Book Reviews

Born Free and Equal? A Philosophical Inquiry into the Nature of Discrimination, by K. Lippert-Rasmussen. New York, NY: Oxford University Press, 2014, xii + 317 pages, ISBN 978019 9796113.

Kasper Lippert-Rasmussen begins his recently published book on discrimination by distinguishing three main general questions that are undertaken in the book, and that organize its structure, namely: what discrimination is, what makes it wrong, and in which cases differential treatment is discriminatory, or what should be done about wrongful discrimination. Both the approach and the layout of these questions make the book a thought-provoking rewarding reading.

In part 1 of the book, Lippert-Rasmussen examines several types of discrimination. This analysis is not an exhaustive taxonomy, but one that allows the reader both to identify a reference framework to allocate the moral wrongness of discrimination, and gives a glimpse of a proposed counteraction of discrimination acts, and its consequences. By doing so, the author advances the content and motivation of parts 2, and 3 of the book. In part 1, Lippert-Rasmussen advances many highly relevant debates on discrimination. Among the debates presented in this part, high points that merit further discussion include: what he calls the *generic definition* of discrimination which offers a broad, in contrast to the usual narrow definition, approach to discrimination. To wit, Lippert-Rasmussen defines *generic* discrimination as follows: "to discriminate against someone is to treat her disadvantageously relative to others because she has or is believed to have some particular feature that those others do not have." Another relevant point is the decision to stick to *group discrimination* as the approach that better accounts both what generally bothers people of discrimination, and the detailed treatment of indirect discrimination. On the one hand, one of the reasons he offers for this move is that, in his view, most of the times when something is said

to be discriminated, it *concerns* group discrimination. On the other hand, indirect discrimination is understood in his account as an example of non-intentional discrimination.

Particularly interesting here is the debate he opens on the *generic* definition of discrimination. In a nutshell, discrimination is defined as disadvantageous differential treatment. Far from a discrimination skeptic that disregards affirmative action, he aims at revisiting the concept of discrimination, and what is morally wrong about it from the very beginning. This intention is clear when he argues in page 15 that: "there is not even a presumption that someone who engages in *generic* (italics added) discrimination acts wrongly." However, the parts of the book that analyze cases of what we may call advantageous differential treatment, or non-wrongful discrimination, are somewhat unclear. For example, in pages 23, 25, and 27, Lippert-Rasmussen argues that nepotism is not a discriminatory act in the relevant sense, while in pages 41 to 46 what qualifies as advantageous differential treatment remains vague.

Lippert-Rasmussen moves a step forward in the definition of discrimination and states in page 16 that discrimination is *essentially comparative* with respect to individuals. The author believes that a feature that may turn generic discrimination to be morally wrong, or at least morally relevant, lies in (unjustified) disadvantageous treatment in comparison to others. This further feature of *generic* discrimination opens the floor to make a relevant distinction. Whilst he states that equal treatment and even non-disadvantageous discrimination may well not be morally wrong, he also considers that compared differential treatment between two people is morally wrong. A more in depth discussion of what makes discrimination wrong is undertaken in part 2 of the book. The relevant differential background of both conceptions is that while the *comparative* account identifies the moral wrongness of discrimination as due to the inequality that it generates, the other account perceives the wrongness in the discriminatory act. In the latter sense, the wrongness would not be only based on the effects generated neither on a particular situation, nor on further counterfactual situations, but on the unjustified differential treatment to a member of (in Lippert-Rasmussen's account) a social salient group. To illustrate the point: to assess whether someone is discriminating another in a morally relevant way, it should

be first established how that person would treat a subject from another equally salient social group in the same situation. It may be said that what justifies this comparison remains somewhat unclear. This feature of the author's account of the wrongness of discrimination defines his characterization of the harm-based account, and in particular of harm as the necessary condition of the wrongness of discrimination, most of all in pages 160 and 161.

In chapter 1, Lippert-Rasmussen sticks to *group discrimination* as a descriptive concept that, in his view, better explains what people talk about when they talk about discrimination. He points out that although *group* discrimination is the proxy for an account of the wrongness of discrimination (and many times in the text it seems to be the only objectionable type of discrimination), it just is a necessary condition for wrongful discrimination, but not a sufficient one. In other words, group discrimination is not always morally wrong. Lippert-Rasmussen proceeds to distinguish different senses in which it might be morally wrong. The reasons given in favor of establishing group discrimination as the main concept that qualifies as discrimination finishes at this point. Although Lippert-Rasmussen's view in this point is not clear, the reader may intuitively guess that he remains neutral on the distinctions made regarding the wrongness of group discriminatory treatment. To wit: Lippert-Rasmussen remains neutral about the moral distinction between direct and indirect discrimination, cognitive and non-cognitive discrimination, and valuation based and non-valuation based discrimination. A clear position regarding these subjects would have been helpful to clarify some normative points in part 3 of the book. It would also have been helpful to have a clear characterization of when is (unjustified) disadvantageous treatment morally wrong.

In part 2 of the book, Lippert-Rasmussen assesses three concrete accounts of the wrongness of discrimination: Larry Alexander's account on objectionable mental states, conditioned by false believes, and resulting in bias; Deborah Hellman's account on discrimination demeaning equal human worth; and Thomas Scanlon's account on the offensive meaning of discrimination. High points include: intrinsically wrong discrimination, instrumental reasons to assess the moral wrongness of discrimination, objective meaning accounts, Lippert-Rasmussen's harm-based account of the wrongness of dis-

crimination, and his version of a prioritarian harm-based account—a desert-prioritarian account. Briefly, though not less relevant, it should be noticed that one of the main difficulties for Lippert-Rasmussen's desert-prioritarian account is the prioritarian calculus. According to the desert-prioritarian account, individuals which are comparatively worse have greater moral value than those that are comparatively better off. While Lippert-Rasmussen is aware of some objections regarding equal value of both the discriminatee, and the discriminator (166), and accommodates some cases to his account, the metric of prioritarian calculations remains unclear.

Particularly interesting here is his approach to harm-based accounts of discrimination (154 ff) to which the author is more sympathetic. Broadly, Lippert-Rasmussen argues that one main concern with the wrongness of discrimination, given that it is not always wrong, are its harmful outcomes. Some statements defended in part 1 of the book have a pervasive impact in this second part of the book. For example, in part one Lippert-Rasmussen states that discrimination is essentially comparative, and, as mentioned before, this completely determines the account of the wrongness of discrimination. To wit, according to this account, the wrongness of a discriminatory act is based on its effects, and not on any other intrinsic moral wrongness it may generate. In addition, a discriminatory act will be harmful if and only if the discriminatee is worse than she would have been had she not been discriminated. However, discrimination may be morally wrong for other reasons than the ones mentioned in Lippert-Rasmussen's approach in part 2 of the book. For instance, racist, sexist, male chauvinistic attitudes may be morally bad both for the discriminatee and for the discriminator. Or they may have no bad effects in the discriminatee, whilst remaining morally bad for the discriminator, in terms of attitudes, decisive reasons for action, and bias generally generated by false beliefs.

On this line of reasoning, discrimination based on inequalities may be morally wrong, not just because of the alleged injustice of inequalities, but also due to the fact that it emphasizes previous injustices, structural or otherwise. Lippert-Rasmussen is aware of that previous injustices aggravate the harm of discriminatory acts (55 and 62). However, the harm-based account defended by the author does not take into account moral wrongs other than foreseen harmful out-

comes to constitute the wrong-making property, (155). For example, discriminatory acts may generate unintended harms, and both these harmful byproducts, and the discriminatory act generating both types of outcomes, raise moral concerns. It seems to me that these aggravating factors are disregarded in Lippert-Rasmussen's account of the wrongness of discrimination.

If we consider it in more detail, we will see that in part one of the book Lippert-Rasmussen conceives indirect discrimination as a non-intentional mental state[1] (73). Accordingly, indirect discrimination may be wrong in light of its due outcomes. However, discrimination based on mental states may well be intentional, and therefore morally wrong not only in virtue of its outcomes, but of its reasons for action. Hence, if Lippert-Rasmussen agrees with the claim that indirect discrimination may well be equally harmful, we may add that this would not be solely due to its harmful outcomes, but also of its reasons for action.

Finally, in part 3 of the book, Lippert-Rasmussen introduces three so-called non-ideal themes: proportional representation in connection with punishment, discrimination on the labour market, discrimination in the private sphere, and, finally, racial profiling. He discusses them in light of his proposed account of discrimination, the desert-prioritarian account. The chapter on discrimination in the private sphere is particularly interesting.

Despite the set of issues that need clarification, and further development, *Born Free and Equal* is a worthwhile enjoyable read, and it sets a precedent for further and fruitful discussion on the somewhat neglected topic of discrimination in political philosophy.

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[1] The discussion on the wrongness of indirect discrimination remains open, and Lippert-Rasmussen comes back to it at the annex of chapter 6, at pages 177, and 178.