(Not) Your Type:

Race, Dating, and Wrongful Discrimination

Benjamin Anderson

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Table of Contents

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Introduction

Just over fifty years ago, the United States Supreme Court ruled unanimously in *Loving vs. Virginia* to strike down laws criminalizing interracial marriage, declaring that "there is patently no legitimate overriding purpose independent of invidious racial discrimination which justifies this classification."[1] Some of these anti-miscegenation laws dated back to the colonial era, though their role in the United States in upholding white supremacy by maintaining racial purity was especially pronounced during Reconstruction and the subsequent return of Southern "home rule."[2] At the time of *Loving*, fewer than 3 percent of U.S. newlyweds were married to someone of a different race or ethnicity. As of 2017, that number has more than quintupled, with 17 percent of newly married couples in interracial partnerships.[3] Public opinion on interracial marriage has also shifted, from 4 percent of Americans approving of Black–white partnerships in 1958 to 87 percent approval in 2013. However, despite the present lack of legal barriers to intermarriage, and notwithstanding the apparent erosion of social disapproval of interracial partnerships, most people still marry within their own racial group, confirming that race still plays an outsize role in the selection of romantic and sexual partners in the United States and around the world. Indeed, striking patterns of race-based preferences are confirmed by empirical research in the social sciences. For example, a study of data from millions of OkCupid online dating profiles found that Black women and Asian men were severely penalized—other users were less likely to message or interact with them.[4] Another study of European daters revealed preferences that correspond closely to extant racial hierarchies in Europe: after white

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[1] *Loving v. Virginia*, 388 U.S. 1 (1967).
[2] Kenneth James Lay, "Sexual Racism: A Legacy of Slavery," *National Black Law Journal* 13, no. 1 (1993): 168-170, https://escholarship.org/uc/item/3qd7s83r.
[3] Gretchen Livingston and Anna Brown, "Intermarriage in the U.S. 50 Years After Loving v. Virginia", Pew Research Center, May 2017, http://www.pewsocialtrends.org/2017/05/18/intermarriage-in-the-u-s-50-years-after-loving-v-virginia/.
[4] Christian Rudder, "Race and Attraction, 2009–2014," *The OkCupid Blog*, OkCupid, last modified September 9, 2014, https://theblog.okcupid.com/race-and-attraction-2009-2014-107dcbb4f060.

Europeans and the online dater's own group, "Hispanics [i.e. Latin Americans] and Asians hold intermediate rankings, and [...] Arabs and Africans are the least preferred."[5]

On the face of it, you may think that these trends, though unfortunate, do not raise any urgent ethical questions. After all, we might think, the purpose of dating is to find someone we are compatible with, someone with the attributes that make them right for us. Each one of us has all sorts of arbitrary preferences that characterize the people we click with: height, weight, intelligence, common interests, and so on. It is inevitable that these preferences will disadvantage certain groups of people—for example, women preferring taller men makes it more difficult for shorter men to meet someone who is interested in them. Nonetheless, we might think that these preferences are personal—morality has no business telling us who we should sleep with, date, or marry. Indeed, there is a legitimate worry that such moralizing about personal choices, if taken to an extreme, would lead to repugnant conclusions, such as the "right" to sex demanded by so-called "incels."[6] As frustrating and insulting as it may be to be turned down because we are not someone's type, we are thus tempted to conclude that this is their prerogative—end of story.

This account, to a great extent, takes our desires as a given, shielding them from ethical evaluation. As a result, when confronted with the aforementioned evidence of racially discriminatory preferences, and the troubling consequences of sexual exclusion (such as risky sex, depression, and trouble maintaining healthy relationships), this account comes up empty-handed: if our desires are off-limits, there is nothing more to say. These considerations thus give us good reason to think that racial preferences might be *more* than personal. As Amia Srinivasan writes, "There is no entitlement to

[5] Gina Potârcă and Melinda Mills, "Racial preferences in online dating across European countries," *European Sociological Review* 31, no. 3 (2015): 332, https://doi.org/10.1093/esr/jcu093.
[6] Amia Srinivasan, "Does anyone have the right to sex?," *London Review of Books* 40, no. 6 (March 2018), https://www.lrb.co.uk/v40/n06/amia-srinivasan/does-anyone-have-the-right-to-sex.

sex, and everyone is entitled to want what they want, but personal preferences [...] are never just personal. [...] [W]ho is desired and who isn't is a political question, a question usually answered by more general patterns of domination and exclusion."[7] Although we might be tempted to throw up our hands and protest that people "like what they like," it is difficult to think of a racialized hierarchy of desire as something we should just accept. It is probably not a coincidence that those who are historically marginalized are also considered less sexually desirable—our dating preferences and norms of beauty are inevitably shaped by our surroundings, and this includes those racist ideologies which historically painted Asian men as effeminate and Black men as hypersexual. In nearly every other domain of life, people and institutions that practice racial discrimination are viewed as committing a grave moral wrong. Why should we think that there is an exception for racial dating preferences?

This question is especially pressing because sexual desire and romantic attraction, whether we like it or not, are not confined to the private sphere. Beauty and sex appeal influence the distribution of benefits and burdens in society: who gets hired, who is promoted, who is paid more, and so on. People are likely to be biased, even in non-dating contexts, towards people they consider attractive. A beautiful person might, for example, have that "something special" in a job interview that is enough to convince a hiring manager to select them over other similarly-qualified candidates.[8] Better-looking men have been found to have 13 percent higher lifetime earnings than their less-handsome peers.[9] Our desires and preferences, as personal as they may feel, are part of a larger picture of racial inequality that extends far beyond the private sphere.

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[7] Srinivasan, "Does anyone have the right to sex?"
[8] Laurence M. Thomas, "Split-Level Equality," in *Racism and Philosophy*, eds. Susan E. Babbitt and Sue Campbell (Ithaca: Cornell University Press, 1999): 170.
[9] Abigail Tucker, "How Much is Being Attractive Worth?" *Smithsonian Magazine*, November 2012, https://www.smithsonianmag.com/science-nature/how-much-is-being-attractive-worth-80414787/.

Thus, it just will not do to label all sexual desires and dating preferences as beyond the purview of morality, and be done with it. Instead, we are left with a series of vexing ethical questions. Is it morally permissible for people to want what they want, and allow their preferences for certain racial groups to influence their choice of partners? Or is there something wrong about preferring members of one racial group over another? If there is, what can we do about it? These questions, I think, merit serious philosophical consideration, and raise broader worries about how to resolve conflicts between seemingly "private" choices and their troubling effects on others. However, as it stands now, precious little work has been done to address this subject. Raja Halwani, one philosopher who has written on racial preferences, observes "no focused discussion of this issue" in the philosophical literature, and scathingly remarks that much of the work done in cultural studies is "superficial and lacking in argumentation."[10]

The literature is admittedly sparse, but a few theorists, including Halwani himself, have made considerable progress in thinking about this issue. Robin Zheng writes specifically about racial preferences for Asian women (pejoratively termed "yellow fever"). She argues that we ought to focus on how racial preferences affect the people they target, and concludes that the heavy psychological burdens of objectification and self-doubt that yellow fever imposes on Asian women is sufficient to conclude that this kind of preference is morally wrong.[11] Halwani's approach is more general than Zheng's: he discusses racial sexual desires of *all* kinds. His essay considers what he takes to be the three most plausible arguments against racial preferences—discrimination, stereotyping, and a virtue-ethics account—and concludes that none of them are adequate to show that racial preferences are, in and of

[10] Raja Halwani, "Racial Sexual Desires," in *The Philosophy of Sex: Contemporary Readings*, eds. Raja Halwani, Alan Soble, Sarah Hoffman, and Jacob M. Held (Lanham, MD: Rowman & Littlefield, 2017): 181.
[11] Robin Zheng, "Why Yellow Fever Isn't Flattering: A Case Against Racial Fetishes," *Journal of the American Philosophical Association* 2, no. 3 (2016): 400.

themselves, racist.[12] Elizabeth Emens, a legal scholar, takes a legalistic approach to what she calls "intimate discrimination," but makes important ethical claims as well, including her conclusion that we ought to abandon thinking about individuals with racial preferences as "bad actors," and instead focus on ways that the state can remove structural barriers to racial mixing (such as *de facto* segregation), as well as on individual, reflective self-inquiry regarding whether race is as important for our relationships as we subconsciously make it out to be.[13] Amia Srinivasan does not focus exclusively on dating preferences—her essay, "Does anyone have the right to sex?", deals with more general problems raised by political critiques of desire. However, this topic finds one key application in race-based dating preferences. She observes the same puzzling tension which I pointed out previously—that our desires are both intensely personal, and undeniably political, and it is from this conflict that the problem of racial preferences takes its ethical weight.[14]

In this thesis, I will approach this problem from a new perspective, by zeroing in on theories of wrongful discrimination and bringing them to bear on racial preferences. In doing so, I will go beyond Halwani's cursory discussion of wrongful discrimination and racial preferences, which in my view, relies on a faulty conception of what makes discrimination wrong. The basic structure of my argument is as follows. In Chapter One, I lay out the ethical problem posed by racial preferences. I begin by clarifying exactly what I mean by 'racial preferences,' and introduce important related concepts. I then survey the empirical literature on racial preferences in order to contextualize the trends in racial preferences, supporting the claims I make about a "hierarchy" of preferences, and the tendency people have to prefer the majority race, or to prefer their own group. This context sets the stage for a more

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[12] Halwani, "Racial Sexual Desires," 183–194.
[13] Elizabeth Emens, "Intimate Discrimination: The State's Role in the Accidents of Sex and Love," *Harvard Law Review* 122, no. 5 (March 2009): 1356–1400.
[14] Srinivasan, "Does anyone have the right to sex?"

detailed introduction of the ethical problem this thesis aims to address; namely, whether racial preferences constitute a form of wrongful discrimination. In Chapter Two, I introduce the concept of discrimination, and discuss various accounts of what makes wrongful discrimination wrong. In particular, I will focus on Deborah Hellman's theory of wrongful discrimination as discrimination that *demeans*, and Kasper Lippert-Rasmussen's account of wrongful discrimination as discrimination that causes morally objectionable harm. In Chapter Three, I consider what resources these theories of discrimination can muster towards an argument that racial dating preferences, or the choices that follow from them, are morally wrong. As it turns out, both the 'demeaning' and 'harm' accounts of discrimination have a plausible story to tell under which some racial dating preferences appear problematic. Of course, these arguments are not without their weaknesses. Chapter Four addresses the problems and limitations of approaching racial preferences from the perspective of discrimination. Crucially, the conclusion that racial preferences are wrongful discrimination would seem, at least intuitively, to imply that people should *stop* acting on their racial preferences—but this is exactly the worry raised by Srinivasan with respect to ethical critiques of desire. We take it as axiomatic that no one can be *obligated* to have sex with (or date) anyone else—so what does it mean to say that racial preferences are wrong? I will discuss this problem, and other objections to the argument that racial preferences are wrong. In the end, I conclude with Emens and Srinivasan that racial preferences, though they are certainly troubling, are best addressed not *directly* (by changing who we date out of duty), but rather *indirectly*, through efforts to change the societal norms and structures that shape our preferences, and as individuals, to question and reflect critically on *why* we want what we want, and whether we ought to "transfigure" our desires.

Chapter One: The Problem
of Racial Preferences

In August 2017, Grindr, a popular gay dating platform, published the first episode of a web series entitled "What the Flip?" The premise of the series is to explore the the way identity affects a user's experience by having two people switch profiles, and see what it is like to be someone else for a day. In the premiere episode, a white man and an Asian man change places. Both immediately notice an enormous difference in how they are treated: the Asian guy receives more messages than he knows what to do with, while the white guy sends dozens of messages that go unanswered. The responses he does get are from users describing themselves as 'rice queens,' or saying that they like Asian men because they are "good at bottoming" (that is, taking the receptive role in gay sex). When he doesn't reply, he is promptly met with angry tirades and racial slurs.[15] Surely we can all agree that abuse and harassment online are unacceptable. But this web series, and Grindr's subsequent "Kindr Grindr" campaign aimed at tackling "discrimination, harassment, and abusive behavior,"[16] also highlight a more subtle problem, which is the way that race shapes who we are attracted to, and in large part determines the romantic and sexual possibilities that are available to us.

This problem of "racial preferences" is the central issue I will analyze in my thesis. This chapter will introduce this ethical problem in detail. To begin, I will clarify exactly what I mean by 'racial preferences,' and introduce related concepts and distinctions that I take to be important groundwork for analysis in subsequent chapters. I then survey the empirical literature on the topic in order to contextualize trends in racial preferences, grounding the problem in the real world, and highlighting important features of racial preferences that a purely hypothetical inquiry might overlook. Finally, with

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[15] "Grindr's First Web Series Has Guys Switching Profiles For a Day," *INTO*, accessed May 10, 2019, https://www.intomore.com/videos/grindrs-first-web-series-has-guys-switching-profiles-for-a-day/7fafce0233934240.
[16] "Community Guidelines," *Grindr*, accessed May 10, 2019, https://www.kindr.grindr.com/community-guidelines.

this context in mind, the chapter concludes by returning to and framing the main problem I aim to address; namely, whether racial preferences constitute a form of wrongful discrimination.

1.1   Defining "racial preferences"

In order to precisely articulate the ethical problem posed by racial preferences, I want to first describe what I take the term 'racial preferences' to mean, and specify exactly what preferences I am interested in for the purposes of this project. I will also lay out a few conceptual distinctions and clarifications that I think are particularly important. In his essay, *Racial Sexual Desires*, Raja Halwani defines racial preferences quite simply, writing that "[people] who sexually desire or do not sexually desire members of a racial or ethnic group have [...] 'racial sexual desires' or 'preferences.'"[17] Preferences like this are variously described as "racial preferences," "sexual racism,"[18] and when they are preferences that favor a specific marginalized racial group, a "racial fetish."[19] Because the purpose of my inquiry is to evaluate the ethics of racial preferences, I will avoid the use of moralized terms such as "sexual racism," which seem to *presume* that people with racial preferences are racist or defective in some way.

As stated in Halwani's definition, and as one might infer from the common use of the term *fetishization* to describe certain attitudes, racial preferences can be "positive" or "negative": that is, one might either favor or disfavor members of a given racial group. It is plausible to think that this difference might matter ethically. As Elizabeth Emens writes, "Affirmative desire for a certain type may seem less troubling than a desire to exclude or avoid certain types or categories. The Asian American woman who, on a dating website, checks that she specifically seeks Hispanic men, looks rather different from the same woman who checks every box but African American."[20] At the same time, we should

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[17] Halwani, "Racial Sexual Desires," 181.
[18] See, for example: Callander, Holt, Newman, "Is Sexual Racism Really Racism?", *Archives of Sexual Behavior* 44, no. 7 (October 2015): 1991–2000.
[19] Zheng, "Why Yellow Fever Isn't Flattering," 401.
[20] Emens, "Intimate Discrimination," 1342.

not discount the possibility that even seemingly "positive" preferences could have pernicious consequences, or be associated with a negative social meaning. After all, "positive" stereotypes, such as the stereotype that gay men have a keen sense of fashion, are still stereotypes, and are often harmful and demeaning—we might think, for similar reasons, that positive preferences are not always flattering.

It is also important to distinguish *desires*, or *preferences*, from actions or choices that are based on or actualize preferences—for example, Beth might have a *racial preference* for Asian men, but if she lives in an all-white neighborhood, she may never get a chance to meet an Asian man. This distinction is important because in order to discriminate, it seems as though it is necessary to act on one's preferences. A hiring manager who is sexist, but who does not reject any female applicants—perhaps because no women apply—is certainly prejudiced, but it is difficult to say that he discriminates against anyone: he never gets the chance to do so. Moreover, one might discriminate for reasons other than one's personal preferences—for example, to avoid conflict with prejudiced family members—so again, preferences are logically separable from choices about who to date or who to have sex with. For the purposes of this project, I am interested in both racial preferences themselves, and the choices—and possible discrimination—that follow from them. At many points in this paper, and in the extant literature on the topic, the term 'racial preferences' encompasses both *desires* and *choices about who to date* based on those desires. However, we might want to analyze these two things separately at times, so it is important to bear this distinction in mind.

It is possible to desire or prefer certain traits *for* many different sorts of relationships. Racial preferences could be purely about sexual attractiveness, affecting who a person wants to sleep with—but one might also have different preferences regarding who to date, or who to marry. Plenty of people will sleep with someone they would never marry or date, and external social pressures, such as

familial expectations, might be more salient to people when they are making decisions about more public, longer-term relationships.[21] This is important because, depending on the sort of relationship, it might make sense to prioritize different things. It seems justified, or at least less questionable, to be "shallow" when looking for a one-night stand, and far more important to truly connect with someone for a long-term relationship. Moreover, as Halwani observes, racial preferences might have different *effects* in a relationship than they would for casual sex—for example, causing someone to doubt whether their partner loves them for *who they are* rather than their race.[22]

Racial preferences should also be distinguished from other attitudes and behaviors that might commonly be associated with them. One common criticism of racial preferences is that they are wrong because they are based on stereotypes about the racial group in question—for example, sexual preferences for Asian women are based on pernicious stereotypes about their being submissive or delicate. This might be the case sometimes, and perhaps even in the majority of cases—but nonetheless, it seems plausible that there are preferences that do not assume anything negative or demeaning about someone. Instead, as Halwani details, one might prefer a racial group because of how its members tend to look, or features they tend to have[23] (this is possible, I think, because race is a social construct based partly on appearance). Because we can imagine such 'brute' preferences— preferences held for no particular reason, or for reasons unrelated to attitudes about a racial group—I will allow the possibility that stereotypes and racial preferences are separable. Having said that, it would be irresponsible to ignore that people with racial preferences sometimes *do* refer to racial stereotypes when discussing their preferences, as detailed in the "What the Flip?" series discussed in the opening to this chapter.[24]

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[21] Emens, "Intimate Discrimination," 1346.
[22] Halwani, "Racial Sexual Desires," 196.
[23] Halwani, "Racial Sexual Desires," 190.
[24] Zheng, "Why Yellow Fever Isn't Flattering," 405.

Stereotypes might also play a *causal role* in the formation of racial preferences, even for people who do not believe those stereotypes. However, since my purpose here is to consider whether racial preferences, in and of themselves, are wrong, I will focus primarily on racial preferences, without assuming that they are always based on or caused by stereotypes.

As well as having racial preferences, people may have *second-order desires* about them—that is, one might approve or disapprove of one's own racial preferences. Just as I might loathe going to the gym, but also *want* to enjoy going to the gym because I know it is healthy to do so, people with racial preferences might feel shame or regret about them, or even think they are morally objectionable. (They also might be oddly proud of them, or more likely, neutral.)[25] Thus, even if we conclude that there is something wrong with racial preferences, we should not immediately conclude that people who have them are bad or malicious people—sometimes, our desires do not easily bend to our cognitive attitudes or ethical judgments.

Finally, we might think that the *identity* of a person with racial preferences is relevant. Although anyone could, in theory, have a non-prejudiced reason for preferring to date within their own race, Emens points out that "[categorical] affinities for in-group members look different, and potentially more appealing, when expressed by members of subordinate groups." For example, the desire to preserve one's own culture and avoid assimilation, to signal pride in one's community, or to partner with someone who understands the struggles of belonging to a subordinated racial group might be compelling reasons to marry within one's race—or even to specifically avoid dating white people (or whatever racial group holds disproportionate political power).[26] These intuitions are not yet an argument one way or another for the permissibility of racial preferences—but to me, they indicate

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[25] Halwani, "Racial Sexual Desires," 183.
[26] Emens, "Intimate Discrimination," 1347.

that different sorts of racial preferences might have various justifications and social meanings, and we should bear this in mind as the discussion turns towards the morality of racial preferences.

1.2   The facts about racial preferences

In order to discuss racial preferences in a productive and interesting manner, our ethical reasoning should not take place in a vacuum—it should be grounded in the real world, situated in the context of the actual preferences that people have. This is important, I think, because examining actual racial preferences can reveal ethically salient features that would not emerge if our discussion was merely hypothetical—for instance, the reality that racial groups that are systematically marginalized are also generally disadvantaged by racial preferences. Moreover, this context is crucial for establishing the *stakes* of this project—if there were no racial preferences that were plausibly of ethical concern, there would be little reason to agonize about them. Thus, my aim in this section is to lay out the salient facts about racial preferences by surveying the empirical literature on the topic. The literature I want to discuss falls into two broad categories: (1) Quantitative research describing overall trends in racial preferences (i.e. who prefers whom in general); and (2) Research identifying the effects of racial preferences on the people who are desired (or not desired). Both the distribution of racial preferences and their effects are important pieces of context for ethical reasoning, and, I think, for emphasizing what an interesting ethical problem they pose.

Many contemporary quantitative studies of racial preferences in dating make use of data from online dating platforms. These online platforms, with millions of users and detailed profiles, provide large samples with highly detailed information. Data from these platforms is particularly relevant given the rising fraction of people who use online dating sites to meet their partners. In 2005, 37 percent of single Internet users were using online dating platforms. Between 2007 and 2009, more new

relationships in the U.S. had begun through online dating (22 percent) than any other means of meeting a partner, except being introduced by a friend.[27] More recently, a 2015 study found that 15 percent of all American adults, and 27 percent of 18- to 24-year-olds, have used online dating sites or apps.[28] The growing prevalence of dating apps is especially pronounced for gay and bisexual men, the majority of whom now meet their first sexual partner online, according to studies of the United Kingdom and the Netherlands.[29] The results from studies of online dating are likely to have relevance outside of online behavior, since there are good reasons to think that behavior online more closely matches our "true" preferences. Due to what psychologists call the *online disinhibition effect*, people "feel less restrained, and express themselves more openly" on the Internet.[30] When it comes to online dating, the larger pool of partners, lower structural pressures, and absence of barriers to meeting people from different backgrounds give online daters more options, and more freedom to pursue them.[31] In addition, the costs of rejection are intuitively lower online than offline—there are many more interactions, these interactions are semi-anonymous rather than face-to-face, and people are rejected or ignored all the time.[32] This means that online daters are likely to avoid strategic behavior, and instead interact with the people in whom they are sincerely interested. So altogether, it seems as though the revealed preferences of online users are likely to represent their true preferences, which lends credence to studies that analyze data collected from online dating sites.

Empirical research on the distribution of racial preferences has demonstrated three key phenomena: (1) same-race preferences; (2) majority-race preferences; and (3) a *hierarchy* of preferences

[27] Eli J. Finkel et al., "Online Dating: A Critical Analysis From the Perspective of Psychological Science," *Psychological Science in the Public Interest* 13, no. 1 (2012): 13, https://doi.org/10.1177/1529100612436522.
[28] Aaron Smith, "15% of American adults have used online dating sites or mobile dating apps," Pew Research Center, February 2016. http://assets.pewresearch.org/wp-content/uploads/sites/14/2016/02/PI_2016.02.11_Online-Dating_FINAL.pdf.
[29] Callander, Newman, and Holt, "Is Sexual Racism Really Racism," 1992.
[30] John Suler, "The Online Disinhibition Effect," *Cyberpsychology and Behavior* 7, no. 3 (2004): 321, https://doi.org/10.1089/1094931041291295.
[31] Potârcă and Mills, "Racial preferences in online dating," 329.
[32] Günter Hitsch, Ali Hortaçsu, and Dan Ariely, "What makes you click?—Mate preferences in online dating," *Quantitative Marketing and Economics* 8, no. 4 (December 2010): 404, https://doi.org/10.1007/s11129-010-9088-6.

that mirrors the broader racial hierarchy of the society under consideration. A study by Hitsch et al. using data from over 6,000 online dating users in the United States found that white men and women disproportionately preferred other white men and women. For example, a Black woman's chances of being contacted by a white man were found to be 10% lower than a white woman's chances, and the chance of a white woman contacting an Asian man was found to be 12% lower than the chance of her contacting a white man.[33] However, since this study did not have sufficiently large samples of minority-race users to accurately determine whether they preferred their own races or not, the preferences of white users in this study could be attributed to either same-race or majority-race preferences. A second study, conducted by Potârcă and Mills, gathered a sufficiently large sample of minority-race users to distinguish between same-race and majority-race preferences, and found evidence for both. Their cross-country study of European countries pooled data from nearly 60,000 heterosexual users of an online dating site, eDarling. Although they initially hypothesized that people from all racial backgrounds would most prefer their own race, they instead found that "online daters of all racial backgrounds are more open to dating Europeans than their own group." However, people did prefer members of their own race as "second-best" to members of the white majority.[34]

Beyond the majority-race and same-race preferences, though, the racial preferences revealed by Potârcă and Mills were not random—they correspond squarely to strict racial hierarchies that have been studied and consistently demonstrated in European countries. To explain this, Potârcă and Mills cite existing research which emphasizes that dominant racial groups and minority groups both participate in a racial hierarchy, "[distancing] themselves from [...] groups at the lower end of the scale to preserve a positive social identity."[35] In European countries, this hierarchy places white Europeans at

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[33] Hitsch, Hortaçsu, and Ariely, "What makes you click," 419.
[34] Potârcă and Mills, "Racial preferences in online dating," 332.
[35] Potârcă and Mills, "Racial preferences in online dating," 328.

the top, Africans and Arabs at the bottom (due to "cultural traits and recent migration history"), and Hispanics (i.e. Latin Americans) and Asians somewhere in between (likely because of the "lengthier time spent in the host country and language and cultural resemblance to the White majority for Hispanics, or ex-colonial relations for Asians.")[36] This is exactly the pattern that emerged in the eDarling data: the study found that after Europeans and the online dater's own group, "Hispanics and Asians hold intermediate rankings, and [...] Arabs and Africans are the least preferred."[37] In the United States, too, the hierarchies of preference that are apparent in empirical studies tend to punish people from historically marginalized groups. Phua and Kaufman's study of 2,400 Yahoo personal ads found that "minorities' racial preference in a partner reflects the racial hierarchy. Most advertisers prefer either their own race or Whites, and least prefer Blacks, regardless of sexual orientation."[38] Data from OkCupid, a popular dating platform, confirms that although women of all races showed a preference for their own race, they otherwise heavily penalized both Asian and Black men. Meanwhile, non-Black men applied a similar penalty to Black women.[39] Among men seeking other men, online dating profiles are similarly biased. For example, gay and bisexual online daters often express desire for Latino or white partners, and rarely for Asian men; indeed, a non-trivial number express anti-Asian sentiment and stereotypes, associating Asian men with femininity.[40]

The second important area of the empirical literature I want to survey concerns the effects that racial preferences have on members of racial minority groups who either face sexual exclusion, or have to grapple with the perception of being desired *for* their race. As we endeavor to understand how these

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[36] Potârcă and Mills, "Racial preferences in online dating," 328.
[37] Potârcă and Mills, "Racial preferences in online dating," 332.
[38] Voon Chin Phua and Gayle Kaufman, "The Crossroads of Race and Sexuality Date Selection Among Men in Internet 'Personal' Ads," *Journal of Family Issues* 24, no. 8 (November 2003): 991, https://doi.org/10.1177/0192513X03256607.
[39] Christian Rudder, "Race and Attraction, 2009–2014."
[40] Denton Callander, Martin Holt, and Christy Newman, "'Not everyone's gonna like me': Accounting for race and racism in sex and dating web services for gay and bisexual men," *Ethnicities* 16, no. 1 (2015): 6, https://doi.org/10.1177/1468796815581428.

people feel, both first-person testimony and quantitative research are relevant. The attitudes of people who have experienced rejection based on their race are quite varied. One study by Callander et al. used in-depth interviews with fourteen gay or bisexual men of color to catalogue their experiences of sexual exclusion. Some participants believed that it is possible to feel and articulate racialized desire in a way that is sensitive and avoids hurting others—in one participant's words: "It's just a preference [...] but if they [...] do anything that hurts my feelings, that's not cool."[41] However, other participants found such preferences, expressed politely or not, to be deeply hurtful, even racist. One participant said, "[The] way I was educated is that discrimination against race is racist [...] to me that would be considered sexual racism I guess."[42]

When people do pursue members of a minority group, it is sometimes in ways that reinforces stereotypes: for example, assuming that Asian men will take on the "feminized" (receptive) role in gay anal sex[43], or assuming that Asian women are feminine and submissive.[44] This gives rise to another effect of racial preferences highlighted by the empirical literature: the feeling of being put into a box, or "reduced" to one's race. Kudler's 2007 study of twelve gay African-American men, for example, discussed the assumptions and expectations placed on these men based on the racial stereotype of Black men as hypersexual, unintelligent, and "well-endowed." This sort of treatment is pernicious because, in one participant's words, "a person is not dating a person—they're dating a race or a perception of a race."[45] Zheng's discussion of Asian-American women's experiences notes a similar feeling of depersonalization: the fact of racial preferences for Asian women gives rise to anxiety that potential

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[41] Callander, Holt, and Newman, "Not everyone's gonna like me," 8.
[42] Callander, Holt, and Newman, "Not everyone's gonna like me," 8.
[43] Chong-suk Han, "A Qualitative Exploration of the Relationship Between Racism and Unsafe Sex Among Asian Pacific Islander Gay Men," *Archives of Sexual Behavior* 37, no. 5 (October 2008): 831, https://doi.org/10.1007/s10508-007-9308-7.
[44] Zheng, "Why Yellow Fever Isn't Flattering," 405.
[45] Benjamin A. Kudler, "Confronting race and racism : social identity in African American gay men" (master's thesis, Smith College, 2007), 47–48, https://scholarworks.smith.edu/theses/1341.

mates are interested in them only for their race, not who they are as individuals.[46] For some of these

women, even compliments were tainted by the existence of racial preferences—they felt that they were

considered "sexy" either *in spite* of being Asian, or *because* of it. These feelings make it difficult to trust

potential romantic partners due to lingering doubts that one is only loved for one's race. The feelings

summarized here, though they are varied, and though they draw on only a limited number of

first-person experiences, lend support to the conclusion that racial preferences, whether they favor or

disfavor a group, can give rise to considerable self-doubt and emotional harm.

Quantitative studies of the effects of race-based rejection and devaluation lend support to many

of the feelings evinced by the subjects of these interviews. Incidences of sexual exclusion are not

necessarily isolated—the same person might encounter repeated rejection due to her race, and it is

plausible to think that over time, this could be seriously detrimental to her self-esteem. As Callandar et

al. explain, "collective forms of rejection can foster strong feelings of shame and potentially lead to an

'internalisation' of one's racial group as somehow less attractive or desirable than others."[47] Research

has found that the perception that one's group is devalued can lead to racial self-hatred and lower

self-esteem—*internalization* of these negative attitudes—which in turn can result in mental health

problems, as well as health-damaging behaviors.[48] A study of 192 gay Asian men found that perceived

group devaluation was associated with depression, and among those more attracted to white men,

greater risk of unprotected anal sex with non-primary partners.[49] Similarly, a study of gay and bisexual

African-American men—although it did not analyze discrimination in the search for romantic

partners *specifically*—found that perceived discrimination based on race and sexual orientation were

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[46] Zheng, "Why Yellow Fever Isn't Flattering," 407.
[47] Callander, Holt, and Newman, "Not everyone's gonna like me," 4.
[48] David H. Chae and Hirokazu Yoshikawa, "Perceived Group Devaluation, Depression, and HIV-Risk Behavior Among Asian Gay Men," *Health Psychology* 27, no. 2 (2008): 140–141, https://doi.org/10.1037/0278-6133.27.2.140.
[49] Chae and Yoshikawa, "Perceived Group Devaluation," 144.

associated with psychological harm and difficulties with sexual performance.[50] In short, both qualitative and quantitative empirical research on the effects of racial preferences and the exclusion of minority racial groups seem to suggest that the hierarchy of racial preferences alluded to previously may have pernicious consequences—both for people who are excluded from intimacy, and for people who are pursued in uncomfortably racialized ways.

1.3   The ethical problem of racial preferences

At the outset of this chapter, it may not have been clear exactly what ethical "problem" this project aims to uncover by discussing people's dating preferences and sexual desires. Perhaps it seems intuitive that these preferences are simply a matter of taste, like preferring horror movies to romantic comedies. It might be strange to consider the possibility that our choice of a sexual or romantic partner is anything but personal, and therefore outside the proper purview of ethical considerations. Now, I hope, after having defined and clarified the notion of a racial preference, and having surveyed the empirical literature to understand how racial preferences operate, it should be more clear exactly what is at stake in our discussion of racial preferences, and why, tempting though it may be, we should not immediately exempt our desires from ethical evaluation.

The racial hierarchy of dating preferences described by Potârcă and Mills seems like something that, if we care about racial equality, should concern us deeply. Housing inequality, income inequality, and other disparities between racial groups are obviously deeply regrettable. Why should we think that there is an exception when we turn to hierarchies of sexual desire? This is especially true given the way that norms of sexual attractiveness and coupling patterns have effects outside of the personal sphere— they influence how others treat us, they influence our opportunities, and they affect our dignity and

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[50] Brian D. Zamboni and Isiaah Crawford, "Minority Stress and Sexual Problems among African-American Gay and Bisexual Men," *Archives of Sexual Behavior* 36, no. 4 (August 2007): 575, https://doi.org/10.1007/s10508-006-9081-z.

self-respect. In light of the seemingly unjust distribution of racial preferences, and how they affect those people they select for or exclude, it will not do to dismiss them as *merely personal*. Of course, mere regret at the way things are is a far cry from an argument that people's desires, or the way they choose their sexual and romantic partners, is *wrong*. This is exactly the line of inquiry I hope to contribute to in the following chapters.

My approach will consider racial preferences through the lens of wrongful discrimination. A preference in and of itself is not yet discrimination. But *because* people have racial preferences, they go on to make choices, based on race, about who to date and sleep with—that is, they discriminate. In order to understand whether this kind of discrimination is wrong, I will begin the following chapter by introducing the concept of discrimination, and then analyze competing theories about what it is about a wrongful act of discrimination that makes it wrong. Then, in Chapter Three, I marshal these theories in order to advance an argument that sometimes, acting on or expressing racial preferences can plausibly be considered wrongful discrimination. Finally, in Chapter Four, I assess the strengths and limitations of the discrimination approach as a lens for understanding racial preferences.

Chapter Two: When is Discrimination Wrong?

When we hear the word "discrimination," most of us probably think about laws and practices that victimize disadvantaged groups. We might think of Jim Crow laws, sexist hiring criteria, or statutes that exclude lesbians and gay men from marriage. In instances like these, we often use the word "discrimination" in a moralized sense: that is, the word itself carries a negative evaluation of the practice to which it is applied. But in a second, non-moralized sense, most of us are quite comfortable with discrimination—for example, denying minors the right to vote, barring visually-impaired people from being truck drivers, and giving racial minorities a slight leg-up in college admissions. If we understand discrimination in this broader, neutral sense—which applies any time a member of one group is treated differently (or more favorably) than a member of another group—an interesting question arises: what makes discrimination wrong when it *is* wrong?

Determining what exactly constitutes wrongful discrimination is, in my view, a crucial step in coming to understand the ethical status of racial preferences. Although racial sexual desires are not themselves discrimination, it seems quite clear that they *lead* people to discriminate—that is, to make choices about who to date based on membership in a racial group. To understand whether selecting partners in this way is wrong—or at least, wrong *because* it is impermissible discrimination—requires separating permissible discrimination from wrongful discrimination. Although one could surely advance all sorts of arguments for and against racial preferences, it seems at least plausible that the fundamental wrong of these preferences, if there is one, is that they draw an unfair distinction between racial groups, and treat them differently on the basis of that distinction. Therefore, the aim of this chapter is to provide a general characterization of wrongful discrimination, which I will later use to

explore the specific problem of racial preferences. I will begin by explaining the non-moralized concept of discrimination, and, since discrimination comes in many forms, identifying relevant distinctions between these different types. Second, I will provide a framework for understanding what we might want out of an account of wrongful discrimination, based partially on a diagnosis of where several 'common-sense' views fall short. Finally, I will introduce two candidate theories that aim to provide this account: first, Deborah Hellman's theory of wrongful discrimination as discrimination that demeans, and second, Kasper Lippert-Rasmussen's theory of wrongful discrimination as discrimination that causes morally objectionable harm. I will also discuss the strengths and shortcomings of each of these theories, although I will not settle on a single preferred account, since, as I will explain, I think that each theory can illuminate different facets of the problem of racial preferences.

2.1   *What is discrimination?*

In order to discuss when discrimination is wrong, we must first establish what discrimination is. The word "discriminate" is used in many different senses—to discriminate is to be able to tell two things apart, and a wine connoisseur is said to have "discriminating" tastes. For the purposes of this project, I am interested in a very specific sort of discrimination, which occurs when someone draws a distinction between people based on traits they have (or do not have), and treats them differently on the basis of that distinction.[51] The sort of discrimination that we tend to care about is discrimination that distinguishes people by their membership in a *socially salient group*—gender or race, for example. If an employer were to refuse to hire people with last names beginning with the letter A, or people with green eyes, we might think it was arbitrary, wrong even, but it is not the sort of discrimination that is likely to be particularly interesting or of most urgent ethical concern, exactly because it is so

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[51] Deborah Hellman, *When is Discrimination Wrong?* (Cambridge, Mass.: Harvard University Press, 2011), 13.

idiosyncratic.[52] It seems different than, for example, refusing to hire women. As Deborah Hellman puts

it, this idiosyncratic sort of discrimination does nothing that "violates the principle of the equal moral

worth of persons."[53] This is why we do not commonly describe nepotism as "discrimination" against

non-family-members, or worry that unqualified applicants are being "discriminated" against: these are

not socially salient groups, i.e. groups that structure social interactions in a wide variety of contexts,

such as race, class, gender, and so on.[54] As a result, some theorists of discrimination, such as

Lippert-Rasmussen, prefer to exclude these more idiosyncratic cases of "discrimination" from the

definition of discrimination altogether. Others, like Hellman, think of these idiosyncratic cases as

"wrongful" and "discrimination," but not "wrongful discrimination," exactly because they do not

offend the equal moral value of persons—they are wrong for some other reason. Either way, these

idiosyncratic traits will not play a central role in the accounts I discuss in this chapter.

A second important question that must be answered is whether discrimination merely requires

differential treatment, or *disadvantageous* treatment. One obvious problem with merely differential

treatment is that it is *symmetric*: Jim Crow treated Black and white people differently, so if

discrimination is merely differential treatment, it would follow that Jim Crow laws discriminated

against white people, which is an absurd conclusion (though perhaps we would be comfortable saying

that they discriminated *in favor of* white people).[55] On the other hand, there are some cases of

discrimination that appear troubling despite not imposing an obvious material disadvantage on

anyone. Hellman gives the following example: in apartheid South Africa, Black prisoners were required

to wear shorts, while white prisoners wore pants. Given the weather, shorts might have actually been

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[52] Kasper Lippert-Rasmussen, "The Badness of Discrimination," *Ethical Theory and Moral Practice* 9, no. 2 (2006): 169.
[53] Hellman, *When Is Discrimination Wrong?*, 14.
[54] Lippert-Rasmussen, "The Badness of Discrimination," 169.
[55] Andrew Altman, "Discrimination," *The Stanford Encyclopedia of Philosophy* (Winter 2016 Edition), edited by Edward N. Zalta, last modified August 30, 2015, https://plato.stanford.edu/entries/discrimination/.

more comfortable than pants, and either way, the difference between shorts and pants seems immaterial. But the symbolism of being required to wear shorts, because they were considered infantilizing, was a "means of demeaning black prisoners."[56] Similarly, if a principal asked Black students to sit on the left side of the cafeteria, and white students to sit on the right, there is no clear disadvantage imposed on either group relative to the other, but the differential treatment itself seems to carry some unpleasant connotations—we might say that it disrespects the Black students. Perhaps the simplest way to handle this counterexample is to think of "disadvantage" as encompassing more than just material differences in treatment, and consider being disrespected or demeaned to be a form of disadvantage, even if it does not involve material harm. According to this understanding of "disadvantage," it makes sense to include these special cases of differential treatment under our umbrella of discrimination for now. Depending on the account of what makes discrimination wrong, *harm* may or may not be relevant to how we think about acts of discrimination.

It is also important to note that discrimination is inherently comparative: what makes an act or policy discriminatory is that it treats one group *disadvantageously*, but of course, this immediately raises the question, "Disadvantageously relative to whom?" Voter suppression of racial minorities in the United States cannot be defended by saying "At least racial minorities get to vote more than children do," because children are not the relevant comparison class; white adults who are not victims of voter suppression are. Thus, the disadvantageous treatment imposed by discriminatory policy ought to be thought of in a relative, not absolute sense.[57] This is especially true because a discriminatory policy might make its victims better off overall, even as it treats them worse than members of other groups.

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[56] Hellman, *When Is Discrimination, Wrong?*, 5.
[57] Altman, "Discrimination."

For example, a welfare policy that gives single mothers fewer benefits than everyone else may still make them better off than no welfare policy; this does not mean it is not discriminatory.

With these considerations in mind, I will provide a preliminary definition of discrimination, which is adapted from Kasper Lippert-Rasmussen's definition in his paper, "The Badness of Discrimination." The definition goes as follows:

> *X discriminates against Y when: (i) X treats Y differently from Z (or from how X would treat Z); (ii) the differential treatment is (or is believed by X to be) disadvantageous to Y; and (iii) the differential treatment is suitably explained by Y's and Z's being (or believed by X to be) members of different, socially salient groups.*[58]

Lippert-Rasmussen also allows for "positive" discrimination, which would have the same definition, replacing "against" with "in favor of," and "disadvantageous" with "advantageous." With this basic definition in mind, I will go on to explain a few relevant distinctions between different types of discrimination.

2.2   A taxonomy of discrimination

Although the concept of discrimination is unified inasmuch as all discrimination constitutes differential treatment based on group membership, discrimination might be better thought of as a family of concepts rather than a single concept, because it comes in so many different forms. People, organizations, and social institutions can discriminate intentionally or unintentionally, and for a variety of reasons. In this section, I will sketch a rough taxonomy of discrimination concepts by explaining a few of the most important conceptual distinctions, which are likely to affect our understanding of discrimination and when it is wrong.

The first such distinction is between "direct" and "indirect" discrimination. Direct discrimination represents its target as a member of some social group, and disadvantages her on that

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[58] Lippert-Rasmussen, "The Badness of Discrimination," 168.

basis. As Lippert-Rasmussen puts it, direct discrimination "involve[s] representational items – e.g. desires, beliefs, statements, laws – that refer to, or otherwise distinguish between, those who are discriminated against and those who are not."[59] For example, a notice posted in a bar which reads "No Women Allowed" would be direct discrimination: it directly picks out a group for differential treatment. Similarly, literacy tests used to bar Black voters in the South would be an example of direct discrimination, since they targeted Black people specifically, with the intention of disadvantaging them (even if the authors of the policy were not always forthright about this intention). Indirect discrimination, on the other hand, occurs when a process or practice systematically favors some groups over others, even though no direct discrimination is involved (i.e. no one intends to disadvantage anyone). For example, many people think that the SAT, although it aims to test for academic potential, systematically favors the rich, who can afford expensive tutors. Today, a good deal of employment discrimination is also indirect: there are at least some employers who do not *want* to hire men more than they want to hire women, but nonetheless workplace policies make it rather difficult to be a mother and advance one's career at the same time.[60] Indirect discrimination can also be *structural* when the rules that govern life in a society produce disproportionate and unfair outcomes. Of course, these rules might be determined by people who intend to disadvantage certain groups, so structural discrimination may have its origins in direct discrimination as well.[61]

A second distinction drawn by Lippert-Rasmussen is the difference between "valuation-based" and "non-valuation-based" discrimination. He observes that the desire or propensity to discriminate against someone does not *necessarily* entail a negative evaluation of that person or the group to which they belong (although it often does). A valuation-based discriminator is a person who believes that one

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[59] Lippert-Rasmussen, "The Badness of Discrimination," 170.
[60] Lippert-Rasmussen, 171.
[61] Altman, "Discrimination."

group's interests count for more than another's, or that members of different groups ought not interact with one another the same way they interact within their group. Thus, this sort of discrimination is based on a differential 'valuation' of the two groups.[62] On the other hand, we can imagine, for example, a man who believes that men and women are of equal value, and that it is perfectly alright for them to interact with one another in the same way that men interact with other men. This man might still prefer, in his own life, to be friends with other men. We might be suspicious of a person like this, and wonder what is behind his desire to primarily be friends with other men—but it seems at least logically possible for him to not have any negative views about other groups, and still prefer the company of his own group. This is what Lippert-Rasmussen refers to as a *brute discriminatory desire*.[63]

One good way of understanding this distinction is in terms of 'first-order' versus 'second-order' desires. A non-valuation-based discriminator might have biased desires and preferences despite recognizing that these preferences are irrational, and there is no good reason to prefer one race, religious group, or gender category over another. She may regret or feel ashamed of her own desires, and perhaps even actively try to stymie them, but nonetheless, they are her desires. Relatedly, it is important to note that discrimination does not need to involve negative attitudes about another group—it is quite possible that certain incentives make it *rational* to discriminate, even if one does not dislike members of another group or view them as inferior. For example, a restaurant owner operating under the Jim Crow regime in the South might have thought it profit-maximizing to cater to her racist clientèle by barring Black people from her restaurant.[64] Such a choice would not logically require her to believe that Black people are inherently worth less than white people—it would only require her to be self-interested. (Of course, in acting in her self-interest, she would be complicit in a larger racist

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[62] Lippert-Rasmussen, 172.
[63] Lippert-Rasmussen, 172.
[64] Lippert-Rasmussen, 172.

structure.) This concept of non-valuation-based discrimination is important—it is one reason why accounts of wrongful discrimination which depend on its being *irrational* are inadequate. Some acts of discrimination, like this restaurant owner's, might be both *rational* and morally impermissible.

2.3   What about "reverse" discrimination?

An additional preliminary question concerns who can discriminate against whom. It is certainly compatible with our working definition of discrimination that members of *any* group can discriminate against members of any other, *including their own group*. However, it is commonly thought that only people who are members of dominant groups can be racist or sexist, or that only the powerless and vulnerable can be victims of racism or sexism. Claims of things like 'reverse racism' and 'misandry' are generally laughed off. One might make a similar claim that in order to *discriminate*, one must hold social or institutional power over another person. Such an account would be problematic for several reasons, several of which have been identified by Lawrence Blum. First of all, it is impossible to deny that members of marginalized groups can, themselves, hold prejudiced or bigoted attitudes. For example, prejudice against Black Americans has been well-documented among Mexican-Americans.[65] Blum further points out that not all racism—and I would add, not all discrimination—is institutional. Anyone can "put their prejudices into action" and carry out acts of racism or discrimination on an interpersonal level; doing so does not require the backing of larger institutions or organizations. Furthermore, even if one thinks that discrimination requires some sort of institutional power, it is not universally true that members of marginalized groups do not hold such power. Even if the United States legislature, for example, is overwhelmingly white and male, women and racial minorities hold leadership positions or constitute majorities in other institutions and communities: city governments,

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[65] Lawrence Blum, *"I'm Not a Racist, But...": The Moral Quandary of Race*, (Ithaca: Cornell University Press, 2002), 35.

schools, and hospitals, for example.[66] If a female executive refuses to hire any men, it seems implausible to me to call this anything other than discrimination—and wrongful discrimination at that.

However, even if anyone can discriminate against anyone, the intuition remains that some instances of discrimination are far less pernicious than the paradigmatic sort, in which a person in a more privileged group imposes a disadvantage on a more marginalized person. I am inclined to agree with this sentiment, and there are several reasons to think this is the case. For one, the historical legacy of racism, misogyny, and homophobia causes discrimination against racial minorities, women, and LGBT people to carry additional weight. Attacks on the dignity of these groups carries a powerful social meaning, and the trauma these groups have faced makes them more vulnerable to these sort of attacks.[67] Second, discrimination against these marginalized groups is simply far more common, and plays into an existing *pattern* of racism, sexism, or homophobia—there is already existing fear, self-hatred, and trauma for it to attach to.[68] Thirdly, these groups are, in Blum's words, 'positionally inferior'—i.e. they already face a material disadvantage in society. This means that discrimination against them tends to disadvantage *already-disadvantaged* people, who are less able to cope with it. It also means that inferiorizing comments carry a more powerful message of shame, since they are directed at groups that are, in fact, disenfranchised and marginalized.[69] On a related point, discrimination against these groups has the effect of *perpetuating* the existing systemic injustices that leave these groups vulnerable and disadvantaged. Black Americans already face serious difficulties, for example, in the housing and job markets. Discrimination against them entrenches and furthers this existing inequity.[70] Although it is logically possible to discriminate against a wealthy, straight, white

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[66] Blum, *"I'm Not a Racist, But..."*, 38–39.
[67] Blum, *"I'm Not a Racist, But..."*, 44.
[68] Blum, *"I'm Not a Racist, But..."*, 47–48.
[69] Blum, *"I'm Not a Racist, But..."*, 46–47.
[70] Blum, *"I'm Not a Racist, But..."*, 49.

man, he is far less likely to be disadvantaged or hurt by it—he might be sad, but there is no systematic pattern of discrimination against him, no traumatic historical legacy of marginalization, and no material disadvantages that multiply the impact of this discrimination. In short, he is much more likely to be able to slough off this single isolated incident and move on with his life. This is why, although we should not ignore discrimination against members of better-off groups, there is good reason to think that not all kinds of discrimination are equally concerning.

2.4   *The right theory for wrongful discrimination*

Before I discuss the two theories of discrimination that I take to be most interesting and useful, I want to spend some time exploring what we should hope to accomplish with all this theorizing about wrongful discrimination. One natural question to begin with is, *why should our ethical theorizing focus on discrimination at all?* That is, why do we need a special concept for ill treatment based on group membership, rather than "cutting out the middleman" and focusing on ill treatment in general? Surely, for example, if discrimination is wrong because it demeans, we could just focus on demeaning, and if it is wrong because it causes harm, we could focus on morally objectionable harm. Indeed, as Andrew Altman points out, until the mid-19th century, ethical reasoning proceeded largely without discussion of discrimination.[71] However, as he observes, moral philosophy has become increasingly cognizant of the fact that much of the perceived injustice in the world has a group-based structure: racism, genocide, patriarchy, and the like pick out a *group* of people and inflict suffering on individuals in that group *on the basis of their membership*. Thus, the concept of discrimination is useful because it highlights the (contingent) fact of the group-based structure of many historical injustices, as well as injustices that continue today.[72] This does not necessarily imply that discrimination is a wrong done to groups rather

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[71] Altman, "Discrimination."
[72] Altman, "Discrimination."

than individuals.[73] However, it does allow us to understand the broader picture of discrimination as disproportionate harms suffered *in particular* by members of socially disadvantaged groups.[74] Thus, although instances of wrongful discrimination may be wrong whether or not they are described as "discrimination," there appears to be some theoretical benefit to labeling them as such, thereby unifying a class of group-based wrongs done to individuals.

In order to properly unify these group-based wrongs, our theory of wrongful discrimination must, at the very least, separate the neutral cases of discrimination from the wrongful ones. It would be even better, based on the discussion in the previous section, if our theory captured why some instances of wrongful discrimination are worse than others. There are many candidate theories that aim to achieve these goals, and examining the ways that some 'common-sense' theories fall short is instructive for understanding additional difficulties that an ideal theory of wrongful discrimination must overcome. One commonly-held belief is that discriminating on the grounds of certain immutable traits is *always* wrong—for example, it is never right to treat men and women differently. Although appealing on face, this account faces a few serious problems. First, it rules out "reparative" discrimination, such as affirmative action, since this also discriminates on the basis of immutable traits. Second, it ignores cases where there are *real differences* between socially salient groups that warrant treating them differently—for example, barring a blind person from being a truck driver, or conducting drug trials for diseases that specifically affect women or Black people. Third, it overlooks the fact that plenty of seemingly wrongful discrimination targets identities that *are* mutable, such as religion. Finally, it just does not seem correct to say that mutability is what matters in assessing the morality of an act of discrimination. Racial discrimination is not bad *because* race is immutable—if racial surgery

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[73] For some theorists, it is important that we be able to explain why discrimination is wrong *on an individual level*—i.e. why it is wrong for X to discriminate against Y, not just why the aggregate outcome of all discrimination is bad.

[74] Altman, "Discrimination."

were cheap and available, this would not make racism permissible.[75] In order to overcome these difficulties faced by the "immutable traits" account, our candidate theories of wrongful discrimination must account for wrongful discrimination based on both mutable and immutable traits, and must identify the instances where it is acceptable to discriminate, even though the relevant trait is not the choice of the targeted individual.

A second common-sense account holds that wrongful discrimination is wrong because it is *irrational*—for example, in the employment context, one's racial background is irrelevant to the ability to successfully carry out tasks in the workplace. In fact, by refusing to consider Asian candidates, for example, an employer would miss out on a significant pool of talent. This account also runs into serious issues. For one, it is not clear that there is an across-the-board duty to be rational: people make irrational decisions all the time, and some of these decisions might be morally permissible, like choosing to eat ice cream for lunch. Furthermore, as in our previous example of a restaurant with a racist clientèle, we can imagine cases where it is rational to discriminate—for the purposes of profit maximization, say—but this does not appear to make that discrimination excusable. This objection also explains why accounts of discrimination that identify the wrong as one of prejudice are not adequate—there are reasons other than prejudice to discriminate, and this discrimination can still be wrong. Finally, "irrationality" simply fails to grasp the seriousness of the harm done to marginalized people by discrimination. If irrationality were the issue, then what would make discrimination against Black people worse than discrimination against people with green eyes? It seems as though the rationality account fails to capture something important about the wrongness of discrimination.[76] Our ideal account should be able to identify what makes discrimination wrong even when it is done with a

[75] Altman, "Discrimination."
[76] Altman, "Discrimination."

rational justification, and ideally, it should capture why some instances of discrimination are *particularly* pernicious, for example, those directed against more marginalized groups.

A final attempt to identify what makes discrimination wrong, most often discussed in the context of employment discrimination, is the notion of *merit*. On this view, people who are most qualified or most "deserving" of a position are *morally entitled* to it, or at least, we have a moral obligation to treat people based on their merits. Therefore, we commit a moral wrong when we select a less-meritorious person for that position, or overlook people's merits when making decisions. One problem is that this approach, like the rationality account, fails to appreciate how serious some cases of discrimination are. If the main problem with discrimination is that the most meritorious applicant does not get the position, or does not have her merits appreciated, then it seems as though being a discriminator is no worse than being an incompetent hiring manager who makes the wrong choice, or does not properly appreciate the merits of the candidates (although perhaps their *intentions* could be an important difference). Some argue, though, that merit simply does not *entitle* anyone to a position— that it is perfectly fine to not hire the most "deserving" person. For example, if the most objectively qualified candidate for a position is an obnoxious, unpleasant person to be around, it seems fine to reject him, even if he would do the best job. Hiring someone less qualified, but also less annoying, does not seem to wrong the obnoxious person.[77] The notion of "merit" is also rather unhelpful, because it simply moves the theoretical "bump in the carpet" to trying to identify what constitutes merit and what people do and do not deserve—it does not do much in the way of identifying which cases of discrimination are wrong.

Having considered where these common-sense theories fall short, and by extension, what obstacles our candidate theories must avoid, I would like to make one final clarification, which is to

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[77] Altman, "Discrimination."

differentiate an act's being wrongful discrimination from its being *wrong, all things considered*. Plenty of actions—murder, theft, and lying, for example—are wrong on face, but nonetheless might be permissible if they are necessary to prevent some greater evil. This is Hellman's view: with discrimination, "like other claims of moral right or wrong, it is possible that [...] one could demean to avoid a worse wrong or perhaps a very great harm."[78] Likewise, in Lippert-Rasmussen's account of wrongful discrimination, he aims to show why some instances of discrimination are "*pro tanto* bad" (regrettable in some respect), not necessarily all things considered.[79]

In this section, we have established the importance of an account of wrongful discrimination, by identifying the historical and present importance of group-based injustices. We have laid out goals that a successful account of wrongful discrimination ought to accomplish, and difficulties that have confounded other theories. In particular, a successful theory should separate permissible from wrongful discrimination; explain why *worse* wrongful discrimination is *worse*; and explain various idiosyncrasies that other theories cannot account for (e.g. discrimination that is rational, permissible discrimination based on immutable traits, and so on). Finally, we have identified that the goal of this theory should not be to establish the absolute wrongfulness of an action, but instead to identify what makes a practice wrong *in the absence of competing moral considerations*. With this framework in mind, I will use the following two sections to forward two accounts of what makes discrimination wrong, beginning with Hellman's 'demeaning' account, and followed by Lippert-Rasmussen's 'harm' account. I will sketch each theory, identify the arguments that support it, and point out its shortcomings. Finally, I will conclude by discussing how each of these theories might reasonably play an important role in analyzing racial preferences, which will occupy the remaining chapters of this thesis.

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[78] Hellman, *When Is Discrimination Wrong?*, 30–31.
[79] Lippert-Rasmussen, "The Badness of Discrimination," 174.

2.5   The 'demeaning' account

The thesis of Deborah Hellman's account of wrongful discrimination is that discrimination is wrong when it *demeans* the people it differentiates. By demeaning, Hellman means treating someone as though they are of lesser moral value. The precise notion of what it is to demean requires some explanation. According to Hellman, demeaning involves two components. The first is *expressive*: to put someone down, one must *express* that they are less worthy of concern, or of lesser moral value.[80] This means that whether an action or classification demeans is not fully within the control of the individual, just as the meaning of words is not set by the individuals saying them. Hellman thinks that sometimes, when we draw distinctions among people, these distinctions are imbued with a meaning beyond the classification itself, and that sometimes this meaning can demean the people who are classified. In the example from section 2.1, the school principal who asks Black and white students to sit on opposite sides of the cafeteria thereby invokes a history of segregation and racial injustice, and hence demeans the Black students, even though he may not intend to.[81] This expressive component explains why someone may intend to demean and fail to do so, and why someone might unintentionally demean another person. This is helpful for our account of discrimination, since, as we discussed previously, it seems possible to wrongfully discriminate against a group of people with no negative evaluation of them in mind, or despite having good intentions.

Along with this "objective meaning" component of demeaning, Hellman also think that it requires some amount of *efficacy*. That is, it is not enough to *express* that someone is of less moral worth; rather, one must actually *succeed* in objectively putting them down, which Hellman thinks

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[80] Hellman, *When Is Discrimination Wrong?*, 35.
[81] Hellman, *When Is Discrimination Wrong?*, 26.

often requires a degree of social power (though there may be exceptions to this). She attempts to

demonstrate this by example. As she writes:

> *[If] I spit at a colleague or my boss, I act disrespectfully, given conventions in our culture about the meaning of spitting. But it is unlikely that I demean my colleague or boss [...] because my actions [...] lack the power to put her down. [...] Contrast this scenario with one in which I spit on a homeless man lying in the street. Here I demean him. In spitting, I put him down [...] because (a) spitting is a conventional way of showing disrespect and (b) the relative disparity in status between a homeless person and myself allows my expression of disrespect to put him down.*[82]

It is important here to distinguish between making someone *feel* diminished, and *objectively* putting

them down. Hellman is quite clear that she intends the latter when she speaks of demeaning—she is

concerned about the *action itself*, not its effects—so whether a person is demeaned is distinct from how

they feel.[83] (Someone might demean me, but do so behind my back, or in a way that I fail to perceive or

understand.) Based only on what we have said so far, however, it is difficult to understand why social

power is required to demean someone, to treat them as less worthy of moral consideration. Indeed, it

seems as though anyone could do this—a homeless woman could presumably treat Bill Gates as though

he is absolutely worthless, and though he might brush this treatment off, this does not erase the fact

that she did, in fact, treat him in this way. However, what I think Hellman is trying to suggest is

something also gestured at by Blum: that sometimes, "the power relations between two groups are such

that it would be virtually impossible for an inferiorizing remark to succeed in scorning or insulting a

member of a positionally superior group." In other words, sometimes we may *try and fail* to demean

other people, or say something that is *disrespectful* without "putting them down."[84] We have to be

careful in making this move—if we aren't, we might end up saying that what marks a "successful" insult

is whether its target *feels* insulted (in fact, I think this is exactly what Blum does). But in order for

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[82] Hellman, *When Is Discrimination Wrong?*, 35.
[83] Hellman, *When Is Discrimination Wrong?*, 27.
[84] Blum, *"I'm Not Racist, But..."*, 46–47.

Hellman's account to work, demeaning must be separate from feeling diminished—I imagine she would couch her explanation of what makes a "successful" insult in the social meaning of the classification, although I think this is still somewhat unclear.

We might seek some clarification on the concept of demeaning from Jean Hampton, the theorist from whom Hellman borrows the concept.[85] Hampton advances the strong claim that, *in general*, an action is wrong when it is objectively demeaning; that is, what makes *any* action wrong is that it disregards another person's moral worth (Hellman does not defend such a bold thesis).[86] According to Hampton, when we perform immoral actions, we thereby fail to treat people in the way they deserve, and so our action expresses the idea that, morally, they *matter less*. As a consequence, people who are morally injured are demeaned—treated as though they matter less—because they are forced to endure treatment that is "below them."[87] Hampton's account does not rely on the notion of social power—indeed, it cannot, because if to do wrong is to demean, and demeaning required social power, then it would be impossible for someone occupying an inferior position in society to do something wrong to someone more powerful than they are (and there are clear cases where this *is* possible, for example, unjustified acts of terrorism).

Is it possible to reconcile these two accounts of demeaning in a way that clarifies Hellman's argument? To some extent, it may be. Hampton's claim is that to demean someone is to force them to endure treatment that is "below them." Although it is logically possible for anyone to treat anyone else in a way that fails to recognize their value, we might argue that people with more social power have a greater ability to treat others in this way, and to escape such treatment themselves. That is, they cannot be forced to *endure* degrading treatment to the same extent, but might be able to use their power to

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[85] Hellman, *When Is Discrimination Wrong?*, 29.
[86] Jean Hampton and Jeffrie Murphy, *Forgiveness and Mercy* (Cambridge: Cambridge University Press, 1988), 53.
[87] Hampton and Murphy, *Forgiveness and Mercy*, 44–45.

force others to endure it. If I spit on my boss or my colleague, there is something they can *do* about it—likely, they can have me fired or disciplined. On the other hand, if I spit on a homeless person, they *might* be able to seek redress, but their very lack of social and economic empowerment means that the chances of success are slim. The impunity with which politicians, wealthy college students, and business executives commit truly appalling acts, including assault and sexual harassment, is a grim testament to the fact that social power mediates our ability to do wrong without consequences. So, although I do not think that Hellman gets it quite right when she claims that to treat someone as though they matter less than others requires social power, we might make the similar, more-plausible claim that more powerful people can demean less powerful people more easily, and avoid such treatment themselves.

Having provided a degree of clarity on how demeaning relates to social power, we should finally have a satisfactory understanding of what Hellman means when she claims that wrongful discrimination is discrimination that demeans the people it classifies. Now, we can begin to explore why she thinks this theory is correct. The basic intuition underlying Hellman's account is that, from a moral point of view, all people are of equal value. And, she adds, what troubles us about some instances of discrimination—the wrongful ones—is *exactly* that they "run afoul" of this idea: they somehow violate the principle of the equal moral worth of persons.[88] If this is right, then discrimination is wrong exactly when it demeans— that is, when in classifying people, we treat them as though they *matter less*. Although it is difficult to determine exactly which classifications demean, there are quintessential classifications that *certainly* do: requiring Black and white children to attend different schools, or excluding female coworkers from an office happy hour, for example. Hellman thinks that we can reason from these paradigmatic examples, and a general understanding of our culture and history, to

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[88] Hellman, *When Is Discrimination Wrong?*, 29.

determine whether a classification "stamp[s] a person or group 'with a badge of inferiority.'"[89] This

account is appealing because it relates discrimination directly to the equal moral value of persons,

which is what many of us have in mind when we object to discrimination: it unfairly privileges

members of one socially salient group over others for no good reason, and so fails to treat the members

of these groups as moral equals. Using Hellman's account, we can come to understand whether an

instance of discrimination is wrong by judging the *social meaning* of the classifications drawn—and if

that meaning is demeaning, then the classification is wrongful, whether or not it leads to any material

harm. This account also neatly explains why the "quintessential" cases of wrongful discrimination are

so much more troubling than idiosyncratic examples like anti-green-eyes discrimination—there are no

relevant historical and social facts about people with green eyes for this classification to attach to, and

so this it is unlikely to demean the people it classifies. It may be arbitrary, and is likely wrong for other

reasons—but it is not the kind of discrimination that violates the principle of equal worth of persons.

Despite its intuitive appeal, there are several ways in which Lippert-Rasmussen worries that

"disrespect-based" accounts like Hellman's fall short. The fundamental problem is that her theory

cannot account for any act of wrongful discrimination that does not presuppose or imply a lower

moral status on the part of those classified. If there are, in fact, central cases of discrimination that do

not imply that members of some groups matter less morally, then it would seem that Hellman's

account is too narrow. According to Lippert-Rasmussen, lots of discrimination is exactly like this—for

example, indirect discrimination, he claims, "need not involve representing the discriminatee as having

a lower moral status than he has."[90] There are two ways to defuse this objection. First, we might argue

that indirect discrimination does, in fact, presuppose that its victims have a lower moral status.

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[89] Hellman, *When Is Discrimination Wrong?*, 40–41.
[90] Lippert-Rasmussen, "The Badness of Discrimination," 179.

Lippert-Rasmussen himself states that "if for purely egoistical reasons, someone ignores the interests of another person in a way that would be morally permissible only if the second person's status were lower than it is," this constitutes such a presupposition. [91] We might argue that indirect discrimination—acts and policies with disproportionate, discriminatory outcomes—does exactly this. Unfortunately, this only works if the outcomes of the policy or action are foreseeable—and in some cases, they are not. Also, Hellman's account is clearly not designed to consider indirect discrimination, since her focus is on the action itself, not on its outcomes. So this first response is inadequate. A second, more promising response is to deny that the 'narrowness' of Hellman's theory is a problem. Some theorists of discrimination think that direct and indirect discrimination are two very different things. Indirect discrimination concerns outcomes, whereas direct discrimination concerns the reasons that guide agents, and how we classify and treat other people. [92] If this is correct, then we might not view it as a problem that Hellman's theory only applies to intentional classifications. On the other hand, we might think it makes sense to group indirect and direct discrimination together, since they are both harms visited on people because of their membership in a socially salient group. At worst, this objection allows that Hellman's account is useful for explaining at least *some* kinds of discrimination, and perhaps it is plausible to think that it is demeaning that makes direct discrimination wrong, and that there is something different that makes indirect discrimination wrong.

A second objection from Lippert-Rasmussen is that disrespect-based accounts like Hellman's cannot explain what is wrong with *positive* discrimination. Positive discrimination might represent a person as "especially deserving," or something similarly positive, due to her membership in some socially salient group, and then reward her on that basis. Such discrimination does not seem to involve

[91] Lippert-Rasmussen, "The Badness of Discrimination," 179.
[92] Altman, "Discrimination."

any disrespect or demeaning; if anything, the problem seems to be *respecting someone too much*.[93] Of course, we might reply that treating one group as though its members have *greater* moral status implies that members of other groups have less moral status. Lippert-Rasmussen argues that the discriminator may not entertain the thoughts of this logical implication of his judgement—so although his action *implies* something disrespectful, he does not actually disrespect anyone. And, Lippert-Rasmussen says, if we adjust our account to say that *any* incorrect judgement of moral worth (whether positive or negative) is what makes discrimination wrong, this is still inadequate. In his view, someone who judges two people to be of equal moral worth and *then* treated them differently in spite of this fact appears to be a *worse* or *more blameworthy* discriminator than someone who makes a mistaken judgment about their moral worth and at least *thought* they were doing the right thing.[94]

This objection might be a problem for some disrespect-based accounts, but Hellman's theory deals with it quite easily. Since her argument does not depend on the beliefs of the discriminator (only on the social meaning of the classification), it does not matter what judgments the discriminator makes, or whether he is aware of their implications. So long as we can establish that "positive" discrimination, when it is wrong, violates the principle of the equal moral worth of persons by treating a member of a socially salient group as worth *more* than other people by virtue of her membership in that group, then Hellman's account adequately explains what makes this type of discrimination wrong. Of course, this might require some adjustment, since it is not obvious to me that the people who are *not* elevated are automatically *demeaned*; the problem is that someone is improperly elevated. But with minor adjustments, we could have a theory which condemns any classification which expresses that some people are worth more than others, and improperly puts down or elevates someone due to their

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[93] Lippert-Rasmussen, "The Badness of Discrimination," 180.
[94] Lippert-Rasmussen, "The Badness of Discrimination," 183.

membership in a socially salient group. I would also note, against Lippert-Rasmussen's worry, that not all instances of "positive" discrimination show excessive respect—for example, people with a sexual preference for Asian women (pejoratively called an Asian fetish or "yellow fever") are often thought to be *disrespectful* of Asian women, because their positive evaluation is based on insulting beliefs about Asian women. Model minority myths about Asian and Jewish people might ascribe "positive" traits to them, but these stereotypes are still disrespectful. So, it is plausible that even an account that *only* relied on demeaning would explain at least some cases that might be described as "positive" discrimination.

2.6   The 'harm' account

Hellman's account of wrongful discrimination is notable because it excludes the harm done by discrimination from a determination of whether it is wrong. Lippert-Rasmussen's account is the exact opposite. His thesis is that discrimination is "pro-tanto" bad (i.e. wrong in the absence of competing considerations), when it is, "because it makes the discriminatees worse off."[95] This claim is somewhat confusing without some clarification of what is meant by "harm" or "worse off." As Hellman points out, we simply *cannot* treat all people the same: "laws, policies, and practices must draw distinctions among people on various bases," and in at least some cases, it might make sense to do so along the lines of socially salient group-membership.[96] Nearly all such distinction-drawing leaves some people better off than they would have been otherwise, and others worse off. Therefore, in this naïve sense, all discrimination makes discriminatees worse off. This tendency is particularly acute when we consider discrimination in *selection mechanisms*: for example, not everyone can get a job at the World Bank, or a spot at a selective college. Any discrimination in these domains would thus deny someone an important

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[95] Lippert-Rasmussen, "The Badness of Discrimination," 174.
[96] Hellman, *When Is Discrimination Wrong?*, 29.

benefit, but, at least in the broadest sense, *some* distinctions must be drawn among applicants.[97] If

affirmative action, or *any* of the examples discussed as objections to the "immutable traits" account

(barring children from voting, or blind people from being truckers), are morally permissible

discrimination, then sometimes, it *must* be permissible to discriminate in a way which harms members

of some socially salient group, or helps members of another. (Most affirmative action programs, for

example, help women and people of color at the expense of white men.) Thus, the most naïve version

of the harm-based account seems seriously deficient.

However, Lippert-Rasmussen provides an alternative: although it might at first seem plausible

to measure the "harm" of discrimination against what would have happened *without discrimination*,

perhaps a better way of measuring it is relative to a "moralized baseline," where this baseline consists of

how things would have been in the *most just outcome*.[98] Of course, this requires much more

specification: in order to identify the most just outcome, one has to elaborate an entire theory of

distributive justice and specify who deserves what. Assuming that all of this works out, however—an

optimistic assumption—this view avoids some of the problems of the naïve view. In particular, it

explains why paradigmatic cases of wrongful discrimination are wrong (because they bring us further

away from a fair distribution), and why some 'reverse' discrimination, like affirmative action, can be

just (because it brings us closer to a fair distribution).[99] We could say, for example, that the white

applicant denied from a selective college due to affirmative action was not harmed *relative to what is*

just, since the historical injustices faced by people of color gave him an unfair advantage.

Unfortunately, Lippert-Rasmussen does not spend as much time explaining why his view is

correct as he does explaining all the different ways it *could* be formulated and tinkered with to avoid

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[97] Hellman, *When Is Discrimination Wrong?*, 4.
[98] Lippert-Rasmussen, "The Badness of Discrimination," 175.
[99] Lippert-Rasmussen, "The Badness of Discrimination," 175.

various objections. However, what he seems to take to be the main advantage of his view is that it can account for every type of discrimination described in the taxonomy in section 3.2—it relies on nothing particular about direct or indirect discrimination, or any of the other types delineated previously. Of course, if we believe the theorists who think that some of these discrimination concepts do not need to be lumped together, then perhaps this advantage is unimportant. Indeed, we might take its generality to be a weakness: not only does it not rely upon anything particular to any given form of discrimination, it does not rely on anything particular to discrimination at all. Is it really helpful to say that harmful things are *pro tanto* bad? We should be careful here, though. Lippert-Rasmussen does not just say that harmful things are bad, he says it is *merely harm* that makes discrimination bad, in contrast to theorists like Hellman, who hold that what makes discrimination wrong has nothing to do with the harm it does or does not do. The harm account also seems to get the obvious, paradigmatic cases of discrimination—both wrongful and permissible—correct. However, it might fail in the sort of cases Hellman identifies, where it seems logically possible to have wrongful discrimination without harm (e.g. the South African prison which forces inmates to wear different kinds of clothes based on their race).[100] Again, this depends on what constitutes harm, and if one takes disrespect or demeaning to be a form of harm, these cases could be accounted for. However, having Lippert-Rasmussen's theory swallow the demeaning account in order to explain these edge cases seems suboptimal.

I also worry that Lippert-Rasmussen's harm account leaves so much to be specified that it might be of limited use on its own, absent a rich theory of distributive justice. A theory that says discrimination is wrong when it magnifies injustice, and right when it leads to a more just arrangement, seems quite difficult to apply to real-world cases. Moreover, it is initially unclear why, according to this theory, we would want to talk about discrimination at all. If it just boils down to justice, why not cut

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[100] Hellman, *When Is Discrimination Wrong?*, 5.

out the middleman, as we proposed in section 2.4, and evaluate racial preferences using a theory of distributive justice, rather than a theory of wrongful discrimination? This worry might be overly pessimistic, and we might levy the same criticism against Hellman's theory: if it just boils down to demeaning, we might say, why talk about discrimination at all? However, Hellman's theory seems applicable because she provides some notion of what paradigmatic cases of demeaning look like, and the sorts of contexts and distinctions that tend to demean—so we can apply her theory without an exhaustive specification of *exactly* when demeaning does and does not happen. This might be the way out for Lippert-Rasmussen as well: although we may not be able to exhaustively outline exactly who is deserving of what, or what the most just outcome looks like, we might be able to identify clear cases of *injustice*, and thereby recognize when certain forms of discrimination cause morally objectionable harm. Despite its weaknesses, I think Lippert-Rasmussen's theory provides a useful lens through which to analyze wrongful discrimination. Some wrongful discrimination, like the example of the South African prison, stands out because it is demeaning. But other examples of wrongful discrimination might stand out more because of the harm they cause—cases where the discriminator might have the best of intentions, and express nothing negative about any socially salient group, yet still perpetuate subtle and pernicious injustice.

2.7   Conclusion

Understanding the ethical status of racial preferences through the lens of discrimination requires an examination of what exactly makes discrimination wrong. It seems plausible that if racial preferences *were* wrong, it would be because when we act based on racial preferences, we unfairly divide people into racial groups and treat them unfairly on that basis. In this chapter, I have framed the challenge of identifying what makes discrimination wrong, and have advanced two plausible theories

aimed at answering that challenge. Hellman's demeaning account locates the wrongness of racial preferences in the *act of classifying*, arguing that some classifications, regardless of their effects, demean the people classified. Lippert-Rasmussen, on the other hand, finds the wrongfulness of discrimination in the harm it does to the people it targets—meaning that if discrimination does no harm, it cannot be wrong. Each of these theories has something to recommend it: Hellman's theory favors arguments that depend on historical and social meanings that determine which classifications are objectively demeaning, whereas Lippert-Rasmussen's theory can be employed to argue that a discriminatory practice is wrong because it causes impermissible harm to the people it affects. These are both potentially valuable approaches to theorizing about racial preferences. Therefore, in the following chapter, I will consider what resources each of these approaches can marshal towards an argument against racial preferences through the lens of wrongful discrimination.

Chapter Three: Racial Preferences and Wrongful Discrimination

When a person who has racial preferences about their romantic and sexual partners publicly expresses those preferences, or makes choices about who to date that are informed by them, it is hard to imagine them doing so in a way that is not discrimination in the neutral sense—classifying and treating people differently based on their membership, or perceived membership, in a socially salient group. Thus, the obvious question is whether expressing or acting on these racial preferences constitutes wrongful discrimination—if it did, we would be forced to conclude either that acting on or expressing racial preferences is wrong, or that having those preferences to begin with is a bad thing (because plausibly, once one has them, it might be difficult to avoid acting on them[101]). Having laid out an account of what I take to be the best theories that explain when discrimination is wrong, my goal in this chapter is to consider what resources these accounts of wrongful discrimination might provide to argue that some racial preferences are morally wrong. The existing literature on racial preferences has not explored these arguments in sufficient depth. Specifically, I think that Raja Halwani's dismissal of the argument that racial preferences constitute wrongful discrimination is dangerously uncharitable, and relies on a faulty account of what makes discrimination wrong. In this chapter, I will first offer a diagnosis of where Halwani goes wrong in attempting to prove that racial preferences are not wrongful discrimination. Then, I will leverage the demeaning and harm accounts in turn to offer my own arguments against racial preferences. I will discuss limitations and possible objections to my approach in Chapter Four.

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[101] I will discuss this difficulty in more detail in Chapter Four.

3.1   The problem with Halwani's argument

In his essay, "Racial Sexual Desires," Raja Halwani aims to defuse what he takes to be the three strongest arguments that people with racial preferences are racist. The first of these arguments revolves around what Halwani terms "unfair discrimination." His version of this argument goes roughly as follows. Suppose that Juliet has a racial preference for racial group *G*. Because of this preference, she discriminates—presumably in her choices about who to have sex with—against people who do not belong to *G*, and in favor of people who do belong to *G*. This discrimination is unfair, or in Halwani's words, "pernicious," and this makes Juliet a racist. For example, he says, "if John is white and sexually desires only Asians, then John discriminates against, say, blacks in not sexually desiring them."[102] Halwani quickly finds fault with this account. He argues that racial discrimination is only wrong when one's racial or ethnic background is *irrelevant* to the performance of the task at hand. For instance, most racial discrimination in employment is wrong because race is not relevant to one's ability to do most jobs. However, he claims, sex is different: to attain sexual pleasure with a partner, it is generally best to be attracted to that partner. If Juliet is more attracted to people with a given "racial or ethnic property," then her discriminating is not *unfair*, because race is, in fact, relevant for the performance of the task at hand, namely, attaining sexual pleasure.[103] Excluding people who one is not attracted to, far from being arbitrary, seems entirely justified, just as it seems justified for gay men to exclude women from consideration as sexual partners.[104] We might think, Halwani says, that preferences can change—but *while people have the preferences they have*, their choices about who to have sex with are not arbitrary.[105]

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[102] Halwani, "Racial Sexual Desires," 184.
[103] Halwani, "Racial Sexual Desires," 184.
[104] This is a common line of thought; I will discuss it in Chapter Four.
[105] Halwani, "Racial Sexual Desires," 186.

Given his cursory reconstruction of the discrimination argument, it is not surprising that Halwani does not find it compelling. No reason is ever given as to *why* the discrimination is wrong—he jumps straight from discrimination to *wrongful* discrimination. However, his conception of what makes discrimination wrong is implicit in his reply: something like *arbitrariness* or *irrationality*; discrimination without a good reason to back it up. To the extent that this is true, Halwani is already in trouble. As I highlighted in detail in section 3.4, accounts based on rationality are *not* good accounts of what makes discrimination wrong. Rationality is not a sufficient condition for discrimination to be permissible: there are cases when race *may well* be relevant to the task at hand, and yet racial discrimination is still wrong—for example, the restaurant that wants to please its racist customers. Or, suppose that Larry owns a jewelry store, and is such a chauvinist that the thought of working with women gives him stress headaches, rendering him unable to do his job. The gender of Larry's potential hires is *highly* relevant to the performance of the task at hand—it seems that he needs to hire an employee he can comfortably work with. But it seems strange to give Larry a free pass to discriminate just because he is prejudiced, just as it seems strange to excuse police officers who shoot at people of color out of what they describe as visceral fear. Disgust or dislike for members of a marginalized group might explain why someone acts a certain way, but it can hardly give them ethical *carte blanche* to treat people badly—we would be inclined to say that it is their job to work on their prejudice. Obviously, telling someone to get over their sexual preferences and have sex with people they do not want to have sex with raises a host of other issues, which I think are worth discussing—but it is certainly not *immediately clear*, as Halwani takes it to be, that one's brute discriminatory desires are valid justifications for discrimination. His account falls flat because he lacks a well-developed notion of what makes discrimination wrong. In the remainder of this chapter, I will show how the demeaning and

harm accounts of wrongful discrimination can be leveraged to develop what I hope are more sophisticated arguments that show, through the lens of wrongful discrimination, that some racial preferences are morally objectionable.

3.2   *Racial preferences and demeaning*

As laid out in the previous chapter, one appealing account of wrongful discrimination, drawing on Deborah Hellman's work, holds that drawing classifications between people and treating them differently is wrong exactly when it demeans the people who are classified. Recall that a classification *demeans* if it fails to treat people as though they are of equal moral worth—which depends in part on the social meaning that attaches to the classification. (By 'classification,' I do not mean a distinction drawn merely in one's head, but rather an *act*, observable by others, of distinguishing between people.) This is why cultural context and history matter—they can imbue classifications with a meaning that they otherwise would not have, and in some cases, that meaning is disrespectful, and demeans the people who are classified.[106]

As Hellman admits, it may not be easy to determine exactly which classifications are demeaning—she has views about this herself, and we may or may not agree with what she takes to be wrongful versus permissible discrimination. In any case, to argue that racial preferences are wrongful discrimination using Hellman's theory, it is necessary to give an explanation of how they might be thought to demean. We should first note that racial preferences—where by preferences I mean simply the desires of an individual person—cannot *themselves* be demeaning. These desires live inside of one person's head, and under the conception of demeaning developed in the previous chapter, cannot *put anyone down* until they result in some action or classification that is disrespectful. Of course, it is quite

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[106] Hellman, *When Is Discrimination Wrong?*, 25.

obvious how racial preferences can cause a person to make racial classifications. This might happen

implicitly, through choices about who the 'discriminator' chooses to associate with sexually and

romantically. These choices would put the racial preference into action by classifying people as

worthwhile partners or not based partly on their race. However, classification could also happen

explicitly, and even publicly, when the person with the racial preference *expresses her desires* in racialized

terms. Such explicit classifications are often made in online dating profiles, as I have discussed

previously—for example, profiles reading "no African girls", or "No whites. Sorry that's just my

preference."[107] (Recall that these explicit classifications can be "positive" as well: there are plenty of

people seeking *specifically* Asian women, or *specifically* Black men.)

It might seem obvious, especially in the case of such direct and explicit racial preferences, that

these classifications could be disrespectful, and could serve to put down the people they exclude (or

single out as especially desirable). But what exactly about racial preferences *causes* them to demean?

One answer is that a preference or dispreference for an entire racial group seems to take for granted that

people in that group are all alike. In cases where a racial preference leads someone to exclude an entire

racial group from consideration, it might imply that all members of that group—simply by virtue of

their membership—are less worthy, less attractive, and less desirable. Even in the case of "positive"

preferences, the idea that "if you've met one, you've met them all," seems deeply insulting—it seems to

reduce the whole person to merely their race.

Whether this implies something about the *moral* value of the people might not be immediately

clear, but in my view, simply the act of homogenizing all members of a diverse and varied group of

people might offend their equal moral worth, by implying that they are interchangeable or fungible.

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[107] Olivia Petter, "Racism Is Rife on Dating Apps – Where Does it Come From and How Can it Be Fixed?", *The Independent*, August 24, 2018, https://www.independent.co.uk/life-style/love-sex/dating-apps-racism-tinder-bumble-grindr-online-dating-a8504996.html.

On the other hand, white people—or members of whatever racial group is considered the "default" category—"insofar as they escape group marking, can be individuals."[108] It does not matter whether this objectification is intended—the experience of people who are affected by racial preferences shows that, at least sometimes, that is the way these preferences are interpreted. Robin Zheng describes this phenomenon specifically with respect to racial preferences for Asian women: "[T]argets of yellow fever feel *depersonalized* or *homogenized* [...] racial depersonalization involves a further dimension of objectification that Martha Nussbaum calls 'fungibility' and in which a person is treated like an object interchangeable with other objects." This is especially pernicious in the case of personal relationships—and might matter less for casual sex—because in an emotional relationship, it matters that you are viewed as *special*. That is, "love requires just the opposite of fungibility, such that the beloved could not simply be replaced by someone else with similar qualities."[109] This depersonalization might not apply to every racial preference—someone whose profile reads "whites only" may have this preference not because they view all white people as being interchangeable, but because they have negative evaluations of other racial groups. Nonetheless, it is plausible that *some* racial preferences, when expressed explicitly, are objectifying and depersonalizing. If this is true, there is a case to be made that such explicit classifications are demeaning—and therefore constitute wrongful discrimination.

It is also important to remember that the expression of racial preferences takes place against a larger background of racism, which specifically includes *sexual stereotypes*. These stereotypes are inherited from a pernicious history of weaponizing specifically and overtly sexual narratives and stereotypes against marginalized racial groups. For example, the stereotypes of Black men in the United States today as "aggressive, unruly predators" can be traced back to the end of Reconstruction in the

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[108] Iris Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990): 59. (Young's original point is about cultural imperialism, and is specifically referring to white men, but her phrasing is apt here as well.)
[109] Zheng, "Why Yellow Fever Isn't Flattering," 407.

United States, when white Southerners justified the re-entrenchment of racial oppression using the fear that "an angry mass of black men might rise up and attack them or rape their women."[110] In other words, "sexuality became one of the central means of reasserting white social control."[111] Similarly, the threat that white Americans felt from Asian immigration from the 1800s onward led to the construction of Asian men as sneaky and competitive (since they were competing with white laborers for jobs), as well as effeminate and physically unfit for manual labor (a tactic to undermine their employability). Asian men were legally barred from certain occupations, and forced into "stereotypically feminine" professions, such as the laundry industry.[112] In short, much like Black men, the subjugation of Asian men in the United States is difficult to disentangle from the sexual stereotypes that have historically limited their freedom. These are only two examples—but countless marginalized groups in the United States (and doubtless, around the world) have been subject to specifically sexual narratives that have served to justify their subordination.[113]

Therefore, it is not surprising that some racialized expressions of desire (or lack of desire) invoke these stereotypes—for example, the stereotype that Asian men are not well-endowed, or that Black men are hypersexual, might be alluded to or mentioned explicitly in a dating profile. But, by Hellman's account, such explicit stereotyping is not necessary to demean—all that matters is the *connotations* of the distinction one draws. The school principal from our previous example who orders Black and white students to sit separately need not mention Jim Crow for this action to immediately *call to mind* the history of segregation. Similarly, the background facts of sexual stereotypes might be enough to make certain classifications demeaning—perhaps to a greater extent if they are drawn by

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[110] Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2010): 27–28.

[111] John D'Emilio and Estelle B. Freedman, *Intimate Matters: a History of Sexuality in America* (Chicago: University of Chicago Press, 1997): 104.

[112] Michael Park, "Asian American Masculinity Eclipsed: A Legal and Historical Perspective of Emasculation Through U.S. Immigration Practices," *The Modern American* 8, no. 1 (2013): 6–9, http://digitalcommons.wcl.american.edu/tma/vol8/iss1/3.

[113] See for example, the stereotype of Greek and Italian immigrants as likely to commit "sexual crimes with boys," in Estelle Freedman, *Redefining Rape* (Cambridge, Mass.: Harvard University Press, 2013): 182.

members of the white majority (but we should certainly not rule out the possibility that racial minorities can demean one another).

Hellman herself does not think that requests for certain traits in relationships is demeaning—and presumably, she would extend this logic to casual sex as well. She holds that there is an important difference between commands and preferences. Since one must have (and perhaps exercise) some amount of social power to effectively put someone down, Hellman thinks that simply asking for something or stating one's preferences is less likely to demean than a classification that *demands* or *orders*. When discussing an example of an online personal ad where a prospective dater asks for a "feminine woman," Hellman claims that since the context is dating (rather than, say, employment), and since the ad is merely an expression of preferences, it likely lacks the power to demean.[114]

However, I think that this view might be misguided, especially when applied to racial preferences that exclude members of marginalized racial categories, because it would fail to account for the history that race-based distinctions invoke. The not-so-distant historical associations—like anti-miscegenation laws and the aforementioned sexual stereotypes—conjured up by white people refusing to associate romantically with members of a racial minority group might lead us to think that the social meaning of some of these classifications is deeply disrespectful. Hellman's objection that social power is not exerted in the context of dating is not necessarily true. Indeed, it seems plausible that members of the white majority would have more social power *in the sphere of dating*, just as they do in many other spheres of life. That social power comes from being more desirable, and having the privilege of being pickier. Moreover, I argued previously that the principal reason that social power is relevant to demeaning is that people with more power might be able to escape being demeaned more easily—but it doesn't mean that they *can't* be demeaned. There's no easy way to escape public

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[114] Hellman, *When Is Discrimination Wrong?*, 44.

statements of racial preferences on dating apps, or to avoid people with racial preferences in advance—and so it is not clear that demeaning can be easily avoided.

Finally, the arguments I have provided so far have primarily been about explicit, public statements of racial preferences, rather than implicit choices made as a result of racial preferences. I want to briefly draw out that contrast here. It seems as though the *explicit* expression of racial preferences would be much more likely to demean than privately acting on them, since, assuming that someone does not tell everyone about their racial preferences, it would be difficult to tell from the outside whether someone was dating the people they were dating (and rejecting the people they were rejecting) because of racial preferences, or for other reasons. This is especially true for any *single* date, relationship, or ignored message: if someone spurns my advances or doesn't call me back, I only know they are ignoring me, but I likely do not know why. It could be because of a racial preference, but it could also be because I am annoying, or too short. Of course, I am not saying that a pronounced pattern of individual behavior that is not accompanied by a public statement could *never* demean. But since the social meaning of simply dating some people and not others seems much less clear than the social meaning of an explicit statement of a racial preference, I think it is much less likely to demean.

3.3   *Racial preferences and objectionable harm*

As I concluded at the end of the previous chapter, some wrongful discrimination stands out because it seems insulting and disrespectful—this is the sort of discrimination that is best picked out by Hellman's demeaning account. Other cases, however, might stand out because of the harm that they cause, irrespective of the social meaning or intentions behind the discriminator's actions. Kasper Lippert-Rasmussen's account of discrimination holds that discrimination is *pro-tanto bad* (wrong in one respect, although perhaps not wrong *all things considered*) if it causes morally objectionable harm.

When it comes to racial preferences, just as I noted with the demeaning account, we should be clear that racial preferences *in and of themselves* cannot harm anyone—at least, I cannot imagine how racial preferences can affect anyone else until they are acted on or expressed.[115] Of course, as I have explained previously, an important component of Lippert-Rasmussen's account is that this harm must be measured relative to a moralized baseline. Since all selection mechanisms that pick one person over another harm *someone*, there must be some notion of what people *deserve*, or what a just outcome would be, and we must measure harm against that baseline. We might immediately wonder what exactly it is that people *deserve* when it comes to dating and sex—surely, no one is morally entitled to go on a date or have sex with anyone else! The implications of this view would be quite alarming—it would seem to imply a corresponding obligation to date or have sex with someone that you may not want to. Perhaps a better notion of what we are entitled to is to *not be unfairly limited* by our race—but again, it is difficult to understand what the corresponding obligation could be. A second immediate difficulty is that it is not clear in any particular instance that *not getting to go on a date with someone* (or have sex with them) is harmful—maybe they were a boring person, and your night was better spent watching Netflix alone!

On the other hand, rejection is very painful—and, given the way that racial preferences are arranged, it seems bad that some people are rejected more than others. Even then, it still does not seem as though any particular person can be thought to be doing something *wrong* by rejecting someone who does not pique their interest. We might think that this argument works better in the case of the sort of explicit racial preferences discussed earlier, in which someone not only refuses to go on dates with a series of individuals, but *as a rule* excludes them from consideration, and often does so publicly.

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[115] Perhaps one could argue that preferences in your head can hurt *you*: for instance, a gay Black man with anti-Black racial preferences might be thought to be harming himself by internalizing a negative valuation of his own group. However, this is tangential to the discussion I want to have about the harm that racial preferences visit on *other people*.

The harm is similar, but it seems less justified—there is no good reason, we might argue, to exclude a whole group from consideration, especially publicly; so the pain and stigma that people suffer as a result of these public declarations should be considered morally objectionable harm. Thus, even if it is difficult to show that it is harmful to act on racial preferences by choosing to go on dates with some people and not others, I find the argument that public declarations of racial preferences are wrong more persuasive on face, although we will see objections to this argument later on.

Another way to make the harm-based account more compelling is to consider racial preferences from a birds-eye view, instead of from the perspective of the individual. Perhaps we are willing to admit that individuals ought to be able to stomach rejection—but when you examine racial preferences on a societal level, the hierarchy discussed in Chapter One becomes visible—a hierarchy that systemically disadvantages members of marginalized racial groups, and treats them as less desirable than members of the majority race.[116] The harm that people are dealing with is not a single rejection, or even a few in a row—it is *systematic disadvantage* in the sphere of sexual and romantic life. It is plausible to think that over time, feeling undesirable and experiencing either rejection or uncomfortably racialized interactions could be seriously detrimental to a person's self-esteem, leading to the adverse consequences discussed in Chapter One, such as depression and unsafe sex. Robin Zheng's account of fungibility, which I previously drew on to explain how racial preferences might be demeaning, is also relevant here—being treated as fungible or part of a homogeneous group can lead to racial self-doubt and force people to carry a heavy psychological burden—doubting whether their partners really love them for who they are, or are only interested (or disinterested) in them because of their race.[117]

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116 Potârcă and Mills, "Racial preferences in online dating across European countries," 332.
117 Zheng, "Why Yellow Fever Isn't Flattering," 407.

This sketch of a harm-based argument for the wrongfulness of racial preferences is not quite as clear as the demeaning argument—awkward questions remain about what exactly we owe each other when it comes to sex and dating, and it is hard to put our finger on exactly what morally objectionable harm is done by any instance of discrimination in dating (if we consider discrimination separately from obviously harmful things, like racist tirades). The *aggregate* harm is quite clear—but this raises a curious puzzle: on the individual level, it seems as though people have every right to go on dates with people they are interested in, and not with others; but on the societal level, this leads to bad outcomes that seem to be the "fault" of no individual person. This is one reason why I believe that thinking about racial preferences as *one person discriminating against another* has its limits. I will explain this line of thought in more detail in Chapter Four.

3.4   Conclusion

In this chapter, I have explored how the framework of wrongful discrimination can be applied to the issue of racial preferences in sex and dating. To begin, we discussed how Halwani's argument falls short. His failure to make explicit exactly what kinds of discrimination are wrong, together with his implicit reliance on a faulty "rationality" account, lead to a construction of the argument that racial preferences are wrongful discrimination that is little better than a strawman. This in turn causes his attempt to defuse the discrimination argument to ignore promising and interesting ways of thinking about wrongful discrimination and racial preferences. The remainder of this chapter explored those avenues, advancing two main lines of argument based on wrongful discrimination as (1) *demeaning classification*, and (2) as *morally objectionable harm*. The first of these approaches seemed quite promising for showing that explicit statements of racial preferences can easily demean by treating their targets as fungible, or calling to mind sexual stereotypes about historically marginalized groups.

However, it was less clear that an individual's choices about who to date would have the same power to demean. On the other hand, the harm-based approach encountered some difficulties when we tried to explain what exactly is harmful about the racial preferences of one individual. It seems like people are well within their rights to reject people they are not interested in, and go on dates and sleep with people they are interested in—but at the same time, when everyone does this, pernicious consequences emerge on a large scale, including severe psychological and health harms to people who face systematic sexual exclusion, or the experience of being desired for their race instead of as individuals.

Chapter Four: Objections and the Limits of Discrimination

Now that I have considered how accounts of wrongful discrimination can be used to criticize racial preferences, this chapter will consider possible shortcomings of these arguments, and the limits of thinking about racial preferences in terms of wrongful discrimination. Some sections in this chapter function as objections to the specific arguments advanced in the previous chapter—that is, objections to the claim that expressing or acting on racial preferences is either (1) *demeaning*, or (2) constitutes *morally objectionable harm*. Others raise—and attempt to untangle—more general problems with the discrimination approach, such as the difficulty of imagining what "non-discrimination" looks like in the realm of sex and dating. In the end, I conclude that, while there are important things we can take away from thinking about racial preferences from the standpoint of wrongful discrimination, there are other things we are likely to miss—including some of the more promising ways to *respond* to an aggregate arrangement of preferences that is obviously unjust.

4.1   Is being gay sexist?

Upon hearing the suggestion that racial preferences in dating might be morally wrong, the first thing that comes to mind for many is the obvious analogy to sexual orientation: if preferring Asians is racist, then why isn't preferring men sexist? This objection is discussed at length by Robin Zheng, among others, in the existing literature on racial preferences. As she admits, gender, like race, has historically been an axis of oppression. If the reason that racial preferences are wrong has to do with the historical injustices visited upon members of socially salient groups, or the harms of their ongoing exclusion from consideration as sexual and romantic partners, then we might initially think that the same arguments we advanced about race could be used to criticize gays and lesbians (as well as

heterosexual people!) for discriminating along gendered lines.[118] This is concerning, of course, because it seems like an obvious *reductio ad absurdum*: it would be *crazy*, offensive even, to suggest that being gay is immoral, so these arguments about racial preferences must be incorrect.

Although some more radical thinkers are willing to bite this bullet and concede that it is morally better to not have preferences for gender either, I do not think this is necessary. There are many relevant differences between racial preferences and sexual orientation. Different people might disagree about the relative *fixity* of the two, but what I think is far more important is that sexual orientation does not have the same effects or social meanings as racial preferences. That is, no one thinks of the existence of gay men in modern society as an affront to women, or based on historical legacies of sexism. If this were the case, one would expect there to be more gay men in more patriarchal societies, and would probably expect gay men to be backward or sexist—I have not seen any evidence of these patterns. (Perhaps, on the other hand, there are some men who think that lesbians are "man-haters," but I think this says more about men's misogyny and sense of entitlement to women's bodies than it does about lesbians.)

Moreover, sex and gender structure the "game" of romance and sexuality in a way that race simply cannot be said to do—people's very *identities* are often built around their sexual orientation (note the word *orientation* is used here, while *preference* is used for race).[119] While some gay men may identify as 'rice queens' or 'chubby chasers,' it does not seem as though these other sexual preferences are as central to a person's identity as being gay is, and as Sonu Bedi points out, if we *were* to think of these other kinds of preferences as constitutive of identity, we would be "[putting] racist desires front

[118] Zheng, "Why Yellow Fever Isn't Flattering," 412–413.
[119] Zheng, "Why Yellow Fever Isn't Flattering," 413.

and center."[120] This rhetoric sounds extreme, but I do think it serves as an important contrast with gay and lesbian identities, which many embrace, and which do not seem to have sexist connotations.

Finally, I would observe that oppression on the basis of gender and race are *very* different, especially when it comes to sexuality, and so we should not expect to be able to easily substitute one for the other in our ethical reasoning. Historically, racist ideologies have focused on *keeping racial groups separate* to maintain white racial purity, as discussed at many points throughout this thesis. From the start, this would never be possible in the same way for gender, because heterosexual sex, reproduction, and the traditional family require men and women to live together. Instead, oppression of women has, in large part, existed *within* unions and *within* the family, and societal pressures have encouraged men and women to engage in heterosexual relationships. Thus, while it might be possible to see heterosexuality as something that the patriarchy enforces, gay and lesbian relationships are a *subversion* of the norm. Meanwhile, while *some* racial preferences might be thought to serve as a form of anti-subordination, certainly preferences for the white majority, especially whites who prefer whites, are based on and reinforce historical trends of anti-miscegenation.

4.2   Is the harm of racial preferences permissible?

One difficulty we encountered in the previous chapter was that, in attempting to apply Lippert-Rasmussen's theory of wrongful discrimination to racial preferences, it was hard to identify exactly what morally objectionable harm makes individual acts of discrimination wrong. If people are not obligated to date or sleep with someone they do not want to date or sleep with, then any harm they cause by *not going on dates* and *not sleeping with people* would appear to be morally permissible. In other words, the harm done by racial preferences is not sufficient to prove that they are morally wrong.

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[120] Sonu Bedi, "Sexual Racism: Intimacy as a Matter of Justice," *The Journal of Politics* 77, no. 4 (August 2015): 1005. http://dx.doi.org/10.1086/682749.

Raja Halwani provides the following analogy: suppose that Daniel is a profoundly noise-sensitive person who is made terribly anxious by any and all noise coming from his neighbors' houses. One of his neighbors, Susie, enjoys listening to NPR at a reasonable volume, but every time she does, it causes Daniel immense anxiety, rendering him unable to perform everyday tasks. However, just because Daniel is hurt and traumatized by the sounds of *This American Life* does not mean that this hurt is *morally wrong*. It is unfortunate that Susie's enjoying herself has this effect, but his anxieties are not her responsibility. In general, Halwani thinks, there are many things that could cause racial self-doubt or mental anguish; it does not follow axiomatically that these things are morally objectionable.[121] For example, a Black woman hired as a philosophy professor might worry that she was hired in part because of her race and gender. This could understandably cause her to doubt her academic merits and qualifications, leading to considerable anguish—this sort of imposter syndrome is all too common. It does not, I hope, entail that it was wrong to hire her. This objection responds directly to the "harm-based" discrimination argument by contesting that the sort of harm that might be caused by racial preferences is morally objectionable—or at least, arguing that the individual with the preference is not culpable for it. Perhaps the harm suffered by this philosophy professor *is* morally objectionable, but it is the fault of racist and sexist institutional arrangements and historical injustices, not the people who hired her, that she has to undergo this anguish. We might argue analogously—and I think this is correct—that the harm resulting from racial preferences *is* regrettable, but that placing significant blame on individual people with racial preferences for making choices based on them is misguided.

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[121] Halwani, "Racial Sexual Desires," 196.

4.3   Is expressing racial preferences better?

In section 3.2, we laid out an argument that explicit statement of racial preferences, for example, on an online dating profile, could very easily demean the people who are classified as desirable or not by such a statement. This argument seems to suggest, on its face, that it would be *better if people did not make such statements*. Then, it seems, the demeaning would be avoided, or at least, made less likely—not to mention the psychological harm that such public statements of racial preferences might evince. However, as Emens points out, there is an important competing consideration, which is the importance of *signalling* to avoid more painful rejection and wasted time. She argues that the expression of racial preferences might, even as it hurts some people's feelings, *preclude* as much harm as it causes. The one-time sting of seeing a racial preference on a profile, or hearing "Sorry, you aren't my type," might be preferable to potentially wasting one's time chasing after someone who is not really interested. Many gay men and lesbian women prefer to know whether a potential mate matches their sexual orientation—it allows them to avoid hitting on straight people, and spend their time on people with whom they actually have a chance. Analogously, we might think it is better, for example, for an Asian woman to know if her crush does not date Asian women, so that she can avoid the pain of trying and failing to make a connection.[122] Hellman and Lippert-Rasmussen both admit that discrimination, even if problematic, might be permissible to prevent some greater harm. It is difficult to weigh the harm and possible demeaning that the explicit statement racial preferences creates against the potential benefits—but we should not ignore the possibility that, since we live in an imperfect world where people *do* have racial preferences, it is better that they are forthcoming about them than not.

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[122] Emens, "Intimate Discrimination," 1353.

4.4   Is non-discrimination conceivable?

As in the previous section, the conclusion that racial preferences are morally suspect might lead us to conclude that *individual people* should change their behavior. This, I think, is one of the shortcomings of the discrimination approach. Once we countenance the possibility that racial preferences constitute wrongful discrimination, and observe the unfair outcomes that result from them, people with racial preferences become *wrongful discriminators*—this seems like a bad thing, so of course, we conclude that they absolutely *must* stop discriminating! The difficulty is that this seems hard to even imagine. How, we might wonder, can a person with biased preferences behave as though they do not have those preferences? Even if acting "colorblind" or race-neutral were possible, it is not clear that this would be desirable. Emens points out that most of us want our lovers to love us *for who we are*, not turn a blind eye to important aspects of our identity—which for many people, includes their racial identity.[123] Perhaps non-discrimination is not the same as "color-blindness." But what exactly is it, then? If we truly mean to act as if we do not have racial preferences, and treat all people equally, it seems like not acting on your preferences could, on the one hand, require you to date or sleep with people you are *not* attracted to, or *less* attracted to. This would be unpleasant for you, and probably patronizing to your sexual partners—and doubtless, these relationships would not work well. The alternative, it seems, would be to date fewer people you *are* attracted to. It is not clear how this helps anyone else—all it would do is make you sad. Moreover, it is also not clear that this sort of "affirmative action" for dating is any less homogenizing and disrespectful than racial preferences themselves—in striving for "non-discrimination," one would be, in reality, viewing people as boxes to check for the sake of fairness. I do not know of anyone who advocates this as a model of how we should

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[123] Emens, "Intimate Discrimination," 1354.

date—but absent a picture of non-discrimination, we are left wondering *what the alternative to discrimination is.*

4.5   Condemning racial preferences without a 'right to sex'

The conclusion of the previous section seems gloomy—discrimination is bad, but it is also difficult to articulate an alternative to discrimination. Does this mean we are stuck with a world where everyone pursues relationships based on their racial preferences, leaving the racial hierarchy intact until racism itself goes away? I do not think so. Fortunately, I believe there is a middle ground, a position which acknowledges that individuals have racial preferences, and that those preferences might be difficult to change, but at the same time sees desire as political, a valid target of ethical criticism.[124] Some of this criticism and reflection can and should take place on the individual level—not necessarily by changing who we sleep with, but by *critical self-reflection* on why we like what we like. As Srinivasan points out, this would not be the first time that someone has demanded a revaluation of how we see other people's bodies: body positivity activists and movements like 'Black is Beautiful' demand that we see their bodies as beautiful—sexually desirable, even. But, as these movements have proven, it is possible to demand this revaluation without demanding *sex*—we can accept that our desires should be different than they are without going down the dangerous road to "incel" ideology.[125]

Similarly, Emens calls for individuals to take a measured approach to interrogating their desires which she terms "structured self-inquiry." Even if people are not culpable for their preferences to the extent that legal and social regulation would be justified, there is still room for some scrutiny, and we can at least expect individuals to be more thoughtful about what they *really* want and need in a

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[124] I largely agree here with Srinivasan's "Does anyone have the right to sex?".
[125] Srinivasan, "Does anyone have the right to sex?".

relationship.[126] In the employment context, the ADA requires employers to think about their

candidates and job openings, and ask questions such as, "What are the essential functions of this job?"

and "Could this person perform those functions, with or without reasonable accommodation?" This

forces the employer to be aware of what parts of the job actually matter, who could plausibly perform

them, and even to *reconsider* her previous beliefs about who could fill the position.[127] Emens applies

this same framework to sex and dating: presumably, the individual knows best what it the essential

functions her partner must fulfill. But perhaps, if people thought more about what they really need in

a relationship, and were more introspective about *why* race in particular matters to them, Emens thinks

that they might categorically exclude people less. With more self-awareness, mistakes about which

"functions" in a relationship are essential and which can be worked around would be corrected by

experience, and people might grow to be more open-minded.[128] Surely, there are limits to how far this

could go—but Emens thinks that this sort of critical reflection could lead people to change in the best

case, and at worst, give the critical reflector a new perspective on her preferences.[129] It is not far-fetched

to think that racial preferences might be at least somewhat malleable. An online dating study by Kevin

Lewis found that "after receiving a cross-race message and sending a cross- race reply, many site users

exhibit greater interracial openness in the short-term future." He hypothesizes that people engage in

"pre-emptive discrimination;" that is, they anticipate that users from a different racial group would not

be interested in them. Once this belief is falsified, however they become more open, at least

temporarily, to talking to people from other racial groups.[130]

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[126] Emens, "Intimate Discrimination," 1358.

[127] Emens, "Intimate Discrimination," 1359.

[128] Emens, "Intimate Discrimination," 1359–1360.

[129] Emens, "Intimate Discrimination," 1364.

[130] Kevin Lewis, "The limits of racial prejudice," *Proceedings of the National Academy of Sciences* 110, no. 47 (Nov. 2013): 18817. https://doi.org/10.1073/pnas.1308501110.

Perhaps more important than what individuals can do to change their preferences is what we can *all* do to change the structures that create and reinforce our preferences. We know that these preferences do not exist in a vacuum—they are informed by our racist history, and likely by many other factors, such as what we are shown on television, in movies, in magazines, and so on. The group of potential mates we are exposed to is also shaped by the state: as Emens writes, "[by] creating the infrastructure of society, the state shapes the accidents of who meets whom and how. In addition, the state plays a role in the hierarchy of intimate opportunities by shaping social capital and relative advantages."[131] Things as simple as where we live, who we go to school with, and who our coworkers are shape who we *could* meet, as well as how we think about members of other racial groups. In many of these exact domains, government policy has either countenanced or actively created racial inequality and separation through, for example, school segregation, redlining, and employment discrimination. Once we recognize that the problem of racial preferences is much larger than individuals, our focus can turn to these societal structures that create and reinforce racial preferences and the negative social attitudes behind them—whether by determining who meets whom, or by determining who is viewed as desirable. Things like beauty standards and housing segregation are, of course, difficult to change—but I think these structural solutions, combined with the individual self-reflection mentioned before, are likely the best way forward. Thinking about racial preferences in this way requires moving beyond the individual discriminator as a bad actor, in order to ask, *what kind of person we should be*, and what kind of person we want *our children*, and *their children*, to be—rather than simply asking *what we should do* about racial preferences.

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[131] Emens, "Intimate Discrimination," 1309.

4.6   Conclusion

In this chapter, I laid out some key objections to the arguments made in Chapter Three aimed at showing that some racial preferences plausibly constitute wrongful discrimination. Some of these objections, such as the worry that it might be sexist to be gay, proved somewhat inconsequential to the arguments I have advanced, since there are important differences between racial preferences and sexual orientation. Other worries though, such as concerns about whether hiding our preferences, or what the alternatives to discrimination look like, began to illustrate some of the limits of the discrimination approach, especially the limits of thinking of *individual people* as bad actors. There are, of course, things that individuals can do to interrogate their preferences—but my central conclusion is that our focus ought to be on what preferences people ought to have, and how we can change the structures that shape them, rather than on how people with racial preferences can change their behavior.

Conclusion

I began this thesis by observing an uncomfortable tension in our everyday beliefs. On the one hand, most of us have the intuition that decisions about who to date and have sex with are deeply personal. The idea of *moral duty* seems out of place, since the point of sex and dating is ostensibly to find someone who is *right for us*. Our preferences will, by necessity, disadvantage people we aren't attracted to—but this is a choice we are entitled to make. This picture becomes more complicated when we begin to see the ways in which desire is political—that who is considered "desirable" is influenced by existing patterns of inequality in society, and that sexual desirability has consequences for people's life prospects and self-respect. Racial preferences therefore create an interesting ethical problem—one that has, to date, not received a great deal of attention in the philosophical literature. Although some theorists have begun to sketch arguments about the permissibility of racial preferences, I approach the problem from a new angle—the lens of *wrongful discrimination*.

In Chapter One, I summarized the empirical literature on racial preferences—who tends to be considered more desirable by whom, and what effects these preferences have on individuals. This context allowed the problem to be framed in a concrete way—grounding our analysis in the real world, and identifying contingent features of racial preferences that are crucial for understanding their ethical implications. In Chapter Two, I introduced the concept of discrimination as it applies to ethical reasoning, and analyzed competing theories as to what makes discrimination wrong—ultimately concluding that both the *demeaning* and *harm* accounts were compelling, and looked to provide an interesting perspective on the problem of racial preferences.

In Chapter Three, I took these theories to advance what I thought was the most compelling possible case against racial preferences from the perspective of wrongful discrimination. From the

demeaning account, we were able to see the way in which especially *public* declarations of racial

preferences have the potential to demean. Whether this means people should never state their

preferences is a more complicated question, as we know from the counterarguments Emens raises in

favor of transparency. But certainly, one regrettable aspect of racial preferences is that they lead people

to make public statements that reduce individuals to their group membership, and often call to mind

sexual stereotypes that are still fresh in our historical memory. We also noted that simply acting on

racial preferences is much less likely to demean, since the social meaning that is conveyed by these

private choices is much less clear. The harm account initially confronts some obstacles, due to the

necessity of identifying the moralized baseline against which harm is measured. Moreover, it is difficult

to locate exactly what morally objectionable harm occurs in any instance of discrimination, since most

of us take it as axiomatic that we are never morally obligated to have sex with or go on a date with

someone. The 'harm' only emerges when we look at the situation from a birds-eye view, and consider

the negative effects of the systematic disadvantage and exclusion faced by members of disadvantaged

minority groups—for example, mental health consequences and and loss of self-respect. These harms,

though they are diffuse and impossible to trace back to any one person, emerge as a consequence of

everyone's racial preferences on aggregate.

Finally, in Chapter Four, I analyzed the shortcomings of the wrongful discrimination

approach. When we focus on discrimination, it is difficult to avoid focusing on what *individual people*

are doing wrong, and if the picture that emerges is unpleasant, then it is hard to avoid concluding that

individual people are to blame. However, given that people *do* have racial preferences, we found

compelling reasons to believe that, perhaps, encouraging them directly to change their behavior is not

the way to go. Emens points out that the signalling of preferences could easily prevent as much harm as

it causes, and it is almost impossible to even conceptualize what it would mean to ignore your preferences. Instead, what we need is a critique of the *desires themselves*. Srinivasan gives us promising examples of how a critique or re-evaluation of desire can take place without anyone demanding sex—for example, body positivity activists and the "Black is Beautiful" movement undeniably politicize desire, and call on us to re-evaluate what we view as desirable. But no one in these movements would say that we are *obligated* to make such-and-such a choice in our dating life. In short, the answer is to identify a middle ground, where we do not demand that people *force* themselves to go against their preferences, but instead aim to gently steer our desires in a better direction, and more importantly, to change the societal structures that mold them in such a biased way—Hollywood, dating apps, and the beauty industry, for example.

This conclusion leaves some important questions open for further inquiry. Since we have concluded that *individual desires* are the proper site of political critique, a thorough account of what kind of desires we *ought* to have—aside from the obvious point that the desires we have now seem less than ideal—would be significant. Moreover, if I am right that the most promising route to addressing the problem of racial preferences is by re-evaluating these desires and changing how our preferences are formed, then there is much more work to be done to consider how this should be accomplished. Understanding what shapes our preferences and how they change over time is an important piece of the puzzle, but we must also consider the role institutions ought to have in constructing our desires. As I have shown, government policy and the structures it creates play an outsize role in determining who meets whom—but there are interesting questions about corporations too. Platforms like Grindr and Tinder might be the future of dating, but is it *their* job to make us better people? Analyzing the ethical responsibilities of online intermediaries is crucial, and has implications not just for racial preferences, but for the future of self-fashioning, privacy, and romance in an increasingly virtual world.

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