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Accepted for publication in *Social Epistemology* (5/21)
Please cite the published version of this paper.

Stereotyping as Discrimination: Why Thoughts Can Be Discriminatory

Abstract

Can we treat people in a discriminatory way in virtue of how we think about them? In this essay, I argue that the answer is yes. According to *the constitutive claim*, stereotyping constitutes discrimination, either sometimes or always. This essay defends the constitutive claim and explores the deeper justifications for it. I also sketch the constitutive claim's larger ethical significance. One upshot is that we can wrongfully discriminate against (or in favor of) others in thought, even if we keep our views of others to ourselves. Second, if stereotyping is a form of discrimination, theories of wrongful discrimination bear on the ethical questions associated with stereotyping, including this one: under what conditions is it wrong to stereotype? In closing, I introduce an intriguing possibility, namely, that stereotyping is wrong if and when it constitutes wrongful discrimination.

People often reveal that they have stereotyped others by what they say and do. When I drop off my six-year-old at a new summer camp, a counselor repeatedly refers to them as “he” because they are wearing athletic shorts and a cap. In Ralph Ellison’s novel *Invisible Man*, a white partygoer demands that a Black stranger sing a spiritual.¹ Not all acts of stereotyping are like this. During a job interview, an employer may expect that a young female job candidate will have a baby in the next ten years but say nothing and hire the person anyway. An Apple employee may see an elderly customer walk up to the Genius Bar and think, “I bet they’ve scheduled an appointment because they don’t know how to use their new phone.” On the bus, I make silent assumptions about the gender, race, and professional status of my fellow riders. The person sitting in the back, I presume, is a white woman on the way to work at our local hospital. She’ll probably get off one stop after me. No one could know what I am thinking—and that I have been stereotyping my fellow passengers—when I say nothing and appear to be staring out a window.

Are we treating people in a discriminatory way by stereotyping them, even if we refrain from articulating our thoughts out loud? Feminist philosophers and theorists of race have long supposed that the answer is yes.² In recent years, the view has been gaining ground with terms

¹ Ralph Ellison, *Invisible Man* (New York: Vintage International, 1995), 311-312.

² Lorraine Code, *What Can She Know? Feminist Theory and the Construction of Knowledge* (Ithaca, NY: Cornell University Press: 1991), 57; Vrinda Dalmiya and Linda Alcoff, “Are ‘Old Wives Tales’ Justified,” in *Feminist Epistemologies*, ed. Linda Alcoff and Elizabeth Potter (New York: Routledge, 1993), 217; Adrian Piper, “Two Forms of Discrimination,” in *Race and Racism*, ed. Bernard Boxill (Oxford: OUP, 1993), 193-237.

like “epistemic discrimination” and “cognitive discrimination” becoming more common.³ Injustices associated with stereotyping—including testimonial injustice—have also been described as “discriminatory injustice.”⁴ Behind this terminology, one finds what I call *the constitutive claim*. According to the constitutive claim, stereotyping constitutes discrimination, either sometimes or always.⁵ For some readers, this may sound like a truism. Others may be skeptical. How could it possibly be discrimination to stereotype someone “in your head,” if you keep your thoughts to yourself and don’t act on them? Against this skepticism, I will defend the constitutive claim and explore the deeper justifications for it.

The argument will proceed as follows. In Section 1, I define stereotyping and distinguish several ways to stereotype individuals. In Section 2, I argue that stereotyping can and often will constitute discrimination, understood in a non-moralized way. In Section 3, I argue that stereotyping can also constitute wrongful or unjust discriminatory treatment in some cases. In Section 4, I sketch the constitutive claim’s larger ethical significance. One upshot is that we can wrongfully discriminate against (or in favor of) others, even if we keep our thoughts to ourselves. Second, if stereotyping is a form of discrimination, theories of wrongful discrimination bear on the ethical questions associated with stereotyping, including this one: under what conditions is it wrong to stereotype? In closing, I introduce an intriguing possibility, namely, that stereotyping is wrong if and when it constitutes wrongful discrimination.

1. WHAT IT MEANS TO STEREOTYPE

In this section, I delve deeper into what it means to stereotype, focusing in particular on stereotyping individuals.

In psychological terms, “stereotyping” refers to a range of cognitive acts and processes that bear a family resemblance to one another.⁶ Groups as a whole can be stereotyped. To stereotype a group is to characterize that group as a collective entity. Characterizations might take the form of beliefs about typical group traits, mental imagery, or webs of associations with informational significance.⁷ Individuals can also be stereotyped. To stereotype an individual is to judge that person by real or apparent group membership.

³ Kasper Lippert-Rasmussen, *Born Free and Equal: A Philosophical Inquiry into the Nature of Discrimination* (Oxford: Oxford University Press, 2014), 41-42; Katherine Puddifoot, “Epistemic Discrimination,” in *The Routledge Handbook of the Ethics of Discrimination*, ed. Kasper Lippert-Rasmussen (New York: Routledge, 2017), 52.

⁴ Miranda Fricker, “Evolving Concepts of Epistemic Injustice,” in *The Routledge Handbook of Epistemic Injustice*, eds. Ian James Kidd, José Medina, and Gaile Pohlhaus, Jr. (New York: Routledge, 2017), 53.

⁵ The claim I defend here is best understood in terms of sufficiency. Stereotyping is sufficient for discrimination, either sometimes or always. The discussion that follows thus sidelines the claim that stereotyping is necessary and sufficient for discrimination. Discrimination can happen even when people are not stereotyping, so not all discrimination involves stereotyping.

⁶ For a survey of how psychologists define stereotyping, see Erin Beeghly, “What is a Stereotype? What is Stereotyping?” *Hypatia* 3, no. 30 (2015): 675-691. I defend a “descriptive,” i.e. non-moralized view of stereotyping that stays neutral on controversial questions about cognitive architecture. For an even more schematic, functionalist account of stereotyping, see Gabrielle Johnson, “The Structure of Bias,” *Mind* 129 (2020): 1193-1236. According to Johnson, stereotyping is biased thought that takes the form of kind-based induction. Both of us argue that people can be stereotyped on the basis of generics, universal generalizations, or statistical information.

⁷ For defense of the claim that stereotype-driven biases are heterogeneous in nature, see Jules Holroyd and Joseph Sweetman, “The Heterogeneity of Implicit Bias,” in *Implicit Bias and Philosophy, Volume 1*, eds. Michael Brownstein and Jennifer Saul (Oxford: OUP, 2016), 80-103. The same kind of heterogeneity is found in explicit biases. For exploration of the claim that stereotypes exist as mental imagery, see Bence Nanay, “Implicit Bias as Mental Imagery,” *Journal of the American Philosophical Association*, forthcoming.

This last definition—simple as it may sound—hides a great deal of complexity. Consider the camp counselor who presumed that my six-year-old was a boy. This person stereotyped my child, according to the above definition. Here is what that means in the context: they categorized my child as a social type based on mere appearances. In the U.S., boys often wear baseball caps and athletic shorts. Girls tend to wear dresses and skirts; in general, their clothes are cut and styled differently than ones marketed to boys. As a six-year-old, my child wore a lot of sporty “boys” clothes, so they were often classified as a boy. When you categorize someone as a social type—for example, as a certain gender—based on how they look, you’re stereotyping someone. Stereotyping in this sense involves presumptive classification.

Often individuals are stereotyped in ways that go beyond presumptive classification. In Ellison’s *Invisible Man*, the white partygoer does not just categorize someone as Black; he also believes that this person sings spirituals because he is Black. In the tech support case, an employee not only classifies a customer as elderly but also suspects that they are technologically inept because of their age. Running into an emergency room, a panicked parent might presume that a person in a white coat is a doctor and can save his child’s life. Knowing that a colleague identifies as genderqueer, one might expect that their pronouns are likely “they/them.”⁸ What unifies these diverse instances of stereotyping—which involve a range of cognitive states such as beliefs, expectations, hunches, and suspicions—is that they involve “judging” persons by group membership in a broad sense.

Some theorists contend that stereotyping occurs in perception as well.⁹ Here is an example. A fellow philosopher once told me that she grew up believing that she was a loud person. Often people would comment on the loudness of her voice. Sometimes they suggested that she try to quiet down. As woman of Asian descent, she was expected to be soft-spoken and deferential. There are at least two ways to analyze what she experienced. One possibility is that people around her registered the decibel-level of her voice and then judged it to be too loud for an Asian woman. A second possibility is that people literally *heard her voice* as louder than they would have because of her social identity. If so, their aural experiences were warped by stereotyping. Though it is unclear how best to analyze the case, we have an intriguing possibility on our hands. Stereotyping someone might consist in hearing or seeing that person in ways that are driven by their real or perceived group membership. If so, stereotyping may manifest as distinctive sensory experience.

So far, I’ve documented the “thin” epistemic dimension of stereotyping. To judge an individual by group membership in a thin sense is to classify them as a social type and, typically, to form further cognitions or perceptions related to them as a result. However, stereotyping also has a second, “thicker” dimension. “To judge” also means to “make an assessment, evaluation, or appraisal.”¹⁰ When we stereotype people, we judge them in this more loaded evaluative sense as well.

The evaluative dimensions of stereotyping derive from two sources. In *How the Body Shapes The Mind*, Shaun Gallagher observes: humans have “a pragmatic way of being in the world.”¹¹ For this reason, we invariably take up “an evaluative understanding” of others, the

⁸ Robin Dembroff, “Beyond the Binary: Genderqueer as a Critical Gender Kind,” *Philosophers Imprint* 20, no. 9 (2020).

⁹ “Dustin Stokes, “The Cognitive Penetrability of Perception,” *Philosophy Compass* 8, no. 7 (2013): 646-663; Katherine Tullman, “Experiencing Gendered Seeing,” *Southern Journal of Philosophy* 55, no. 4 (2017): 475-499.

¹⁰ “Judgment,” *Oxford English Dictionary*, Definition 1 (c) and 3. Available at: <https://www-oed-com.ezproxy.lib.utah.edu/view/Entry/101888?rskey=YSbW6P&result=2#eid>

¹¹ Shaun Gallagher, *How the Body Shapes the Mind* (Oxford: Oxford University Press, 2005), 212.

world, and ourselves.¹² The white partygoer in Ellison's novel is a perfect example. His goals impact the stereotypical property he attributes to the narrator, i.e., an aptitude for singing. He is at the party to have a good time. As a result, he notices the narrator and invests his presumed ability to sing with positive significance. For agents with different goals, the narrator's alleged ability to sing might have been perceived in a neutral or even negative light. So it goes for all acts of cognition, if Gallagher and others are right.¹³ Goals and interests shape what we think, pulling our thoughts in certain directions and giving them valence. The social world writ large also infuses our cognition with meaning. When we judge others by group membership, we situate them in particular "places" within the social world. Group hierarchies and power relations often—if not always—structure the normative expectations associated with these places. The white partygoer in *Invisible Man* presumes that the narrator will—and perhaps even should—embrace a stereotypical role: the role of a happy-go-lucky Black entertainer, eager to cater to the whims of a white audience. Though acts of stereotyping differ in their evaluative and prescriptive implications, all acts of stereotyping involve placing people in norm-laden and prescriptively-charged social locations.

Let me now circle back to my original definitions. To stereotype a group, according to my proposed definition, is to *characterize that group as a collective entity*. To stereotype an individual is to *judge that person by real or apparent group membership*. One might object that these definitions are overbroad. Yet broadness is a virtue, in my view. These definitions are pitched at a high level of generality because there is no other way to identify the common thread in an otherwise diverse set of cases. Acts of stereotyping may be spontaneous or calculated. They may be epistemically defective or promote knowledge.¹⁴ In terms of who can be stereotyped, the same complexity holds. People can be targeted for stereotyping on the basis of membership in socially salient groups such as race or gender, or on the basis of membership in groups that are not socially salient, such as professional affiliation.¹⁵ It is even possible that people can be stereotyped on the basis of novel, gerrymandered social groups created in experimental conditions.¹⁶

Only expansive definitions like the ones that I am proposing are able to capture the full range of phenomena that fall under the label "stereotyping" and which ought to be considered in

¹² Ibid.

¹³ Other theorists who take this view include Linda Martin Alcoff, *Visible Identities: Race, Gender, and the Self* (Oxford: Oxford University Press, 2006); Victoria McGeer, "Mind-Making Practices: The Social Infrastructure of Self-knowing Agency and Responsibility," *Philosophical Explorations* 18 (2015): 259-281.

¹⁴ For arguments that entail stereotyping can promote knowledge, see Kahneman, *Thinking Fast and Slow*; Endre Begby, "The Epistemology of Prejudice," *Thought: A Journal of Philosophy* 2 (2013): 90-99; Louise Antony, "Bias: Friend or Foe? Reflections on Saulish Skepticism," in M. Brownstein & J. Saul (eds.) *Implicit Bias and Philosophy: Volume 1* (Oxford: Oxford University Press, 2016), 157-190; Erin Beeghly, "Bias and Knowledge: Two Metaphors," in Erin Beeghly and Alex Madva, *An Introduction to Implicit Bias: Knowledge, Justice, and the Social Mind* (New York, NY: Routledge, 2020), 77-98; Endre Begby, *The Epistemology of Prejudice* (Oxford: Oxford University Press, 2021).

¹⁵ For a definition of "social salience," see Lippert-Rasmussen, *Born Free and Equal*, 30. He writes: "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." It should go without saying that social groups can be intersectional in nature. See Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics," *University of Chicago Legal Forum* 1989, no. 1 (1989): 139-167; Ann Garry, "Intersectionality, Metaphors, and the Multiplicity of Gender," *Hypatia* 26, no. 4 (2011): 826-850.

¹⁶ For examples of stereotyping involve gerrymandered groups, see Marjorie Rhodes, Sarah-Jane Leslie, and Christina M. Tworek, "Cultural Transmission of Social Essentialism," *Proceedings of the National Academy of Sciences of the United States of America*, 101, no. 34 (2012): 13526-13531.

an ethical investigation of stereotyping. These definitions have other benefits too. Despite their generality, they convey crucial and even surprising information. They announce that stereotyping is a cognitive phenomenon involving “judgment,” which is connected to core features of human rationality, including categorization, generalization, and induction.¹⁷ Moreover, the locution of “judging” people by group membership also flags the evaluative nature of stereotyping, thereby calling attention to the fact that stereotyping has two intertwined dimensions: a thin, epistemic aspect and a thicker evaluative aspect. Both of these dimensions will be important as I scrutinize the constitutive claim.

2. STEREOTYPING AS DISCRIMINATION

In this section, I discuss two ways to define discrimination. Each definition is non-moralized. Neither builds ethical wrongness into the very idea of what it means to discriminate. Both definitions entail that acts of stereotyping—even in thought—can constitute a form of discrimination.

2.1 Discrimination as perceiving, noting, or making distinctions. The first definition of discrimination in the Oxford English Dictionary reads as follows: “the action of perceiving, noting, or making a distinction between things.”¹⁸ Definitions in this vein stretch back to at least the seventeenth century. In 1678, E. Phillips offers the following characterization: “*Discrimination*, putting a difference between one thing and another.”¹⁹ In 1864, F.C. Bowen talks of “a conscious discrimination of those respects in which it [a thing] is similar to others from those in which it is unlike them.”²⁰ When contemporary theorists investigate the ethics of discrimination, they sometimes adopt definitions in this family. Deborah Hellman provides one example. In *When is Discrimination Wrong?*, she argues that to discriminate is “to draw a distinction between people on the basis of a certain trait: race, the letter of a person’s last name, sex, appearance, ability, age, or another attribute.”²¹

If drawing distinctions entails discriminating, stereotyping is always a form of discrimination. That’s because acts of stereotyping necessarily require “perceiving or noting or making a distinction” between allegedly different social kinds. The camp counselor who stereotyped my child as a boy, for example, noted gendered patterns of dress among kids. But they did something else as well. They carved up the social world in a particular way and assigned my child a specific, evaluatively-charged place within it.²² The same goes for stereotyping when it takes other forms. The white partygoer in Ellison’s novel believes that “all” Black people sing spirituals. He does not have this belief about white people. Group-specific distinctions such as this are always in the background when people stereotype. One might therefore characterize

¹⁷ Susan Fiske and Shelley Taylor, *Social Cognition*, 2nd ed. (New York: McGraw Hill Inc., 1991); Daniel Kahneman, *Thinking, Fast and Slow* (New York: Farrar, Straus, and Giroux, 2011).

¹⁸ “Discrimination,” *Oxford English Dictionary*. Available at:

<https://www.oed.com/view/Entry/54060?redirectedFrom=discrimination#eid>

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Deborah Hellman, *When is Discrimination Wrong?* (Cambridge, MA: Harvard University Press, 2008), 2.

²² Ásta, *Categories We Live By: The Construction of Sex, Gender, Race, & Other Social Categories* (Oxford: Oxford University Press, 2018).

stereotyping as a kind of *cognitive discrimination*, or classify it as a variety of *epistemic discrimination*, as writers increasingly have done.²³

2.2 Discrimination as differential, unequal, or disadvantageous treatment. A second family of views defines discrimination in terms of *treatment*. One popular view is that to discriminate is to treat people in a disadvantageous way because of their presumed group membership.²⁴ This view blossoms into a range of competing views when theorists either (a) make it more specific or (b) challenge its adequacy and advance alternatives to it. A more expansive view, for example, is that discrimination consists in differential treatment based on group membership. Such treatment may be disadvantageous, advantageous, or neither. For theorists who adopt treatment-focused definitions, it is not obvious that stereotyping qualifies as discriminatory treatment. The key issue is this: what counts as treatment?

Start with this observation. It's commonly said that laws and policies "treat" different groups differently. When a claim like this is advanced, the suggestion is not that these entities—for example, the laws themselves—are literally behaving in a particular ways. Treatment here consists in the articulation or imposition of group-specific norms, permissions, obligations, or regulations. For instance, Executive Order 9066—signed by U.S. President Theodore Roosevelt in 1942—treated Japanese Americans in a distinctive way by mandating that they relocate to internment camps. Voting laws in the U.S. South treated Black citizens in a distinctive way by requiring them to pass polls tests before voting. Corporate policy at 1950s law firms treated women in a particular way by prohibiting their hire. Call this *the regulative view of discriminatory treatment*. In each of the above cases, the treatment in question was not just differential. It was profoundly unequal.

A second paradigmatic kind of "treatment" occurs in behavior. Call this *the behavioral view of discriminatory treatment*. In an interview, Supreme Court Justice Sandra Day O'Connor once offered the following example.²⁵ When she graduated from Stanford Law School in 1952, she could not find a job. Every firm that she called told her the same thing: "We don't hire women." It made no difference that she had graduated at the top of her class. This is a paradigmatic example of discriminatory treatment in the behavioral sense. If you were a white man who graduated at the top of your class at Stanford in the 1950s, you weren't turned away with a few words when you inquired about a job. You were spoken to politely, sought after, courted. If you appeared to be an American of Japanese heritage in 1942, police would ask you for your papers. If you were a Black person trying to vote in 1950, you may have a poll test pushed on you. In such cases, people are being treated in discriminatory ways in a literal behavioral sense due to their group membership.

Given these two paradigmatic senses of discriminatory treatment, the constitutive claim may seem dubious. But further investigation dispels the impression. Below I present three arguments in its favor. Together these arguments reveal a rich, multi-faceted basis for the constitutive claim.

²³ For references, see footnotes 2 - 4.

²⁴ Lippert-Rasmussen, *Born Free and Equal*, 45-46; Benjamin Eidelson, *Discrimination and Disrespect* (Oxford: Oxford University Press, 2015), 17; Frej Clem Thompson, "Direct Discrimination" in *The Routledge Handbook to the Ethics of Discrimination*, ed. Kasper Lippert Rasmussen (New York: Routledge, 2017), 19-29 at 24.

²⁵ Interview with Sandra Day O'Connor, *Fresh Air*, hosted by Terry Gross, National Public Radio, March 5, 2013 at 31.08. Available at: <https://www.npr.org/2013/03/05/172982275/out-of-order-at-the-court-oconnor-on-being-the-first-female-justice>

The epistemic shortcut argument. The first argument notes that stereotyping is often a shortcut, and it goes as follows:

1. To stereotype is—often if not always—to take a shortcut.
2. Taking a shortcut with respect to someone can be discriminatory.

3. Stereotyping—qua shortcut—can constitute discriminatory treatment.

Start with premise 1: *to stereotype someone is—often if not always—to take a shortcut.*²⁶ The claim here is plausible. Stereotyping is a comparatively fast way of judging individuals. Instead of having to seek out personalized information about individuals, stereotyping allows us to judge persons—e.g., form beliefs, expectations, and predictions about them—based on their presumed group membership. The method is efficient, and it obviates the need to pursue person-specific information.

Premise 2 is also intuitive: *taking a shortcut with respect to someone can be discriminatory.* To illustrate the premise, consider a case described by Frantz Fanon.²⁷ On a train, a Black man is looking for the dining car. He asks another passenger for directions: “Excuse me, could you please tell me where the restaurant car is?” The man—who is white—responds in pidgin: “Sure sonny, you go corridor, you go straight, go one car, go two car, go three car, you there.”²⁸ What has just happened? One possibility is that the white passenger has been intentionally rude. He knows that he is interacting with a fluent French speaker, but responds in pidgin in order to express racial contempt. A second possibility—and the one on which I will focus here—is that white passenger mistakenly presumes that the Black man lacks fluency in French because he has not been paying sufficient attention. Instead of stopping for a minute and carefully listening, he stereotypes. Was taking this shortcut discriminatory? If it were, a hypothetical would be true. Had a fellow white man approached him, the white train passenger would have listened more carefully, perhaps put down his newspaper. When racially motivated, taking epistemic shortcuts constitutes discriminatory treatment.

One might wonder what notion of “discriminatory treatment” underlies premise 2. According to one line of thought, it is the behavioral notion. The idea here is *not* that stereotypic snap judgments constitute behavior per se. Rather, the view is that shortcuts must be contrasted with the relevant alternative, i.e., more laborious and careful ways of judging individuals. More laborious methods of judgment involve doing things in a literal behavioral sense: asking questions, listening carefully, looking up information online, and so forth. Keeping this contrast in mind, here is the proposal. The white train passenger would have taken a longer epistemic route, hence would have *behaved differently*, if a visibly white stranger had approached him. The counterfactual behavior is what grounds the claim that stereotyping constitutes discriminatory treatment. According to a second line of thought, shortcuts are best understood as failures of action. Instead of gathering more information, the white passenger “stays in his head” and

²⁶ For exploration of this metaphor and its prominence, see Beeghly, “Two Metaphors.”

²⁷ Frantz Fanon. *Black Skin, White Masks*, trans. Richard Philcox (New York: Grove Press, 2008), 14-19.

²⁸ Fanon, *Black Skin*, 18.

stereotypes. This failure to act and pursue better information is discriminatory because it is racially motivated.²⁹

Together these two premises provide an elegant, relatively uncontroversial argument for the constitutive claim. If acts of stereotyping involve taking shortcuts and taking shortcuts can constitute discriminatory treatment, then stereotyping can sometimes constitute discriminatory treatment. The “sometimes” here is a result of two scenarios. In some cases, people stereotype because they are pressed for time and would have used an epistemic shortcut no matter what the presumed social identity of the stereotyped person. In other cases, people stereotype because they are making judgments in conditions of extremely limited information and would be forced to stereotype anyone. Even so, Fanon’s example gives us reason to believe that stereotyping will frequently constitute discriminatory treatment. In particular, individuals from privileged groups may often judge people from socially marginalized groups in fast ways, rather than using more attentive, careful epistemic methods that would require more effort. In other situations, the opposite pattern of treatment takes hold: privileged individuals judge other privileged individuals quickly using stereotypic shortcuts, while deploying more laborious methods when judging individuals from marginalized groups.³⁰ In both cases, stereotyping—qua epistemic shortcut—constitutes a form of unequal, discriminatory treatment.

The embodied mind argument. A second argument rests on the claim that stereotyping is a form of embodied cognition. It goes as follows:

1. Cognition is embodied.
 2. The embodiment thesis: “the agent's beyond-the-brain body plays a significant causal role, or a physically constitutive role, in that agent's cognitive processing.”³¹
 3. Acts of stereotyping—qua cognitive activity—may be partially constituted by a person’s body and their behavior, including discriminatory behavior.
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4. Stereotyping can constitute discriminatory treatment.

To motivate premise 1—i.e., the claim that *cognition is embodied*, start with this observation. When humans perceive the world via sense modalities, we necessarily use our bodies. Seeing requires eyes, for example. We cannot see without numerous bodily movements, voluntary and involuntary. When a stranger perceives my child to be a boy, or the white person on the train classifies his interlocutor as Black, these judgments are not just happening in someone’s head. To see someone in these ways, and in even richer ways, requires bodily

²⁹ For contemporary examples, see José Medina, *The Epistemology of Resistance: Gender and Racial Oppression, Epistemic Injustice, and Resistant Imagination* (Oxford: OUP, 2013).

³⁰ For a telling example, see Christine Hauser, “‘Are You Actually an M.D.?’: A Black Doctor is Questioned as She Intervenes on a Delta Flight,” *New York Times*, Nov. 2 2018. Accessed at <https://www.nytimes.com/2018/11/02/us/delta-black-doctor-racial-profiling.html>

³¹ Robert Wilson and Lucia Foglia, “Embodied Cognition,” *Stanford Encyclopedia of Philosophy* (Spring 2017 ed.), ed. Edward Zalta. Accessed at <https://plato.stanford.edu/archives/spr2017/entries/embodied-cognition/>

movements, as well as orientation vis-à-vis other people and one's environment.³² Moreover, acts of seeing, and thinking, are done by agents with particular kinds of bodies, who inhabit social positions that are more or less constrained, whose experiences, histories, and interests may radically differ. If cognition is embodied, it follows that stereotyping—qua cognitive activity—is also embodied.

Premise 2 draws out what it means for cognition to be embodied. The wording for the premise is borrowed from Robert Wilson and Lucia Foglia. Laying out the basics of embodied cognition for readers, they argue that the above thesis—which they dub “the embodiment thesis”—articulates “the working hypothesis of embodied cognitive science.”³³ It is also the working hypothesis of phenomenologists who use embodiment as a lens to explore the lived realities of racism and sexism.³⁴ The body plays two key roles in cognition, according to the embodiment thesis. First, the body plays a significant causal role in cognition: the body shapes the mind and, in turn, the mind shapes bodily orientations and behavior. Second, the body plays a constitutive role in thought: bodily dispositions and behavior function as elements of cognition. This second claim is particularly important when one contemplates the possibility that stereotyping constitutes discriminatory treatment.

Premise 3 applies the embodiment thesis to stereotyping: *acts of stereotyping may be partially constituted by a person's body and behavior, including discriminatory behavior*. To illustrate the premise, consider a person who stereotypes my colleague of Asian heritage. What is happening when they perceive her voice as loud? The stranger's eardrums vibrate. They notice her voice. If they notice her voice, that means they are paying some attention to her. Paying attention is a bodily enterprise, just as much as a mental one. Maybe the person looks up from what they are doing. Maybe instead the stranger tries to ignore my colleague because she is interrupting their concentration as they try to work. They keep their head down and try to focus, though they struggle. The idea is not just that a person's thoughts accidentally “leak out” in body language or speech. Rather, the idea is that the act of *hearing someone as loud* is partially constituted by a range of physical reactions and dispositions, as well as micro- and macro-behaviors.³⁵

Consider a key thought behind premise three. According to the embodiment thesis, to stereotype someone is not just to judge that person “in your head” because of their presumed group membership. To stereotype is also *to do* something—and not just in a metaphorical sense.

³² For more on the notion of orientation, see Sarah Ahmed, *Queer Phenomenology: Orientations, Objects, and Others* (Durham, NC: Duke University Press, 2006).

³³ Wilson and Foglia, *Embodied Cognition*. For research within this paradigm, see Alva Noë, *Action in Perception* (Cambridge, MA: The MIT Press, 2004); Francisco J. Varela, Evan Thompson, and Eleanor Rosch, *The Embodied Mind: Cognitive Science and Human Experience: Cognitive Science and Human Experience*, Revised ed. (Cambridge, MA: MIT Press, 2017); Benoit Hardy-Vallée and Nicolas Payette (eds.), *Beyond the Brain: Embodied, Situated, and Distributed Cognition* (New Castle: Cambridge Scholars Publishing, 2008); Shaun Gallagher, *How the Body Shapes the Mind* (Oxford: Clarendon Press, 2006).

³⁴ Maurice Merleau-Ponty, *Phenomenology of Perception*, 11th ed., trans. Colin Smith (New York: Routledge, 2001); Iris Marion Young, *On Female Body Experience: “Throwing Like a Girl” and Other Essays* (Oxford: Oxford University Press, 2005); Alcoff, *Visible Identities*. George Yancy, *Black Bodies, White Gazes: The Continuing Significance of Race in America*, 2nd edition (Lanham, MD: Rowman & Littlefield, 2017); Helen Ngo, *The Habits of Racism: A Phenomenology of Racism and Racialized Embodiment* (New York, Lexington Books, 2018); Céline Leboeuf, “The Embodied Biased Mind,” in Erin Beeghly and Alex Madva, *An Introduction to Implicit Bias: Knowledge, Justice, and the Social Mind* (New York: Routledge: 2020).

³⁵ Noë, *Action in Perception*. Yancy, *Black Bodies*, 21. Yancy writes: “deep-seated racist emotive [and cognitive] responses may form part of the white *bodily* repertoire.”

Acts of stereotyping are “embodied actions.”³⁶ If acts of stereotyping—qua embodied cognition—are actions plain and simple, they will sometimes constitute discriminatory treatment in a behavioral sense. Stereotyping will constitute discriminatory treatment if and only if the person who stereotypes behaves in a distinctive way towards someone because of that person’s presumed group membership.

This argument does not entail that stereotyping always constitutes discrimination. Consider my personal experience on the bus. I stare out the window and my mind wanders as I think about my fellow passengers. Though I stereotype, my behavior is the same as if I were thinking about something else entirely: what to have for lunch or how to spend my weekend. Because thoughts and behavior come apart in this way, the embodied mind argument could never show that stereotyping *always* constitutes discriminatory treatment in a behavioral sense. At most, the argument applies in a wide range of cases, where the contents of discriminatory thoughts express themselves in discriminatory behaviors, and vice versa.

Some readers will reject the claim that cognition and perception are embodied; hence they will be skeptical of this argument from Premise 1. I direct such readers to the empirical and philosophical literature on embodied cognition where Premise 1 is fully defended.³⁷ Even though I cannot fully settle the matter here, one thing should be clear: embodied cognition deserves to be taken seriously. From the perspective of many theorists, it motivates a compelling argument for the constitutive claim.

The regulative mind argument. A final argument for the constitutive claim goes like this:

- 1) It is discriminatory to articulate or put into effect group-specific norms, rules, evaluative standards, etcetera.
- 2) Stereotyping involves articulating or putting into effect group-specific norms, rules, or evaluative standards.

- 3) Stereotyping constitutes discriminatory treatment.

Premise 1 offers a partial gloss of the regulative view of discriminatory treatment. It says: *it is discriminatory to articulate or put into effect group-specific rules, norms, or evaluative standards.* Since the present argument hinges on how one understands the regulative view, its details must be examined. Start with this observation. Discriminatory rules very often have the following feature: people act on them, putting the rules into practice. Examples include Presidential Executive Order 9066 and Jim Crow laws mandating racial segregation. Yet consider the Briggs Initiative. In 1978, this ballot measure sought to ban gay people from working as public school employees in the state of California.³⁸ Gay rights activists argued that the measure treated gays and lesbians people in a discriminatory way. It would have required school districts to fire employees who engaged in “public” homosexual conduct, and it prohibited their hire as well. Ultimately, the Briggs Initiative was voted down. Even so, it is perfectly appropriate to say that the ballot measure treated gays and lesbians in a discriminatory

³⁶ Varela, Thompson, and Rosch, *The Embodied Mind*, 173.

³⁷ See footnotes 33 and 34 for references.

³⁸ For the Initiative’s details, see https://repository.uchastings.edu/ca_ballot_inits/324/

way. It articulated disadvantageous rules that targeted them but not heterosexual people. What this reveals is that rules, norms, and evaluative standards can be discriminatory, whether or not they are put into practice or acted upon.

The Briggs Initiative suggests another lesson as well: there is no knowledge or awareness condition on discriminatory treatment in the regulative sense. Consider a gay high school teacher in 1978 Los Angeles. Maybe he isn't aware of the Briggs Initiative. Even so, it treats him in a discriminatory way: the ballot measure says that his school district should fire him and implies that he is deviant. One might object that this example is too far fetched. No gay man in 1978 would be so clueless. Even so, the hypothetical highlights an entirely general feature of discriminatory treatment. Discrimination can happen to you, even if you don't realize it. Employers may have "hidden" discriminatory hiring policies, for example.³⁹ Even when such information is concealed from job candidates, they can experience discrimination. Receptionists might smile and happily accept their resumes, knowing all the while that applicants' information will be shredded as soon as they leave.

Though these remarks do not fully clarify the content of the regulative view of discriminatory treatment, they tell us quite a lot. Indeed they reveal why thoughts may be discriminatory. First, discriminatory treatment is possible even when group-specific rules, norms, and standards are not acted on. It is thus no objection to the constitutive claim that thoughts exist "in the head." Even if this were true, cognitive acts have the potential to possess the exact property that makes regulative tools like social norms, speech acts, and laws discriminatory. Like norms, speech, and laws, thoughts can articulate or put into effect group-specific rules, norms, or evaluative standards.⁴⁰ Second, persons need not be aware of or know how they are being treated in order to experience discriminatory treatment. You might suspect that someone has discriminated against (or in favor of) you in virtue of what they think about you, but you can't know for sure because you are not a mind reader.⁴¹ You might never find out that someone thinks less of you because of your presumed group membership because they intentionally hide that information from you. Even so, there is a matter of fact—-independent of your knowledge or awareness—regarding whether you have been treated in a discriminatory way.

Premise 2 says this: *stereotyping involves articulating or putting into effect group-specific norms, rules, or evaluative standards*. Empirical research comes in handy when defending this premise, including research in psychology on "dual character concepts."⁴²

³⁹ In some cases, employers may not even know that they have a discriminatory policy (e.g., a racially motivated double standard for hiring or firing), or have treated employees in a discriminatory way. For examples from case law, see Linda Hamilton Krieger, "The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equality Opportunity," *Stanford Law Review* 47, no. 6 (1995): 1161-1248.

⁴⁰ The term "putting into effect" has multiple meanings. "To put into effect" can be to put something into practice via action or speech. For more on how norms can be enacted in speech, see Mary Kate McGowan, *Just Words: On Speech and Hidden Harm* (Oxford: OUP, 2019); Sara Bernstein, "Biased Evaluative Descriptions," Manuscript. My point here is that speech and action are not necessary for enacting norms. Norms and rules can be "put into effect" in thought alone. A person might apply a social rule or cultural norm to someone without saying so, for example. In doing so, they activate the norm and apply it to someone, hence "putting it into effect."

⁴¹ This kind of uncertainty is characteristic of discriminatory treatment in a wide range of cases, especially those involving "microaggressions." For examples see Claudia Rankine, *Citizen: An American Lyric* (New York, NY: Graywolf Press, 2014); Regina Rini, *The Ethics of Microaggression* (New York, NY: Routledge, 2020), esp. 39-70.

⁴² Joshua Knobe, Sandeep Prasada, and George Newman, "Dual Character Concepts and the Normative Dimension of Conceptual Representation," *Cognition* 127, no. 2 (2017): 242-257; Guillermo Del Pinal and Kevin Reuter, "Dual Character Concepts in Social Cognition: Commitments and the Normative Dimension of Conceptual Representation," *Cognitive Science* 41, no. 3 (2017): 477-501.

Examples of such concepts include “woman,” “Catholic,” “doctor,” “undocumented person,” and “disabled person.” What dual character concepts share in common is that they have a descriptive dimension, as well as a normative one. Hence they contain two kinds of meaning. Consider the concept “Catholic.” The concept includes a set of features that can be specified in purely descriptive terms. Catholics are Christians, for example, and they have a distinctive set of religious beliefs and practices. However, the concept of “Catholic” also specifies the abstract values associated with being a Catholic, as well as norms and rules that go along with being a “good” Catholic. Because of the concept’s dual character, anyone who falls under its heading is subject to group-specific evaluations. Researchers who study dual character concepts hypothesize that we have them for all socially salient social groups: age, gender, sexuality, race, ethnicity, religion, and even socio-economic status. Indeed any social group that performs characteristic tasks or has a dedicated social role ought to have a dual character concept associated with it, including concepts like “elementary school teacher,” “artist,” “knitter,” “anti-vaxxer,” “detective,” “Tesla owner,” “Cross-Fit enthusiast,” and many others.⁴³ If all such concepts have a dual character, all acts of stereotyping involve activating—hence “putting into effect”—group-specific norms, rules, or standards.

The conclusion stands independently any particular research paradigm. In *The Sources of Normativity*, Christine Korsgaard suggests why, when she introduces the notion of a practical identity.⁴⁴ Korsgaard explains that a practical identity is “a description under which you value yourself.”⁴⁵ On her view, each of us has a practical identity. I may see myself simultaneously as “a human being, a man or woman [or a person whose gender identity does not fit neatly within the binary], an adherent of a certain religion, a member of an ethnic group, a member of a certain profession, someone’s lover or friend.”⁴⁶ “All of these identities,” Korsgaard notes, “give rise to reasons and obligations.”⁴⁷ By seeing myself under a certain description, I am necessarily committed to seeing myself as answerable to norms, rules, and obligations associated with my identities. A parallel claim also holds. When I see other people—even strangers—under a certain description, I see them as answerable to norms, rules, and obligations that correspond to their identities too. Further, in socially placing someone, I am situating that person in a particular social location vis-à-vis myself, as well as others. Norms, rules, and evaluative standards govern the ways in which people in various social locations ought to interact and understand one another.

One can also pan out and look at the bigger social picture. Our views of groups don’t come from thin air. They fit into wider narratives about why people are the way they are and how they ought to be. Such narratives imply, if not entail, that certain types of people have a “natural” or “proper” place in the social order, and they delineate how people of certain types are supposed to act, feel, and think. To stereotype someone is thus not just to expect something of them, as if one were a scientist forming a reasoned prediction or hypothesis. It is to draw people into these wider narratives.⁴⁸

⁴³ For skepticism regarding this point, see Sarah Jane Leslie, “Hillary Clinton is the Only Man in the Obama Administration,” *Analytic Philosophy* 56, no. 2 (2015): 111-141.

⁴⁴ Christine Korsgaard, *The Sources of Normativity* (Cambridge: Cambridge University Press, 1996), 101.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ Hilde Lindemann, *Holding and Letting Go: Damaged Identities, Narrative Repair* (Ithaca, NY: Cornell University Press, 2014).

These reflections underscore what philosopher Victoria McGeer has called “the regulative nature” of the human mind.⁴⁹ On McGeer’s view, the function of cognition is not just drawing distinctions, making predictions, or forming hypotheses. Cognition—how we think and what we think—is inherently normative. Each of us is trained to see the world in particular ways that are laden with prescriptive and ideological significance.⁵⁰ Even when these thoughts are not articulated out loud, they have emotional impact, and they serve to shape the option-spaces of social interaction and opportunity, often in ways that entrench the status quo. To stereotype is therefore not just to expect things; it is to make judgments using concepts that place people into social frameworks with prescriptive and normative significance.

With these two premises, a powerful argument for the constitutive claim reveals itself. If it is discriminatory to articulate or put into effect group-specific rules, norms, evaluative standards, etcetera, and all acts of stereotyping do this, i.e., they articulate or put into effect group-specific rules, norms, evaluative standards, etcetera, stereotyping constitutes discriminatory treatment. Not just sometimes, but always.

2.3 Bringing It All Together. If my analysis is correct, the full rationale for the constitutive claim is multifaceted. Stereotyping is not discriminatory for one reason, but for many. We can treat people in a discriminatory way in virtue of what we think of them, how we judge them (quickly or slowly), how we act or fail to act towards them, and the standards and rules to which we subject them.

Though it would be impossible to reduce this multidimensional picture to a single argument for the constitutive claim, it would also be a mistake to ignore the common thread between these diverse forms of treatment. Each aspect of discriminatory treatment pinpoints a distinctive way in which we relate to others. These forms of treatment are partially constitutive of our relationships with others, making these relationships what they are.⁵¹

Understanding discrimination as a relational phenomenon is illuminating. Commonly theorists attach a worse-than condition to discriminatory treatment. However, from a relational perspective, we see that giving people undue benefits because of group membership can be just as problematic as saddling them with unjust burdens.⁵² Both relations of advantage and disadvantage work together to sustain unjust, oppressive social relationships. The problem is not just anti-Black racism, for example; it is also white privilege. Discrimination is therefore better thought of as a form of unequal or differential treatment, which people on the winning and losing sides of inequalities can experience. If so, positively stereotyping someone—for example, by presuming that they are credible or trustworthy because of their group membership—can constitute discriminatory treatment too. It may even be discriminatory to pigeonhole people in

⁴⁹ McGeer, “Mind-Making Practices.” For a related view, see Tadeusz Wiesław Zawidzki, *Mindshaping: A New Framework for Understanding Human Social Cognition* (Cambridge, MA: MIT Press, 2013).

⁵⁰ Sally Haslanger, “Cognition as a Social Skill,” *Australasian Philosophical Review* 3, no. 1 (2019): 5-25; Erin Beeghly, “What’s Wrong with Stereotypes? The Falsity Hypothesis,” *Social Theory and Practice* 47, no. 1 (2021): 33-61.

⁵¹ One finds a version of this view in Lindemann, 2014. Discussing Carl Elliot’s interpretation of Wittgenstein, Lindemann suggests that to treat someone as a person is a matter of “taking up a certain attitude or stance towards her” (12). Lindemann’s insight here suggests that treating someone as an equal—hence relating to them as an equal—has a necessary attitudinal component. See also Elizabeth Anderson, “What’s the Point of Equality?” *Ethics* 109, no. 2 (1999), 287-337.

⁵² Medina, *Epistemology of Resistance*; Emmalou Davis, “Typecasts, Tokens, and Spokespersons: A Case for Credibility Excess as Testimonial Injustice,” *Hypatia* 31, no. 3 (2016): 485-501.

ways that neither benefit nor burden them, but which could have hurt or helped them had the situation been different.

3. STEREOTYPING AS WRONGFUL DISCRIMINATION

A moralized version of the constitutive claim is easy to motivate, given the arguments in the last section. Its justification takes the form of a conditional. If an act of stereotyping

- (a) qualifies as discriminatory in a non-moralized sense and
- (b) is morally wrong, then
- (c) stereotyping in that instance constitutes wrongful discrimination.

Last section I showed that the conditional's first part (a) can be satisfied. Stereotyping will count as discriminatory treatment in a non-moralized sense, either sometimes (in a behavioral sense) or always (in a distinction-drawing and regulative sense). The conditional's second part (b) becomes now crucial. When, if ever, is it wrong to stereotype?

Start with a skeptical perspective. In "Is Racism in the Heart?" Tommie Shelby argues that racial prejudices are beliefs. He writes:

Beliefs aren't the kind of thing that can be immoral; they can be true or false, warranted or unwarranted, rational or irrational, but certainly not virtuous or evil, just or unjust, at least not in themselves."⁵³

Shelby seems to be saying that ethical norms do not apply to beliefs and, by extension, to cognitive states such as expectations, beliefs, predictions, and suspicions. If so, stereotyping someone "in your head" could never be wrongful discrimination. Ethical norms don't legitimately apply to cognitive states or processes.

The contention is hard to believe. For millennia, ethical theories have criticized thoughts and ways of thinking. For virtue ethicists like Aristotle, ethical life is about living well, i.e., flourishing. To flourish as human, one must cultivate certain virtues, including intellectual virtues. If you judge someone in a way that is close-minded, your belief and way of forming it could be ethically vicious.⁵⁴ In Christian ethics, thoughts and desires can be sinful. "Thou shalt not covet" is listed as one of the Ten Commandments, for example.⁵⁵ Coveting is first and foremost a sin that consists in desiring things that aren't yours. However, it can also have cognitive elements. For example, you might covet something because you believe that you are entitled to it. Such a belief could be sinful and hence wrong, according to The Old Testament. Perhaps oddly, consequentialists can say similar things, a fact which Shelby implicitly acknowledges. Cognitive and perceptual acts—just like actions in the more traditional sense—can have bad consequences, so they may be extrinsically wrong.⁵⁶ Extrinsic wrongness is not a fake or second-tier kind of wrongness. If it's extrinsically wrong to eat meat because of the

⁵³ Tommie Shelby, "Is Racism in 'The Heart?'" *Journal of Social Philosophy* 33, no. 3 (2002): 411-420 at 416.

⁵⁴ See Aristotle, *Nicomachean Ethics*, trans. Christopher Rowe (Oxford: OUP, 2002), 176-189 (Book VI).

⁵⁵ Exodus 20:17.

⁵⁶ For analyses along these lines Lippert-Rasmussen, *Born Free and Equal*; Endre Begby, "Doxastic Morality: A Moderately Skeptical Perspective" *Philosophical Topics* 46, no. 1 (2018): 155-172.

harmful environmental consequences, eating meat is wrong and you shouldn't do it. The same goes for thoughts and thinking, according to a consequentialist view. While Kantians have a different story to tell, the moral is similar. Suppose that ethics mandates respect for persons. If you judge someone based on demeaning, cruel, or patronizing stereotypes, you are disrespecting them.⁵⁷ Even if your outward behavior were perfect, you would be failing to recognize the limitless value of a rational being and, hence, failing to treat someone as an end. Your thoughts would therefore be wrongful.⁵⁸

The consensus across ethical theories is this: being a good person and treating others ethically are not just matters of how we behave. They are also about our emotional responses, the way in which we think about others, and much more.

Theorists of responsibility underscore this consensus. A control-based account of moral responsibility offers one perspective among many.⁵⁹ According to control-based theories, we are responsible only for those things that we can control; hence only controllable aspects of what we do and think have the potential to be right or wrong. Theorists interested in this tradition note that humans have the capacity to learn and grow. The very fact that teachers give students exams and bother teaching them in the first place shows that we have a great deal of *indirect* control over what we automatically know (and what we don't), as well as how we think.⁶⁰ The issue is not just about individual control, either. How we think and what we think reflects ways in which we have been *collectively* trained to think about and perceive others.⁶¹ Yet other theorists of responsibility focus on the so-called "deep self."⁶² According to deep self theories, even if thoughts or actions were uncontrollable and spontaneous, we would still be responsible for them if and when they reflect aspects of our selves that we have cultivated over time, which connect to our core values and our specific "take" on the world. Despite the diversity of views, theorists agree on one thing: the human mind—what we think and how we think—is shaped by and infused with agency. Where there is agency, there is a potential for responsibility and ethical evaluation.

The positive claim in the background here—which is largely independent of any particular philosophical theory—is that ethical norms apply to actions, as well as to elements of our inner lives, including cognitive states and processes. If so, stereotyping can sometimes be wrongful, even if it happens "in your head." A moralized version of the constitutive claim is

⁵⁷ For discussion of this point as it relates to judgments of credibility, see Miranda Fricker, *Epistemic Injustice: The Power and Ethics of Knowing* (Oxford: OUP, 2009), 44–45. Fricker argues that testimonial injustice insults people's humanity qua knowers. See also Rima Basu, "The Wrongs of Racist Beliefs," *Philosophical Studies* (2018), 1–16 at 13; Rima Basu, "What We Epistemically Owe Each Other," *Philosophical Studies* (2019): 1–17.

⁵⁸ Kantian discussions of self-respect emphasize something similar, namely, that treating oneself "as an end" requires properly appreciating your own intrinsic value. See Cynthia Stark, "The Rationality of Valuing Oneself: Kant on Self-Respect," *Journal of the History of Philosophy* 35, no. 1 (1997): 65–82 at 69–70.

⁵⁹ For an overview of competing approaches, see Noel Dominguez, "Moral Responsibility for Implicit Biases: Examining Our Options," in *An Introduction to Implicit Bias: Knowledge, Justice, and the Social Mind*, eds. Erin Beeghly and Alex Madva (New York: Routledge, 2020), 153–173.

⁶⁰ Iris Murdoch, "The Idea of Perfection," *The Sovereignty of the Good* (New York: Routledge & Kegan Paul, 1970); Jules Holroyd, "Responsibility for Implicit Bias," *Journal of Social Philosophy* 43, no. 3 (2012): 274–306; Alex Madva, "Implicit Bias, Moods, and Moral Responsibility," *Pacific Philosophy Quarterly* 99, no. 1 (2018): 53–78.

⁶¹ Nancy Arden McHugh and Lacey J. Davidson, "Epistemic Responsibility and Implicit Bias," *An Introduction to Implicit Bias: Knowledge, Justice, and the Social Mind*, eds. Erin Beeghly and Alex Madva (New York, NY: Routledge, 2020), 174–190.

⁶² Pamela Hieronymi, "Responsibility for Believing," *Synthese* 161, no. 3 (2008): 357–373; Michael Brownstein, *The Implicit Mind: Cognitive Architecture, the Self, and Ethics* (Oxford: OUP, 2018).

thereby vindicated. When an act of stereotyping constitutes discrimination and is also wrongful, as sometimes will be the case, stereotyping constitutes wrongful discrimination. Stereotyping will therefore sometimes be a form of discriminatory injustice, as feminist theorists and theorists of race have long suggested.

4. WHY THE CONSTITUTIVE CLAIM MATTERS

In closing, I'd like to give readers a sense of why the constitutive claim matters and why it is worth arguing for. My view is this. Not only is constitutive claim philosophically sound, it is also incredibly illuminating. Consider three of its big payoffs.

Payoff 1: The constitutive claim helps us to better understand the moral psychology of stereotyping.

The constitutive claim conveys a powerful message. If someone stereotypes you, they may be wrongfully discriminating against you. The wrong in question is not just about how someone has acted. Discrimination can happen in thought and reasoning, too. Because the constitutive claim makes this answer possible, it opens up a novel way of thinking about what goes awry when people wrongfully stereotype. The constitutive claim thus has the potential to serve as a useful hermeneutical resource, giving marginalized individuals a powerful frame for interpreting their experiences of injustice. It also lets people who stereotype—i.e., all of us—see exactly what we are doing, even if we manage to keep stereotypical expectations to ourselves. To stereotype someone is not just to think about that person in a way that may or may not have downstream discriminatory impacts. By stereotyping, we are literally engaging in a form of discriminatory treatment, even if we are just thinking about someone “in our head.”

Payoff 2: The constitutive claim reveals normative resources that can be used to solve ethical puzzles associated with stereotyping.

The constitutive claim also unlocks philosophical resources that could help to answer this pressing question: when and why is stereotyping wrong? If stereotyping were a form of discrimination, the best theory of wrongful discrimination might be able to explain when and why is it wrong to stereotype too.

At least a dozen potential theories present themselves, including the following:

Lippert-Rasmussen: discrimination is wrong if and only if it is sufficiently harmful.⁶³

Arneson: discrimination is wrong if and only if it is motivated by prejudice.⁶⁴

⁶³ Lippert-Rasmussen, *Born Free and Equal*, 165-170. I keep the terminology general to convey the big-picture idea of the theory; see the citation for the details. See also Richard Arneson, “Discrimination and Harm,” *The Routledge Handbook of the Ethics of Discrimination*, ed. Kasper Lippert-Rasmussen (New York, NY: Routledge, 2017), 151-163.

⁶⁴ Richard Arneson, “What is Wrongful Discrimination?” *San Diego Law Review* 43, no. 4 (2006): 775-808. Arneson argues that “intrinsically wrongful discrimination occurs when an agent treats a person identified as being of a certain type differently than she otherwise would have done because of unwarranted animus or prejudice against persons of that type” (779). He claims that he is offering a deontological account of wrongful discrimination that articulates an “if and only if” claim as stated above. In other work, he endorses a harm-focused theory of wrongful discrimination. See Arneson, “Discrimination and Harm.”

Khaitan: discrimination is wrong if and only if it frustrates people's ability to lead flourishing lives.⁶⁵

Moreau: discrimination is wrong if and only if it entrenches inequality.⁶⁶

Eidelson: discrimination is wrong if and only if it manifests deliberative disrespect or is harmful.⁶⁷

Hellman: discrimination is wrong if and only if it is demeaning or compounds social injustice.⁶⁸

Consider this possibility. The best theory of wrongful discrimination might do double duty, explaining what's wrong with discrimination in the traditional sense and stereotyping. Call this hypothesis *normative symmetry*. At least one theorist in the above list is officially committed to symmetry. On Lippert-Rasmussen's view, nothing is ever intrinsically wrong. Whether discrimination manifests in thinking, action, or institutional policies, it is wrong—when it is—due to its downstream impacts, specifically, on people's welfare. Other theorists don't commit to symmetry, but their theories easily extend to the realm of thought and reasoning. Consider Khaitan's theory. On his view, discrimination is wrong if and only if it frustrates human flourishing. This view has the potential to apply to both stereotyping and discrimination in the traditional sense. People who stereotype others, especially in denigrating ways, may undercut their own moral wellbeing and ability to reason well, hence their ability to flourish; at the same time, their acts of stereotyping may have consequences that prevent others from living well. Similar observations apply to Sophia Moreau's equality-based theory. On her view, discrimination is wrong, when it is, because it reflects and entrenches problematic social inequalities. The claim applies equally well to discriminatory thoughts, actions, and policies. Her analysis is thus relevant to stereotyping.⁶⁹ Symmetry raises an interesting possibility: perhaps it is wrong to stereotype if and when stereotyping constitutes wrongful discrimination. If, so, we could identify the conditions under which stereotyping is wrong by analyzing the conditions under which discrimination in general is wrong.

A second hypothesis is in the offing as well: normative asymmetry. One motivation for asymmetry begins with this observation. Not all species of discrimination necessarily possess the same normative profile. It has been suggested, for example, that direct and indirect

⁶⁵ Tarunabh Khaitan, *A Theory of Discrimination Law* (Oxford: OUP, 2015). Khaitan is focused mostly on illegal discrimination, but his theory has the potential to work for morally wrongful discrimination as well. For a related, "freedom-focused" theory, see Adam Hosein, "Freedom, Sex Roles, and Antidiscrimination," *Law and Philosophy* 34, no. 5 (2015): 485-517.

⁶⁶ Sophia Moreau, *Faces of Inequality: A Theory of Wrongful Discrimination* (Oxford: OUP, 2020).

⁶⁷ Eidelson, *Discrimination and Disrespect*, 223.

⁶⁸ Hellman, *When is Discrimination Wrong?*, 34-38. Deborah Hellman, "Indirect Discrimination and the Duty to Avoid Compounding Injustice," *Foundations of Indirect Discrimination Law*, eds. Hugh Collins and Tarunabh Khaitan, (London: Bloomsbury, 2018), 105-122. In her book, Hellman argues that discrimination is wrong if and only if it is demeaning. In her later work on indirect discrimination, she modifies her theory to the disjunctive claim stated above.

⁶⁹ See Moreau, *Faces of Inequality*, 55 fn 19.

discrimination are wrong for different reasons.⁷⁰ Consider Deborah Hellman's view. She contends that direct discrimination is wrong if and only if it is demeaning.⁷¹ To demean is to send the message that a person or group is morally less than or not fully human. However, on her view, indirect discrimination is wrong—when it is—because it compounds social injustice.⁷² Thus direct and indirect discrimination are wrong for different reasons. One might argue that discrimination in the traditional sense and stereotyping are similarly divergent when it comes to their wrong-making features.

Because it reveals these two hypotheses and invites us to test them, the constitutive claim is normatively illuminating. Theorists of stereotyping and discrimination find themselves in closer conversation.⁷³ These conversations have the potential to yield a deeper, more complex understanding of when and why stereotyping is wrong, when and why discrimination is wrong, as well as how these wrongs relate to one another.

Some readers may object that this payoff is entirely speculative. No decisive evidence has been provided to show that the wrongs of discrimination really are the wrongs of stereotyping. So why take the constitutive claim seriously? In lieu of hasty dismissals, I advise an open mind. Normative symmetry cannot be ruled out in a few paragraphs, or even in a single essay. Testing the above hypotheses will require elbow grease. Indeed this essay is part of a larger project in which I explore what's wrong with stereotyping and in which theories of wrongful discrimination play an essential role. My own view is that normative symmetry, with some qualifications, rules the day. I believe that one can hold this position while remaining attentive to the special normative features of thought, speech, actions, and policy and without papering over important ethical distinctions. I advance a radically pluralistic, context-sensitive account of wrongful stereotyping, nestled within a contractualist ethical theory, which has the potential to serve as a general theory of wrongful discrimination.⁷⁴

Payoff 3: The constitutive claim calls attention to the difficulty of living up to ethical norms in an unjust world.

A final benefit of the constitutive claim is that it underscores the ethical challenges we face in living in an unjust world. Living ethically means cultivating a certain kind of 'inner' life and avoiding pernicious habits of thought, no matter how culturally pervasive.

The observation evokes what Iris Murdoch has called *the idea of perfection*. "As moral agents," she argues, "we have to try to see justly, to overcome prejudice, to avoid temptation, to control and curb imagination, to direct reflection."⁷⁵ Writing about the philosophy of Martin

⁷⁰ For example, see Michael Selni, "Indirect Discrimination and the Anti-discrimination Mandate," in *Philosophical Foundations of Discrimination Law*, eds. Deborah Hellman and Sophia Moreau (Oxford: Oxford University Press, 2013), 250-268 at 250. Selni frames the normative difference between direct and indirect discrimination like this: "Discrimination typically involves some element of fault, but disparate impact theory moves away from issues of fault to distributive remedial concerns."

⁷¹ Hellman, *When is Discrimination Wrong?*

⁷² Hellman, "Indirect Discrimination."

⁷³ The same observation applies to theorists working on the ethics of belief. See Basu, "The Wrongs of Racist Beliefs;" Begby, "Doxastic Morality." The constitutive claim licenses such theorists to deploy research on wrongful discrimination to explain why beliefs can be ethically bad or wrong.

⁷⁴ Erin Beeghly, *What's Wrong with Stereotyping?* Unpublished manuscript.

⁷⁵ Iris Murdoch, "Perfection," 40.

Luther King Jr., Paul C. Taylor refers to this kind of ideal as “tragic.”⁷⁶ The tragedy lies in our persistent inability to live up to our own moral standards and to transform society into a more just, equitable place. “We struggle and fail,” writes Taylor, describing King’s message, “...and the failures are discouraging. But ‘that is the story of life.’”⁷⁷ Taylor suggests that King’s perfectionism sounds “very much like what [Christopher] Lebron’s project of mobilizing civic shame means for democratic citizens...*I’ve failed, by my own lights, we’re meant to say. I can and will do better.*”⁷⁸

One thinks of Fanon here too. “My true wish,” he writes in the introduction of *Black Skin, White Masks*, “is to get my brother, or white, to shake off the dust from that lamentable livery built up over centuries of incomprehension.”⁷⁹ Which raises the question: how does one rid oneself of the baggage associated with oppression, when the world and other people will not let you forget, and in which you yourself cannot forget? It is clear that one must try. But it is equally clear that one will often fail.

The constitutive claim provides a special frame for understanding what we are struggling against and why we often fail. As feminists and theorists of race have long noted, the most intimate aspects of our selves, including our ways of thinking, agency, and modes of embodiment, are among the mechanisms of group oppression.⁸⁰ Our fight against injustice is therefore not only against evil political forces, unjust laws, or oppressive social norms. We must also battle the intransigence of discriminatory hearts and minds, including—at least sometimes—our own, as we push towards justice. The constitutive claim throws this quandary into high relief, forcing us to recognize that unjust discrimination is not just a matter of action; it is also a matter of thought.

Acknowledgements

This essay was made possible by support from the National Humanities Center, the National Endowment for the Humanities, the American Council of Learned Scholars, IASH at the University of Edinburgh, and the College of Humanities at the University of Utah. I first drafted this essay while serving as the Philip L. Quinn fellow at the NHC in 2017 and revised the essay throughout the 2019-2020 academic year while on fellowships sponsored by the NEH and ACLS. I worked for part of 2020 at IASH at the University of Edinburgh before COVID forced a hasty departure. The University of Utah generously supported these leaves. I have also benefitted from a supportive community of fellow philosophers. I owe special thanks to individuals who

⁷⁶ Paul C. Taylor, “Moral Perfectionism,” in *To Shape A New World: Essays on the Political Philosophy of Martin Luther King Jr.* eds. Tommie Shelby and Brandon M. Terry (Cambridge, MA: Belnap Press, 2018), 35-57 at 45.

⁷⁷ *Ibid.*, 44.

⁷⁸ Taylor, 45. Christopher J. Lebron, *The Color of Our Shame: Race and Justice in Our Time* (Oxford: OUP, 2013), esp. 19-28.

⁷⁹ Fanon, *Black Skin*, xvi.

⁸⁰ For articulations of this view, see Ida B. Wells, *The Light of Truth: Writings of an Anti-Lynching Crusader*, ed. Mia Bay (New York: Penguin Classics, 2014); Simone de Beauvoir, *The Second Sex*, trans. H.M. Parshley (New York: Knopf, 1953); Audre Lorde, *Sister Outsider: Essays and Speeches by Audre Lorde* (Berkeley, CA: Crossing Press, 1984); Charles Mills, *The Racial Contract* (Ithaca, NY: Cornell University Press, 1997); María Lugones, *Pilgrimages/Peregrinajes: Theorizing Coalition Against Multiple Oppressions* (Lanham, Maryland: Rowman & Littlefield, 2003); David Livingstone Smith, *On Inhumanity: Dehumanization and How to Resist It* (Oxford: OUP, 2020).

gave me crucial feedback, including Joshua Rivkin, Alex Madva, Susanne Sreedhar, Sally Haslanger, Jean Thomas, Aness Webster, Sabine Tsuruda, Ben Eidelson, Larry Blum, Carlos Santana, Elijah Milgram, Alicia Patterson, Saray Ayala-López, Elliot Paul, Jonna Vance, Asia Ferrer, Gabby Johnson, Ásta, Mari Mikkola, Esa Diaz-León, Deborah Hellman, and Kasper Lippert-Rasmussen. This paper has also been presented a variety of venues, including the MAP Philosophy Conference at Stanford (2017), the University of Oxford (2018), the University of Edinburgh (2018), WOGAP Boston at MIT (2019), Bay Area Feminist Philosophy Workshop at UCSF (2019), Legal Theory Workshop at the University of Surrey (2019), British Society for Ethical Theory Conference at the University of Glasgow (2019), the 44th Annual Midwest Philosophy Colloquium at the University of Minnesota-Morris (2019), the Moral Psychology Research Group at the University of Utah (2019), Queens University (2019), and the LOGOS group extra talk series at the University of Barcelona (2020). Audiences at these venues provided me with valuable feedback and objections, for which I am very grateful.