribute, they have been discriminated against": [102].

https://doi.org/10.1017/S0012217323000215 Published online by Cambridge University Press

the negative outcome was caused by their protected attribute."[9] This framing of discrimination law may well be exceptional, but it prompts us to think again about what might sit at the core of our prohibition of discrimination.

5. On the Public/Private Divide

The public/private divide is an enduring feature of the way discrimination laws are framed. Discrimination in the private sphere or private domain is largely unregulated and beyond the scope of discrimination law; discrimination in the public sphere is generally regulated. In some Australian jurisdictions, this is taken so far as to exclude domestic work on residential premises from the scope of discrimination law: even if I employ you in my home, so long as it is my home (and my "castle," perhaps), discrimination law does not apply.[10] Margaret Thornton strongly critiques this public/private divide as replicating gendered norms and assumptions — after all, if women are confined to the home, and discrimination law does not touch the home, then the transformative potential of discrimination law is largely eliminated (Thornton, 1991, p. 459).

Moreau challenges the public/private divide in a moral sense — for Moreau, we all have a moral obligation to treat each other as equals (Moreau, 2020, pp. 217, 226), and this applies regardless of context. That said, for Moreau, law and legal regulation should not regulate our private and personal dealings with our friends and families (Moreau, 2020, p. 38). Instead, it should be confined to the public sphere.

Of course, the public/private divide is criticized because it is so permeable: as Thornton posits, "the public/private dichotomy of liberal thought, far from constituting two analytically discrete realms, is a malleable creation of the public realm" (Thornton, 1991, p. 459). As Moreau points out, the personal is political: how we behave and are treated at home can perpetuate stereotypes and exacerbate power relations (Moreau, 2020, p. 227).[11] The public/private divide is therefore not fixed; rather, we should view it "through a moving prism," with boundaries that shift across time (Thornton, 1991, p. 450) and for political expediency. It is "a malleable political mechanism which can be effectively utilized to safeguard dominant interests under the guise of seeming neutrality and naturalness" (Thornton, 1991, p. 451). For Thornton, extending equality law to the "private" sphere would cripple the liberal order:

> The political malleability of the public/private line of demarcation ensures that domestic labour remains cordoned off because the repercussions of regulation would be devastatingly destabilizing. Just imagine a regime of formal equality, let alone a substantively equal regime, operating within the home, given that women are presently expected to care not just for children,

[9] *Complainant 201931 v Australian Capital Territory (Represented by Access Canberra)* (Discrimination) [2021] ACAT 9 (8 February 2021), [102].

[10] See, e.g., *Age Discrimination Act 2004* (Cth) s 18(3); *Equal Opportunity Act 2010* (Vic) s 24; *Anti-Discrimination Act 1991* (Qld) ss 26–27; *Anti-Discrimination Act 1992* (NT) s 35(2); *Equal Opportunity Act 1984* (WA) s 66W(3); *Anti-Discrimination Act 1977* (NSW) s 49ZYB(3); *Equal Opportunity Act 1984* (SA) s 85F(1)(a); *Discrimination Act 1991* (ACT) s 24.

[11] Indeed, Thornton sees "the domestic sphere as a major site of oppression and inequality for women" (Thornton, 1991, p. 453).

https://doi.org/10.1017/S0012217323000215 Published online by Cambridge University Press

> the aged and the sick but also for adult men — husbands, lovers, fathers and grown-up sons — that is, those who are perfectly capable of caring for themselves! Like justice, the equality prescript of anti-discrimination legislation operates only within the public sphere of the liberal paradigm. (Thornton, 1991, p. 453)

In more recent times, the growth of the "sharing" economy and "peer-to-peer" platforms has fundamentally challenged our view of who provides a "service" (and what is "private" or in the domestic sphere). As we welcome people into our homes (via AirBnB) and our cars (via Uber), what — if anything — remains private? Catherine Barnard and I have argued that once people make a public offer of a service, even in their homes, they can and should be required to comply with discrimination law (Barnard & Blackham, 2017). But what about grandparents who are paid (even a little) to care for their grandchildren? Excluding the private sphere and personal relationships from discrimination law is still most likely to affect women.

There are clearly no easy answers to these questions, but we *should* question whether the private sphere should continue to be immune to discrimination law, as well as what form regulation might take in this context. As Moreau argues, it is difficult to articulate a legal standard that might apply in this context (Moreau, 2020, p. 236); our concern for privacy may trump our concern for equality in some cases (Barnard & Blackham, 2017), and enforcement is likely to be fraught (Moreau, 2020, p. 237), potentially undermining the legitimacy of law. Thirty years after Thornton's devastating critique of the public/private "dichotomy," we need to critically examine the limited scope of discrimination law, which serves to perpetuate inequality and undermine the transformative potential of discrimination law.

6. On the Justification of Discrimination

Common law jurisdictions are divided on the question of justification, at least as it applies to direct discrimination. For Moreau, direct and indirect discrimination occasion the same three types of harm; they therefore should both be justifiable (Moreau, 2020, pp. 37, 192–193). For Moreau, something like the Canadian "undue hardship" test[12] — with a fairly demanding interpretation of what constitutes "undue hardship" — might be appropriate for justifying both direct and indirect discrimination (Moreau, 2020, p. 247).

I am cautious about this argument, given its practical implications. From my perspective, the desirability of this position really hinges on the test used to determine justification; as Moreau acknowledges, if "undue hardship" is interpreted too broadly, this will undermine the prohibition of discrimination (Moreau, 2020, p. 247). It is here that the UK offers a rather unusual example of the risks of justification. Under the *Equality Act 2010* (UK), direct discrimination cannot be objectively justified *except* in the case of direct age discrimination.[13] Direct age discrimination *can* be justified as a proportionate means of achieving a legitimate aim. This exception — and

[12] See, e.g., *Canadian Human Rights Act*, R.S.C., 1985, c. H-6, s 15(1)(a), 15(2).
[13] *Equality Act 2010* (UK) s 13(2).

https://doi.org/10.1017/S0012217323000215 Published online by Cambridge University Press

equivalent provisions in EU law — has led, for example, to the justification of mandatory retirement ages, age-based redundancy payments, and age-based pay scales (Blackham, 2022a). The exception has bred significant legal uncertainty, and has led to extensive litigation. Indeed, scholars have written extensively on the confusion and lack of guidance provided by courts in determining whether measures are "objectively justified," seeking to offer solutions and more transparent ways of navigating competing tensions (Dewhurst, 2016; Goosey, 2021). In my research, respondents have made clear that the ability to objectively justify direct age discrimination may explain why people impacted by age discrimination are unwilling to bring complaints; legal uncertainty deters claiming, and creates a perception that age discrimination rights are weak (Blackham, 2022b). I argued, then, that this exception should be removed from UK law.

So, what if we were to allow justification of direct discrimination across all grounds or protected characteristics? It may mean that age discrimination is no longer the "Cinderella" of protected characteristics (Meenan, 2007). It would likely require, too, a stronger test to establish whether discrimination is "justified." If, as Moreau argues, the same test for justification should apply to both direct and indirect discrimination, this would likely mean that forms of indirect discrimination, which are currently seen as a justified in the UK, would no longer be legally permissible. This is an interesting thought experiment. It would certainly bring UK law more into line with that in Canada. But whether it is a normatively desirable development requires further thought and consideration, particularly given the legal uncertainty it is likely to occasion.

7. On Discrimination as a Personal Wrong

For Moreau, there are four features of discrimination law that form the starting point for her theory and theorizing: that discrimination is on the basis of a protected trait, that there is a distinction between direct and indirect discrimination, that discrimination is a personal wrong, and that an area does not need to be shown to be morally valuable to fall within the scope of discrimination law (Moreau, 2020, p. 13). Moreau argues that many forms of discrimination — both direct and indirect — can be seen as a form of negligence (Moreau, 2020, pp. 184, 205). Further, at least part of the rationale for prohibiting discrimination is grounded in our valuing of human autonomy and individualized agency (Moreau, 2020, pp. 97–98). While discrimination can be both an individual and a group wrong, this is confined to the members of that group (Moreau, 2020, pp. 179–180); overall, then, while Moreau's focus on social groups might serve to de-individualize discrimination, discrimination is still fundamentally a personal harm (Moreau, 2020, p. 42).

But should discrimination be seen and structured as an individual or personal wrong? Moreau's analysis uses the law as her grounding and starting point; in many legal systems, discrimination *is* seen and structured as an individual wrong. At a descriptive level, then, in depicting law as it is, Moreau's approach is factually correct. But what about in a normative sense, depicting law as it should be? Indeed, Moreau's approach uses the social world as a check on theory, seeing the social world as creating law, which in turn generates theory (Moreau, 2020, pp. 28, 29). So, if the social world is out of step with law, then this should also have implications for our theory.

https://doi.org/10.1017/S0012217323000215 Published online by Cambridge University Press

In our social world, experiencing discrimination does not just harm us as individuals, it has ripple effects and harmful consequences for those around us, who support us and experience vicarious harm (Moody, 2022; Wofford et al., 2019): our families, our friends, and other members of our community. Discrimination and inequality are damaging at a societal level: more unequal societies experience poorer health, economic and social outcomes across society (Wilkinson & Pickett, 2017).

Focusing on individuals and personal wrongs minimizes our regard for inequality as a *societal* wrong and form of harm, meaning discrimination law has become an empty "liberal promise," confined to individual redress rather than societal change (Thornton, 1990, pp. 38, 151) and depriving discrimination law of much of its transformative potential. A focus on individual wrongs fails to recognize the inherently collective nature of inequality, where disadvantage is due to actual or perceived membership of, or association with, a particular group (Bell & Waddington, 2003, p. 353). It also seeks to adapt individuals to fit existing structures, rather than focusing on how structures can be adapted to accommodate everyone (Dickens, 2007, p. 472). This is a more limited approach to equality than one which is focused on organizational change and transformation to challenge "structural accommodations" of privilege. As a result, then, individual rights models do not necessarily effect systemic solutions (Smith, 2008b, p. 134). Instead, we might prefer a group-oriented approach, which focuses less on individual merit and fault and more on addressing discriminatory barriers, and which may be more appropriate for addressing structural or "second generation" discrimination (Fredman, 2001, p. 156). This recognizes, too, that structures are created and replicated by humans; and those who create, administer, oversee, and replicate discriminatory structures should be held accountable for their impacts, as well as their reform. Again, this emphasizes the importance of adopting proactive organizational approaches for addressing inequality, as through positive equality duties.

Early in her work, Moreau frames her focus as being around what those impacted by discrimination want (Moreau, 2020, p. 26), emphasizing their experiences and their desires. In my empirical work, it appears clear that what those impacted by discrimination want is for the behaviour to stop, to not occur again, to never have occurred in the first place (Blackham, 2022b). This re-writing of history is beyond the capacity of law to achieve; however, with a reframing of discrimination law, to focus on transforming structures, systems, and communities, perhaps we can stop it occurring again into the future.

Competing interests. The author declares none.

References

Allen, D., & Blackham, A. (2019). Under wraps: Secrecy, confidentiality and the enforcement of equality law in Australia and the UK. *Melbourne University Law Review*, *43*(2), 384–422. https://law.unimelb.edu.au/__data/assets/pdf_file/0010/3393370/01-Allen-and-Blackham.pdf

Barnard, C., & Blackham, A. (2017). Discrimination and the self-employed: The scope of protection in an interconnected age. In H. Collins (Ed.), *European contract law and the Charter of Fundamental Rights* (1st ed., pp. 197–218). Intersentia. https://doi.org/10.1017/9781780684963.009

Bell, M., & Waddington, L. (2003). Reflecting on inequalities in European equality law. *European Law Review*, *28*(3), 349–369.

Blackham, A. (2021). Positive equality duties: The future of equality and transparency? *Law in Context*, *37*(2), 98–118. https://journals.latrobe.edu.au/index.php/law-in-context/article/view/150

Blackham, A. (2022a). Non-discrimination on the grounds of age. In S. Garben & L. Gormley (Eds.), *The Oxford encyclopedia of EU law*. Oxford University Press. https://doi.org/10.1093/law-oeeul/e31.013.31

Blackham, A. (2022b). *Reforming age discrimination law: Beyond individual enforcement*. Oxford University Press. https://global.oup.com/academic/product/reforming-age-discrimination-law-9780198859284?cc=ca&lang=en&

Blackham, A., & Allen, D. (2019). Resolving discrimination claims outside the courts: Alternative dispute resolution in Australia and the United Kingdom. *Australian Journal of Labour Law*, *31*(3), 253–278. http://hdl.handle.net/11343/233958

Campbell, C. D. (2007). A hard case making bad law: *Purvis v New South Wales* and the role of the comparator under the *Disability Discrimination Act* 1992 (Cth). *Federal Law Review*, *35*(1), 111–128. https://doi.org/10.22145/flr.35.1.4

Dewhurst, E. (2016). Proportionality assessments of mandatory retirement measures: Uncovering guidance for national courts in age discrimination cases. *Industrial Law Journal*, *45*(1), 60–88. https://doi.org/10.1093/indlaw/dww004

Dickens, L. (2007). The road is long: Thirty years of equality legislation in Britain. *British Journal of Industrial Relations*, *45*(3), 463–494. https://doi.org/10.1111/j.1467-8543.2007.00624.x

Fredman, S. (2001). Equality: A new generation? *Industrial Law Journal*, *30*(2), 145–168. https://doi.org/10.1093/ilj/30.2.145

Goosey, S. (2021). *A pluralist theory of age discrimination*. Bloomsbury Publishing. https://www.bloomsbury.com/ca/pluralist-theory-of-age-discrimination-9781509944071/

Meenan, H. (2007). Age discrimination? Of Cinderella and *The Golden Bough*. In H. Meenan (Ed.), *Equality law in an enlarged European Union* (pp. 278–312). Cambridge University Press. https://doi.org/10.1017/CBO9780511493898.010

Moody, M. D. (2022). Vicarious experiences of major discrimination and the life satisfaction of black and white adults from a community sample. *Journal of Happiness Studies*, *23*(6), 2725–2743. https://doi.org/10.1007/s10902-022-00532-3

Moreau, S. (2020). *Faces of inequality: A theory of wrongful discrimination*. Oxford University Press. https://academic.oup.com/book/36783

Rattigan, K. (2004). *Purvis v New South Wales (Department of Education and Training)*: A case for amending the *Disability Discrimination Act 1992* (Cth). *Melbourne University Law Review*, *28*(2), 532–563. https://law.unimelb.edu.au/__data/assets/pdf_file/0007/1708108/28_2_9.pdf

Smith, B. (2008a). From *Wardley* to *Purvis*: How far has Australian anti-discrimination law come in 30 Years? *Australian Journal of Labour Law*, *21*(1), 3–29. https://doi.org/10.2139/ssrn.1005528

Smith, B. (2008b). It's about time — for a new regulatory approach to equality. *Federal Law Review*, *36*(2), 117–144. https://doi.org/10.22145/flr.36.2.1

Thornton, M. (1990). *The liberal promise: Anti-discrimination legislation in Australia*. Oxford University Press.

Thornton, M. (1991). The public/private dichotomy: Gendered and discriminatory. *Journal of Law and Society*, *18*(4), 448–463. https://doi.org/10.2307/1410319

Wilkinson, R. G., & Pickett, K. E. (2017). The enemy between us: The psychological and social costs of inequality. *European Journal of Social Psychology*, *47*(1), 11–24. https://doi.org/10.1002/ejsp.2275

Wofford, N., Defever, A. M., & Chopik, W. J. (2019). The vicarious effects of discrimination: How partner experiences of discrimination affect individual health. *Social Psychological and Personality Science*, *10*(1), 121–130. https://doi.org/10.1177/1948550617746218

Cite this article: Blackham, A. (2024). *Faces of Inequality*: Reflections on Exceptional Developments. *Dialogue* 63(1), 85–94. https://doi.org/10.1017/S0012217323000215