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Special Issue: Canadian Philosophical Association 2022  
Book Prize

# Discrimination, Pluralism, and Social Subordination: On Moreau's *Faces of Inequality*

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## Abstract

Sophia Moreau's wide-ranging and nuanced book defends a pluralist view of wrongful discrimination. I argue three points. First, I argue that Moreau's account of deliberative freedom does not provide a distinct ground for objecting to discrimination. Second, I argue that there is not as wide a gap between her view and expressivism as she makes there out to be. Third, there is an intriguing gap in the argument that deserves further exploration: Moreau never provides us with an account of when and why social subordination is wrong.

## Résumé

Le livre ambitieux et nuancé de Sophia Moreau défend une vision pluraliste de la discrimination injuste. Je soutiens trois points. Premièrement, je soutiens que le compte rendu de Moreau sur la liberté délibérative ne fournit pas de motif distinct pour s'opposer à la discrimination. Deuxièmement, je soutiens qu'il n'y a pas, entre sa vision et l'expressivisme, un écart aussi important qu'elle le suggère. Troisièmement, j'avance qu'une lacune intrigante dans l'argument mérite une exploration plus poussée : Moreau ne nous fournit jamais de description détaillée des situations où la subordination sociale est immorale ni des raisons qui expliquent pourquoi elle le devient.

**Keywords:** discrimination; subordination; social status; social inequality

## 1. Deliberative Freedom

According to Sophia Moreau,

Deliberative freedom 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 one's life with these traits always before one's eyes.<sup>1</sup> (p. 84)

She gives a number of powerful examples designed to show that people who are subject to discrimination often feel that certain ascriptive traits (gender, race, or sexuality, for example) have become an issue for them, given other people's assumptions. Those traits "loom" before their eyes, and interfere with their ability to choose without having to constantly take into account how the ascriptive trait affects the way people treat them, and the way they are perceived by others.

But aren't there many cases where our deliberative freedom is restricted, but where such restrictions are not morally problematic, even *pro tanto*? Moreau is right to point out that there are. She mentions cases in which our religious faith can become a cost or burden when practitioners have to travel very far distances to practice it, and cases in which satisfying our preferences can be costly when they are affected by other people's choices and assumptions (as in a market). In both of these cases, our deliberative freedom has been constrained by others, but no one would argue that it was wrong to do so. We can extend the range of such cases. It may seem as if we can divide the problematic denials of deliberative freedom from the unproblematic ones by pointing to traits that are not the product of choice. But this is not so. Suppose I have always wanted to be a musician but, through no fault or choice of my own, I lack the talent. This lack of talent constantly looms before my eyes, and is a burden to me, every time I try out for an orchestra. I am ashamed of my lack of ability, and I cannot help thinking about how the judges and others perceive my lack of ability. Or suppose that I, a white man from a privileged country, travel to a village in Mali, and constantly feel the weight of my race and background as my presence attracts attention and limits the kinds of choices I can make. So, what might explain when we have a *right* to deliberative freedom, and when we don't?

Moreau argues that a person has a right to deliberative freedom just in case a denial of their deliberative freedom would "amount to failing to respect [them] as a being who is equally capable of autonomy" (p. 90). Acknowledging the vagueness in the formulation, she goes on to suggest two tests for determining whether a given discriminatory act or policy fails to respect someone in the relevant sense. The first test assesses whether the "costs that a discriminatee is being asked to bear reflect her own personal choices, or whether they reflect other people's assumptions about who she is and what roles she ought to occupy" (p. 90). As we saw in the previous paragraph, this isn't enough, however, to distinguish the case of the musician and the traveller to Mali, whose loss in deliberative freedom was a reflection, not of their personal choices, but of other people's assumptions. The second test Moreau proposes points to "the interests of the other people who are affected by the particular practice that [is being challenged] as discriminatory" (p. 92). If those interests are significant and weighty enough, then, Moreau argues, a denial of deliberative freedom does not count as failing to respect someone's standing as a being equally capable of autonomy, and so does not violate a *right* to deliberative freedom. She gives the example of Muslim taxi drivers who refuse to accept visually impaired passengers

<sup>1</sup> All standalone page citations are to Moreau (2020).

with guide dogs. Because dogs are considered unclean, according to Islam, Muslim taxi drivers who take dogs must wash their car several times before they can pray again in them. This is significantly burdensome. In cases like this, Moreau claims that a balance must be struck between the interests of Muslims in practicing their religion without hindrance and therefore without its costs continuously “before their eyes,” and the interests of the visually impaired in accessing taxis without having their need for guide dogs constantly before them as a burden. Moreau ultimately sides with the visually impaired on the basis that the costs being imposed on the drivers are “not the result of other people’s assumptions about them, but are simply the result of their own religion and its dictates” (p. 94). By contrast, the costs imposed on the visually impaired are “due to the Muslim drivers’ ... assumptions about them and the cleanliness of their animals” (p. 94).

To be sure, this is a hard case. But the rationale provided and the tests associated with it don’t seem to me capable of distinguishing problematic denials of deliberative freedom from unproblematic ones. In the example just provided, it seems stretched to say that Muslim drivers are not stopping for the visually impaired because of any assumptions about them *as* visually impaired. To be sure, they have a religiously based belief about the *spiritual* uncleanness of the *dogs* that are accompanying them, but this belief doesn’t look morally problematic.<sup>2</sup> So, in what sense is having this belief a failure to respect the visually impaired as having an equal capacity for autonomy?

The case is hard because the interests on both sides seem *symmetrical*.<sup>3</sup> Both Muslims and the visually impaired face stigma, invidious stereotyping, and lower social status as a result of living in societies that are predominantly Christian and able-bodied; both suffer myriad unfair costs as a result of their place in the social hierarchy. The balance in this case has to be struck, it seems to me, in terms of who has a greater claim to *accommodation* as part of a broader aim to remedy the social inequality that prevents both Muslims and the visually impaired from participating as equals in the societies of which they are a part. The facts of *social subordination* are in the driver’s seat in distinguishing cases like this, not facts about who has which deliberative freedoms (or whose capacity for autonomy has been thwarted). Of course, if we focus on social subordination, there is no clear answer: both have a claim to accommodation. The case should then be decided on a judgement about the broader costs — both personal and social — associated with accommodating one or the other group.

The importance of social subordination relative to deliberative freedom becomes even clearer when we consider the other cases we have discussed. Take the talentless musician whose lack of talent looms before their eyes every time they are rejected from an orchestra, preventing them from “becom[ing] who they want to be” (p. 109). It is implausible to argue that they suffer from unjustifiable discrimination.

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<sup>2</sup> Seana V. Shiffrin (2021, p. 577) makes a similar point, though I suggest that we need to make a broader, outcome-based assessment of which measures reduce social inequality and by how much. Shiffrin points out that the conflict is avoidable by, for example, giving taxi drivers who need to clean their cars a subsidy for the opportunity costs of needing to do so. The two recommendations are compatible.

<sup>3</sup> As Moreau herself notes in the footnote on p. 95.

It may be tempting to say that this is because talent is tightly connected with the ends an orchestra is there to pursue; the rejection on the basis of a lack of talent is not, as we might say, *arbitrary*. But to see why this isn't, in fact, a reason, imagine that people generally went to see orchestras more often (and were more likely to enjoy the experience) when the members were all white, or all men.<sup>4</sup> It would then no longer be arbitrary in the cited sense to exclude non-white or non-male people.<sup>5</sup> Excluding them would promote one of the constitutive ends of an orchestra, namely to generate a broader following and audience for their concerts. The distinguishing feature is that, in the latter case, but not the former, the exclusion serves to support, express, and reinforce the general social subordination of a socially salient group. Notice further that in this case (as in the others) even if there were *no* setback in deliberative freedom, the discriminatory exclusion would still be wrongful. To see this, imagine that the non-white, non-male people excluded from the orchestra *didn't know* that this was why they were excluded; if this were the case, then there is no sense in which awareness of their status as non-white or non-male prevented or shaped their further actions or deliberations. Once again, social subordination, not deliberative freedom (or arbitrariness), is in the explanatory driver's seat.

Similar things apply to the traveller in Mali case. The difference between that case and a similar case in reverse (i.e., a traveller from Mali travelling to, say, Europe) is that there is no social subordination (or structural history of social subordination) in the former case, but there is in the latter. The social meaning of the restrictions in deliberative freedom (and other freedoms) therefore takes on a very different valence. This would be the case, I submit, even were the Malian company's board of managers to prefer fellow blacks because they mistrust the white traveller because of his origin, and even were his chances of getting a job in Mali with this particular company diminished as a result.<sup>6</sup> This would be regrettable, to be sure, and under certain circumstances also a violation of the white traveller's claim to equality of opportunity, but it would not be an instance of wrongful discrimination.<sup>7</sup> The structure of such cases is similar to cases of nepotism. Nepotism, where it is wrongful, is wrongful because and insofar as it undermines equality of opportunity, but not insofar as it is wrongfully discriminatory.<sup>8</sup> It is no surprise that there are no jurisdictions anywhere in the world that ban nepotism as a matter of anti-discrimination law; the fact that they don't makes sense if we conceive of wrongful discrimination as targeting

<sup>4</sup> See, e.g., Larry Alexander (1992) on "reaction qualifications."

<sup>5</sup> See also the discussion of merit in Hellman (2008, Chapter 4).

<sup>6</sup> Note that if whites in Malian society were structurally and persistently disadvantaged such as to amount to a form of social subordination, then this *would* become an instance of discrimination. Here, I am supposing that there is no such pattern or history. I return to reverse discrimination below.

<sup>7</sup> It is a mistake to see anti-discrimination norms as a subclass of violations of equality of opportunity. Policies can be wrongfully discriminatory even if they do not produce inequalities of opportunity. See *Palmer v. Thompson*, 403 US 217, for example, where *both* segregated black *and* white public swimming pools were closed down to avoid desegregating them. And there are many violations of equality of opportunity where discrimination is not at issue. I return to this below, both in discussion of nepotism and in discussion of inequalities between the North and South of the UK.

<sup>8</sup> Cf. Moreau (2020, p. 115), who argues in passing that nepotism is a form of discrimination. Also see Kasper Lippert-Rasmussen (2013, pp. 185–189), who rightly questions whether nepotism is a form of discrimination.

practices of social subordination rather than targeting practices that restrict deliberative freedom (or opportunity as such).

I have tried to show that restrictions in deliberative freedom are neither necessary nor sufficient for wrongful discrimination. But Moreau could argue that she never tried to argue that they were. Since hers is a pluralist account, restrictions in deliberative freedom are not necessary. And since she also accepts that there can be restrictions in deliberative freedom that aren't wrongful, then they are not sufficient either. Rather: "I have now argued that *in some cases* of wrongful discrimination, the source of the wrong lies not primarily in unfair subordination but in an infringement of someone's right to deliberative freedom" (p. 108, emphasis mine). As long as there are at least *some* cases where denials of deliberative freedom, and in particular those denials that fail to respect people's equal capacity for autonomy, are in the explanatory driver's seat, then she has shown what she has set out to show.

One way to do so would be to point to cases — as Moreau (2021) does in response to a similar worry expressed by Deborah Hellman (2021) — where there is wrongful discrimination but no social subordination, and where the wrongfulness of the discrimination is best characterized in terms of restrictions in deliberative freedom. The two cases Moreau draws on both involve so-called "reverse" discrimination. I will discuss each in turn. In the first (also discussed in the book at p. 164), white employees of a hotel were told by the resort's owner (who is from a Cantonese-speaking part of China) that they were lazy, fragile, and excessively demanding compared to Chinese workers. Witnesses testified that the resort owner said, among other things, "too many white people" worked at the resort, "Chinese workers do not have to be paid holiday pay or overtime," and "Chinese workers are better and cheaper than white workers."<sup>9</sup> The second case is hypothetical. Moreau imagines that some students of colour in her seminar "routinely ignor[e] or devalu[e] the observations of the one white male student during discussions, excluding him from their social media chats, and so on" (Moreau, 2021, p. 602). Both cases are meant to show that there can be wrongful discrimination without social subordination (since it would be implausible to argue that the white people in these cases have been socially subordinated), and that the best explanation for this is the infringement of their right to deliberative freedom.

I don't want to challenge the conclusion that the right to deliberative freedom of the white male in her class and the employees at the resort have been violated. I am also willing to accept (given certain qualifications I will mention in a moment) that both involve wrongs against the injured party. What I want to argue, however, is that neither is best understood as an instance of wrongful discrimination.<sup>10</sup>

Notice first that not all violations of deliberative freedom are instances of wrongful discrimination. If someone is constantly threatening to beat me up every time I step out of the house, then the presence of this person — including his aims, desires, and

<sup>9</sup> *Eva and Others v Spruce Hill Resort and Another*, 2018 BCHRT 238 at §51, §55.

<sup>10</sup> I will come, then, to the same conclusion as T. M. Scanlon (2008, p. 74) but by a different route: "[The idea of discrimination] applies only to actions that disadvantage members of a group that has been subject to widespread denigration and exclusion: in the case of race, it applies to actions or policies that disadvantage blacks, not to all policies that employ race-based criteria. So when discrimination is understood in this way, 'reverse discrimination' is an oxymoron."

assumptions about me — is a constant worry on my mind, and affects my range of action. The looming threat of coercion constrains my deliberative freedom — namely, the range of options I can legitimately expect to have and in light of which I make my choices — and is wrongful (in part) for that reason. But it is not discriminatory in any relevant sense. Now suppose that my coercive stalker targets me because I am black. This *is* discriminatory. What's the difference? It strikes me that the difference is that the stalker is now reinforcing and reflecting a wider system of practices that *reproduces my social subordination*.

The key question for our analysis of cases of reverse discrimination is the following: what if the stalker targets me because I am white? But how is this any different from the stalker targeting me because he doesn't like the look of me, or because I am part of the wrong family, or because I am an athlete (he hates athletes)? (The reason can't be social subordination.) Perhaps the difference-making feature is the presence (or absence) of *stereotyping*, where stereotyping is, roughly, generalizing characteristics, attributes, or behaviours to an entire group of people based on their membership in that group. Perhaps, it might be suggested, a violation of deliberative freedom is an instance of wrongful discrimination, that is, if and because it is motivated by a stereotyped view of that person. On this reading, the stalker would *not* be wrongfully discriminating if his actions were the result of not liking the look of me, but would be if and because I was part of the wrong family (assuming he has a stereotyped view of members of my family), if and because I was an athlete, or if and because I was white. The trouble with this proposal is that it doesn't draw a morally relevant difference. Given that the stalking (we have assumed) is a wrongful violation of deliberative freedom in all of these cases, what difference does the fact that some are, and some aren't, grounded in generalizations make? Once again, it strikes me that the generalizations that matter for wrongful discrimination are the ones that are grounded in, reinforce, or reflect structures of social subordination. Whether a particular violation of deliberative freedom is based on a generalization *tout court* is (morally) irrelevant.

So, where does this leave us with respect to reverse discrimination and in particular the two cases discussed by Moreau? In the case of the Chinese employer, I believe we should conclude that his behaviour was wrongful, but not because it was wrongfully discriminatory. It was wrongful because the constant haranguing of his employees is an instance of what, in the law, is called workplace harassment. It would have been wrong, that is, even if he had picked on them, humiliated them, and mistreated them for being lazy, fragile, and demanding on some other basis than their being white (for example, on the basis of a cursory and malicious assessment of their performance). Note that, in this hypothetical alternative, the deliberative freedom of the employees is also violated: in going about their daily work, they must now constantly have in view (and treat as a cost) the unwarranted assumptions about their character held by the employer. But it would be implausible to argue that this was a case of wrongful discrimination. The key feature in cases of wrongful discrimination is, once again, social subordination, not deliberative freedom as such.

The case of the white male student is similar but we need to distinguish two readings of what is going on (and one contrast case). Suppose, on the first reading, that the students of colour exclude the white student because they want to have a

space to discuss the issues raised in the class without having to deal with white guilt and privilege. They don't so much ignore or devalue his observations in class as much as simply disregard them as likely to be uninformed and obtuse. In this case, I see nothing wrong in what they do. But consider this contrast case: white students exclude students of colour so they can have space to discuss the issues raised without having to deal with black anger and resentment. They disregard the black students' views because they are, they believe, likely to be uninformed and obtuse. This contrast case is morally problematic in a way the former case isn't, precisely, I am arguing, because the latter, but not the former, reflects and reinforces structures of social subordination.

In the second reading, the students of colour spitefully exclude the white student because they don't trust white people and believe that all white people are devils. On this reading, they devalue and denigrate the student in class whenever he speaks because of their assumptions about him. It may be tempting to say, as Moreau does, that they are wrongfully discriminating insofar as and because they are violating the student's rights to deliberative freedom. But, if what I have said above is right, then we should opt for a different view: they are violating the student's right to deliberative freedom, but not because they are wrongfully discriminating, but because they are wrongfully *denigrating* and *devaluing* what he is saying, and treating him *maliciously* (without any good evidence about his character). This would be wrong *whatever* their reasons: it is wrong to denigrate, devalue, and maliciously exclude others *period*. It would also be wrong if they maliciously denigrated, excluded, and devalued the student, not because he was white, but simply because they didn't like the way he dressed. If, as Moreau argues, what makes it wrong for the students of colour in the second reading to exclude etc. is that the white student, as a result of their exclusion, must constantly have the fact that he is white before his eyes and to treat his race as a burden, then this must also make the *first* reading wrongful for the same reasons: recall that, in the first reading, the students of colour exclude because of generalizations regarding what to expect from white students at university (rather than because of specific characteristics of the student himself). What distinguishes the two cases, I have argued, is *not* that in the second case the students of colour generalize based on his race (since they do that in the first, too), but that the second case involves maliciously denigrating, devaluing, and excluding him. The same analysis, I have argued, applies to the Chinese employer case. For these reasons, both cases are not best classed as instances of wrongful discrimination, but as more general wrongs — wrongs, that is, that would have *just the same character* and be *just as wrong* were they to be motivated by other considerations.

This is also why there are, I submit, no cases of wrongful reverse *indirect* discrimination. Because indirect discrimination must, by definition, lack the element of malice or harassment present in the cases of reverse discrimination discussed above — which, I have argued is key to explaining their wrongness — the reverse cases should come out, if I am right, as not wrongful when the impact is indirect. And, indeed, this seems to be the case. Imagine that tests administered by a company for promotion unintentionally disadvantage whites and unintentionally advantage members of minority groups. I see no problem. Indeed, that is precisely the point of affirmative action programs. But the myriad cases in which such tests

disproportionately advantage white candidates and disadvantage members of minorities *are* problematic, precisely because they tend to reinforce or reflect structures of social subordination.

So far, I have argued that there are reasons to doubt whether there are *any* cases of wrongful discrimination where infringements of deliberative freedom are in the explanatory driver's seat. I have done so by showing that the cases Moreau mentions (and other salient ones) are better explained by reference to social subordination than by reference to deliberative freedom. But there may be cases, one might wonder, not considered by either me or Moreau, where deliberative freedom matters in a way that social subordination doesn't. I now want to give a more general reason to doubt this possibility.

Moreau is surely right that victims of wrongful discrimination often point to the costs borne by constantly having before their mind their race, gender, sexuality, or disability when navigating the society of which they are members. Does one need to deny the significance of such appeals to deny that they are a wrong-making feature of discrimination? No. Compare the way people often describe betrayal. Among other things, they portray the way it has made them aware of the fragility of their relationships, caused pain and suffering, and robbed them of the ability to trust their own judgement. But the presence of none of these things is what makes betrayal wrong. Betrayal would be wrong even if someone didn't become aware of their fragility, or didn't feel pain or suffering, or didn't lose the ability to trust; indeed, betrayal would be wrong even if one was unaware that one had been betrayed. Each of these attitudes are (appropriate) reactions to the kind of wrong that betrayal represents, rather than explanations of what makes betrayal wrong in the first place. They *presuppose*, rather than *explain*, the wrongness of betrayal.

The situation is similar, I want to claim, with respect to denials of deliberative freedom: they do not explain what makes discrimination wrong, but often accompany wrongful discrimination as a response to it. Indeed, what makes losses of deliberative freedom in wrongful discrimination cases so damaging is that they are constituted by one's awareness of the social subordination to which one is subjected on a daily basis. Given the pervasiveness of such subordination, one cannot but be aware of how one's race, gender, sexuality, or disability affects people's perceptions, and shapes the kind of choices and opportunities available. But the damaging awareness and the subordination that gives rise to that awareness are two different things. The latter is what makes discrimination wrong, and the former is what makes it painful and constraining. This is why, even in cases where someone isn't aware of how their race, gender, sexuality, or disability impacts their range of choices and opportunities (and so does not change one's behaviour or deliberation as a result of such awareness), discrimination can be wrongful. A test for this claim is to consider any case where deliberative freedom seems to make a difference to the wrongfulness of some discriminatory act or policy, and then to see if the act or policy is still wrongful *in the absence* of that denial of deliberative freedom. In the taxi driver case, does it matter to the wrongfulness of failing to get rides whether the visually impaired are aware that they have been (or will be) denied because they are visually impaired? In *Masterpiece Cakeshop, Ltd v Colorado Civil Rights Commission*, in which a baker refused to bake a wedding cake celebrating a gay marriage, does it matter to the wrongfulness of the refusal whether the couple are aware that they have been (or will be)



refused because of their sexuality? And so on. Whatever one thinks about these cases (i.e., whether they are, or are not, instances of wrongful discrimination), it strikes me that the answer doesn't turn on the presence or absence of deliberative freedom.

## 2. Social Subordination

In this section, I turn to Moreau's discussion of unfair social subordination, which is the first, and arguably most important, of the three grounds she identifies as characterizing wrongful discrimination. I will first discuss her critique of so-called "expressivist" views, and then turn to her account of social subordination as such.

Moreau takes issue throughout with expressivist views of wrongful discrimination. Expressivist views — associated with scholars such as Hellman and Benjamin Eidelson — take *social meanings* to be the essential vectors through which wrongful discrimination subordinates.<sup>11</sup> Wrongful discrimination, that is, is wrong only when and because it sends a message to those subject to it that they are socially inferior. Hellman, for example, claims that discrimination is wrong only when and because it *demeans*. It is not wrong, then, merely because of the intentions of discriminators, or because of the downstream effects of discrimination on, say, equality of opportunity. For Hellman, the presence of a demeaning or subordinating social message sent by a socially powerful person or group of persons is the key to understanding the distinctiveness of wrongful discrimination.

Moreau questions whether it is "only the social message sent by a particular act or policy that determines whether it unjustly subordinates" (p. 48, emphasis mine). Sometimes (though not always) an act or policy can unjustly subordinate in virtue of the way it shapes options or opportunities for action. She gives the example of the tight-fitting clothing that women (but not men) are sometimes expected to wear on the job (say, serving tables). To be sure, she allows that such policies *do* send a message about women's inferiority (insofar as such policies mark women out as beautiful objects for the pleasure of men). But she claims that such dress codes *also* "lessen women's power" in the workplace by hampering their ability to move, and gives them less authority (than men) over their self-presentation. In each of these cases, Moreau claims, social meanings are irrelevant: all that matters is the lesser power and lesser authority possessed by women (as compared to men).

There is, I want to argue, not as wide a gap as Moreau believes between her view and expressivism.<sup>12</sup> The trouble with the example of clothing requirements, even on Moreau's description of the case, is that the social meanings are inextricably wound up with the lesser power and authority at stake in this case. Indeed, merely having lesser power and authority — separated from the social meanings that such less power and authority signify — is not problematic on its own. In the clothing example, the lesser power and authority *follow from* the lower and subordinate status, and serve to embody, signify, and communicate that status to others. To see why this matters, consider that it is not the fact that *employees* have lesser power and authority than *employers* — including power over self-presentation and power to set the rules that they must follow — that makes the policy wrongfully discriminatory (both male and

<sup>11</sup> I have also defended an expressivist account in Sangiovanni (2017, Chapter 3).

<sup>12</sup> Hellman (2021) makes a similar point. Here, I continue the dialectic.

female employees lack these powers compared to employers). It is rather the fact that *female* employees have less power and authority than *male* employees that makes the policy wrongfully discriminatory. Why is this difference in comparative class so important? I submit that it is precisely because the two descriptions of the case — both of which involve lesser power and authority — carry different social meanings that we mark a difference between them. The social meanings — women are objects to be gazed at and modelled according to a feminine ideal — reflect, reproduce, and reinforce the general social subordination of women across society, and it is this fact that makes the policy wrongfully discriminatory (not the mere fact of having lesser power and authority *as such*, which employees in general also have). Now, to be sure, the difference in power and authority between employers and employees might be unjust *for other reasons*, but it will not be unjust *because it is wrongfully discriminatory*.

In drawing a contrast to expressivist views, Moreau writes:

[D]iscrimination does a great deal more to those whom it renders inferior, beyond sending a certain kind of message about them. It alters their position in the world in a number of ways, denying them options that others have, imposing new costs on certain choices, subjecting them to risks that others do not face. (Moreau, 2021, p. 601)

Expressivist views, however, need not deny that discrimination is wrongful because people who are discriminated against lack real opportunities, benefits, powers, or forms of authority that those not subject to discrimination possess. All expressivists need to affirm is that these inequalities are instances of wrongful discrimination only when and because of the social meanings they bring with them. It is one thing to be denied an opportunity, power, or authority that one is due *simpliciter*, but it is another to be denied that opportunity, power, authority because of one's race, gender, disability, or sexual orientation. The former might be a violation of equality of opportunity but it only becomes an instance of wrongful discrimination when and because of the subordinating social meanings associated with it. The socially meaningful denial of opportunity, authority, and power in some cases constitutes the subordination (think of segregation under Jim Crow); in others, it reinforces or reflects it (think of the clothing requirements).

To buttress this point, we can return to the cases discussed in the previous section. Nepotism might, in some cases, be wrong as a denial of equality of opportunity. But it is not an instance of wrongful discrimination. The difference is that there is no social subordination of the excluded *qua* excluded in the case of nepotism. The denial of equality of opportunity does not, that is, carry the social meaning that those excluded are excluded because of their lower social rank within a broader social hierarchy (or, in the case of indirect discrimination, the denial does not constitute a socially meaningful indifference to the way in which exclusion reinforces and heightens an already existing social subordination).<sup>13</sup> There are other examples of denials of equality of opportunity that are not instances of wrongful discrimination. Suppose that

<sup>13</sup> On the role of negligence in indirect discrimination, see Moreau (2020, p. 205ff), and on the role of indifference, see Sangiovanni (2017, Chapter 3).

equally talented individuals from the North of a country (like the UK) have lesser opportunities than people from the South because of post-industrial decline in the North. This is a violation of equality of opportunity, yet it need not be the result of wrongful discrimination. It only becomes an instance of wrongful discrimination if and when the denial constitutes or reinforces a form of social subordination, and it only socially subordinates if it carries a social meaning that reinforces or constitutes the lower social standing of the discriminatees. Moreau describes a superficially similar, but actually quite different, case:

The service on many bus-routes in rural locations across the UK has been significantly cut in recent years: there are far fewer buses running and certain routes have been eliminated entirely. These cuts were undertaken in order to save costs, because many of these rural routes are not frequently used. But they have had a disproportionate impact on those people living in rural locations whose age or physical disability makes it difficult or impossible for them to drive. (Moreau, 2021, pp. 602–603)

The reason this case is different from the one I just mentioned is that it involves an already vulnerable, marginalized, and subordinate group, namely the elderly and disabled. The policy sends a message of indifference toward the needs of this group. This is, I believe, what makes it a case of wrongful discrimination. But now imagine that the rural communities did not have any elderly or disabled residents; imagine instead that, in this new description of the case, rural residents would now have to purchase new cars or pay extra fuel costs (which city residents would not have to purchase) as a result of the policy. And imagine that this policy was unfair for this reason. This would be a case of injustice based on inequality of opportunity but it would not be wrongfully discriminatory *unless rural communities are more generally socially subordinated*, and this policy serves to *reinforce or reflect that subordination*. If we don't include the qualification, then *any* instance of unfair inequality of opportunity of *any kind* would count as wrongfully discriminatory (since all such instances target, by definition, some social group or other), which would rob the category of wrongful discrimination of its distinctiveness.

There is a more general reason that social meaning and subordination are so closely bound up: social subordination is a product of hierarchies in social status, and hierarchies in social status are constituted by differences in social ranking, which are themselves generated by different social meanings attached to the possession of given traits. For example, Dalits in India are considered (though such beliefs are declining) as polluted; they are often segregated in schools, public offices, and so on, and expected to do the dirtiest work in society. The segregation and discrimination faced by Dalits *follows from* the fact that the caste is seen as polluted. That social stigma ("pollution") is constituted, communicated, and reinforced through the social meanings attached to all kinds of everyday behaviour and norm-based expectations. Without those social meanings, there would be no such thing as social stigma. So, it is no surprise that, insofar as wrongful discrimination is bound up with social subordination (as Moreau rightly emphasizes), wrongful discrimination is also, as I have

been arguing, bound up with the social meanings attached to it. Moreau's view, I conclude, is not as far from expressivism as she makes it out to be.

The last point I want to make is more exploratory: I wonder whether Moreau's view about the nature of social subordination is overinclusive. I also consider whether this is, in part, because Moreau never gives us a reason why social subordination is wrong. According to Moreau, one group unjustly subordinates another when

- (i) The members of that group have, across a number of social contexts, less relative social and political power and less relative *de facto* authority than the other group; and
- (ii) The members of that group have, or are ascribed, traits that attract less consideration or greater censure across a number of different social contexts than the corresponding traits of the empowered group; and
- (iii) These traits are the subject of stereotypes, which help to rationalize the differences in power and *de facto* authority, the habits of consideration and censure, and the structural accommodations; and
- (iv) There are structural accommodations in place in society that tacitly accommodate the needs of a superior group while overlooking the needs of at least some members of the subordinate group; and these accommodations work together with stereotypes to rationalize the differences in power and *de facto* authority and the differences in consideration or censure. (p. 62)

This account of social subordination does well on the paradigmatic cases, like gender, race, disability, sexual orientation, and religion. But what other cases might it encompass? Gamblers and drug addicts (when compared to the conscientious and careful), for example, also meet each of these criteria. Gamblers and drug addicts, it is reasonable to say, have less relative social and political power and *de facto* authority than the conscientious and careful. They also have traits that are given less consideration and are subject to censure, and are subject to stereotypes. It is also reasonably clear that the needs of gamblers and drug addicts are passed over when compared to the conscientious and careful — the fact that there are social programs for gamblers and addicts isn't sufficient to alleviate the potential concern, since there are also social programs in place for all of the protected categories in any modern liberal democracy. Similar things can be said for the talentless and the unattractive (compared to those who are talented, successful, and beautiful).

How might we draw the relevant differences (or should one simply grant that these groups are also subject to discrimination, and should receive similar protection as those discriminated against on the other, paradigmatic grounds)? Could one add a condition such as: "(v) the traits are not a product of choice or fault"?<sup>14</sup> There are three things to say in response to such an addendum. First, it doesn't distinguish the talentless and unattractive. Second, it excludes people of religious faiths that *are* the product of choice. (Should we eliminate religion as a protected category under the purview of anti-discrimination norms?) Third, suppose that the addendum

<sup>14</sup> I suggest this because Moreau draws a similar distinction to separate cases involving violations of autonomy from ones that do not in her discussion of deliberative freedom. (I discuss this above in the text.)

did distinguish the cases correctly: what more general reason do we have to include it (other than that it gerrymanders the relevant cases into those that seem to us to be deserving of protection from those that don't)? Why, in other words, should traits that meet conditions (i)–(iv), but are the product of choice or fault, to be *excluded* from the remit of anti-discrimination norms? We need a more basic ground for objecting to social subordination that is lacking in the account as presented.

Perhaps we should include the talentless and unattractive precisely because and insofar as they meet conditions (i)–(iv). After all, there does seem to be something problematic about someone not getting a job merely because they are unattractive, especially in cases where being attractive is not part of the job description. But suppose it *is* reasonably part of a job description (as part of a job, say, entertaining)? Should we say the same thing about this kind of case as we would about a TV news anchor position that is advertised only for men because such men, let us suppose, draw more viewers (a case of so-called “reaction qualifications”)? The second sends a message about the epistemic credentials of women (as if only men could be credible and authoritative reporters); the former sends a message about the stigma of being unattractive (as if only the attractive can draw people in and keep them engaged). Perhaps that is enough to draw them together. But perhaps it isn't: there does seem to be a systematic distinction between one class of cases and the other. Maybe the difference is that being unattractive does not apply across a sufficiently large “number of different social contexts” (as stated in (ii))? But why must the social category impinge across a large number of social contexts to be of concern? (Why wouldn't just one social context do?) Perhaps some socially salient traits are more debilitating, or more systematically disadvantaging, than others, and so deserving of greater protection. But how do we determine which categories are more disadvantaging or debilitating? What standards do we use (and must they be individually applied standards, or standards for the group, on average)? What is missing, as before, is some deeper theory of equality to make sense of why and how the conditions go together in constituting the phenomenon of social subordination.

### 3. Conclusion

I have argued that denial of deliberative freedom is not a wrong-making feature of discrimination, but a regrettable symptom of it. I have also argued that Moreau's account of social subordination (a) is not as far from expressivism as she makes it out to be, and (b) lacks a deeper theory of equality to explain why conditions (i)–(iv) are individually necessary and jointly sufficient for (wrongful) social subordination. But none of what I have argued should take away from the brilliant, nuanced, and insightful account of discrimination in *Faces of Inequality*, including the particularly illuminating discussions of indirect discrimination and structural accommodation.

**Competing interests.** The author declares none.

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