

Chapter Six, “Indirect Discrimination,” makes explicit the implications that the author’s pluralist theory of wrongful discrimination has for our understanding of indirect discrimination. The author argues that the distinction between direct and indirect discrimination is not always morally significant. Indirect discrimination, like direct discrimination, can subordinate people; it can infringe their right to deliberative freedom; and it can deny them access to a basic good. The author also considers questions of responsibility and culpability. The author distinguishes between “responsibility for cost” and “responsibility as culpability.” Agents of indirect discrimination are, in many cases, both responsible for the costs of rectifying discrimination and also responsible in the sense of “culpable.” The author explains how we can see both indirect and direct discrimination as involving negligence on the part of the discriminator.

indirect discrimination, negligence, responsibility, culpability, justification, subordination, freedom, basic good, disparate impact

C6.P1

In each of Chapters Two, Three and Four, we saw that indirect discrimination can fail to treat people as the equals of others in many of the same ways that direct discrimination can. Indirect discrimination, too, can unfairly subordinate them, though it does so in different ways from direct discrimination. Indirect discrimination, too, can infringe someone's right to a particular deliberative freedom. And indirect discrimination, too, can leave some people without access to a basic good. It may seem, therefore, that there is no need for a separate chapter in this book on indirect discrimination. However, there are still a number of difficult questions concerning indirect discrimination that I have not yet addressed.

C6.P2

One of these questions is whether there is a morally salient difference between direct and indirect discrimination at the stage of justification, when we ask whether a discriminatory practice that wrongs someone might nevertheless be justified, all things considered. Up until this point in the book, I have focused on the question of whether and why discrimination can wrong someone. But what ought we to say about the further question of all things considered justification? Is there, as some legal jurisdictions posit,

a difference in the way in which we ought to treat direct and indirect discrimination at the stage of justification? I shall argue that on my account, there is no reason to treat the two forms of discrimination differently at the stage of all things considered justification. It is true that different justificatory factors are relevant in different cases. But these differences do not line up neatly with the distinction between direct and indirect discrimination.

C6.P3

A further set of difficult questions raised by indirect discrimination concerns the responsibility and culpability of the discriminator. Some of these are questions about what I shall call “responsibility for cost”—that is, responsibility for paying the cost of altering one’s practices so that they no longer constitute wrongful indirect discrimination, and also, in some cases, compensating those who have been disadvantaged by one’s discriminatory practices. This is a morally thin sense of responsibility because it need not imply culpability or blameworthiness. To deem someone responsible in this sense is simply to judge that it is fair, under the circumstances, to make him bear the costs of altering his policy and of compensating those

who have been disadvantaged. The idea that we ought to hold discriminators responsible for these costs may seem especially problematic in cases of indirect discrimination. This is because in these cases, the disproportionate disadvantages accruing to a particular group are the result of many different factors operating together—not just the wrongfully discriminatory practice, but also the practices of other institutions, the actions of other individuals, general social conventions, tacit assumptions, and in some cases also our natural environment. Moreover, the disadvantages accruing to the relevant social group are often occur much farther down the causal chain—to borrow a term from tort law, they are more “remote” from the discriminator’s policy than are the harmful effects of direct discrimination. And so it can seem unfair to hold the discriminator responsible for indirect discrimination, even in the morally thin sense of “responsibility for cost.”

C6.P4

Other important questions about indirect discrimination concern responsibility in a morally thicker sense, which I shall call “responsibility as culpability.” Even if we accept that both direct and indirect discrimination wrong people by failing to treat them as equals, and even if we accept that discriminators ought to be

held responsible for the cost of eliminating indirect discrimination, we may nevertheless feel that those who indirectly discriminate are not as culpable, and ought not to be subjected to the same kind of moral criticisms to which we subject those who discriminate directly. I shall argue, however, that this feeling is largely misguided. Although there are certain heinous cases of direct discrimination in which agents are motivated by hate or prejudice, nevertheless, in most cases of direct and indirect discrimination, we can see the culpability of agents of direct discrimination and agents of indirect discrimination as stemming from the same source: their negligence. And I shall explain what this negligence seems to me to consist in.

C6.P5

But before I address these questions, it will be helpful to summarize what conclusions I drew about indirect discrimination in the earlier chapters of this book, when I looked in detail at each of the ways in which discrimination wrongs people by failing to treat them as equals.

C6.S1

6.1 What My Theory Implies about Indirect Discrimination

I have argued that, just like direct discrimination, indirect discrimination can wrong people by failing to treat them as the equal of others. I looked extensively in Chapter Two at the way in which indirectly discriminatory practices can subordinate certain social groups to others, both by causally contributing to the four conditions that characterize persistent and unfair subordination across a number of social contexts, and by rendering the needs and situations of certain groups invisible and thereby marking them as inferior to others. I then argued in Chapter Three that there are a number of indirectly discriminatory practices that infringe certain people's right to a particular deliberative freedom and thereby fail to treat them as equals. For instance, we considered tests for promotion in the workplace that disproportionately disadvantage certain racial minorities, leaving these people always with their race before their eyes and unfairly bearing the costs of lacking whatever experiences or background are assumed by the test. Finally, I tried to show in Chapter Four that indirectly discriminatory practices can leave people without access to basic goods and thereby fail to treat them as the equals of others, the way the Canadian government's inadequate provision of clean

water to many indigenous communities leaves them without access to the water they need both for their health and for the symbolic rituals that are essential to their cultures and identities.

C6.P7

Indirect discrimination, then, can wrong people in the very same way that direct discrimination does. There is, to be sure, a difference in the *mechanism* through which wrongful subordination occurs, depending on whether the discrimination is direct or indirect. Wrongful direct discrimination, as we saw, marks people as inferior by explicitly naming a trait that is a prohibited ground of discrimination and thereby branding or stigmatizing the person or group that possesses it. By contrast, as we explored in detail in Chapter Two, indirect discrimination usually works to subordinate people by ignoring their needs and thereby rendering them invisible. But this is a mere difference in the mechanism through which the wrong of failing to treat others as equals comes about, rather than a difference in the kind or degree of seriousness of the resulting wrong. And in cases involving the other two wrongs that I have discussed—that is, where people’s right to deliberative freedom is infringed, or where they are left without access to a basic good—it does not seem to

make a significant difference whether this occurs through direct discrimination or through indirect discrimination. So although it was useful, and indeed necessary, to start our investigation of discrimination with this legal distinction, so as to ensure that our theory of wrongful discrimination was capacious enough to capture all of what we consider to be “discrimination,” we have now reached a point where we can question the theoretical usefulness of this distinction. Or rather, we can recognize that it may be helpful in identifying the mechanisms through which some discriminatory practices fail to treat people as equals, while nevertheless questioning whether it marks a difference in the kind, or degree of seriousness, of the moral wrong at issue.

C6.P8

Of course, we can question this while still recognizing the history and evolutionary importance of the distinction between direct and indirect discrimination. As a part of our anti-discrimination laws, this distinction reflects the evolution of our public views about discrimination.¹ And interestingly, the initial

¹ For helpful legal overviews of the development of anti-discrimination law in certain countries, see

<<<REFO:JART>>> Denise Réaume, “Harm and Fault in

Faces of Inequality

evolution of these views after World War II was strikingly similar across a number of different countries such as the United States, Canada, and the U.K.² Discrimination was, in these countries,

Discrimination Law,” *Theoretical Inquiries in Law* 2(1) (2001), pp. 349–385<<<REFC>>> (detailing the growth of discrimination law in Canada); <<<REFO:IART>>> Alfred W. Blumrosen, “Strangers in Paradise: Griggs v. Duke Power Co. and the Concept of Employment Discrimination” (1972), *Michigan Law Review* 71(1), pp. 59–110<<<REFC>>> (detailing American developments); and <<<REFO:BKCH>>> Christopher McCrudden, “Changing Notions of Discrimination,” in Stephen Guest and Alan Milne (eds.), *Equality and Discrimination: Essays in Freedom and Justice* (Stuttgart: Franz Steiner, 1985)<<<REFC>>> (detailing developments in the U.K.).

² Although of course now indirect discrimination is treated differently by different countries. Some, such as Canada, treat indirect discrimination in the same way that they treat direct discrimination, allowing the same factors to justify both. See *British Columbia (Public Service Employee Relations*

originally regarded by the law as a form of wrongful treatment that centrally involved some sort of offensive and unwarranted motive—such as hatred of, or prejudice against, a particular group of people, based on some trait of theirs such as their race. Liability was gradually extended to acts that lacked this kind of illicit motive but nevertheless involved *intentional* treatment of members of one group differently from that of others; and from here, in jurisdictions such as Canada and the U.K., the intent requirement was formally dropped and direct discrimination came *Commission) v. B.C.G.E.U.*, [1999] 3 S.C.R. 3, 1999—known as the “Meiorin case,” after the claimant, Tawney Meiorin. Other countries, such as the U.K., prohibit both wrongful direct discrimination and wrongful indirect discrimination; but they allow that indirect discrimination may be justified by factors that would not, similarly, justify direct discrimination. See the *Equality Act 2010*. Still other countries, such as the United States, regard prohibitions on indirect discrimination with suspicion, strictly limiting them to the private sector: see *Washington v. Davis*, 426 U.S. 229 (1976); and *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989).

to involve simply an explicit or facial distinction.³ At the same time, indirect discrimination was recognized as a form of the same wrong, in which a particular group was neither intentionally treated differently nor even explicitly singled out for different treatment, but nevertheless disproportionately disadvantaged.

C6.P9

On the theory of wrongful discrimination that I have proposed in this book, both direct and indirect discrimination are wrongful when they fail to treat some people as the equals of others. And whether they fail to do this does not depend on the motive or the intent of the discriminator. It depends on the kinds of considerations we examined in the earlier chapters of the book—those relevant to unfair subordination, to a person's deliberative freedom, and to whether something amounts to a basic good for a particular person. However, we can recognize this and yet still leave room for the possibility that victims of discrimination are *also* wronged in a *further* and different way

³ See Réaume "Harm and Fault in Discrimination Law," *supra* note 1; and Blumrosen, "Strangers in Paradise: *Griggs v. Duke Power Co.* and the Concept of Employment Discrimination," *supra* note 1.

when the discriminator acts from certain motives, such as malice or prejudice. All that my theory denies is that having such motives is a necessary part of wronging someone by failing to treat that person as the equal of others. It seems quite plausible to suggest that in the most heinous cases of discrimination, such as the Jim Crow laws, or violence directed at Muslims out of hatred, there is also an additional wrong done to the victim. There are a number of ways in which we might characterize this further wrong: the wrong of acting out of hatred toward another person, and with enjoyment of the harm that comes to them; the wrong of deliberately insulting another person; or the wrong of deliberately assigning another person not just a less than equal status, but a subhuman status. What is important for my purposes is that my account is quite consistent with our recognizing that some such further wrong is present in some cases of wrongful discrimination. Nevertheless, my account insists that not all cases of discrimination, and not all cases of *direct* discrimination, involve this further wrong. It is not a necessary component of the wrong of failing to treat people as the equals of others.

The view that direct and indirect discrimination both wrong people by failing to treat them as the equals of others, and that this wrong does not depend on the agent's having any particular motive or intent, is arguably the view that underlies current Canadian laws on discrimination. Canada no longer recognizes a distinction between direct and indirect discrimination. It applies a single test to any form of discrimination (though the relevant test is different in private sector anti-discrimination law and in the constitutional equality rights provisions under the *Canadian Charter of Rights and Freedoms*).⁴ When the Supreme Court of Canada harmonized the country's approaches to direct and indirect discrimination in private sector anti-discrimination law, it noted a number of pragmatic reasons for not treating the two forms of discrimination differently. It suggested, for instance, that as long as the law treats indirect discrimination as easier to justify, employers and other agents of discrimination may try to reframe policies that they know are directly discriminatory using neutral language, in the hope that they can bring about exactly the same effect through

⁴ See the *Meiorin* case, *supra* note 2.

different means and thereby escape legal sanctions. Relatedly, the Court noted that treating indirect discrimination as easier to justify and less serious from a moral standpoint might inadvertently legitimize systemic discrimination.⁵ I hope that, in this book, I have given some theoretical reasons that complement these pragmatic ones. I have tried to show that direct and indirect discrimination involve the same kind of wrong. Both fail to treat some people as the equals of others.

C6.P11

I have argued that there is no difference between the wrongs done by direct and indirect discrimination—that is, no difference in their kind, and hence, no difference in their seriousness or urgency. But recently, some scholars have gone further than this. They have argued that in fact all indirect discrimination just *is* direct discrimination—direct discrimination on the basis of a *different* ground. So, for instance, John Gardner has argued that indirect sex discrimination is just discrimination “against people with some *other* property (people of less height, or with less availability for evening work, or having less upper body strength, or with a record of lower earnings), where that other

⁵ Ibid.

property is statistically correlated with sex.”⁶ And so, he argues, legislation such as the U.K. *Sex Discrimination Act* “does not regulate only sex discrimination. It also regulates, in a derivative and relatively circumscribed way, height discrimination, strength discrimination and so on.”⁷ There are two claims here, and I think we need to question both of them. The first is that all indirect discrimination is reducible to direct discrimination. The second—and it is an implicit, rather than an explicit claim—is that we can grasp what is morally problematic about cases of wrongful indirect discrimination, and accurately form a picture of the particular social group that has not been treated as the equal of others under that new description. Both of these claims are, in my view, problematic. First, although it is true that some practices that indirectly discriminate distinguish between people on the basis of some other property, other indirectly discriminatory practices

⁶ <<<REFO:IART>>> John Gardner, “Discrimination: The Good, the Bad, and the Wrongful,” *Proceedings of the Aristotelian Society*, 118(1) (2018), pp. 55–81 <<<REFC>>> at p. 60.

⁷ Gardner, “Discrimination: The Good, the Bad, and the Wrongful,” *ibid.*

don't explicitly employ *any* criteria in order to distinguish between different groups. Their aim is not to distinguish between different groups, by applying a certain criterion to those groups. Rather, they simply *ignore* the needs of a particular group, while lavishing resources on particular causes that happen to satisfy the needs of other groups. This is true, for instance, of the governmental practices we considered in Chapter Four, which resulted in the indigenous water crisis. These are not practices that deliberately or explicitly assigned indigenous communities fewer resources on the basis of some *other* criterion, such as remoteness. Rather, the needs of these indigenous communities have simply been ignored, as funding has been directed at other problems that happen to be the problems of non-indigenous communities. It seems to me that it is much more helpful to call this what it is—a set of practices that disproportionately disadvantages a certain group because of a trait that is a prohibited ground of discrimination—than it is to try to re-describe all of these many practices as attempts to distinguish between people on some other basis. And the indigenous water crisis is not an unusual type of case. Many of the cases of indirect discrimination that leave

people without access to basic goods will also be difficult to re-describe as an attempt to classify people on the basis of some other criterion. So it is not clear that Gardner's re-description can capture all instances of indirect discrimination.

C6.P12

Second, however, even in the case of those indirectly discriminatory practices that *can* be re-described as direct discrimination on the basis of some other property, I worry that we will lose both our ability to see them as wrongful and our ability to pick out the particular social group that is in fact wronged if we see them as direct discrimination on the basis of some other property.⁸ *Pace* Gardner, the Sex Discrimination Act does not regulate height discrimination and strength *qua* height and strength discrimination. It regulates them only insofar as they constitute sex discrimination. And what makes them wrongful is not their impact on persons because of their height or their strength or their lesser availability to work in the evening or their record of lower earnings. What makes them wrongful is their impact on people because of their sex.

⁸ I am very grateful to Andy Yu for discussions of this objection.

Gardner might reply that these remarks are perfectly consistent with his view. He might argue that yes, in order to understand what makes these forms of direct height discrimination and direct strength discrimination *wrongful*, we have to make reference to sex: they are wrong because they disproportionately disadvantage women. But they are nevertheless forms of direct discrimination. But if this is right, then I cannot understand what is to be gained by saying that these are forms of direct discrimination. For in order to capture what is wrongful about them, we will have to say that they are a *special kind* of direct discrimination. Whereas in ordinary cases of direct discrimination, the discrimination is wrongful because of the particular property that is explicitly used to differentiate some people from others, in cases of indirect discrimination that we redescribe as cases of direct discrimination, the discrimination is only wrongful in relation to some other property, which is the prohibited ground, and only wrongful insofar as the criterion that is explicitly used happens to track that other ground. And this seems to me to amount, in effect, to an admission that indirect discrimination is *not* just like wrongful direct discrimination.

Moreover, I think it is important to note that we *learn* something about indirect discrimination when we describe it as “indirect discrimination on the basis of sex” that we do not learn when we re-describe it as “direct discrimination against people of lesser average height” or “direct discrimination against people with less availability for evening work.” Even if we could come up with a perfectly accurate set of conditions that pick out all and only the particular people who have been disadvantaged by a certain indirectly discriminatory policy—it would be a conjunction, I think, of many different conditions, such as “discrimination against shorter people, with less lung power, with less evening availability, who do not present as sufficiently aggressive or assertive at their interview, who might shortly need to take a parental leave” and so on—I do not think we would be able to understand why and how all of these conditions contributed to our treating this particular group as less than equals in society unless we thought of their treatment in light of the prohibited ground of sex. When we conceptualize wrongful discrimination, after all, our aim is not only to pick out the *right* group of people in each case, the group that has not been treated

as the equal of others. Our aim is also to understand *why* this has happened to them. And in order to understand why wrongful discrimination against women occurs, it is crucial that we think of it as discrimination on the basis of their *sex*. When we think of how and why women are subordinated, or what it means for them to be denied deliberative freedom—what trait it is that they must always have before their eyes, as they deliberate—or why, in certain circumstances, they are denied basic goods, we will only be able to understand women’s situations, and to see the relevant practices as failures to treat women as equals, if we think of them as failures to treat women as equals on the basis of their sex.

C6.P15

For all of these reasons, I think it is helpful to retain the distinction between direct and indirect discrimination. But we can do this while still maintaining that when both direct and indirect discrimination are wrongful, they are wrongful for the same reason. This is because they fail to treat some people as the equals of others.

C6.S2

6.2 Is Indirect Discrimination Easier to Justify?

C6.P16

As I have mentioned, in some legal jurisdictions, direct and indirect discrimination are treated differently at the stage of

justification. Wrongful direct discrimination is simply prohibited; whereas wrongful indirect discrimination is treated as justifiable under certain circumstances. And this is sometimes understood as implying, from a moral standpoint, that direct discrimination can never be justified all things considered, whereas indirect discrimination can sometimes be justified, all things considered.

C6.P17

Such an approach to the justification of direct and indirect discrimination would be sound if they involved two different kinds of wrongs, or if direct discrimination always involved a deeply troubling motive, such as the kind of hatred or prejudice that I already discussed briefly. And indeed, this legal approach to justification may, historically, hark back to the time when we did think of direct discrimination as essentially motivated by hostile attitudes. But many countries now treat direct discrimination as requiring no such attitudes, and this is the view I have defended in this book.⁹ So, for instance, if a sports club permits blacks and Latinos to access its facilities only at different times of the day in order to reduce racial tensions, this amounts to direct discrimination on the grounds of race—even if, far from being

⁹ See Chapter 1, section 3.

motivated by racial prejudice or hatred, it is driven simply by an innocent (though perhaps misplaced) desire to use the club's opening hours to try to reduce racial tensions. Since direct discrimination can occur, as it does in this case, without animus, there does not seem to be any reason for thinking that, in principle, it could not be all things considered justified by whatever considerations might justify certain cases of wrongful indirect discrimination. I am not suggesting here that the direct discrimination in this case is justified; only that it seems to be the kind of practice that could in principle be justified. Moreover, if the same wrong—the wrong of failing to treat people as the equals of others—is done by direct and indirect discrimination, it seems reasonable to suppose that similar considerations will be relevant to the question of when wrongful direct and indirect discrimination are nevertheless all things considered justified.

C6.P18

The only real difference between direct and indirect discrimination, as I have understood them, is that wrongful direct discrimination explicitly singles out a certain group or person using a prohibited ground of discrimination (or some trait that is closely connected to such a ground), whereas practices that

discriminate indirectly do not. The latter are apparently neutral, but nevertheless have a disproportionately disadvantageous effect on a group that shares a trait that is a prohibited ground of discrimination. So the two forms of discrimination both wrong people by failing to treat them as equals; but one explicitly uses prohibited grounds of discrimination, whereas the other does not. It is not clear why this difference should give rise to a difference in the kinds of factors that would *justify* wrongful direct and wrongful indirect discrimination.

C6.P19

My theory, then, implies that there is no difference, as a group, between the justificatory factors relevant in cases of indirect discrimination and the justificatory factors relevant in cases of direct discrimination. This, too, is the approach that has been adopted by Canada. Both in its interpretation of private sector anti-discrimination laws and in its interpretation of constitutional equality rights in the *Charter*, Canada applies the same test to cases of direct and indirect discrimination, to assess whether they can nevertheless be justified.¹⁰ In the private sector,¹⁰ Though, interestingly, one test is applied to both forms of discrimination in the private sector context, and another, to both

for instance, when assessing whether employers or providers of goods and services can be justified in continuing to discriminate, Canadian tribunals ask whether the discriminatory practice was adopted in good faith for a purpose that is rationally connected to the function being performed, and whether it is “reasonably necessary” in the strong sense that there is no alternative practice that the discriminator could adopt that would accommodate the claimant’s needs without imposing “undue hardship” on the discriminator.¹¹ This test is applied both to direct and to indirect discrimination. As the reference to “undue hardship” on the side of the discriminator suggests, Canada allows that the burden on the discriminator is relevant in determining whether a practice that fails to treat certain people as equals is nevertheless justified, all things considered. But it is relevant *both* in cases of direct discrimination and in cases of indirect discrimination.

forms of discrimination under the Constitution. I shall discuss these differences in Chapter 7, as they stem in part from the different demands of inquiries into discrimination by private agents and inquiries into discrimination by the state.

¹¹ See the *Meiorin* case, *supra* note 2 at para. 54.

I have argued that there is no reason to think that different factors are relevant to the justification of direct and indirect discrimination. Which particular factors are relevant in any given case is a complex question. It seems to depend very much on the particular role that is occupied by the discriminator, relative to the discriminatee, and on the constitutive responsibilities of that role. “Undue hardship” is the language that Canadian legislation uses in connection with those who hold themselves out to the public as providers of employment, or goods, or services. These are individuals with their own projects to advance and their own lives to live; and the law recognizes that certain costs would make it impossible for them to pursue these projects, or impossible for them to pursue these projects safely. By contrast, government actors do not pursue private projects and do not have the same interest in being allowed to pursue them autonomously. They, however, have other obligations—obligations both to promote the equality of other groups and to respect other rights of these groups. And so the relevant tests for justifications of violations of constitutional equality rights by the government in Canada take account of these other obligations. I shall discuss questions of

justification further in Chapter Seven. What is important for our purposes now is to note that the factors relevant to justification seem to depend on the status and responsibilities of the agent, and not on whether the discrimination is direct or indirect.

6.3 Responsibility for Cost

Even if you accept that direct and indirect discrimination are wrongful for the same reasons, and even if you accept that both can be justified by the same sorts of considerations, you might still question whether the agents of direct and indirect discrimination are responsible to the same degree.

It is helpful to distinguish two sets of questions here. There are, firstly, questions concerning how far a particular agent can be held *responsible for the cost* of eliminating a particular discriminatory practice and replacing it with a practice that treats the individuals or the group in question as equals. It can be fair to hold someone responsible for the cost of a particular alteration even if they are not culpable in some weighty moral sense—that is, even if we are not justified in blaming them, or in acting toward them in a way that expresses disapproval of them as a person. This morally thin idea of responsibility is familiar to us from tort law.

Judges adjudicating cases of negligence commonly distinguish between the judgment that a particular defendant is blameworthy and the judgment that he/she is liable.¹² A judgment of liability, they repeat, is simply the judgment that, of all of the people who are in some way causally connected with a particular loss, it is just and fair to make *this* person cover the cost of that loss. This is what I mean by a morally thin notion of responsibility. It is the idea of responsibility for a certain cost—in our case, the cost of eliminating the discriminatory practice and replacing it with something that treats these people as equals. And although a person can be both responsible for cost and blameworthy, they can also be responsible for a cost even when, like many of those who are found liable in tort law, they are not to blame.

C6.P23

I want to set aside for now questions about responsibility in any thicker moral sense and focus on questions about responsibility for cost. It may seem that responsibility for cost ought to depend at least in part on how *close* one's actions are on the causal chain to the disadvantageous effects on the

¹² See e.g. *Rylands v. Fletcher*, [1868] UKHL 1; and *Roberts v. Ramsbottom*, [1980] 1 All E.R. 7 (Q.B. 1979).

discriminatee, and on how many *other* factors are also causes of the discriminatee's situation. And so it may seem that there are some morally relevant differences here between direct and indirect discrimination. It is often assumed that these two forms of discrimination differ in what we might call the directness or the closeness of the effects on the discriminatee to the discriminatory practice itself. Indeed, this assumption is likely what explains the choice of the terms "direct" and "indirect" to describe these two forms of discrimination. The thought seems to be that in cases of indirect discrimination, the discriminatee is disadvantaged, not directly or immediately by the discriminatory practice, but only through a much more complicated causal chain, involving other institutional practices, other agents' actions, and other features of our shared social environment. By contrast, in cases of direct discrimination, it is the discriminatory practice itself that directly or immediately disadvantages the discriminatee.

C6.P24 It may be true that in many cases of indirect

discrimination, the disadvantage to the discriminatee occurs by means of a complex causal chain. But I doubt whether the causal chains at issue in direct discrimination are any less complex, or

the disadvantageous effects, that much more remote from the policies, than they are in the case of indirect discrimination. Think of the sports club policy I discussed that constitutes direct discrimination. If restricting blacks and Latinos to different opening hours amounts to wrongful discrimination, this is only because of a complex set of social circumstances, social conventions, a history of racial segregation and so on: the failure to treat these groups as the equals of others is hardly an immediate or “direct” effect of the policy.

C6.P25

More importantly, whether the disadvantage to the claimant is a direct or an indirect effect of the policy cannot be dispositive in our thinking about responsibility for cost on my own theory, because what makes discrimination wrongful according to this theory is not the disadvantages suffered by discriminatees but the failure to treat them as equals. So it is irrelevant how closely connected their disadvantage seems to be to the discriminatory practice, or how many other items appear in the causal chain connecting them to the discriminatory practice. And the fact that a particular practice fails to treat people as equals will always depend, not just on the practice itself, but on the surrounding

social context. It will always depend on the history of certain social groups and their interactions, on social conventions and expectations, on the rules of other institutions, and on the built and natural environments in which the discrimination occurs. This will be true regardless of whether the discrimination is direct or indirect.

C6.P26

Nor does it seem correct to suppose that a person is less responsible for a certain outcome simply because it occurs farther along a certain causal chain, or because there are a greater number of relevant background factors. If I negligently drop a broken bottle in the sand at the edge of the ocean and it is tossed about, carried here and there, and finally washes up on another beach many years later and injures a child, I am morally culpable for this injury in spite of the many factors and the many years intervening between my act and the actual injury. Why? Because this is precisely the kind of injury that makes it morally problematic to drop broken bottles on a beach in the first place. It is true that if the causal chain is very long and mediated by many other people's acts, then we do not generally think a particular agent is responsible for the outcome unless he failed to do something that

he had a *duty* to do. But on my account, both agents of direct and agents of indirect discrimination have a duty to treat others as equals.

C6.P27

But at this point, one might object that I have misconstrued the nature of the problem here. Perhaps the problem isn't that all agents seem less responsible for indirect discrimination than for direct discrimination. Perhaps the concern is that it is simply unfair to hold *private* agents—that is, individuals, corporations, any non-government entity—responsible for what are really the cumulative effects of many different social institutions and individuals interacting in complex ways. Unlike the government, private agents do not have a constitutive responsibility to create the conditions under which people can relate to each other as equals. So it is *never* fair to hold them responsible for the cost of eliminating what is essentially a shared social problem.

C6.P28

This may sound attractive from a theoretical standpoint. But I think it is important to remember that in practice, somebody will always bear the costs of wrongfully discriminatory practices, regardless of what we do. If we alter these practices—moving our organization's meeting times from 5 p.m. to lunchtime so that

more women can attend, giving employees a more flexible work schedule so that they can take breaks as required by their religion or their disability, changing hiring and promotions practices so that more racial minorities are given an equal chance to contribute to the organization—then it is true that the cost will be borne by private parties, such as employers. But if we do nothing, if we do not require employers to alter such practices, then there is still a cost. It is borne by the people who are treated as inferiors: they do not enjoy a status equal to that of others. It may be easy for us to overlook this cost—after all, as we saw in Chapter Two, the people who bear these costs are often rendered invisible by the policies that fail to treat them as equals. So the burdens that they carry go unnoticed. But of course this does not mean these costs do not exist. There are also shared social costs to allowing wrongful discrimination to continue, costs that *all* of us bear when some social groups in our society have a lower status than others across a number of different social contexts and over a long period of time. We are all the poorer. We lack the ideas and the perspectives that members of these groups might have shared with us, if they had had the power and if we had been willing to listen.

There are more misunderstandings and greater mistrust between social groups—the kind of mistrust that ferments when certain social groups are persistently excluded from important social institutions and from positions of power and privilege. And perhaps most sadly, a certain kind of life together is not possible, a life in which we all relate to each other as equals.

C6.P29

So there are costs either way—costs to eliminating discrimination, and costs to allowing it to continue. Because *somebody* will always bear the cost of wrongfully discriminatory practices, and because the alternative to holding discriminators responsible is to let equally innocent discriminatees bear the costs of wrongful discrimination, it seems less plausible to me to claim that it is unfair to hold discriminators responsible for the cost of eliminating such practices. Moreover, I think the costs of eliminating discriminatory practices are often less than we imagine. When we think of responsibility for cost, we may have in mind prohibitively high costs, such as the cost of retrofitting a historic building with ramps and elevators. But in very many cases, the costs of eliminating discrimination are much less. And, rather than involving the purchase of expensive equipment, they

often require only time and imagination, time spent thinking creatively with members of subordinated social groups about how to redefine certain jobs or alter certain rules so that they do not fail to treat some people as the equals of others. The changes can be as simple as altering the requirements for a certain job: such as not requiring a University degree where a high school education would suffice, or not requiring that applicants be recent graduates of their educational institutions, or giving cashiers the option of sitting so that people with muscular disabilities can do the job also. While these changes are not without other costs, they are not as costly as one might imagine.

C6.P30

One might also argue that paying the costs of eliminating a particular discriminatory policy, when you are the person or the organization who is best positioned to eliminate it, is just one of the responsibilities that you take on when you live together with others within a democratic society. Democratic societies, as Rawls noted, are “systems of social cooperation”—and, we might explicitly add, systems of social cooperation between people

conceived of as equals.¹³ We all share in the benefits of these systems, both the economic benefits and also the relational benefits. But the relational benefits are only possible if we all do what we can to ensure that others are treated as equals.

C6.P31

There are, of course, some cases where the cost of altering a particular discriminatory practice is so great that it would threaten the survival of an otherwise beneficial organization or social institution: a small bookstore, for instance, in a historic building, that simply does not have the funding to install an elevator. This may be one of the considerations that could legitimately justify an agent in continuing with a wrongfully discriminatory practice. Our conclusion in such a case might be that the employer wrongs those whom his practices do not treat as equals—in this case, those in wheelchairs—but because of his difficult circumstances, he is under no all things considered

¹³ See, for instance, <<<REFO:IART>>>Elizabeth Anderson, “What is the Point of Equality?,” *Ethics* 109(2) (1999), pp. 287–337<<<REFC>>>; <<<REFO:BK>>>Kasper Lippert-Rasmussen, *Relational Egalitarianism: Living as Equals* (Cambridge: Cambridge University Press, 2018)<<<REFC>>>.

obligation to provide the elevator. But we may also want to say that governments have an obligation to put into place a compensation scheme that might enable at least some of the private agents in these situations to procure additional funding and thereby eliminate the discriminatory practice. In other words, even in cases where private agents are justified in not changing their practices for financial reasons, there may be an overarching governmental obligation to provide funds to address the problem, or funds to address those cases that affect the largest numbers of people in the most serious ways.

C6.S4

6.4 Culpability in Direct and Indirect Discrimination

C6.P32

But what about responsibility in the morally thicker sense of “culpability”? We often assume that those who engage in wrongful direct discrimination are especially blameworthy, whereas those who engage in wrongful indirect discrimination are often seen as innocent. Sheila Day and Gwen Brodsky put this point particularly vividly when they noted that direct discrimination is frequently perceived as “loathsome” and

“morally repugnant,” whereas indirect discrimination is commonly held to be “innocent, unwitting, accidental, and consequently not morally repugnant.”¹⁴ I want to argue in this section of the chapter that many agents of indirect discrimination are no less culpable than are agents of direct discrimination. I shall proceed by looking at some ordinary cases of indirect discrimination and some parallel cases of direct discrimination, and by analyzing in what respects the agents seem culpable. This will lead us to the arguments of the final section of this chapter, in which I try to show that it is most helpful to think of agents of direct and indirect discrimination as culpable for their *negligence*.

C6.P33

Acts of indirect discrimination frequently occur as part of a whole set of policies, practices, and assumptions that together form what is called “systemic discrimination.” So we can start by ¹⁴ <<<REFO:IART>>> Shelagh Day and Gwen Brodsky, “The Duty to Accommodate: Who Will Benefit?,” *Canadian Bar Review* 75 (1996), pp. 433–473 <<<REFC>>> at p. 457. These authors went on to argue that this view was misguided—but for reasons different from the ones that I want to foreground in what follows.

considering one common instance of systemic discrimination: the culture of sexual harassment within the military. Recently, an External Review of the Canadian Armed Forces revealed an environment in which harassment and assault of women and LGBTQ members have become so commonplace that they are regarded as normal and natural.¹⁵ Some of the worst aspects of this culture involve direct discrimination: frequent use of sexualized language and sexual jokes targeting women's body parts; comments and posters proclaiming that a woman enters the army "to find a man, leave a man, or become a man"; and sexual assaults and date rape of younger women by senior ranking officers. But these acts of direct discrimination have been allowed to continue in large part because they are sustained by a whole set of policies that are indirectly discriminatory and that work to silence women and LGBTQ members. These include a practice of ostracizing recruits who speak up about any kind of problem; a

¹⁵ *External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces*, conducted by The Honourable Marie Deschamps, March 27, 2015, available at <http://www.forces.gc.ca>.

complaints process that has no provision for confidentiality; a policy of documenting only serious physical injuries and no “lesser” injuries; and a training program that does not focus on appropriate behavior toward others. These policies amount to indirect discrimination because, even though they are neutral on their face, they have a disproportionately disadvantageous impact on women and LGBTQ members in a culture in which these people are the most frequent targets of sexual abuse.

C6.P34

If we look at these cases of indirect discrimination within their context—that is, within the culture of sexual harassment that exists in the military, in which everyone is aware that such acts are occurring even if they think this is normal and natural—it is difficult to view the members of the Armed Forces as less than seriously culpable. They have failed to do certain crucial things to stop the subordination of women and LGBTQ members, such as develop a proper training program, encourage victims of abuse to come forward, cultivate a culture of openness and honesty, and implement a confidential complaints process. And they have failed to do these things, and failed to see the importance of doing them, presumably because they have failed to see women and LGBTQ

members as equals, as beings whose interests are just as important, and deserve just as much weight in their deliberations, as the interests of straight men.

C6.P35

Indeed, when we look closely at this example, the moral failings involved in the indirectly discriminatory policies do not seem so very different from the moral failings involved in the acts of direct discrimination—the sexual jokes, the assaults, and the harassment. Those who engage in such acts of direct discrimination are likely either trying to put victims “in their place” because they think of them as inferior and want their victims to know it, or they are just “having a bit of fun” on the assumption that having fun at the expense of these groups is perfectly acceptable because women and LGBTQ members aren’t “real” soldiers anyway. Either way, these agents, too, are failing to take the harms suffered by these people as a reason to act differently, and they are failing to treat these people’s aims and ambitions as seriously as they treat their own. So both those engaged in direct discrimination and those engaged in indirect discrimination in this case are failing to see others as equals. They are failing to give others the moral significance that they should be

given in their deliberations. Of course, those who engage in direct discrimination must, in addition, know that they are directly causing physical or emotional harm to the people whom they assault or harass. But indirect discrimination also harms these groups, and the members of the Armed Forces who continue to support the indirectly discriminatory policies must be aware that they are contributing to the harm that is suffered by these groups. They are just contributing to it in a less direct way, with the causal chain being somewhat longer and mediated by other factors—such as other policies, and other people’s words and actions. I argued earlier that this fact should not make much of a difference to our judgments about responsibility in the sense of “responsibility for cost.” For the same reasons, one might doubt whether it should make much difference to our judgments about culpability.

C6.P36

One might object that this is an unhelpful type of example to use when trying to assess the moral status of indirect discrimination, because the indirect discrimination in this case is so closely bound up with direct discrimination. The policies that amount to indirect discrimination in this example do so only because they help to condone and so to perpetuate direct

discrimination against these same groups. So it might seem that in this type of case, if the agents of indirect discrimination seem as culpable as the agents of direct discrimination, this is only because the practices in question are so deeply bound up with directly discriminatory practices.

C6.P37

What we require, then, is an example of indirect discrimination by agents who are not themselves engaged in direct discrimination, and where the indirectly discriminatory policy works to impose disadvantage by some means other than encouraging or permitting agents to engage in acts of direct discrimination against these groups. So consider the physical fitness tests used for hiring in occupations that require considerable strength and stamina—such as firefighters, forest firefighters, or security guards. Some of the fitness tests used for these occupations have faced legal challenges in the United States and Canada, on the grounds that they hold everyone to standards that were originally based on male aerobic capacity and male fitness targets and are therefore much harder for most women to succeed at.¹⁶ The tests do not amount to direct discrimination:

¹⁶ See the *Meorin* case, *supra* note 2.

there is no reference to gender in the application of the test, the tests are open to both men and women, and some women do pass them. However, as a group, women find it disproportionately harder to pass the tests than men, and it seems that this is because of their physique and aerobic capacities as women.

C6.P38

A second, and similarly structured example of “independent indirect discrimination” involves written tests for aptitude or intelligence that are used by some employers for purposes of promotion, which I considered in earlier chapters of this book. As I noted in those earlier chapters, some of these tests have been found to be very difficult for certain racial minorities to pass: the percentage of blacks or Hispanics that pass the tests, out of all of those who attempt it, is a much smaller percentage than the percentage of Caucasians who succeed, relative to the number who attempt it. Often, this occurs in part because the questions on the test presuppose knowledge of certain kinds of life experiences and certain sorts of social interactions, of a sort that are more commonly had by Caucasian families than by these racial minorities. In some cases, the disparity in success rates results also from direct discrimination: white employees are part of a social

network from which minority employees are excluded, and senior employees within this network are happy to coach friends and family members but not minority candidates. So that this will remain an example of “independent indirect discrimination,” let us suppose that this is not occurring.

C6.P39

Most countries’ laws would deem these tests unjustified wrongful discrimination only if there were alternative tests available that could successfully track aptitude for the job, while at the same time increasing the number of minority candidates who pass the test. And the availability of these alternative tests is important, because it makes a difference to what agents of wrongful indirect discrimination are doing and failing to do when they persist in applying the current tests. They are continuing to use their original tests in circumstances where there are alternatives available that would harm the minority groups less, while disadvantaging the employer in only a relatively small way.

In some of these cases, the employer presumably realizes that there are alternative tests available but decides not to implement an alternative test, either for reasons of cost or simply out of laziness. In other cases, the employer does not know that

there are alternative tests available, but has a vague suspicion that there might be, and avoids looking into this because it is easier to turn a blind eye. And in still other cases, it may never have occurred to the employer that the original test poses difficulties for certain minorities, because the employer doesn't often bother to think about minority employees as the kind of people who deserve to be promoted. You may think there are significant differences between these different cases. Cases of the first type involve knowledge that a harm is avoidable; cases of the second type involve willful blindness; and cases of the third type involve a complete lack of awareness. But *all* of these employers seem to manifest exactly the same failure to see others as an equal that we saw in the example of indirect discrimination in the Armed Forces. Here, it is a failure to see other people's interests as significant enough to outweigh the relatively small trouble or cost that would be involved in looking into a particular test's effects on this group, in searching for a viable alternative, or in changing the test once an alternative is found.

So in cases of wrongful indirect discrimination that are not all things considered justified, the agents do seem culpable. And I

wonder if they seem even more culpable when we reflect that in many of these cases, part of the reason why the organization in question has not tried to look for or develop alternative tests has to do with a lingering stereotype. Perhaps it is the stereotype that women don't really belong in "rough" professions such as firefighting: they are too delicate, too emotionally fragile, and too distracting to men. Or the stereotype that racial minorities couldn't really cope with managerial positions: they lack initiative, they don't have their lives together, and anyway, they probably have an enormous extended family at home that would take their attention away from their job. I suggested earlier that the cases of indirect discrimination that we examined, all involved a failure to see certain groups as the equals of others. I think we often fail to see these groups as the equals of others because we see them through the lens of a stereotype—sometimes the same stereotypes that are used to rationalize direct discrimination. By "stereotype," I mean, as I suggested in Chapter Two, a generalization about a trait that is allegedly possessed by some or all members of a particular social group, which is used as a justification for seeing members of that group as different from ourselves and often as less than fully

capable. There may certainly be circumstances in which reliance on stereotypes is necessary and unproblematic. But when an agent is responsible for attending to the real needs and circumstances of the people affected by his policies and, instead of making an effort to engage with these people and to inquire about their real needs, instead relies upon a stereotype, he may seem more culpable than someone who was simply oblivious.

C6.P41

If I am right about the way in which stereotypes often figure in the reasoning of agents who engage in wrongful indirect discrimination, this means that what I have called “independent indirect discrimination” is not completely independent of direct discrimination. Both can be rationalized by stereotypes, and the same stereotypes that were once given as explicit justifications for particular instances of direct discrimination can be cited to try to avoid having to search for alternatives to policies that disproportionately disadvantage certain groups. This does not pose a problem for my argument: independent indirect discrimination is still “independent” in the sense that it does not impose disadvantage on minority groups by encouraging other agents to engage in separate acts of direct discrimination toward this group.

And so my examples of indirect discrimination still serve the purpose of helping to demonstrate that agents of indirect discrimination can be just as culpable as agents of direct discrimination, and in much the same way. Both, I have argued, often fail to see members of certain other groups as equals—and this is a significant failing, regardless of whether it results from deliberate neglect, or from willful blindness, or from ignorance.

C6.S5

6.5 The Negligent Discriminator

C6.P42

I have argued that agents of direct and indirect discrimination often share a single moral failing: they have failed to think of others as their equals. I think we can see this as a form of negligence—or rather, as involving two concurrent sorts of negligence.¹⁷ It is negligent in a sense akin to the negligence of tort law, which has to do with *treating* someone in an unreasonable way. And it is negligent in a moral sense as well, the sense of unreasonably *failing to think of something* that one ought

¹⁷ I have discussed and defended the view that agents of direct and indirect discrimination are negligent in other writings: see Sophia Moreau, “Discrimination as Negligence,” *Canadian Journal of Philosophy*, 40, Supp. 1, 123-149 and “The Moral Seriousness of Indirect Discrimination” in *Foundations of Indirect Discrimination Law*, ed. Hugh Collins and Tarunabh Khaitan, Hart Publishing, 2018, pp. 123-48.

to have thought of—or more accurately, in this case, failing to think of *someone* as one ought to have thought of them, as the equal of others.

C6.P43

I should emphasize here that in suggesting that both direct and indirect discrimination involve negligence, I am not offering the concept of negligence as a test or instruction manual for determining when an alleged discriminator has violated a duty toward a discriminatee. Their duty, as I have explained earlier in the book, is to treat the discriminatee as the equal of others. They act negligently when they fail to treat her as the equal of others, in circumstances where their failure is not all things considered justified. And they show moral negligence when they fail to think of her as a person whose interests merit a certain weight in their deliberations, and whose real needs and circumstances ought to be taken into consideration when deciding on relevant policies.

C6.P44

There are at least two objections one might make to my suggestion that both direct and indirect discrimination involve negligence. First, one might argue, as some legal scholars have done, that in fact prohibitions on indirect discrimination are much more akin to *strict liability* than they are to prohibitions on

negligence.¹⁸ It is no defense to a claim of wrongful indirect discrimination that one took all of the precautions that one reasonably could have taken to avoid disproportionately harming a particular protected group or that one did one's best to look into alternative policies. And presumably, even though in many cases we do think that a reasonable person in the agent's position would have been aware of the disproportionate effects of their policy on a particular group and would have located a viable alternative, nevertheless there will be some cases in which agents, through no fault of their own, fail to notice either the availability of alternative policies or the negative effects of their existing policy. Would we really want to say, as my view seems to imply, that these agents are negligent? Wouldn't we want to say, instead, that although they are not negligent and are not in any way at fault, there are nevertheless sound policy reasons for holding that they too should bear the costs of fixing their policies, to eliminate these harmful effects on protected groups?

¹⁸ See e.g. <<<REFO:IART>>>David Benjamin Oppenheimer, "Negligent Discrimination," *University of Pennsylvania Law Review* 141 (1992), pp. 899–972<<<REFC>>>.

It is true, of course, that absence of fault is generally no defense in law to a claim of indirect discrimination. But this does not seem to me to show that it is unhelpful to think about the kind of failing that is involved in cases of discrimination as a form of negligence. I think we can view the absence of such a defense as reflecting the diverse nature of the aims of anti-discrimination laws. One of the aims of anti-discrimination law is clearly to encourage governments, corporations, employers, providers of goods and services—any agent who is in control of significant resources or is in the position of offering significant opportunities to members of the public—to consider the impact of his actions on groups that have historically been treated as second-class citizens and significantly disadvantaged. But another aim of anti-discrimination law, and particularly of prohibitions on indirect discrimination, is to try to rectify or reduce some of these disadvantages. In other words, anti-discrimination law focuses not just on the agents of discrimination but on the effects of their policies on protected groups. Presumably, if lack of fault were a defense, this would impede the goal of improving the prospects of these groups. It might also function as a disincentive to employers

or other agents of indirect discrimination, who might, under an explicit fault standard, be less likely to stretch themselves, less likely to take that extra step to try to figure out alternatives that would cause less harm to members of protected groups. So we can explain the absence of this defense in a way that is entirely consistent with my theory.

C6.P46

Having said this, I do not think it is true that many actual cases of wrongful indirect discrimination involve agents who have made perfectly reasonable assumptions and investigations but were simply unable, through no fault of their own, to grasp that their policies have had disproportionate effects on protected groups or to locate better alternatives. Most people are aware of the history of exclusion of certain social groups in our societies, and we are bombarded by reports of discrimination from the media. So although it certainly does not follow that every organization will be aware of every discriminatory aspect of their policies, it does seem to me reasonable to expect most people to look into their practices and policies and to consider their impact on members of different social groups. And it seems to me that most of us are likely already to have access to much of the

relevant information we need, in order to assess the impact of our policies on these groups. Most employers and providers of goods and services are a part of many social networks of similar employers or providers of similar goods. The idea that there could, under these circumstances, be many sincere employers who are simply unable to figure out that their tests have unfair adverse effects on ethnic minorities or are oblivious to the fact that their policies unfairly disadvantage women—this seems to me a convenient fiction, one that some agents of indirect discrimination might like us to believe, but not one that has much basis in fact. So I think we need to be honest that such cases arise rarely. When they do, then we can say, as I did above, that there are nevertheless sound reasons for holding these agents responsible for cost, even if they are not responsible in the sense of being culpable.

C6.P47

There is also a second objection one might make to my suggestion that both direct and indirect discrimination involve negligence. One might object that it is only negligent to fail to give other people's interests a certain weight in one's own deliberations, and to fail to act accordingly, if we are actually

obliged to give others' interests that weight. And one might claim that the existence of such obligations is precisely what is contested by at least some of those people who think that indirect discrimination is less morally problematic than direct discrimination. For instance, scholars such as John Gardner and Richard Arneson would argue that the agent who discriminates indirectly does not inappropriately elevate her own interests above theirs because she stands, in the first place, under no obligation to give their interests any particular weight in her own deliberations.¹⁹ Of course, both Gardner and Arneson allow that there could be beneficial effects to prohibiting indirect discrimination. For instance, such prohibitions likely result in a redistribution of opportunities from the privileged to the underprivileged, and this will increase the well-being of underprivileged groups. But these are just beneficial consequences of a certain policy choice; and they do not, for Gardner and Arneson, track any kind of prior moral duty that we have to

¹⁹ See Richard Arneson, "What is Wrongful Discrimination?" *San Diego Law Review* 43 (2006), pp. 775-808 and John Gardner, "Liberals and Unlawful Discrimination," *OJLS* 9.1 (1989), pp. 1-22.

members of these groups. And so agents who fail to give such weight to the interests of others are not, on their views, negligent.

C6.P48

Do we, in fact, have a moral duty to treat others as equals? One might accept that, when a person holds himself out to the public as an employer, or as a provider of goods and services, then he stands to benefit from social cooperation, and so must take on the corresponding burdens of helping to ensure that others are treated as equals. But one might argue that the same is not true in private contexts, such as within the family or among friends. Do we have a duty to treat everyone as the equal of every other person, even when we make very personal decisions, such as decisions about whom to date or whom to invite over to our house? Haven't many philosophers written about the importance of special relationships in our lives, and about how such relationships require us to prioritize certain people over others, giving special preference to our children, our parents, and our friends? How is my account consistent with the recognition of such relationships? I shall turn to these, and other related questions about the nature of our duty to treat others as equals, in the next and last chapter of this book.