

## Is Discrimination Harmful?

Abstract. According to a prominent view, discrimination is wrong, when it is, because it makes people worse off. In this paper, I argue that this harm-based account runs into trouble because it cannot point to a harm, without making controversial metaphysical commitments, in cases of discrimination in which the discriminatory act kills the discriminatee. That is, the harm-based account suffers from a problem of death. I then show that the two main alternative accounts of the wrongness of discrimination—the mental-state-based account and the objective-meaning account—do not run into this problem.

Keywords: discrimination; discriminatory killing; harm-based account; wrongness of discrimination

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1.

Most people agree that discrimination is, at least sometimes, morally wrong.<sup>1</sup> It is a further question, however, what makes discrimination morally wrong, when it is. There is disagreement about this question in the philosophical literature. A popular and seemingly plausible answer is that discrimination is wrong, when it is, because it makes people worse off. Lippert-Rasmussen defines such a harm-based view, in its generic version, as follows:

*Generic harm-based account:* “An instance of discrimination is wrong, when it is, because it makes people worse off, i.e., they are worse off given the presence of discrimination than they would have been in some suitable alternative situation in which the relevant instance of discrimination had not taken place” (Lippert-Rasmussen 2014, pp. 154-155; see also Slavny and Parr 2015, p. 102).

Suppose that a Black person is discriminated against by an employer who decides not to hire them because they are Black (the employer would have hired them if they had been white instead). This instance of discrimination clearly makes the Black person worse off than they otherwise would have

been: if they had not been discriminated against, they would have gotten the job. Thus, according to the generic harm-based account of discrimination, this instance of discrimination is morally wrong. And this is clearly the correct verdict.

Another plausible feature of the generic harm-based account is that it can explain, in most circumstances at least, why there is a difference between *ordinary discrimination* and *affirmative action*. As Lippert-Rasmussen (2014, p. 168) explains, ordinary discrimination usually harms those who are worse off. This is not the case for affirmative action since it targets, to benefit, those who have suffered from (the effects of) injustice. And if there is decreasing marginal utility of resources, ordinary discrimination may usually be more harmful than affirmative action. Since many believe that there is a moral difference between ordinary discrimination and affirmative action, it speaks in favor of the generic harm-based account that it can explain that the former is morally wrong in a way that, or to a degree that, the latter is not.

So, the harm-based account of the wrongness of discrimination has a lot going for it, also dialectically speaking. Lippert-Rasmussen (2014), in one of the most prominent books on the wrongness of discrimination, argues that the harm-based account is more plausible than the two main alternatives: mental state-based accounts and objective-meaning accounts. However, despite this, I will argue that the harm-based account runs into trouble because it cannot point to a harm, without making dubious metaphysical commitments, in cases of discrimination in which the discriminatory act kills the discriminatee.<sup>2</sup> But we still think that discrimination is wrong in such cases. Consider:

*Discriminatory Killing:* Gunner wants to kill a person. He sees a Black person and a white person in front of him. He decides to kill, and kills, the Black person because he believes the Black person is morally inferior to the white person qua their race. The Black person

dies immediately from the shot without suffering. Suppose there is no harm to anyone else, and no one else will ever find out about the killing.

I take it that most people will agree that Gunner's discriminatory act is wrongful. And I take it that most people will agree that it is not only wrongful because Gunner kills someone. If he had decided whom to kill by flipping a coin, that would still have been wrong, but the discrimination involved in Discriminatory Killing makes the killing even more wrongful,<sup>3</sup> or wrongful in a way which it would not have been had the act not been discriminatory. That is to say, a satisfactory account of the wrongness of discrimination must explain why Discriminatory Killing is wrong qua discriminatory. And if the harm-based account must explain why Discriminatory Killing is wrong qua discriminatory, it must explain why it makes the Black person worse off.<sup>4</sup>

Now, consider a central problem in the philosophy of death, namely the problem of explaining why death is bad for the person who dies (see, e.g., Bradley 2009; Nagel 1970). It seems that death cannot be bad for the person who dies because they do not exist when they are dead. Death terminates the person. The challenge is thus to explain why death is bad for the person who dies (at least sometimes). Let us refer to this as the *problem of death*. I think Discriminatory Killing presents an analogous, or perhaps even identical, problem for a harm-based account of the wrongness of discrimination. It seems that the discriminatory act in Discriminatory Killing is not bad for the Black person since they do not exist after the discriminatory act. But if it does not make the Black person worse off, it is not wrongful according to the harm-based account. The challenge is thus to explain why the discriminatory act is harmful to the Black person.

Several solutions have been proposed to the problem of death. And since, as I have just explained, I believe the problem facing the harm-based account of discrimination is analogous, or

perhaps even identical, to the problem of death, it may be that these solutions can help the harm-based account of discrimination in explaining the harm in Discriminatory Killing.

The most prominent solution to the problem of death is:

*Deprivationism*: A person's death at  $t$  is bad for them if and only if they would have been on balance better off had they not died at  $t$  (Thieme 2023, p. 249; see also Bradley 2009; Feldman 1991; Nagel 1970).

This is a *forward-looking view*: it looks to what the person is deprived of by dying (hence Deprivationism); or, in other words, what the person would have had in the future had they not died. This would amount to the following solution to the problem facing the harm-based account:

*Deprivationism<sub>DISCRIMINATION</sub>*: The discriminatory act in Discriminatory Killing at  $t$  is harmful to the Black person if and only if they would have been better off had they not been discriminated against at  $t$ .

The problem with this solution is that the Black person might not have been better off had they not been discriminated against.<sup>5</sup> After all, the Black person may have been living a very bad life (i.e., one not worth living).<sup>6</sup> Or suppose that if the Black person had not been discriminated against, they would have died almost immediately after by being hit by a truck. In such cases, the Black person would not have been better off had they not been discriminated against. But the discriminatory act in Discriminatory Killing would still be wrong. So *Deprivationism<sub>DISCRIMINATION</sub>* cannot be the solution.

Instead of this forward-looking view, we might turn to a *backward-looking view*. Consider:

*Declinivism*: A person's death is bad for them (in one respect) when it involves a decline from a life containing intrinsic goods (Thieme 2023, p. 250).

It is *backward-looking* in that it focuses on what was before death (and not what would have come had they not died). This view would amount to the following solution to the problem facing the harm-based account:

*Declinivism*<sub>DISCRIMINATION</sub>: The discriminatory act in Discriminatory Killing is harmful to the Black person if and only if it involves a decline from a life containing non-discrimination.

The problem with this solution is that if the Black person had been subject to a lot of discrimination, the discriminatory act would not be a decline from a life containing non-discrimination.<sup>7</sup> But it would clearly still be wrong to discriminate against them. So this solution will not do either.

But there are other backward-looking views. Consider:

*Willhavehadism*: A person's death is bad for them when their life has been bad, where badness is a matter of both quality (how much bad life one has had) and quantity (how much life one has had) (Kamm 2020, p. 2).

Although it is a backward-looking view, it is different from Declinivism. Whereas Declinivism focuses on the amount of intrinsic goods contained in a person's life, Willhavehadism focuses on a person's need, or on how much the person has had. When a person's life is bad, that makes the person's death less bad (than if the person's life had been good) according to the former, but it makes it

worse according to the latter because the person will have had less in that case. This view would amount to the following solution to the problem facing the harm-based account:

*Will have hadism*<sub>DISCRIMINATION</sub>: The discriminatory act in Discriminatory Killing is harmful to the Black person if and only if the Black person's life has been bad, discrimination-wise, where badness is a matter of both quality (how bad has the discrimination been from which they have suffered) and quantity (how many instances of discrimination have they been subject to).

The problem with this solution is that if the Black person has never been subjected to discrimination, the person's life has not been bad, discrimination-wise.<sup>8</sup> But it would clearly still be wrong to discriminate against them. And so this is not a satisfactory solution to the problem facing the harm-based account.

At this point, some might wonder whether we can solve the problem for the harm-based account if we assume a preference-based view of well-being (Lippert-Rasmussen 2014, p. 106). If the Black person has a preference for not being discriminated against, might we not say that they *are* worse off because their preference fails to be satisfied in Discriminatory Killing? There are a couple of problems with this suggestion. First, suppose the Black person has a preference, unbeknownst to Gunner, for being discriminated against in this way (e.g., because their life contains a lot of pain). But given that Gunner does not know this, it clearly seems wrong for him to discriminate in this way. However, that is not the case according to this view. Second, even if this could work as a solution, it is a solution which presupposes taking on dubious metaphysical commitments. If harm is a matter of not getting one's preferences satisfied, it opens the door to posthumous harm since a person's preferences can be dissatisfied after their death (Feinberg 1984; Pitcher 1984; Wilkinson 2011). But whether there can

be posthumous harm is a contested issue, also metaphysically speaking (Bradley 2009). And so proponents of the harm-based account cannot provide this solution without taking on controversial metaphysical commitments. Perhaps this would not be a problem if we had to do so to explain the wrongness in Discriminatory Killing. But, as I will show shortly, there are other accounts of the wrongness of discrimination in which we do not have to take on such controversial metaphysical commitments to explain that the discriminatory act in Discriminatory Killing is wrong.

To sum up, Discriminatory Killing presents the following problem for the harm-based account of the wrongness of discrimination. Either the harm-based account cannot explain why the Black person suffers any harm in Discriminatory Killing, as we saw with the modifications of the different views on the badness of death, but then it implausibly entails that the discriminatory act in Discriminatory Killing is not wrong qua discriminatory; or it can assume an understanding on which the Black person is harmed after their death, for example, the preference-based view, but that is to take on controversial metaphysical commitments which we would rather avoid in explaining the wrongness of discrimination.

In the last part of this paper, I would like to show that the two main alternatives to the harm-based account—the mental state-based account and the objective-meaning account—can explain that the discrimination in Discriminatory Killing is wrong without taking on any controversial metaphysical commitments.<sup>9</sup>

Consider:

*Generic mental-state-based account:* “Discrimination is wrong, when it is, because it reflects a certain morally objectionable mental state on behalf of the discriminator” (Lipert-Rasmussen 2014, p. 111).

As opposed to the harm-based account, whether an instance of discrimination is wrongful according to the mental-state-based account is a matter of what goes on in the mind of the discriminator; or, as one might say, how the discriminating agent deliberates (Eidelson 2015). There are different ways in which the mental-state-based account can be spelled out, but it is common to assume at least that if the discriminator acts as they do because of the belief that the discriminatee has a lower moral status than they in fact do, then that is a morally objectionable mental state (Lippert-Rasmussen 2006, p. 178). And, accordingly, that a discriminatory act based on this belief is wrong. This is exactly what happens in Discriminatory Killing: Gunner believes that the Black person is morally inferior to the white person qua their race when clearly they are not. And this means that, according to the mental-state-based account, Gunner's discriminatory act is wrongful. In reaching this judgment, the mental-state-based account need not rely on controversial metaphysical assumptions such as that persons can be harmed after their death. So the mental-state-based account more easily captures the wrongness of discrimination in Discriminatory Killing than the harm-based account.

Let us now turn to the objective-meaning account:

*Generic objective-meaning account:* Discrimination is wrong, when it is, because of the objective meaning it carries (Lippert-Rasmussen 2014, p. 129).

The objective-meaning account differs from the mental-state-based account in that, according to the former, discrimination may be wrong even if it does not involve any objectionable mental states (Lippert-Rasmussen 2014, pp. 129-130). The objective-meaning account locates the wrongness of discrimination in what discriminatory acts express. To focus the discussion, let us look at arguably the most prominent objective-meaning account:



*Hellman's objective-meaning account:* Discrimination is wrong, when it is, because it demeans the discriminatee, where it demeans the discriminatee if, and only if, (a) it expresses that the discriminatee is not of equal moral worth; and (b) it is done by a person in a superior social position (Hellman 2008).

Discrimination is wrong, according to Hellman, when it *demeans*. “To demean,” Hellman (2008 p. 29) explains, “is to treat someone in a way that denies her equal moral worth ... [it is] to put down, to diminish and denigrate. It is to treat another as lesser.” A demeaning act “expresses that the other is less worthy of concern or respect” (Hellman 2008, p. 35). What an act expresses is a contextual matter—a matter of the common history and culture with its accompanying conventions and social understandings. For an act to be demeaning, the discriminator furthermore has to be in a position of power relative to the discriminatee. Thus, discrimination has a social aspect and a power aspect.

Now, one might suspect that Hellman's account fails to capture anything demeaning in Discriminatory Killing since it seems that a private act cannot express anything. But, she argues, this is not the case. She asks us to consider an employer who prefers to hire men rather than women but keeps it to himself. He must hire one more person before he is laid off. Hellman argues that, in terms of the meaning of an act, it is capacity that matters: “so long as the action, if known, would have this meaning, then it expresses denigration even when no one knows about it ... [the secret action] demeans the women who are passed over for this job” (Hellman 2017, p. 105). Thus, the employer's discriminatory hiring policy is wrongful, even if secret, according to Hellman's objective-meaning account.

The same may be said about Discriminatory Killing. Even if Gunner's act will not be known by anyone else, it would express denigration of Black people, if known, for which reason it demeans

Black people. Again, it is capacity that is important according to Hellman's objective-meaning account. Thus, Gunner's discriminatory act is wrongful according to this account.

To sum up, we have seen that, because of a problem of death, the harm-based account of wrongful discrimination runs into trouble in cases in which the discriminatory act kills the discriminatee. To explain the wrongness in such cases, the harm-based account will have to take on controversial metaphysical assumptions. This is not the case according to the two most prominent alternatives, to wit, the mental-state-based account and the objective-meaning account. They can easily explain why the discriminatory act in Discriminatory Killing is wrong. All else equal, this speaks in favor of these accounts.

Author affiliation: CEPDISC, Department of Political Science, Aarhus University. [theandre-asbengtson@gmail.com](mailto:theandre-asbengtson@gmail.com)

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## Notes

<sup>1</sup> I will assume the following understanding of discrimination: "An agent, X, discriminates against someone, Y, in relation to another, Z, by  $\Phi$ -ing (e.g., hiring Z rather than Y) if, and only if: (i) There is a property, P, such that Y has P or X believes that Y has P, and Z does not have P or X believes that Z does not have P; (ii) X treats Y worse than he treats or would treat Z by  $\Phi$ -ing; and (iii) It is because (X believes that) Y has P and (X believes that) Z does not have P that X treats Y worse than Z by  $\Phi$ -ing" (Lippert-Rasmussen, 2014: 15). Note that a definition of discrimination may be either *moralized* or *non-moralized* (Hellman, 2008: 13). According to the former, discrimination is necessarily morally objectionable. According to the latter, it is not,

which means that it becomes a further question whether a particular instance of discrimination is morally objectionable. The definition of discrimination which I assume in this paper is non-moralized.

<sup>2</sup> Slavny and Parr (2015) also argue that there are cases of wrongful, but harmless, discrimination which the harm-based account, implausibly, cannot capture. The added value of my paper is that I show, by appealing to cases in which the discriminatory act kills the discriminatee, that the harm-based account suffers from a problem of death, and that proponents of the harm-based account cannot escape this problem without taking on dubious metaphysical commitments. Moreover, I show that the two main alternative accounts of the wrongness of discrimination do not suffer from this problem of death.

<sup>3</sup> It might be that the discriminatory aspect amplifies the wrongness of the killing, or that the discriminatory aspect is a separate part that adds to the total wrongness of Gunner's act. I do not have to take a stand on how the discriminatory aspect adds to the wrongness of Gunner's act; my argument is compatible with both views.

<sup>4</sup> Strictly speaking, it would suffice if it could show that someone is made worse off in Discriminatory Killing. But it is hard to see who that is, if not the Black person, given the structure of the case.

<sup>5</sup> But what if we specify that it must be "some suitable alternative situation"? First, for this to even get off the ground, "some suitable alternative situation" must be specified in a non-arbitrary and non-counterintuitive way (for discussion of why this might be difficult, see Rasmussen (2019)), and in such a way that it continues to be a *harm-based* account, and, second, it still might not solve the problem in overdetermination cases. I thank an anonymous reviewer for useful discussion.

<sup>6</sup> I do not mean to suggest that bad lives cannot be worth living. As a reviewer notes, the notion of *adaptive preferences* suggests that people can adapt to very bad conditions (for philosophical discussion of adaptive preferences, see, e.g., Enoch (2020); Khader (2011); Nussbaum (2001)). So, someone with a bad life could have preferred to continue living. Moreover, across the world subjugated communities that live in dire poverty can still find value in life. What I am saying is that even if a person has not adapted to their very bad conditions, and thus lives a very bad life, it is still wrong to kill this person for racist reasons. I thank an anonymous reviewer for encouraging me to discuss this issue.

<sup>7</sup> I do not mean to suggest that a life that contains discrimination cannot contain other intrinsic goods which may make dying bad. As a reviewer notes, Black enslaved people who suffered through chattel slavery in the US and Black persons who suffered through Jim Crow have indicated in African-American literature that myriad features of their lives had intrinsic value. All I am saying is that if a person's life did not contain such intrinsic goods, killing them for racist reasons would still be wrong. And Declinivism<sub>DISCRIMINATION</sub> does not say so (even if we extend the account to not only be about non-discrimination but other intrinsic goods as well). I thank an anonymous reviewer for discussion.

<sup>8</sup> Here I analyze discrimination apart from racial injustice in society more generally. But as a reviewer notes, discrimination will often be part of racial injustice in society more broadly. While I agree that this might often be the case, it is not a necessity: there can be discrimination even if there is not racial injustice in society more broadly (and that is all I need for my purposes). Imagine an egalitarian society in which there is an idiosyncratic racist. If that person kills another as in Discriminatory Killing, this is clearly wrong qua discriminatory. But if this is the first time this person has been discriminated against, it is not wrong qua discriminatory according to Willhavehadism<sub>DISCRIMINATION</sub>. One might retort that what is doing a lot of the work in Discriminatory Killing is the fact that the person killed is Black. When we judge the discriminatory killing of the Black person, we may have in mind the history, and occurrent state, of racial injustice in the US. And this adds to our intuitive judgment that Discriminatory Killing is wrong qua discriminatory. In response, note that it is in line with my argument that we judge Discriminatory Killing to be more wrong in a society with a history of racial injustice than in my imagined egalitarian society. All I need is that we still judge it to be wrong to discriminatorily kill someone in the egalitarian society. And I cannot see why we should not. If you worry about the racial aspect of the case, you may instead imagine that Gunner, instead of choosing to kill a Black person, chooses to kill the only person living with dwarfism in society, instead of the person not living with dwarfism, because he believes this person is morally inferior to the other person qua living with dwarfism. Clearly, we would still think that this would be an instance of wrongful discrimination. This should also address the potential worry that some of the wrongness in Discriminatory Killing may have to do with the act expressing racial stigma and thus harming Black people as a group (e.g., Anderson (2010: 49); Medina (2013: 142)). Finally, it should also address the potential worry that in a truly egalitarian society, races would not obtain (e.g., Haslanger in Glasgow et. al. (2019)). I thank an anonymous reviewer for discussion on these issues.

<sup>9</sup> Perhaps this generalizes to harmless killings in general. If so, that would be an argument for why we should prefer a respect-based account of actions over a harm-based account. Settling this issue takes me too far away from the issue discussed in this paper. But it definitely points to an intriguing possibility that should be explored further. I thank an anonymous reviewer for suggesting this possibility.

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