1. **Defining Discrimination**

*Intuitive definition:* we discriminate when we refuse someone a job, position, or benefit on the basis of their race, gender, sexual orientation, etc.

A more precise definition from Kasper Lippert-Rasmussen '(The Badness of Discrimination', Ethical Theory and Moral Practice, 9 (2006): 167-85):

X discriminates against Y in dimension W iff:

1. X treats Y differently from Z in dimension W;
2. the difference in treatment is disadvantageous to Y;
3. the difference in treatment is suitably explained by Y’s and Z’s being from different socially-salient groups.

*Socially salient group:*A “group is socially salient if perceived membership of it is important to the structure of social interactions across a wide range of social contexts” (Lippert-Rasmussen 2006)

*Examples:*race, gender; not e.g. eye colour

Why focus on socially salient groups?

*Answer 1.*Pragmatic necessity: the law is a blunt tool.

*Answer 2.*We want to assess current practices morally, and current discrimination law focuses on socially-salient characteristics.

1. **Discrimination in and beyond the law**

UK Equality Act of 2010 (Part 2, Chapter 2, Section 3): A person (A) discriminates against another (B) if, because of a *protected characteristic*, A treats B less favourably than A treats or would treat others”.

*Protected characteristics:* “age; disability; gender; marriage & civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation.”

*Discrimination beyond the law*

Not all discrimination is illegal. And legal discrimination can still be morally problematic

Consider *private discrimination* e.g. private sports clubs, or religious associations.

Discrimination of membership for private organization by e.g. age or gender might not always be illegal. But is it moral?

Consider also *discrimination in personal lives:*

* Is it wrong to choose friends, spouses, or romantic partners in terms of “protected characteristics”?
* What about sexual preferences? (e.g. racialized sexual preference)

For more on the ethics of private and personal discrimination see:

* Sophie Moreau, ‘What is Discrimination?’ *Philosophy and Public Affairs,* (2010)
* Robin Zheng ‘Why yellow fever isn’t flattering: a case against racial fetishes’ *Journal of the American Philosophical Association* 2(3) 2016
* Matt Zwolinski ‘Why not regulate private discrimination?’ *San Diego Law Review* 43 (Fall), 2006
1. **What is wrong with discrimination? Harm and Attitudes**

*The Harm-Based Account:*discrimination is wrong insofar as it makes those who are discriminated against worse off. (Lippert-Rasmussen 2006)

“Worse off” than what?

*Non-moralised baseline:*how well off they would be if the discrimination had not occurred.

*Moralised baseline:*how well off they would be in a just world.

*Problem for the harm-based account:*wrongful but beneficial discrimination.

*Example:*a gay man prohibited from serving in the army, who would have died in combat

*The Bad Attitudes Account:*discrimination is wrong when motivated by “unjustified hostile attitudes toward people perceived to be of a certain kind or faulty beliefs about the characteristics of people of that type” (Richard J. Arneson, 'What is Wrongful Discrimination?', San Diego Law Review, 43 (2006): 775-808)

*Problem:* There can be wrongful discrimination in the absence of bad attitudes. E.g. George, who falsely believes that all Scandinavians are incredibly skilled.

*Reply?* George’s excessively good attitude toward Scandinavians entails an excessively negative view of non-Scandinavians.

1. **What is wrong with discrimination? Luck Egalitarianism**

*Luck egalitarianism (LE):*We should eliminate inequalities in opportunities for welfare if they result from bad luck rather than from choice

LE would say that discrimination is wrong where it leads to luck-based inequality in opportunities for welfare

*Advantage 1:*LE can explain why typical definitions of discrimination focus on socially salient groups.

*Advantage 2:*LE can explain the wrongfulness of discrimination where harm or attitude-based approaches cannot e.g. physical tests for recruiting firefighters indirectly discriminating against women (Shlomi Segall, ‘What is so bad about discrimination?’ *Utilitas* 24(1), 2012)

*Problem 1:* LE allows discrimination if it is properly compensated (Cynthia Stark, 'Luck, Opportunity and Disability', Critical Review of International Social

and Political Philosophy, 16, no. 3 (2013): 393-402)

*Reply:* That’s fine; not all discrimination is wrong (Richard J. Arneson, 'Against Rawlsian Equality of Opportunity', Philosophical Studies, 93 (1999): 77-112).

*Counter:* but LE allows some forms of discrimination that seem intuitively wrong

*Example:* a caste society where a minority racial group is excluded from certain jobs but receives financial compensation (adapted from Stark 2013)

*Reply:* LE prohibits this because money cannot compensate loss of self-respect through discrimination (Segall 2012)

*Problem 2:* LE allows a society in which group A discriminates against B, group B discriminates against C, and group C discriminates against A, so long as equality prevails. But such a society still seems morally problematic(adapted from Moreau, 2010)

1. **What is wrong with discrimination? Meritocracy**

*Meritocracy:*desirable jobs or positions should be offered to the best-qualified applicants through competitions that no one is excluded from entering

Meritocracy would say that discrimination is wrong because it ignores qualifications

*Advantage:* Anti-discrimination is built into the foundations of meritocracy: qualifications are all that count

*Implication:* Legal definitions of discrimination are too narrow—we shouldn’t focus only on “socially salient groups”, but on differential treatment based on anything except qualifications

*Problem 1 – Statistical Discrimination*

*Statistical discrimination:*a member of a socially-salient group G is treated worse because there is statistical evidence that members of G perform less well (Lippert-Rasmussen 2007)

*Problem for meritocracy:*

* Statistical discrimination may be an efficient way of finding out whether an individual is qualified for a job.
* But statistical discrimination seems unfair.
* So meritocracy seems to encourage an unfair form of discrimination.

*Reply****:*** statistical discrimination is unfair when it does not accurately track merit

*Problem 2 – Reaction Qualifications*

*Reaction Qualification:*an attribute that contributes to job performance because of the reactions/attitudes of other people

*Example:*in a racist society, being white may be a qualification for a car salesman because of customer prejudice (David Miller, ‘Deserving Jobs’, *Philosophical Quarterly*, 42(167), 1999)

*Problem for Meritocracy:*when qualifications result from discriminatory attitudes, selecting the best qualified becomes a vehicle for discrimination.

*Reply 1:* Reaction qualifications should never count when we are selecting the best qualified

*Counter-reply 1:* in many cases, taking reaction qualifications into account is legitimate for meritocracy (for example: teaching, sales, acting)

*Reply 2:* reaction qualifications count only if they are based on morally legitimate attitudes. (Miller 1999)

*Counter-reply 2:* it is no longer meritocracy itself that explains the wrongness of discrimination—rather, it is some prior standard of moral legitimacy

***Next week:* Affirmative Action**