

Chapter Two, “Unfair Subordination,” develops a theory of unfair subordination and then uses this theory to help explain why discrimination wrongs people. The author explains why, in this context, it is important to think of subordination as “social subordination” –that is, as something that happens to a person by virtue of her membership in a certain social group. The author argues that social subordination involves not only differences in the power, authority, and deference given to particular social groups, but also, crucially, the presence of what the author calls “structural accommodations.” These are practices that normalize the needs of the superior groups and render invisible the needs of inferior groups. The author then uses this account of subordination to explain a variety of ways in which direct and indirect discrimination contribute to unfair subordination. Both forms of discrimination perpetuate differences in power, authority, and deference. Direct discrimination also subordinates by marking out certain people or groups as inferior, constituting an expression of censure. And indirect discrimination contributes to unfair subordination when it leaves in place problematic structural

accommodations, rendering certain groups invisible, and thereby marking them out as inferior, in certain contexts.

discrimination, subordination, direct discrimination, indirect discrimination, power, authority, justice, fairness, disparate impact, equality

## 2

## Unfair Subordination

### 2.1 Unfair Subordination: A Plausible Starting Point

An intuitively compelling place to start, in answering what I have called “the question of inequality” is with the concept of unfair subordination. When we disadvantage some people relative to others on the basis of certain traits, either through practices that explicitly single them out or through practices that indirectly disadvantage them, we often seem to be failing to treat them as the equals of others in the sense that we are *unfairly subordinating* them to others, putting them beneath others. Indeed, the kinds of discrimination that usually give rise to the greatest moral

indignation involve the creation or perpetuation of different classes of people, with some having a superior status and others an inferior one, in circumstances where we think that everyone ought to have an equal status. Consider, for instance, the Jim Crow laws, which turned African Americans into second-class citizens; or dress codes for waitresses or female retail employees that mark them out as sexual objects, lacking the full and independent agency that we ascribe to men.

C2.P2

The idea that unfair subordination might help to explain the wrongness of certain forms of discrimination does not only have a hold on our moral imaginations. It is also deeply rooted in the law. Both the United States' Fourteenth Amendment and the constitutional equality rights in section 15 of the *Canadian Charter of Rights and Freedoms* have been understood—by courts, and also by academics—as prohibiting government policies that unfairly subordinate people based on certain traits.<sup>1</sup>

---

<sup>1</sup> For seminal discussions of unjust subordination in the context of the United States' Fourteenth Amendment jurisprudence, see

<<<REFO:JART>>> Owen Fiss, "Groups and the Equal

---

Protection Clause,” *Philosophy & Public Affairs* 5(2) (1976), pp. 107–177<<<REFC>>>; <<<REFO:IART>>> Ruth Colker, “Anti-Subordination Above All: Sex, Race, and Equal Protection,” *New York University Law Review* 61 (1986), pp. 1003–1044<<<REFC>>>; <<<REFO:IART>>> Mari J. Matsuda, “Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction,” *Yale Law Journal* 100(5) (1991), pp. 1329–1407<<<REFC>>>; <<<REFO:IART>>> J. M. Balkin, “The Constitution of Status,” *Yale Law Journal* 106(8) (1997), pp. 2313–2374<<<REFC>>>; and <<<REFO:IART>>> Jack M. Balkin and Reva B. Siegel, “The American Civil Rights Tradition: Anti-classification or Anti-subordination?,” *University of Miami Law Review* 58 (2003), pp. 9–33<<<REFC>>>. Canadian courts adjudicating equality rights cases tend to speak of “stereotyping” rather than of subordination, but their discussions of stereotyping are often discussions about subordination. See, for instance, <<<REFO:BK>>> Colleen

And of course, when private sector anti-discrimination law was first developed in these two countries in the 1960s and 1970s, it was treated as a form of quasi-criminal law that aimed to eliminate acts of prejudicial subordination, acts that deliberately denied certain privileges or benefits to members of certain social groups on the grounds that these groups were less worthy than others.<sup>2</sup> But what exactly does unfair subordination involve? How do some discriminatory acts and policies work to subordinate certain social groups unfairly, and to sustain this subordination? In this chapter, I shall try to answer these questions.

Rather than referring throughout to “unfair subordination,” I shall often refer, simply, to “subordination.” This is not because I am assuming that subordination in every form is always unfair. All of what I shall go on to say is consistent with the possibility

---

Sheppard, *Inclusive Equality* (Montreal: McGill-Queen’s University Press, 2010) <<<REFC>>>.

<sup>2</sup> See <<<REFO:IART>>> Denise Réaume, “Harm and Fault in Discrimination Law,” *Theoretical Inquiries in Law* 2 (2001), pp. 349–385 <<<REFC>>>.

that the subordination of certain people in certain institutional contexts is sometimes permissible. Many would argue that a soldier can permissibly be assigned a lower status within the army than his commanding officer, just as a company's employees are, in certain respects, subordinate to their managers. But these particular cases of subordination seem justifiable, I think, only because, and only to the extent that, the differences in status hold only within a particular organization, rather than across a number of different social contexts, and only to the extent that those with the higher status require this status in order to fulfil the legitimate demands of their particular institutional roles. So, for instance, if a soldier can justifiably be treated as subordinate to his commanding officer, this seems to be only because commanding officers could not organize their units, or efficiently run their military operations, unless they had the power and authority that a higher status involves. So certain forms of subordination may be justified within a particular organization, when they are necessary for the operation of that organization. But subordination is often unfair when it is based, not upon the demands of a particular institutional role, but upon perceptions about certain personal (or

allegedly personal) traits, and when the group of people that are alleged to have that trait are subordinated, not just within a particular organization, but across a variety of different social contexts.

C2.P4

Most of the legal scholars who analyze discrimination in terms of its contribution to subordination invoke a relatively under-specified, intuitive idea of subordination. For instance, when Owen Fiss first urged that the U.S. Equal Protection Clause was best interpreted not as preventing arbitrary classifications but as eliminating unfair subordination, he suggested that subordination was a “status harm” that involved perpetuating the lower social position of persistently disadvantaged social groups.<sup>4</sup> But it was not his aim to develop a general account of what that status harm involved. More recently, Reva Siegel and Joel Balkin have examined the ways in which courts, in cases of discrimination, are motivated by concerns with “social stratification” and “the secondary social status of historically

---

<sup>4</sup> Fiss, “Groups and the Equal Protection Clause,” *supra* note 1 at p. 157.

oppressed groups.”<sup>5</sup> But they do not explain in detail what “social stratification” involves. Their interest is largely in charting how concerns about social stratification motivate judges to adopt particular legal doctrines and to decide certain cases in certain ways. My aim in this chapter is different. I want here to develop a more detailed account of subordination, one that can help us understand some of the ways in which different forms of discrimination subordinate people and some of the reasons why they might be wrong, in virtue of contributing to such subordination. I shall, in Section 4 of this chapter, lay out in some detail four conditions that seem to be satisfied in most cases where the subordination of a certain social group persists across different contexts for an extended period of time, and seems unfair. I shall then turn in Section 5 to considering how both direct and indirect discrimination contribute to social subordination.

The scholars of anti-discrimination law who come closest to offering a philosophical analysis of subordination and of how

---

<sup>5</sup> Balkin and Siegel, “The American Civil Rights Tradition: Anti-classification or Anti-subordination?,” *supra* note 1 at p. 9.



discrimination subordinates are expressivists Deborah Hellman, Elizabeth Anderson, and Richard Pildes.<sup>6</sup> They have argued that an act is wrongfully discriminatory when it subordinates a person to others in the sense that the act demeans her, or sends the message that she is of less value than others. I shall consider Hellman's account in Section 3 of this chapter. While this account is extremely helpful in drawing our attention to the ways in which discriminatory acts send messages about the inferior status of certain groups, I shall suggest that, at least in its current form, the account is too individualistic. It focuses too much on the individual power dynamic between the discriminator and the discriminatee, when in fact we need to look at the relative

---

<sup>6</sup> <<<REFO:IART>>>Elizabeth Anderson and Richard Pildes, "Expressive Theories of Law: A General Restatement," *University of Pennsylvania Law Review* 148(5) (2000), pp. 1503–1576<<<REFC>>>, especially at pp. 1533–1544; and <<<REFO:BK>>>Deborah Hellman, *When Is Discrimination Wrong?* (Cambridge, MA: Harvard University Press, 2008)<<<REFC>>>.

amounts of power possessed by the different social groups to which these people belong. I shall also argue that expressivism offers us too narrow an understanding of subordination.

Subordination is not only a function of the social messages sent by particular acts or policies. Rather, it is kept in place by a variety of effects that discriminatory practices have on different social groups, such as perpetuating differences in power and authority between them and rendering certain social groups or their needs invisible in certain contexts.

C2.P6            In addition to focusing on social groups, my own account of social subordination places special emphasis on one feature of it that is not often foregrounded. This is the fact that social subordination often depends, for its persistence, on what I shall call “structural accommodations.” These are policies, practices, and physical structures that tacitly accommodate a more privileged group’s needs at the expense of the subordinate group or groups. Normally, within anti-discrimination law, we use the term “accommodation” to refer to a special measure that must be adopted in order to give the subordinated group an opportunity equal to that of the more privileged group. And we assume that the

subordinate group requires an accommodation because that group has certain special needs. So, for instance, when a Muslim employee requests an altered work schedule so that he can pray at the times that his religion requires, we treat the altered schedule as an “accommodation” to which he is entitled, because of the special demands of his religion. As we have learned from feminists, critical race theorists, and disability theorists, however, at least part of the reason why these groups require an accommodation in the first place is that our social environment has been constructed in such a way as tacitly to accommodate the needs of more privileged groups.<sup>7</sup> I shall be proposing that we need to think of these *prior* policies and structures as “accommodations”—accommodations to certain social groups, which make their interests and needs seem normal and the interests of other groups seem exceptional. And I shall argue that we cannot understand the subordination of one group by another, or the real contribution of discrimination to subordination, unless we consider these “structural accommodations.” For they serve

---

<sup>7</sup> See the works cited in note 16, *infra*.

indirectly to rationalize the greater power and de facto authority that are held by certain groups and the greater deference we pay to them. We can, I shall argue, see many of the policies that constitute wrongful indirect discrimination as “structural accommodations” that contribute to unfair subordination. So my account of subordination will give us a way of explaining in detail not just how direct discrimination subordinates, but how indirect discrimination subordinates as well.

## 2.2 Discrimination That Subordinates:

### Restaurant Dress Codes

Before I turn to accounts of unfair subordination, I want to lay out several examples of discrimination that seem to be wrong at least in part because they involve unfair subordination. I shall focus on discrimination involving restaurant dress codes for employees. I shall lay out a number of examples in this section and shall return to them at various points in the chapter.<sup>8</sup>

---

<sup>8</sup> The examples discussed in this section are taken from a recent report by the Ontario Human Rights Commission on common

C2.S2

C2.P7

Many restaurants and bars impose a gendered dress code on their employees. Rather than providing a gender-neutral set of options and allowing each employee to choose what suits them, these restaurants require female employees to wear tighter fitting clothing designed to show the shape of their bodies, low cut tops, shorter skirts, and high heels. Men, by contrast, are usually permitted to wear more comfortable, looser fitting clothing that is not revealing. If you have thought about such dress codes, you have probably already reflected on the messages they send about the appropriate social roles of men and women; the ways in which they mark women out as inferior; and the additional physical and health burdens they place on women, both through the tight clothes that restrict their movement and through the high heels

---

practices surrounding restaurant dress codes and their impact on a variety of underprivileged groups. See *Not on the Menu: Ontario Human Rights Commission Inquiry Report on Sexualized and Gender-based Dress Codes in Restaurants* (March 2017), available at <http://www.ohrc.on.ca/en/not-menu-ohrc-inquiry-report-sexualized-and-gender-based-dress-codes-restaurants>.

that cause foot and back pain. They are examples of direct discrimination, since they explicitly single out women for a different and less comfortable uniform, and thereby treat them less favourably on the basis of their gender.

C2.P9

The dress codes for employees adopted by many restaurants also *indirectly* disadvantage people: in particular, transgendered people, pregnant women, and members of certain religions. The disadvantages to these groups are indirect, since none of these groups is explicitly singled out by the policies. But trans employees may have to wear a uniform that does not express their current gender identity. Pregnant women are often disproportionately burdened because at some point their pregnancy makes it impossible for them to fit into a tight-fitting uniform, and they then face the difficulty of having to tell their employer about their pregnancy sooner than they would have liked. Similarly, members of religious groups that require particular modes of attire may find it difficult or even impossible to adopt the dress codes while practicing their religion, and so may be unable to hold these jobs. So, in addition to constituting

direct discrimination against women as a group, the dress codes constitute indirect discrimination against other groups of people.

C2.P10

There are also two further restaurant practices that are worth examining, which relate to restaurant dress codes. These practices constitute an even more subtle form of indirect discrimination than those I have already examined. First, many restaurants do not stock any uniforms of a kind that might be easily put on and worn by people with muscular disabilities (disabilities that make it difficult for them to put on or wear tight clothing, for instance, or to do up all of the buttons on button-up shirts). And this means that such people, when hired, are placed in the difficult position of being unable to put on their uniform without assistance, or of having to step forward and ask for a different uniform and so present themselves as “abnormal.”

Second, even restaurants that have officially adopted gender-neutral, disability-friendly dress codes often hand new employees a training manual that has pictures only of young, svelte, conventionally attractive women dressed in the most feminine uniform options. Insofar as such manuals reinforce the image of people as useful and employable only insofar as their physical

appearance is “normal,” and insofar as they suggest that it is part of a woman’s role as a waitress to use her body to gratify men, they disproportionately burden women, pregnant women, people with disabilities, and trans people.

C2.P11

Let us now consider what expressivist theories of discrimination would say about such practices, looking in particular at Deborah Hellman’s theory of discrimination as wrongful because it demeans.

C2.S3

## 2.3 Hellman’s Expressivist View:

### Subordinating by Demeaning

C2.P12

Hellman has argued that discrimination is wrong when and because it puts someone down, treating them as though they are “not fully human” or “not as worthy as others.”<sup>9</sup> She uses the term “demean” to refer to the kind of subordination that she has in mind. One might think that to demean someone is simply to act in a way that sends the social message that another person is less worthy of respect. And this is certainly how traditional

---

<sup>9</sup> Hellman, *When Is Discrimination Wrong?*, *supra* note 6 at p. 35.



expressivists have understood it. But Hellman uses “demean” in a special way, to refer to a subgroup of those acts that send the message that someone is less worthy of respect than others. For she notes, quite rightly, that not all acts that send such messages actually do have the capacity to affect the social status of others. For instance, she suggests, when an employee spits at her boss or a child taunts her classmate, their acts send an inferiorizing social message but do not normally have the capacity to lower the status of the person insulted.<sup>10</sup> In Hellman’s view, in order for a discriminatory act actually to constitute objectionable subordination, two things must be true of it. First, it must send an inferiorizing message about someone. Second, it must have the power to put that person down.<sup>11</sup> Whether it has this power depends in large part, she suggests, on the discriminator’s status relative to the discriminatee: as she says, “in most instances, demeaning also requires that the speaker hold a higher status than

---

<sup>10</sup> Hellman, *When Is Discrimination Wrong?*, *ibid.* at pp. 35–36.

<sup>11</sup> Hellman, *When Is Discrimination Wrong?*, *ibid.* at p. 38.

the person demeaned.”<sup>12</sup> She does not state exactly what kind of “status” she has in mind here. But in her analysis of her examples, she speaks mostly of status that is given to us by our roles in particular social institutions—for instance, the higher status of an employer relative to an employee, the higher status of a parent relative to a child. So the employee most likely will not put her boss down in Hellman’s example because she lacks the power to do so, given her lower status in that company; the child cannot put her classmate down, given that they have an equal status in the classroom, as classmates.

C2.P13

It seems right that many acts of discrimination that subordinate do so in part because of the social messages they send—messages about the inferiority of some groups or the superiority of others. And it also seems right that, in order to subordinate someone, one must be capable of affecting their status in the world, rather than simply expressing something about them. But there are at least two respects in which the expressivist account seems to me incomplete.

---

<sup>12</sup> Hellman, *When Is Discrimination Wrong?*, *ibid.* at p. 36.

First, I do not think Hellman places enough emphasis on the importance of looking at the social groups to which people belong and the relationships between these groups, when assessing whether someone has the capacity to put another person down. In her examples, she focuses a great deal on the institutional role that the discriminator has, relative to the discriminatee, and on the status and power that this institutional role gives the discriminator over the discriminatee, such as the teacher's power over the student, and the employer's power over the employee. But whether one person's expression of disrespect for another has the power to put that other person down seems often to depend, more broadly, on the power and authority that the *social groups* to which they belong have, relative to each other.<sup>13</sup> Consider again

---

<sup>13</sup> Hellman's focus on particular institutional roles and the differences in status that they involve may be a deliberate explanatory choice: differences in two people's institutional roles are often easy to identify, and so her reasoning may be that if we can first grasp the idea of lowering someone's status in an institutional context, we will then be better able to understand what it is to lower someone's status in society at large. But I think it is important to emphasize that, even within a particular institution, the status that is had by a given individual often depends not just on the powers that this institution assigns to them, but also on the social groups to which they belong and the authority that these groups are recognized as having over others in society at large.

Hellman's examples of spitting at one's boss or insulting a classmate. These acts could sometimes put the person down. If I am a white employee and you are my African American boss and I spit at you in full view of all of my other fellow white employees, I can indeed lower your social status. I can't, of course, affect your employment status—that is, your status as my boss. But I can certainly lower your social status by spitting at you, even if I am just your employee. I can do that precisely because, in our version of the example, I am white and you are black, and whites and blacks in our society have a certain history, relative to each other, which my act invokes. Similarly, if the child insulted by a classmate in Hellman's example is indigenous and he is called a "drunk Indian" by a white child, the act can lower his status in the classroom or perpetuate his already low status. That is because the group to which the white child belongs has historically possessed, and continues to possess, a great deal of power and authority over the ways in which indigenous children are portrayed in our society. So, in order to assess whether someone's act puts down another, we need to look, not just, and not primarily, at the institutional roles of these two people relative

to each other and the powers that these roles confer on each of them, but also to the social groups to which each belongs and the relationship of these groups to each other.

C2.P15

I think Hellman is aware of the relevance of the power relations between different social groups; but I do not think she places nearly enough emphasis on it. It is not a central feature of her discussions. She does qualify her examples by noting that her analyses would be different if there were “unequal status or hierarchy” in the classroom, or if there were “unusual circumstances” at work.<sup>14</sup> But by leaving these as brief qualifications applicable to exceptional situations, she suggests that those situations in which power relations between groups are relevant are unusual or special. As I hope the rest of this chapter will show, however, such power dynamics characterize most of the social situations in which we find ourselves. They are not unusual or special. On the contrary, they are what define a person’s “status,” in the sense relevant to subordination. They should be considered in all cases, not just in some.

---

<sup>14</sup> Hellman, *When Is Discrimination Wrong?*, *ibid.* at pp. 35–36.

C2.P16

But there is a second problem I see in Hellman's view. It is a more serious problem for the view, since it concerns, not a query about emphasis, but a problem with the expressivist core of the view. As I shall now argue, it is unclear that it is only the social message sent by a particular act or policy that determines whether it unjustly subordinates. To see this, let us look at some of the common policies concerning restaurant dress codes that I mentioned in Section 2.

C2.P17

First, consider the explicitly gendered dress codes adopted by many bars and restaurants, which require female employees to dress in sexualized and revealing ways, while permitting men to wear more comfortable, non-revealing clothing. It is true that such dress codes send a message about women needing to appear in a sexualized way so as to please male clients, and that, given the overall context, this message really does have the effect of confirming women's already inferior status. But such dress codes also seem to do many other things to women—and importantly, they do not seem to do these things because of the social message they send. Requiring women to dress in tight clothing and heels hampers their ability to move, thereby giving them less power in

the workplace than their male colleagues and male clients. So such dress codes lessen women's power, quite independently of the social message they send about women. Such dress codes also give women less authority over their own self-presentation than men have—and again, they do this not because they send a message about women's inferiority, but because they deny women a choice that they give to their male colleagues. These dress codes also present a certain conception of how women ought to dress as preferable to others conceptions, thereby elevating the women who dress this way above those women who do not, and so creating a hierarchy *within* the class of women—a hierarchy that in turn helps to perpetuate many women's subservience to many men's attitudes about them. And these dress codes render invisible those women who have figures that do not conform to this image. Although we do not yet, at this stage in the paper, have a detailed conception of subordination to help confirm the relevance of these facts to women's subordination, it seems implausible to suppose that all of these facts are irrelevant to unfair subordination. But the expressivist account gives us no way of recognizing the relevance of such facts, except insofar as they can be reinterpreted as aspects

of, or effects of, the social message of inferiority sent by the discriminatory policy.

C2.P18

Now consider several ways in which such gendered dress codes also seem to discriminate indirectly, both against women and against other groups such as trans people, and members of certain religious minorities. Trans employees may have to pigeonhole themselves into the uniform for one gender or the other, even if this does not express their current gender identity. Pregnant women are often disproportionately burdened because at some point their pregnancy makes it impossible for them to fit into a tight-fitting uniform, and they then face the difficulty of having to tell their employer sooner than they would have liked. Similarly, members of religious groups that require particular modes of attire may find it difficult or even impossible to adopt the dress codes while practicing their religion, and so might be unable to work in this industry. But it is unclear that these dress codes send a message about the inferiority or lack of worth of any of these groups: they seem simply to overlook their situations. So it is unclear that an expressivist could recognize these forms of discrimination as wrongful subordination,



Hellman would likely reply that in her view, direct and indirect discrimination are two different kinds of wrongs. Direct discrimination demeans, and so wrongfully subordinates. By contrast, indirect discrimination does not usually demean but is wrong for some other reason—for instance, as Hellman has recently suggested, because it compounds past injustices.<sup>15</sup> Hellman might argue that compounding a past injustice is a way of contributing to subordination; it is just different from demeaning someone. However, if both of these forms of discrimination seem to confirm or perpetuate the lower status of certain social groups, then, rather than drawing a line between those that demean and those that do not and asserting that only those that demean count as wrongful discrimination, perhaps we should see whether there is a single account of subordination that

---

<sup>15</sup> <<<REFO:BKCH>>> Deborah Hellman, “Indirect Discrimination and the Duty to Avoid Compounding Injustice,” in Hugh Collins and Tarunabh Khaitan (eds.), *Foundations of Indirect Discrimination Law* (Oxford: Hart Publishing, 2018), Ch. 5 at pp. 105–121 <<<REFC>>>.

can allow us to explain, in rich and detailed ways, how different forms of discrimination work to create or confirm a person's lower status, and can all, for this same reason, be wrongful. And, as I argued earlier, we should try to do so in a way that clearly acknowledges the role of the social groups to which that person and the discriminator belong. In the next section, I shall try to develop such an account of subordination.<sup>16</sup>

---

<sup>16</sup> My account owes much to the work of

<<<REFO:IART>>> Niko Kolodny in "Rule Over None II: Social Equality and the Justification of Democracy," *Philosophy & Public Affairs* 42(4) (2014), pp. 287–336<<<REFC>>>. I also draw on the insights of philosophers who write on subordination within certain specific contexts. For instance, Rae Langton and Catharine MacKinnon have developed theories of subordination within discussions of pornography: <<<REFO:BK>>> Rae Langton, *Sexual Solipsism* (Oxford: Oxford University Press, 2009);<<<REFC>>> and <<<REFO:BK>>> Catharine MacKinnon, *Only Words* (Cambridge, MA: Harvard University Press, 1993)<<<REFC>>>. And relational egalitarians such as

## 2.4 Toward an Account of Social Subordination

What we need is an account of subordination that considers the broader relationship between the social group (or groups) to which

---

Elizabeth Anderson and Samuel Scheffler have given analyses of the kinds of non-subordinating relationships that are required in order for us to live in a true society of equals—that is, a society in which everyone stands, to every other person, in a relationship of equality. See <<<REFO:IART>>>Elizabeth Anderson, “What is the Point of Equality?,” *Ethics* 109(2) (1999), pp. 287–337; <<<REFC>>> and <<<REFO:IART>>>“The Fundamental Disagreement between Luck Egalitarians and Relational Egalitarians,” *Canadian Journal of Philosophy: Supplementary Volume on Justice and Equality* 36 (2010), pp. 1–23<<<REFC>>>; and <<<REFO:BKCH>>>Samuel Scheffler, “The Practice of Equality,” in Carina Fourie, Fabian Schuppert, and Ivo Wallimann-Helmer (eds.), *Social Equality: On What It Means to Be Equals* (Oxford: Oxford University Press, 2015), pp. 21–44<<<REFC>>>.

the discriminatees belong and the social group to which the discriminator belongs. We need an account of what I shall call *social subordination*—that is, the state of affairs in which one social group has a standing in society as a whole that is lower than that of another social group.

C2.P21

As a preliminary to developing such an account, I should clarify what I mean by a “social group.” As I am using the term, a “social group” is an entity that has an existence apart from any particular member: one can speak about the group without reference to those who happen to be its current members. A social group either shares or is presumed to share a certain trait. But importantly, it is not just any group of people who happen to share a certain trait, such as “people with bushy eyebrows,” who count as a social group in the sense that I am concerned with. Rather, the kinds of social groups that suffer from unfair subordination usually have, or are presumed by others to possess, a particular type of trait, a trait that is *socially salient*, in the sense that others in society take that trait to have implications for the character and behavior of members of the group, and for the social roles that they are capable of occupying. And it is often by this socially

salient trait, or by a combination of this trait and other traits associated with a subgroup of those who possess this trait, that we identify members of that social group. So, for instance, “wearers of blue, crimson, or scarlet velvet” does not, in our current society, mark out a group of people through their shared possession of any socially salient trait. But in Tudor England, where Sumptuary Laws regulated the materials and colors that people from each social stratum could wear, it marked out the group of noblemen who stood at or above the level of a Knight of the Garter. This was an important social marker in those times; and it was a moral marker of sorts too, marking out people believed to be of superior moral fiber. So this group of people would, at that time and in that place, have counted as a “social group” in my sense.

C2.P22

On this understanding of a social group, all of the groups that are marked out by the sorts of traits that our laws commonly treat as prohibited grounds of discrimination constitute “social groups”—for instance, women, Jews, Haidas, and people with hearing impairments. But notice both that we need *not* assume that members of a social group, so defined, consider their membership in that group to be an important part of their identity. Nor should

we assume that social groups are homogenous, either in the aspirations of their members, or in the needs or abilities of their members. And it may be that one subgroup within a particular social group is affected quite differently from another by a given policy. For instance, to return to our gendered dress code example, these codes impose one set of burdens on non-religious women, and an additional set of burdens on those women whose religions require them to dress in ways incompatible with the dress codes. So if we are to understand how such codes subordinate women, we may need to look at a variety of different subgroups within this broader social group.

C2.P23

We can now go on to consider what it is for a social group, so understood, to be subordinated to others. What does this involve? First, in most situations of social subordination, members of the subordinated social group have less power than members of other groups, across a variety of social contexts. Not just less political power, but less social power as well, and not just less power in the sense of a diminished capacity to do certain things on their own, but also less power in the sense of a diminished capacity to compel others to do what they want them to do. There

are, of course, difficult questions here about how we are to conceive of power—whether it is relational or can be conceptualized as a kind of resource that could be distributed; whether it makes sense to analyze how much power particular individuals have or whether it must be analyzed structurally and systemically. But I do not think that my argument requires me to take a stance on these questions, so I shall leave them open.

C2.P24

Subordinated social groups also generally have less de facto authority than others, across a variety of social contexts. Having de facto authority over others is different from having power over them.<sup>17</sup> In order to get you into the place that I want you to be in, it is enough for me to have the power to move you there: all I need is a large and strong enough army of helpers and a means of confining you. But I can only get you to do what I want of your own volition if I have de facto authority over you. So de

---

<sup>17</sup> Kolodny emphasizes the importance of power and authority in understanding subordination, in “Rule Over None II: Social Equality and the Justification of Democracy,” *ibid.*

facto authority includes the power to get you, of your own volition, to obey me.

C2.P25

It is common within political philosophy to think of de facto authority largely in terms of the power to secure others' obedience. But within the context of social subordination, I think it is important for us to think of de facto authority as involving a broader set of powers, including the power *to be listened to*, and to be taken seriously when one brings a complaint against another. One fascinating effect of the many recent successful complaints of sexual harassment against prominent film producers such as Harvey Weinstein and prominent actors such as Bill Cosby is that it has made us collectively aware of a kind of authority that women have lacked. For before the recent successful complaints of harassment, some actresses did try, unsuccessfully, to bring complaints against these same people. And they were not believed. As women, they lacked the authority to speak and to be assumed to be telling the truth, and were too often assumed to have been overreacting in an emotional way or misinterpreting the meaning of men's actions. In fact, women in the film and theater industries are often in something uncomfortably analogous to the



position of women in cultures in which the testimony of two to three women is legally required in order to equal the weight of the testimony of one man. Their voices simply do not carry the same credibility as a man's. So it is important not to have too narrow a conception of what *de facto* authority involves, when we think of the kind of authority that subordinated social groups lack. They do not only lack the power to have other people *obey them* when they issue orders. Before one is even in a position to get other people to obey, one needs to have authority in the sense that other people are *ready to listen*, ready to assume that you are telling the truth rather than overreacting emotionally or misreading other people's actions. And that prior authority is the kind of authority that members of subordinated groups quite often lack.

C2.P26

Niko Kolodny has helpfully described a further feature of social subordination using the term "consideration."<sup>18</sup> In situations of social subordination, Kolodny argues, the group that possesses more power and *de facto* authority may be ascribed certain

---

<sup>18</sup> Kolodny, "Rule Over None II: Social Equality and the Justification of Democracy," *ibid.* at pp. 296–297.

attributes or personal traits that, within that particular society, attract positive responses of deference and respect. Importantly, these responses are directed, not just at these attributes or traits, but at the people who possess them: people with certain features are more likely to be shown greater deference and respect, and their interests are likely to be given greater priority, even in situations where they ought to be weighed equally with those of others. Moreover, the traits themselves are not just regarded as pleasing or as important for certain limited purposes (as, for instance, athleticism is when you are competing in a sports competition, or intellectual acuity is when you are writing the GRE), but as traits that mark people out as belonging to a higher or better class of people, *per se*. So when one shows deference to someone on the basis of such a trait, or excludes another person because she lacks it, one is contributing to a pattern of responses that mark some people out as higher, or lower, than others.

C2.P27

It seems right, and deeply insightful, that in many cases of subordination, certain traits attract greater deference of just this sort. Though I think it's important to add that members of subordinated groups aren't just perceived to *lack* such traits.

Often, the subordinated group is defined in terms of a corresponding trait that comes to be regarded as worthy of *censure*, because it has been identified with patterns of action or dispositions of behavior that are perceived as worthless, or worse, as vices. For instance, Muslims living in the United States at the moment don't just suffer from a lack of deference or consideration, based on perceptions of their religion. Rather, this trait—their religion—is in certain social and political circles regarded as a sign that they are likely either to be terrorists or to be connected with terrorists or, at the very least, to be unpredictable religious extremists. So the trait “being Muslim” functions in certain social circles to mark people out as deserving of condemnation and ostracism. When we think of subordination, then, we should think not just of the absence of consideration toward the disempowered group, but of the use of corresponding traits to condemn, publicly humiliate, or ostracize this group. I shall use the term “censure” to refer to these negative public attitudes.

Kolodny does not investigate how some of the traits ascribed to certain social groups come to attract greater

consideration than the corresponding traits of other groups, because he does not need to investigate this for the purposes of his own argument. But if we are trying to develop a picture of social subordination that will help us understand how discrimination subordinates, I think it matters very much that we examine how certain traits come to attract greater consideration. For of course, certain races and religions don't randomly or arbitrarily attract greater consideration, while the corresponding traits of others happen to attract censure. Rather, particular traits come to be associated with dispositions to behave in certain ways, with certain talents or lack of talents, and with certain social roles. And it is through this association that the traits come to acquire greater consideration or greater censure. So, for instance, as I suggested before, in certain social and political circles in the United States, the Muslim religion has come to be associated with religious extremism and with a propensity to engage in terrorist activity. These associations of certain traits with particular dispositions, patterns of behavior, and roles are what we commonly call "stereotypes."

Stereotypes, as I understand them here, are generalizations about particular social groups that ascribe most of their members certain desires, dispositions of behavior, or obligations, simply because they possess whatever trait defines that group, as a group: Muslims are thought more likely to be religious extremists, simply by virtue of being Muslim; women are held to be under an obligation to beautify themselves, because that's what women are for.<sup>19</sup> Some of these generalizations may be false; others may be

---

<sup>19</sup> I have learned much about stereotypes from Rebecca Cook and Simone Cusack's pioneering discussions of stereotypes and stereotyping in <<<REFO:BK>>>*Gender Stereotyping: Transnational Legal Perspectives* (Philadelphia: University of Pennsylvania Press, 2010)<<<REFC>>>. For my own analysis of the role of stereotypes in cases of discrimination, see <<<REFO:BKCH>>>Sophia Moreau, "Equality Rights and Stereotypes," in David Dyzenhaus and Malcolm Thorburn (eds.), *Philosophical Foundations of Constitutional Law* (Oxford: Oxford University Press, 2016), pp. 283–304<<<REFC>>>.

true, and yet may still contribute to subordination.<sup>20</sup> What is important about them, for the purposes of subordination, is that they serve to rationalize the differences in the power and de facto authority given to the groups marked out by these traits, and the differences in the consideration and censure they attract. By “rationalize” I do not mean that they actually justify them, but rather that they constitute the kind of proposed justification that is plausible enough that many people in fact accept them. And in some cases, stereotypes seem to work by making us think that *there is no need to justify* certain ways of treating others: stereotypes make the connection between a certain trait and a certain social role or a certain kind of treatment seem so obvious

---

<sup>20</sup> Must stereotypes be false, to contribute to subordination? I think not. Some of the gender stereotypes that contribute to women’s subordination, for instance, may be statistically true; but they are presented or used as though they are true as a matter of biology, when in fact they reflect the ways in which women in certain communities are socialized and they limit the opportunities open to women and the careers that they are able easily to enter and to conceive of as possible for themselves. Similarly, “statistical discrimination”—that is, differential treatment of different groups that results from using group averages to determine which policies are rational—is often based on statistically sound generalizations. What is problematic in these cases isn’t the truth value of the generalizations. It’s the fact that using the generalizations in these ways perpetuates differences in the power and authority enjoyed by these different groups, results in undue deference being given to some and undue censure to others, and renders certain groups invisible in certain contexts.

that we feel we do not need to give any reasons for placing someone with that trait in that social role or for treating her in a certain way. So, whether by rationalizing certain acts or by apparently obviating the need to justify them in the first place, stereotypes play an important role in the persistence of disparities of consideration and censure, and in the perpetuation of unequal power and de facto authority.

C2.P30

If we were just to stop here—thinking of subordination in terms of disparities in the power and de facto authority held by certain social groups, and in the degree of consideration or censure they attract, based on certain traits—we would omit an important fact about social subordination. Differences in power and de facto authority are not only held in place by habits of conscious or explicit consideration or censure or by the stereotypes that support such consideration and censure. Perhaps even more importantly—because more silently, and more insidiously—they are kept in place by apparently neutral policies, practices, and physical structures that privilege the interests of the dominant group, while overlooking those of the subordinate group. Particular such structures have been examined by legal scholars working on

indirect discrimination, by feminists such as Rae Langton and Catharine MacKinnon working on pornography, and by critical race theorists and disability theorists trying to expose the ways in which apparently neutral policies and political concepts work to perpetuate the privileged status of certain groups and the disadvantaged status of others.<sup>22</sup> But no one has, to my knowledge, developed a general philosophical theory of

---

<sup>22</sup> See, for instance, <<<REFO:IART>>> Kimberlé Crenshaw, “Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law,” *Harvard Law Review* 101(7) (1988), pp. 1331–1387 <<<REFC>>>. See also Langton, *Sexual Solipsism*, *supra* note 15; MacKinnon, *Only Words*, *supra* note 15; <<<REFO:BK>>> Catharine MacKinnon, *Towards a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1991) <<<REFC>>>; and <<<REFO:BKCH>>> Catharine MacKinnon, “Difference and Dominance: On Sex Discrimination,” in Ann Cudd and Robin Andreasen (eds.), *Feminist Theory: A Philosophical Anthology* (Oxford: Blackwell, 2005), pp. 392–402 <<<REFC>>>.



subordination across these different contexts that gives a place to these structures; and there is, quite strikingly, no general scholarly term for them. I shall call them “structural accommodations.” This term is intended to highlight two important facts about them. First, unlike consideration and censure, they are not attitudes or dispositions of behavior of the discriminator or the public at large: they are real *structures* in our social and physical environment. In some cases, as we shall see, they are literally physical structures. In other cases, they are structures in the sense that they are policies and practices that structure our workplaces, our homes, and our shared social environment. And second, they work by tacitly *accommodating* the needs or interests of one group, and overlooking those of others—with the result that the needs of the dominant group come to seem normal and natural, whereas the different needs of the subordinate group come to seem exceptional and even odd.

C2.P31

Consider first a very literal example of structural accommodation: certain standard features of the buildings in which we live and work. Most houses have a short flight of steps leading up to the front door, and most storefronts facing onto

commercial streets standardly have a single step leading up to the door. This easily accommodates those of us arriving on foot, but poses obvious difficulties for people in wheelchairs or for those with certain muscular difficulties. Light switches are standardly placed four feet above the ground, and bathroom mirrors at a similar height—again, perfectly within reach of many adults, but out of reach, and out of sight, for people in wheelchairs. Tobin Siebers, a disability rights theorist, has written quite movingly about the ways in which such structures not only exclude people with certain disabilities from these spaces, but implicitly send a message about the normal human body who is expected to reside there and the normal guest or client who is welcome there.<sup>23</sup> Our

---

<sup>23</sup> <<<REFO:BKCH>>> Tobin Siebers, “Disability Studies and the Future of Identity Politics,” in Linda Alcoff, Michael Hames-Garcia, Satya Mohanty, and Paula Moya (eds.), *Identity Politics Reconsidered* (London: Palgrave Macmillan, 2006), pp. 10–30 <<<REFC>>>. See also <<<REFO:BK>>> Tobin Siebers, *Disability Theory* (Ann Arbor: University of Michigan Press, 2008) <<<REFC>>>.

houses and our stores presuppose a certain kind of human body and tacitly invite inside those who share such a body, while not issuing invitations to those who do not share it. This ideal or normal body remains invisible until someone with a nonstandard body appears. When that happens, we might add, it can look as though it is the person with the disability who requires some “special” accommodation. But this is only because houses and storefronts have already been built in such a way as to accommodate the needs of the rest of us.

C2.P32

Siebers’s point is not that the construction of houses and stores is an act of deliberate exclusion or deliberate deference to certain body types and censure of others. He recognizes, quite rightly, that houses and storefronts are constructed this way because this answers to the needs of the majority of the adult population. For this reason, I don’t think this particular structural accommodation can be accurately re-described as just another form of “consideration” in Kolodny’s sense. It is not an instance of conscious deference or respect for people without disabilities. It reflects a quite neutral, pragmatic effort to build in a way that is efficient and in demand. But it contributes significantly to the

subordination of those with disabilities—by making it physically impossible for them to enter into certain buildings, by thereby making it more difficult for them to enter into certain social and commercial relationships, and by making their bodies seem invisible and unnatural.<sup>24</sup>

---

<sup>24</sup> One might object here that the exclusion of people with disabilities from traditional buildings is not a true case of *discrimination*, so this is not a helpful example. In American law, the “failure to accommodate” certain disabilities or religions is treated as something distinct from wrongful discrimination—both are prohibited, but there are separate bodies of law that govern them. This distinction between failures to accommodate and wrongful discrimination has, however, been criticized. Legal scholars such as Samuel Bagenstos, Christine Jolls, and Sharon Rabin-Margalioth have argued that the obligations imposed on us by accommodation requirements are no different in kind or degree of onerousness from those imposed on us by anti-discrimination law. See <<<REFO:IART>>>Samuel Bagenstos, “Rational Discrimination, Accommodation and the Politics of (Disability)

Consider next the example of public washrooms that are segregated by gender, with washrooms for men bearing a large sign on the door that represents a man in trousers, and washrooms for women bearing a large sign on the door that represents a woman in a skirt. We are now aware of the ways in which such signs and practices marginalize transgendered persons and place them at greater risk of being taunted or bullied. But at the time when many such washrooms were built, most of the people commissioning them thought that it was normal and natural to segregate people in this way. This was not intended as an expression of respect or deference for people whose body fits their

---

Civil Rights,” *Virginia Law Review* 89 (2003), pp. 825–923<<<REFC>>>; <<<REFO:IART>>>Christine Jolls, “Antidiscrimination and Accommodation,” *Harvard Law Review* 115 (2001), pp. 642–699<<<REFC>>>; and <<<REFO:IART>>>Sharon Rabin-Margalioth, “Anti-Discrimination, Accommodation and Universal Mandates—Aren’t They All The Same?,” *Berkeley Journal of Employment and Labor Law* 24 (2003), pp. 111–152<<<REFC>>>.

gender identity, or of censure for those who are not in this position; yet it has had the effect of normalizing the divide, and of rendering invisible those who do not fit on one side of it or the other. This is another example of what I am calling a “structural accommodation”—in this case, a feature of our built environment that accommodates the needs of the majority and constitutes them as normal, while overlooking the needs of a less privileged social group.

C2.P34

I have given two quite literal and physical examples of structural accommodations. But “structural accommodations” in my sense need not actually be physical structures, and they need not function to exclude the subordinated group in quite such a literal way. Think of the many policies in your own academic faculty or department that accommodate the needs of the average male junior faculty member, while posing some obstacles for young female junior faculty members. A tenure clock that runs out four or five years after one’s first appointment is perhaps a good idea for someone whose wife can bear their children; but if you have to bear them yourself, and you have to do so within these particular five years because you are getting older, it is more

difficult. In some departments, faculty meetings run from 4–6 p.m., which means that a woman who has children and who is responsible for picking them up from daycare has no choice but to exit the meeting early, in full view of her colleagues, who know exactly where she is going and who sometimes view it as a sign that she isn't able to be fully attentive to her work. When we invite guest speakers to give a talk, we often take them for drinks. Ronald Dworkin would take them for raw oysters. There is a tacit expectation that each scholar will have a drink or consume a few raw oysters, partly out of collegiality and partly to demonstrate our sophistication. This poses a dilemma for those women who are, or are trying to become, pregnant. They may not want to partake, and may not want to disclose why; yet if they don't partake and don't offer some explanation, they appear at best less than collegial, and at worst provincial.

C2.P35

None of these practices is designed to disadvantage women. They do not seem well described as expressions of greater consideration or deference toward men or censure of women. They just happen to accommodate the needs of men who either have no children or have a partner who can bear and take care of

them, because this particular social group formed the majority of faculty members at the time that these practices were developed. So they are, in my sense, “structural accommodations”—features of our environment that tacitly accommodate the needs of certain groups, while also normalizing them and rendering the more marginalized group invisible or seemingly exceptional. I should also add that, as the daycare example shows, the needs that are accommodated do not need to be natural or biological needs: they can be needs that arise because of the social burdens that are placed on one group or another, the way women tend to bear more of the burdens of taking children to and from child care.

C2.P36

I hope I have given enough examples to explain why, in my view, states of social subordination need to be thought of not just as involving differences in power and de facto authority and lesser consideration or censure, across a variety of different social contexts, but also as involving a variety of structural accommodations that both deny certain opportunities and resources to the subordinated group and serve to render their different needs invisible or abnormal. Because they serve this normalizing function, structural accommodations seem to me to



stand in a special, supportive relationship to the other features of subordination. Because they help to constitute the needs of the superior group as normal and natural, they serve indirectly to rationalize the differences in power and de facto authority between these groups and those that are subordinate to them, and also indirectly to provide further support for the various expressions of deference and consideration that are given to these groups in other contexts. If, as the gender segregation and labeling of public toilets implies, it is normal and natural to be born one gender or the other and to have the gender identity that corresponds to the body you were born with, then those who don't have this are unnatural—and perhaps they don't deserve the kind of consideration given to the rest of us. If it is normal and natural for a smart, high-powered academic to produce a book within their first few years, then it looks as though women who can't manage this aren't capable enough to hold power and don't deserve as much deference.

C2.P37

There is another reason why structural accommodations help to rationalize differences in power, de facto authority, and consideration or censure. This is that they, just like the patterns of

consideration and censure we examined earlier, are bound up with stereotypes about the subordinated group. One such stereotype is that when a woman has young children, she becomes unable to focus on anything except her children; whereas when a man has young children, he is able properly to compartmentalize them and remain a serious scholar. Because of this stereotype, the structural accommodation of holding meetings from 4–6 p.m. has particularly serious effects on women—because it colors our interpretation of what members of the subordinated group are trying to do, when they try to work around this particular accommodation. When a woman walks out of a departmental meeting at 5:50 p.m., she is not just a scholar leaving the meeting early, as her male colleague might be seen to do. She is much more likely to be seen as a mother abandoning her work for her children; and this in turn is often taken as evidence that she must not really have been fully focused on her work, even during the time when she was at the meeting. So the structural accommodation and the stereotype work together to paint her action in a particular light, to reinforce the stereotype, and to

rationalize the differences in power and de facto authority that put the subordinated group in this position to begin with.

C2.P38

I have suggested that structural accommodations are bound up with stereotypes; with differences in power and de facto authority; and with practices of censuring certain groups, or giving them less consideration, on the basis of certain traits. But it is worth noting that it is quite possible for a structural accommodation to be innocuous, if it is unconnected with these other features of subordination. So there is nothing inherently objectionable in structural accommodations per se. They become implicated in unjust subordination only because, and only to the extent that, they are bound up with stereotypes, differences in power and de facto authority, and practices of assigning censure and lesser consideration to certain social groups.

C2.P39

To see this, consider one structural accommodation: the fact that most stores are open during daylight hours and close at night, rather than being open all night and closed during the day. This is convenient for the majority of us, who are awake during the day and who sleep for some part of the night. But it adds hardship to the lives of those employees who work night shifts: if

they need to make purchases at stores other than all-night convenience stores, or if they wish to shop together with friends, they have to disrupt their normal sleep time, which is during the day. And this disruption likely affects their bodies more than it would ours, given that their natural sleep rhythms are already disrupted. So the disadvantage they suffer as a result of this policy is more than trivial. It seems also worth noting that this is a group that is already disadvantaged, since night shift work increases one's risk of suffering from a host of health problems, such as high blood pressure and metabolic syndrome. So we have here a structural accommodation that imposes more than a trivial disadvantage on an already disadvantaged group. Nevertheless, in certain societies, this structural accommodation would not seem problematic. Suppose that the only people who worked night shifts in a particular society were people in relatively prestigious professions: emergency physicians and nurses at hospitals, lawyers who burned the candle at both ends, and judges who were on call all night. The fact that most stores were only open during the day would not then perpetuate practices of censure toward, or lesser deference toward, those who held these occupations; nor

would it support stereotypes about them being less able to handle regular work or being less well educated, nor would it perpetuate differences in social or political power or de facto authority between this group and day workers. In fact, it might even have positive effects on how others viewed the members of this group by adding to the mystique and aura surrounding them: these professionals somehow still manage to get their groceries purchased even though most stores aren't open while they are at work! By contrast, in a society such as our own, in which many night jobs involve menial labor, require little education, and have much less prestige attached to them (jobs such as janitorial work, cleaning, garbage collecting, security enforcement) and tend overwhelmingly to be held by immigrants who are already mistrusted and misunderstood, the shared practice of only opening stores during daylight hours starts to look more problematic. In order to be implicated in social subordination, then, structural accommodations need to be supported by, and in turn perpetuate, stereotypes, habits of censure and consideration, and differences in power and de facto authority between different social groups.

C2.P40

Because structural accommodations, like the differences in power and authority possessed by different social groups, can be innocuous or justified, there is an important difference between these features of subordination and the expressions of consideration or censure. Consideration and censure involve taking the praise or criticism that is due to a certain *trait* and transferring it to the *person* across a variety of other contexts. So they are always unjustified. Structural accommodations, by contrast, and differences in power and de facto authority, and even stereotypes, may sometimes be innocuous. They become problematic only when they work together to consign certain social groups to a lesser status in society.

C2.P41

Thus far, I have laid out a number of common and morally relevant features of social subordination. I have argued that one social group is unjustly subordinated to another when:

C2.P42

- (i) The members of that group have, across a number of social contexts, less relative social and political power and less relative de facto authority than the other group; and

## Faces of Inequality

- C2.P43                    (ii)      The members of that group have, or are ascribed, traits that attract less consideration or greater censure across a number of different social contexts than the corresponding traits of the empowered group; and
- C2.P44                    (iii)     These traits are the subject of stereotypes, which help to rationalize the differences in power and de facto authority, the habits of consideration and censure, and the structural accommodations; and
- C2.P45                    (iv)     There are structural accommodations in place in society that tacitly accommodate the needs of a superior group while overlooking the needs of at least some members of the subordinate group; and these accommodations work together with stereotypes to rationalize the differences in power and de facto authority and the differences in consideration or censure.

C2.P46                    I offer these four conditions as a set of common and morally salient features of situations involving the unjust subordination of one social group by another, features that, as we

will see in the next section, are relevant in understanding when and why discrimination subordinates. All four conditions will usually be satisfied when one social group is subordinated for some substantial period of time.<sup>25</sup> And, as I shall go on to argue in

---

<sup>25</sup> It seems possible that, in certain exceptional cases where a social group is in the early stages of becoming unfairly subordinated, only some of these conditions will be satisfied, but not all of them. For instance, it may be that a certain structural accommodation, initially innocuous, comes gradually to support stereotypes about a certain group that rationalize excluding them from certain prestigious professions, and that over time these stereotypes, combined with the persistence of the structural accommodation, lead in turn to expressions of censure of this group, along with differences in power and authority between this group and those permitted to enter these prestigious professions. Or it might be the case that expressions of censure, without any accompanying structural accommodations, lead certain groups to become regarded as so inferior that they are effectively invisible in certain social circles or certain areas of life; and that this in turn



the next section, these four conditions give us a good basis for

---

nurtures stereotypes about them, and leads to structural accommodations that privilege the needs of others and fail to consider the needs and capacities of this group. In both of these examples, although all four conditions do come to be satisfied over time, there is an interim period in which one or two are not satisfied. During some of that time, we might simply want to say that there was no unjust subordination as yet. But we might instead conclude that there was unjust subordination of the group for some of the time, even in the absence of any censure of them, or even in the absence of structural accommodations excluding them. Such exceptional cases are not counter-examples to my four conditions: they simply show that, as on any theory, there will be certain difficult cases, where we are unsure whether there is unfair subordination or not. And importantly, since all of the widely recognized prohibited grounds—grounds such as sex, race, sexual orientation, religion, and disability—reflect longstanding relations of subordination, none of the cases involving such grounds will be of this exceptional type.

understanding how discrimination can sometimes subordinate particular individuals and groups, and why discrimination is wrongful when it does. They also help us understand the differences between the ways in which direct discrimination subordinates and the ways in which indirect discrimination subordinates.

## 2.5 How Direct and Indirect Discrimination Subordinate

Now that we have an account of what social subordination involves, we can go on to consider how direct and indirect discrimination might contribute to such subordination.

Let us look first at direct discrimination. Recall that, according to our earlier definition, a policy directly discriminates against a person,  $P$ , if the policy treats  $P$  less favorably on the basis of some trait,  $t$ , than it would treat those who lacked  $t$ . And recall that, as we noted in Chapter One, policies that amount to wrongful direct discrimination either explicitly single out people with a certain trait that is a prohibited ground of discrimination, or single them out on the basis of some trait that is very closely

connected to such a trait. In order to see how such policies can unfairly subordinate certain social groups, it helps to note an important fact about the prohibited grounds of discrimination. We hold, both as a matter of law and in our own moral thought, that not just any trait can constitute a prohibited ground of discrimination. Rather, those traits that are justifiably treated as prohibited grounds—race, gender, sexual orientation, and religion, for instance—are traits on the basis of which at least one, and often quite a number of social groups have been denied equal power and de facto authority over others; have been subjected to greater censure or lesser consideration, in the sense that they have been condemned or thought of as less worthy of respect than others; have been stereotyped; and have had their needs overlooked by certain structural accommodations that cater to the needs and circumstances of more powerful social groups. To say this is not to claim that in any particular case of direct discrimination, the use of such a trait or its proxy will necessarily perpetuate all of conditions (i) through (iv). But it is highly likely to perpetuate a number of them, given the past history of these traits and the social uses to which they have been put.

C2.P49

Consider, as an example, the Jim Crow laws briefly mentioned at the start of this chapter, which left blacks in the United States with separate and inferior schools, hospitals, prisons, washrooms, seating areas in public transit, and even water fountains. These laws used the trait “black” in order to accord blacks less power and de facto authority, and they used it in such a way as to ascribe to blacks a variety of undesirable traits, because of their alleged blackness—laziness, stupidity, incivility, uncleanliness, and so on. So they helped to perpetuate the disparities of power and de facto authority between blacks and whites, and they thereby helped to rationalize the many structural accommodations that privileged the needs of whites over blacks.

C2.P50

Our account of social subordination, then, helps us to understand that policies that are directly discriminatory against groups marked out by a prohibited ground of discrimination can play an important causal role in sustaining the four conditions of unjust subordination.

C2.P51

But there is a second way in which direct discrimination can subordinate. It can also *constitute* an expression of censure, of the kind mentioned in condition (ii), a statement that a particular

group is inferior to others across a variety of different social contexts, and can justifiably be treated as inferior. During the Jim Crow era, even water fountains were segregated. The signs above white fountains read “Drinking fountain: Whites only.” The sign above fountains for blacks read: “Drinking fountain: Colored.” These signs did not just function to tell people where to drink, nor did the water fountains just provide water. Perhaps more importantly, they marked out “Colored” as the inferior group. They did so partly because the term “only” was attached only to the sign for “Whites,” implying that no one would want to drink from the fountain for “Coloreds” if they were eligible to drink from the “White” fountain. But they also did so through their association with stereotypes such as “Colored people are unclean” and through their association with the many other separate and inferior public facilities which this group was assigned.

C2.P52

Our account of subordination, then, allows us to conceptualize two rather different ways in which direct discrimination can subordinate a certain social group. It can (a) play an important causal role in sustaining some or all of the four conditions of subordination. But in addition, it can (b) constitute

an expression of censure of the subordinated group, or an expression of lack of deference toward them, a way that marks out this group as inferior.

C2.P53

Consider, as another example, the gender-specific dress codes I discussed earlier. Recall that these codes explicitly prevent women from wearing certain allegedly “male” uniform options, and require them instead to wear tight, body-fitting, and revealing clothing. This perpetuates the stereotype that women are sexual objects without independent agency, and that part of their function, not just as waitresses but as women, is to be beautiful in the eyes of men. Such dress codes thereby mark women out as inferior. They imply that men have independent agency and need to dress as such, but that women need to dress in such a way as to please men. Unlike the segregated water fountain example, the gendered dress codes seem problematic less because they involve censure and more because they give lesser authority and lesser consideration to women. But this is still a case of one social group being branded or stigmatized as inferior to another.

C2.P54

What about cases of wrongful indirect discrimination? As I indicated in Chapter One, such practices do not specifically single

out a person or group because of some trait that amounts to a prohibited ground of discrimination; but they do disproportionately disadvantage those who have a trait that amounts to a prohibited ground of discrimination, relative to those who do not have this trait. Indirect discrimination can seem puzzling, and its moral status unclear, partly because it is less easily interpreted as the kind of expression of censure referred to in condition (ii). But my account of subordination has the resources to explain why indirect discrimination, too, can subordinate people. For my account of subordination focuses not just on expressions of censure or lesser consideration, but also on the “structural accommodations” in condition (iv) that work tacitly to disadvantage groups marked out by certain traits, and on the stereotypes that rationalize these accommodations and seem to rationalize our not looking for viable alternatives. As I shall now explain, many instances of wrongful indirect discrimination can be seen as structural accommodations—and moreover, as the kinds of structural accommodations that are problematically bound up with stereotypes, differences in power and de facto authority, and

practices of censure and lesser consideration of subordinated groups.

C2.P55

As an initial example of wrongful indirect discrimination, consider the cases involving tests for promotion within a certain occupation, such as tests for firefighters or police—tests that do not draw any explicit distinctions along racial lines, but are failed in far greater proportions by blacks and Latinos than by whites.<sup>26</sup> In some cases of this type, the differential results are due to prejudicial grading or “buddy systems” and networks of nepotism within the profession that give whites an edge. These cases look rather more like direct discrimination. So let us consider those cases in which only the tests themselves are responsible for the difference: the test questions use situations and analogies and bits of information that, in a particular community, whites are more likely to have encountered already. This is still, I take it, an example of the kind of indirect discrimination or disparate impact that many would find wrongful. My account of subordination allows us to explain why. These tests are an instance of a

---

<sup>26</sup> See, for instance, *Ricci v. DeStefano*, 557 U.S. 557 (2009).



“structural accommodation” inadvertently given to white employees. They privilege the interests and knowledge of whites over those of blacks, and even though they do so completely unintentionally and without malice, they nevertheless serve to perpetuate differences in power and de facto authority, and they work together with stereotypes about blacks (they are lazy and never study; they couldn’t be competent enough to do well on these tests anyway) to rationalize the persistence of these structural accommodations.

C2.P56

This account of subordination, then, gives us at least one plausible way of understanding how indirect discrimination causally contributes to social subordination. Policies that discriminate indirectly can constitute the kind of structural accommodation that privileges other groups over a given group, reinforces stereotypes about that group, and indirectly rationalizes habits of censure and lesser consideration of them. So indirect discrimination, like direct discrimination, can play an important role in sustaining subordination.

C2.P57

It might seem, however, as though there is no analogue in the case of indirect discrimination to the capacity of direct

discrimination to contribute to subordination in a further way, by marking out certain groups as inferior. After all, didn't we see earlier that structural accommodations, unlike expressions of censure and lack of deference, are not inherently problematic? Don't they only become problematic through their association with certain stereotypes, differences in power and de facto authority, and practices of ascribing censure and consideration? Perhaps, on this account, all that we can say about indirect discrimination is that it plays some causal role in sustaining subordination—but, unlike direct discrimination, it does not literally mark out certain groups as inferior.

C2.P58

Some scholars might be quite content to claim this. Indeed, many believe that indirect discrimination *is* significantly different from direct discrimination. Indirect discrimination is, on their view, either an injustice of a different and less serious kind, or it is not an injustice at all, but simply an unfortunate state of affairs for those who are disadvantaged.<sup>27</sup> And if you take this view, you

---

<sup>27</sup> See, for instance, Hellman, "Indirect Discrimination and the Duty to Avoid Compounding Injustice," *supra* note 15;

might think it is actually quite plausible to suggest that indirect discrimination doesn't, in fact, mark out certain groups as inferior, but only indirectly contributes to states of affairs in which one social group is socially subordinated to another.

C2.P59                But I want to resist this view. I think that indirect discrimination, too, can fail to treat people as equals by subordinating them to each other. And I think that my account of subordination gives us the resources to explain why indirect discrimination does not merely play an indirect causal role in sustaining subordination, but can actually mark out a group as inferior. It is of course true that indirect discrimination does not explicitly *classify* subordinated groups using the traits that are the

---

<<<REFO:BK>>> Benjamin Eidelson, *Discrimination and*

*Disrespect* (Oxford: Oxford University Press, 2015) at p.

39 <<<REFC>>>; <<<REFO:IART>>> John Gardner, "Liberals and Unlawful Discrimination," *Oxford Journal of Legal Studies* 9

(1989), pp. 1–22 <<<REFC>>>; and <<<REFO:IART>>> John

Gardner, "Discrimination as Injustice," *Oxford Journal of Legal Studies* 16(3) (1996), pp. 353–367 <<<REFC>>>.

basis for lesser consideration or censure of them. But I shall try to argue in what follows that the structural accommodations that are at issue in many unjust cases of indirect discrimination serve in an important way to render subordinated groups invisible, and thereby to mark them out as inferior.

C2.P60

To see this, let us turn back to my example of restaurant dress codes and the practices associated with them. As I mentioned earlier, it is a common practice for restaurants not to stock uniforms for pregnant women, and not to stock any uniforms for those who have muscular disabilities, such as difficulties doing up buttons. This is generally not done out of prejudice toward people with disabilities or pregnant women. Rather, adapted uniforms are not easily and conveniently available, and most people who apply for waitressing jobs are not pregnant; so it isn't economically efficient for restaurants to keep a stock of such uniforms on hand. But this structural accommodation works together with certain stereotypes about pregnant women and people with disabilities (stereotypes such as "pregnant women aren't able to work very efficiently or to focus on their work" and "people with disabilities are not beautiful, so who would enjoy

being served by them?”) to mark them out as inferior. We can say the same about the practice, common even in restaurants that do offer female employees a choice of more and less revealing uniforms, of filling their training manuals with pictures only of svelte women wearing feminine uniform options. The absence of pictures of people who look different and have made different choices functions to render these groups invisible, and to deny their claim to equal status in no less real and forceful a way than would a sign that read “Keep out!” In fact, in an interesting way, the absence of uniforms for those who are pregnant or disabled, and the absence of pictures of people wearing non-revealing uniforms in the manuals, mark these groups as inferior even more effectively than a sign would—and even more effectively than the signs on the water fountains do, in my earlier example of direct discrimination. For a sign at least names the subordinated group and so calls attention to their existence. By contrast, the absence of the uniforms, and the absence of pictures of pregnant women or women wearing non-revealing uniforms, quite literally serves to render them invisible as potential candidates for the job of waitress. They simply do not exist in this particular part of our

social world—and so neither do their needs. So indirect discrimination, too, can mark out a social group as inferior. It does so by working together with associated stereotypes and habits of censure or lesser consideration to render a group invisible.

C2.P61

One might at this point object that there is something paradoxical, and therefore problematic, about my claim that indirect discrimination both renders a group invisible and marks them as inferior. How could a policy really do both of these things?<sup>28</sup> In order to mark a group out as inferior, doesn't a particular policy have to call attention to them in some way, the way that direct discrimination does? Or, otherwise put, if a structural accommodation really did render a group invisible to us, wouldn't we simply stop seeing them, rather than see them *as inferior*?

C2.P62

But the paradox here is only apparent. In societies ordered by social castes, the lowest caste, such as the Dalit caste in India, is both invisible and inferior. Indeed, the full extent of their inferiority is demonstrated by their invisibility. Although others

---

<sup>28</sup> I am grateful to Cheshire Calhoun for this objection.

“see” them in the sense that they see human bodies occupying a certain space, they do not “see” them in the sense of recognizing them as full citizens, capable of participating fully in society and deserving of all of the rights that others are given in that society. Nor do we need examples as extreme as caste systems in order to see that people can be at once made invisible in a particular context and yet at the same time marked out as inferior through that very invisibility. We are just beginning to have public conversations about the ways in which many commonplace business practices still treat the average male body as the norm, and thereby render women’s bodies invisible, and, in the process, devalue their work. For instance, NASA had to cancel a planned all-female spacewalk early in 2019 because it realized that it did not have any spacesuits in a size small and had only two in a size medium: it had stopped ordering smaller suits in the 1990s in order to cut costs, because most men wouldn’t fit into those sizes. Similarly, safety equipment for science labs, diving equipment for marine biologists, and protective armor for the military are all

designed to fit male bodies rather than female ones.<sup>29</sup> Such designs treat female scientists and soldiers as though they do not exist, and thereby imply that their work is not as important as the work of their male colleagues.

C2.P63

For another vivid example of how the same act can render a group invisible and inferior, consider the artistic program launched by the transit commission in my home city of Toronto. Local artists have been commissioned to sketch members of the public riding the city's buses, streetcars, and underground trains, and copies of the sketches are put up inside these vehicles, under the heading "Sketching the Line." However, although the majority of people who ride public transportation in Toronto are from visible minorities, and a huge number are women, the sketches that have been put up so far consist largely of identifiable white men and of a few non-descript, unidentifiable people with their backs turned to the viewer, who might be members of visible

---

<sup>29</sup> These examples are discussed by <<<REFO:BK>>> Caroline Perez in *Invisible Women: Data Bias in a World Designed for Men* (New York: Abrams Press, 2019) <<<REFC>>>.



minorities but might also be white. At the time of my writing this, there is only one drawing of a woman, and she is obviously white.

When I telephoned the Director of the program to discuss the absence of visible minorities and women in these sketches, he replied, slowly and with a tone of barely controlled exasperation: “Ma’am, the artists are just drawing . . . what . . . they . . . see.” In one sense, this is false: the drawings are quite stereotyped caricatures even of the white men who are pictured, with older men falling asleep and teenage boys with acne-covered skin eating potato chips. So one doubts that the artists are actually “drawing what they see.” But in another sense, the Director’s claim is disconcertingly accurate. Perhaps the artists who made these sketches did ride trains packed with Chinese, Haitian, Korean, and Pakistani women, and yet these artists “saw” only the one white male teenager sitting in the corner. For this is often what happens to members of “visible” minorities in Toronto. Even though the city celebrates its multiculturalism, it is nevertheless true that racial minorities, and especially women from racial minorities, are still not regarded as normal or typical, even when they outnumber white men in a particular place. They are, in this sense, invisible;

and the “Sketching the Line” program unfortunately perpetuates their invisibility. And in doing so, it marks them out as inferior. Even though they are the overwhelming majority of riders, they are not “normal” enough to be sketched as representative riders.

C2.P64

I have now used my account of social subordination to suggest a number of ways in which direct and indirect discrimination can work to subordinate social groups. Direct discrimination can sometimes constitute an expression of censure toward, or lesser consideration for, a subordinated group, as is mentioned in condition (ii). And it can sometimes causally perpetuate the conditions described in (i), (iii), and (iv), sustaining differences in power and authority between the subordinated group and more privileged groups, supporting stereotypes that in turn rationalize inferior treatment of the subordinated group, and keeping in place problematic structural accommodations. Indirect discrimination can contribute to unfair subordination when it involves the kind of structural accommodation referred to in condition (iv), and thereby plays an important causal role in sustaining conditions (i) through (iii). And although indirect discrimination does not normally constitute an expression of

censure, it can nevertheless mark out certain groups as inferior to others by rendering them invisible in certain contexts.

C2.P65

One might at this point object that talk of “marking out people as inferior” and “rendering people invisible” sounds very much like talk of the expressive meaning of an act or policy. What is it, really, to “mark out as inferior” or to “render invisible” if it is not to send the message that a particular social group is inferior or invisible? So it might seem as though, in spite of my earlier criticisms of the expressivist view, my account has an important expressivist dimension to it, even though it goes beyond this and looks also at a broader range of effects of discriminatory acts.

C2.P66

But although part of what it is to “mark out someone as inferior” is to send a message about this person, this idea cannot be entirely parsed in terms of the social message that a policy sends. Rather, marking someone out as inferior or invisible (or both) involves doing things in the world to that person. It involves altering their situation in certain ways, imposing additional costs on certain opportunities, creating certain disincentives that the rest of us do not have to worry about. When all storefronts have a step leading up to them and this renders Jean and his disability

invisible, the step doesn't just send a social message about Jean. It literally prevents him from accessing the store by himself: it is a physical barrier. It also reinforces our shared assumption that the normal shopper is someone who is not in a wheelchair. This in turn creates disincentives for Jean to come forward and ask for the same opportunities as others. For if he were to come forward, he would face costs that the rest of us do not. He would have to present himself as different from the rest of us, different in ways that, given our society's stereotypes about disability, have pejorative connotations attached to them. He would have to present himself as less capable than the rest of us, and as dependent on our help. Of course, it is true that these costs depend in complex ways upon the social messages that the steps, and other practices in our society, send about people with disabilities. But it does not follow that the costs for John are reducible to these social messages. They are very real costs in the world—as real as the physical barrier that the steps pose.<sup>31</sup>

---

<sup>31</sup> Note that the expressivist need not deny that discriminatees face such costs; what they deny is that these costs help to explain why discrimination is *wrongful*. But if I am correct in supposing that discriminatory policies can contribute to unfair subordination in a variety of ways, through a variety of

Similarly, when female soldiers have to wear body armour that is designed for men, we cannot understand their invisibility solely in terms of the social message that is sent about them. It certainly does include this message. But it also includes very real health risks that women must bear, which men do not have to bear. And it includes a complex array of other costs—as is shown by the case of Rebecca Lipe, who was an American Air Force Judge Advocate General working in Iraq in 2011.<sup>32</sup> Lipe explained in a recent military hearing that the American military’s standard issue “ballistic vest” is not designed to fit a woman’s body, and that female soldiers have to jerry-rig it by removing its side

---

effects on people that include but are not exhausted by certain social messages, then it is unclear why we should think that it is only these social messages that make discrimination wrongful.

<sup>32</sup> <<<REFO:WBLN>>> Subcommittee on Military Personnel

Hearing: “Feres Doctrine—A Policy in Need of Reform?,”

Tuesday, April 30, 2019. Transcript of the hearing available at

<https://armedservices.house.gov/2019/4/feres-doctrine-a-policy->

[in-need-of-reform](https://armedservices.house.gov/2019/4/feres-doctrine-a-policy-in-need-of-reform) <<<REFC>>>.

panels. This leave them without protection if they are shot in the side. Lipe found that in order to make the vest fit, she needed to hike it up and overtighten it around her waist to reduce the slack. But five and a half months of wearing the vest this way caused her a pelvic herniation—which was misdiagnosed by the military doctors, who assumed that because she was a woman, the most likely explanation for her pain was menstrual cramps or an STD. They suggested she was exaggerating her pain and then began testing her for STD's and questioning her on whether she had been having extramarital affairs. Interestingly, the medical officers in this case believed that they were paying proper attention to Lipe as a woman. But their misdiagnoses were based upon false, stereotyped assumptions about women's injuries and habits of behavior—which helped to make Lipe's actual injuries, and her actual pain, invisible to the doctors. This case shows particularly vividly how stereotypes about particular groups work together with practices that render the group invisible, so that even when members of this group come forward to report their problems, others are often unable to see these problems clearly. Instead, others see what they had expected to see in a person of that type.

And I hope this case also shows that what it is to be rendered invisible can't be analyzed simply in terms of the social message that is sent by a particular practice. We need to think of a much broader, and more serious, set of costs that are placed upon those who are rendered invisible.

C2.P68

I considered the examples of Lipe and Jean in order to highlight the ways in which my account of subordination differs from the expressivist account. As I hope these two examples have shown, my account takes the social meaning of acts and policies to be but one component of a full analysis of the ways in which those acts and policies mark out some people as inferior or render them invisible. My account also looks at a broader range of effects of discriminatory acts than do expressivist accounts. And my account considers subordination to be something that happens to a person as a member of a group, because of a socially salient trait that they share with others.

C2.P69

My account of subordination also enables us to see more clearly the ways in which different subgroups within a particular social group can be subordinated in relation to each other, and subordinated in different respects and to different extents. On an

expressivist account, all acts of discrimination that wrong the members of a particular group wrong them in the same way—by demeaning them as individuals. But my account of social subordination gives us a richer way of describing what is going on, and encourages us to think about the differences between what happens to one subgroup and what happens to another. Think back to my example of the training manual. Because the manual depicts only women with svelte figures wearing conventionally feminine uniform options, it implies that women waitresses are objects of beauty to be enjoyed by men, and so marks out all such women as inferior to men. But, as we saw earlier, it also creates a hierarchy within the class of women, between those who measure up to conventional standards of beauty and those who do not—and it subordinates the latter in a further way. My account of subordination offers us a rich set of concepts with which to analyze this nested form of subordination, and also with which to analyze the ambiguous position of the women who meet these standards and the precariousness of their status relative to the more subordinated women—which does not seem adequately described simply by saying that they are not demeaned relative to



these other women but are demeaned relative to men. The account encourages us to explore the particular ways in which directly and indirectly discriminatory policies reinforce different patterns of consideration or censure toward different subgroups, support different stereotypes about each subgroup, and rationalize differences in power and authority between these subgroups as well as between the group as a whole and other, more privileged groups.

C2.P70

My account of subordination also offers us a plausible explanation of the function of prohibited grounds of discrimination—though, as I shall later explain, this is not, on my view, the only explanation of their function. All of the traits that are commonly recognized in our laws as prohibited grounds—for instance, race, gender, sexual orientation, religion, and disability—mark out traits on the basis of which at least one, and often quite a number of social groups have been denied equal power and de facto authority over others; have been subjected to greater censure or lesser consideration, in the sense that they have been condemned or thought of as less worthy of respect than others; and have had their needs overlooked by certain structural

accommodations that cater to the needs and circumstances of other, more powerful social groups. In other words, they are traits that not only mark out particular subordinated groups but also frequently help to explain why they have faced subordination in certain contexts. So, in cases where discrimination is wrongful because it subordinates, the requirement that discrimination must have occurred on the basis of a prohibited ground helps to ensure that the discriminatees really are part of a group that is socially subordinated. It may also point us toward an explanation of why and how they have been subordinated in this case—though it does not, of course, guarantee that they are subordinated in that particular context by that particular discriminatory practice, and so a further contextual analysis of whether and how the practice contributes to subordination will always be necessary. If this is the rationale for appealing to prohibited grounds in those cases where the wrongfulness of discrimination stems from unfair subordination, then it is arguable that our lists of prohibited grounds should also include other traits, traits that are not commonly added to such lists, such as “lack of physical beauty, as conventionally understood.” Moreover, my account implies that

what traits should or should not be on the list will vary from one society to another, and may change over long periods of time, depending on what forms of social subordination develop in each society.

C2.P71

In this chapter, I have tried to show that one of the ways in which discrimination can wrong people by failing to treat them as equals is by subordinating them to others. I have explored two senses in which direct and indirect discrimination subordinate. First, both types of discrimination play an important causal role in sustaining unfair social subordination. And second, both types of discrimination can mark out a particular social group as inferior to others—direct discrimination, by constituting an act of censure or lesser consideration of a certain group, and indirect discrimination, by rendering a certain social group invisible and thereby creating real barriers to their participation in certain social institutions.

C2.P72

But this is not, in my view, the only reason why a particular case of discrimination can be wrongful. Discriminatory policies, and the stereotypes that underlie them, have also been challenged as wrongful for very different reasons. One of these

reasons is that they sometimes deny people the freedom to shape their lives according to their own values, without constantly having to factor in other people's assumptions about certain traits of theirs, and without having to treat these traits as costs.<sup>33</sup>

Although we do not always have a right to this kind of freedom, I shall be arguing in the next chapter that we sometimes do. When discriminatory acts and policies deny us such freedom in circumstances where we have a right to it, they fail to treat us as beings capable of autonomy. And given the value that our societies place upon autonomy, to treat us in this way is to fail to treat us as equals. So there is a second way in which discriminatory practices can wrong us, a second way in which they can fail to treat us as the equals of others, over and above whatever contribution they might make to the kind of social subordination that I have been discussing in the current chapter. I

---

<sup>33</sup> See, for instance, <<<REFO:BK>>> Tarunabh Khaitan, *A Theory of Discrimination Law* (Oxford: Oxford University Press, 2015) <<<REFC>>>.

Faces of Inequality

shall turn in the next chapter to the task of exploring this second way.