

NAVIGATING THROUGH THE NOISE: ON WHAT IT MEANS TO DISCRIMINATE

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Abstract

Explaining what it means to discriminate is easier said than done. A reason for this is that the concept of discrimination is a social one, and thus changes with its time. Furthermore, it is heavily intertwined with other concepts, such as fairness, which present an explanatory challenge on their own. In order to deal with this ambiguity around the meaning of the concept of discrimination, shortcuts are often used. Although practical, these shortcuts could damage our understanding of the concept by giving a quick but incomplete answer. One shortcut in particular draws attention for its common usage: the use of specific groups and those groups only when it comes to discrimination. What often happens in practice is that we associate the concept of discrimination with particular groups only. For instance, women, black people, and the gay community are important groups that are often found to be discriminated against. Those groups, however, are not the only victims of discrimination. The question that lies central, then, is how, if at all, we could build an account of discrimination that describes a discriminatory situation, regardless of whether the act occurred against a member of the aforementioned groups. Reflecting on the conceptualization of discrimination is a complex task due to the nature of the concept. It is, however an important one, for doing so will reveal the complex structure of relationships between concepts, and allow for a more enlightened vision of what it means to discriminate. The analysis presented in this thesis elucidates the concept of discrimination by breaking down the components which it presupposes, and shows the importance of clearly analyzing a situation before labelling it as discriminatory. More specifically, the idea that the concept of discrimination is relevant only to certain groups is put under critical scrutiny.

Key words: Conceptualization, Discrimination, Groups, Group-Criterion

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1 INTRODUCTION

The Netherlands, a country that is internationally praised and stereotyped for its tolerant culture, was home to a lot of controversy over the last few years. A special case that occupied the headlines in the Netherlands but also got international attention was the Zwarte Piet discussion. Zwarte Piet, or “Black Pete”, is a fictional character that takes on the role of Sinterklaas’ (the Dutch equivalent of Santa Claus) helper. The physical characteristics attributed to Zwarte Piet, like black skin, big red lips and golden earrings, seemed to depict the image of a black slave, which was the object of the controversy. This character has existed for decades and is seen as intrinsic to the Dutch culture. Only now, people have started calling the character out as racist as it perpetuates the image of black slaves. The reception of this accusation was ambiguous: on the one hand, Dutch citizens were shocked that their traditions were being held under fire. On the other hand, people recognized that the comparison did not appear out of thin air. There seemed to be a general realisation of the fact that, although the intention was never to be racist or demeaning, one of the icons of an important tradition directly tied back to the racist history of the Netherlands during colonial times. Unknowingly, they were contributing to the foundations of the discrimination exercised against black people that still exists today. Or were they? Racism is seen as an important category of discrimination. The mixed reactions of the Dutch people regarding the Zwarte Piet case being labeled as discriminatory show exactly that: we are unsure whether or not these types of actions constitute discriminatory actions. This leads to the central question we need to answer before delving deeper into the topic:

What is discrimination, or a discriminatory practice?

Another case that elicited a great deal of confusion due to its discriminatory marking is a trend that gained a more and more prominent place in the media: the #metoo movement. A trend, which exponentially spiraled outwards after the accusations against the famous film producer Harvey Weinstein went viral. It all started when two women, actresses Rose McGowan and Ashley Judd, claimed to have undergone sexual harassment. They were the first of a very long list that went on to include almost 70 women (Sandra Gonzalez & Melas, 2018). These accusations that took a substantial place in

the media went on to form the #metoo movement. This movement was characterized by women placing accusations on Twitter with moments in which they were sexually harassed.

Sexual harassment is often seen as a category of gender discrimination. Although it is undeniable that sexual harassment constitutes a harmful and derogatory way of being treated, can we really qualify it as discrimination? The media claims that we can: Weinstein was called out for discrimination after the allegations became public (Sampathkumar, 2018). Bloggers and journalists keep referring to Weinstein's case as a case of sexual harassment and discrimination, not keeping in mind that those two concepts do not necessarily refer to the same thing (Khadem, 2017). Again, are these claims reasonable? Can we assume that Weinstein's case is indeed a case of discrimination? In order to answer this, we must first understand what discrimination and discriminatory practices are. A completely unified understanding of the concept of discrimination is, however, improbable. The reason for this is that the concept of discrimination is an *essentially contested concept* (Gallie, 1955), a concept that is understood and defended in different ways due to its normative nature, while still pointing towards the same thing. In essence, the claim that discrimination is an essentially contested concept means that people with different experiences and norms will understand the concept of discrimination and its assumptions in different ways, while still agreeing on the meaning of the concept in general. The consensus on the concept in general remains valid until a specific situation arises which some people label as discriminatory, while others don't. The concept is essentially contested as both parties defend their standpoint with logic and empirical evidence, which may lead them to opposing conclusions while still developing a solid line of argumentation.

The ambiguity around essentially contested concepts has become even more prominent since the rise of social media. These digital platforms allow for the free expression and contesting of opinions by any type of individual, which enables the public to express itself whenever it so desires. Discriminatees (individuals undergoing discrimination), who previously lacked the shelter of an (anonymous) instant access to the rest of the world, more commonly come forward as the chances for their claims to be taken seriously are higher. Indeed, the platform created by the internet and social media allows for the regrouping of individuals defending the same claim (Debatin, 2008). The power of numbers makes the claims seem less idiosyncratic: it only takes one influencer to post a story on sexual ha-

rassment and discrimination for others to follow with what they believe are stories based on the same conceptual axis. Even though this might not necessarily be the case.

It is unclear whether this worldwide accessibility to expression actually improves our understanding of the concepts on which claims are based, or whether it confuses us further. In the case of the #metoo movement, many women started using the hashtag on Twitter in order to show support for other women and to denounce situations in which they were compromised themselves. It did not take long for very ambiguous situations to be called discriminatory due to the overuse of the hashtag, thereby discrediting the people who were truly harmed. The popularity of the topic and the lack of a clear understanding allowed non-discriminatory actions to be labeled discriminatory. The possibility of misunderstanding and confusion about important concepts that mark policies, mindsets and societies in general is enforced by the existence and use of such platforms. It has thus become even more necessary to make sure that important concepts such as discrimination are well thought through and understood. By doing so, certain benefits will ensue. From a practical perspective, the public will understand the concept and related concepts better, thereby also facilitating legal discussions. By breaking down the concept of discrimination and by uncovering the complexities around concept of discriminatory practices, its usage will be (to some extent) restrained to pertinent cases. The example of the Harvey Weinstein case shows how easily and rapidly cases can be interpreted and labeled as something like discrimination, which can have serious consequences both in the short and long run. Short term consequences include a rejection by society, whereas long term consequences are likely to show a decrease in the powerfulness of the concept of discrimination; its high moral status is likely to be diluted and the ambiguity around its meaning that is already present would only be amplified, resulting in a general increase in uncertainty about what is acceptable and how to behave. This is not to say that Harvey Weinstein did nothing wrong. On the contrary, it is to say that we ought to spend more time thinking about what it actually means to discriminate, for Harvey Weinstein's actions might be wrong, but they might not necessarily be discrimination. A clarification of the concept of discrimination with as goal an improved understanding of discriminatory practices is thus desirable and could contribute in avoiding the confusion on what is acceptable and what is not. By reflecting on what it means to discriminate, and by analysing the interdependencies of the concept, the confusion might perhaps not be completely erased, but will

be partially released as it becomes easier to navigate through the clutter of entangled concepts.

It is for this reason that clarifying the concept of discrimination will be a goal of this thesis in order to allow for an overall enhanced understanding of the concept. The goal is not to provide an exact definition of the concept of discrimination, but rather to gather important elements that are inherently relevant to the discussion. While a definition provides the basis of an approximation of what the concept means, it does not necessarily allow us to understand what is meant. An improved understanding of what is meant by the concept of discrimination is not the formulation of a clear definition in our minds, but the realisation that the meaning of the concept of discrimination is deeply interconnected with concepts that are equally essentially contested. This realisation will contribute to the awareness that there is no simple answer, and that such ought not be the goal. By realising this interconnectedness and complexity, we shift from opting for an easy fix which is enabled by tools such as definitions, to taking more time to incorporate relevant elements into our assessment.

Attempting to interpret an essentially contested concept such as discrimination can be challenging, for doing so implies providing an account of additional concepts that are implied by discrimination, such as what it means for something to be fair. By grinding the concept of discrimination and its implications, new links and complexities can be discovered, which, in turn, enables this improved understanding of the concept. To achieve this goal, I will be turning to philosophy and, more specifically, to analytical philosophy. Ultimately, by enhancing the overall understanding of the concept of discrimination, distinguishing between discriminatory and non-discriminatory actions or practices becomes easier, and in case of doubt, this will allow for an augmented ability to unravel our confusions.

Looking back at previous attempts of conceptualizing discrimination, we find a general lack of consensus on the topic (Lippert-Rasmussen, 2018). Authors have often been able to define important conditions or aspects to the concept of discrimination, but a reliable, all-encompassing definition has not been found. The blur around the notions that are relevant in the discussion on defining discrimination as a concept and how these notions tie together seems to be the area that causes most difficulty. Is an action discriminatory

when a person is differentially treated alone? Or does this treatment need to be harmful and unfair as well? Even so, does discrimination need to be morally wrong per se? If not, how do we distinguish between wrongful and non-wrongful situations of discrimination? This blur around relevant concepts in the discussion on discrimination is precisely why discrimination is an essentially contested concept. Depending on the social, philosophical or legal interpretation of harmfulness, fairness or moral wrongness, participants in a discussion might end up with differing conclusions, without any of the participants having inadequate logic. Again, the point is therefore not to produce a singular definition of the concept of discrimination, but rather separate and analyse the different components that are relevant to the discussion.

Generally, the concept of discrimination is often described by some sort of disadvantageous differential treatment on a person or groups of people (Horta, 2015). One person or one group of persons is wrongly treated compared to the other. It is this comparative difference between groups that forms the basis of discrimination (Altman, 2016). A natural way for us to conceive of discrimination is indeed by dividing people into groups. This division comes naturally as it is based on regrouping individuals who share similar characteristics. (Turner, 1982). These characteristics can be anything from having the same musical taste to sharing the same height. As such, the characteristic “white” and “black” constitutes an example of two different groups. This particular example shows a case of “opposing” groups, as the characteristic of being “white” implies that one cannot be “black” or any other skin color. The characteristic of “opposing” groups is often used in order to find out whether an action is discriminatory. One author who contributed a great deal to the idea of discrimination and relevant groups thereof is Lippert-Rasmussen. In essence, Lippert-Rasmussen proclaims that categorizing people into groups is constitutive of the determination whether discrimination occurred. By having this categorization, we can simply check whether groups that underwent a certain treatment are *socially salient* (Lippert-Rasmussen, 2006). By “socially salient” groups, Lippert-Rasmussen refers to those groups that are “important to the structure of social interactions across a wide range of social contexts”. Groups formed on the basis of dietary preferences would thus not be relevant in the context of discrimination, but gender and race would be accepted as socially salient.

Grouping people into separate categories is a very natural process, and often occurs automatically. As Gardner (1998) stipulates, using categorization process as a way to make decisions (how to decide which persons to love, or which persons to avoid for instance) is very natural to humans; without it, we would be lost and more exposed to dangerous situations as we do not filter out those people that may harm us. While grouping is a natural phenomenon, using grouping as the core pillar for defining the concept of discrimination might seem incomplete. By equating the concept of discrimination to grouping, many subtleties inherent to the concept remain unspoken of. The following section will delve deeper into the analysis of what a discriminatory action entails.

2 DEFINING DISCRIMINATION

While being used extensively in today’s vocabulary, the word “discrimination” has not been around and widely used for that long. The topic has truly begun to spur world-wide interest starting from the late 20th century (Thomsen, 2018). Its origin is traced back from late Latin’s “discriminationem”, which refers to “distinction”, and later in 17th century English “to discern”. The concept of discrimination refers to some sort of act of distinguishing between two separate entities. Its interpretation depends on two things: on the one hand, a distinguishing act, which is what we have come to frame as some form of differential treatment; on the other hand, the entities in question that undergo the differential treatment. These two components represent the base definition of discriminatory actions. The entities consist of individuals who belong to two groups that are their respective opposites with respect to one special feature. Nevertheless, despite their difference, they belong to the same general category, the base group. The two opposing groups, then, can be referred to as subgroups of the base group. The difference that separates the groups is what results in treating the respective entities differently. This simple account leaves much unspecified. For instance, what happens when one is treated differently? Are there special conditions that need to be present in order to be qualified as discrimination or can any type of differential treatment constitute a discriminatory action? These questions will be answered in this section, by looking at important components of the concept of discrimination. Each step that is discussed below represents an extension to the simple base definition discussed above. For now, we will start by looking at the base

of the definition of discrimination, which portrays the idea of differential treatment.

1) If an action is discriminatory, then it involves treating members of a subgroup differently from the rest of the base group.

In order to get a clearer idea of what such a definition would mean in practice, let us look at the following example, which illustrates a clear case of discrimination.

Base Example

In Company X, both men and women are employed. John and Jane are the same age, have the same level of experience and have the same qualifications for the position they are in. Both are employed as analysts and thus hold the same job title. Their pay is unrelated to performance and is set by the contract they signed before joining the company. Their profiles are similar in all respects except for their gender. However, despite this fact, Jane is being paid 15% less than John at entry level. When Jane notices this difference in pay, she reaches out to her female colleagues who occupy similar positions in the company and have a similar background. This difference in pay seems to be a reality for them as well.

This example clearly portrays a case of discrimination. On the basis of their respective profiles, John and Jane should receive equal pay. In this case, the base group is “analysts at Company X” and the subgroups are “male analysts at Company X” and “female analysts at Company X”. The only difference between John and Jane, then, is the fact that Jane is female. She is being treated differently because of her gender. As such, we label this example as being a case of discrimination, but not only because it respects the base condition 1) identified above.

Condition 1) is important and necessary, for differential treatment is constitutive of the act of discriminating. It is furthermore essential to identify the separate entities that undergo a respective different treatment as the very act of distinguishing implies categorizing in some way. However, this condition alone is insufficient to determine discriminatory from non-discriminatory actions. After all, it is quite common to change the way we

treat different types of people based on their characteristics, and it does not necessarily need to be discrimination. Throughout the section, different conditions that are necessary to the definition of the concept of discrimination will be retrieved from Example 1 and broken down. We will see that each condition extending the definition adds an important dimension, but is independently insufficient to express the entirety of the concept of discrimination.

Allergy

If there are two children, one being allergic to citrus fruit and the other not, and the parents only give oranges to the non-allergic one and not to the other. This would not constitute a case of discrimination despite the fact that condition 1) is respected: Child 1 and Child 2 both belong to the base group¹ of Children of Parents X. Child 1, who belongs to the subgroup “citrus fruit allergy” will be differentially treated with respect to Child 2, who belongs to the subgroup “no citrus fruit allergy”. As such, situations that may be innocent like the citrus fruit example will be targeted unless additional conditions are added.

A missing attribute of discriminatory actions, then, is the fact that this differential treatment is harmful to the subgroup that suffers from harmful differentiation relative to the other subgroup. The citrus allergy example shows this well: the two children were differentially treated, but the treatment was not harmful, and can thus not be labeled as discriminatory. The harmful characteristic of the differential treatment is an important attribute of negative discrimination as opposed to positive discrimination. In order to remain within the scope, this thesis will exclusively focus on negative discrimination. Although the distinction between positive and negative discrimination is important, it is not necessarily relevant to the point I am trying to make; namely, to enhance our understanding of the concept of discrimination which is used on a daily basis in order to improve the way in which we interact with one another. Hence, my focus lies on negative discriminatory situations only. By limiting our conceptualization to negative discriminatory situations, harmfulness becomes a necessary component to the definition, which

¹Although the use of groups is not of primary concern here, it is important to understand how this division works. The use of groups will be discussed at length in section 2.

leads us to our next extension:

2) If an action is discriminatory, then it implies treating members of a subgroup differently from members of the base group in a harmful way.

Although this makes our account of discrimination more specific, we must check whether this necessary condition is sufficient in addition to our previous condition. The following example will illustrate this assessment.

Bank Robbery

Anna is a woman who robbed a bank. The police have arrested her and, after having a trial in court, she is convicted to 10 years in federal prison. In this case, Anna belongs to the subgroup of “criminals”, which, contrary to the subgroup of “non-criminals” undergoes a harmful and differential treatment, namely, being locked up in prison for an extended amount of time. The non-criminals get to remain free.

Although the conditions in (2) show that this could be a case of discrimination, it is likely that it isn't. An important feature that is still lacking contains the “justifiability” of a harmful discriminatory practice: the unfairness factor. This factor explains why we may treat an individual or group of individuals in a harmful way, without it being discrimination. “Harmful”, in the sense we use it here, refers to a treatment that is non-beneficial to the people undergoing it. When looking at Anna's situation, it is unlikely that her conviction would be judged as “unfair” given that the amount of years abides to the regulations of the legal system in place and that there are no additional details relevant to her case. In general, the reason for why discrimination hurts a person is because the treatment implies an injustice to the person or groups of persons undergoing it: for instance, in Anna's case, the years in prison are decreasing her well-being. However, Anna's differential treatment is based on the rules of the legal system in place, and not on Anna as a person. Anna performed actions that were illegal, and the consequences of her actions were known beforehand. Anna's treatment, then, is a result of what she did, not of who she is. If, on the other hand, Anna had been from another ethnicity, and if she had

stolen bread instead of robbing a bank, and still would have gotten the same sentence as the white Anna who robbed a bank, suspicion might be raised that the treatment is based on Anna's personal characteristics, as the punishment does not reflect her illegal actions. In essence, one situation was fair, and the other was not. Furthermore, the first situation may have been harmful, but not unfair whereas the second situation was harmful because it was unfair. It is this distinguishing concept of unfairness that presents an important attribute to the concept of discrimination. The concept of unfairness will be used in an intuitive way, and is included in the following extension to our definition:

3) If an action is discriminatory, then it involves treating members of a subgroup differently from members of the base group in an unfair way.

The concept of unfairness portrays the idea of being denied something whereas one ought to have access to it. This does not necessarily mean that one particularly desire the access to this particular thing or treatment, but that being deprived from it implies being treated less well compared to someone else, which is a direct attack on one's being. Being deprived from the same beneficial treatment as someone else implies being undervalued. Being undervalued relates to the relative valuation of two separate entities, which brings us back to the issue of discrimination. Being valued as less relative to others harms a person in any case, but especially when doing so is unjustified. In that sense, unfairness is an essential component of the concept of discrimination.

We are thus left with two attributes regarding a discriminatory action: the fact that one differentially treats a subgroup from a base group, and the fact that this treatment is unfair. The question remains: although these attributes are necessary, are they sufficient? It is likely that it is not, for the following example shows that these attributes can be present, but still will not determine the discriminatory aspect of an action.

Housing Problems

Tom and Mohammed are two men with identical characteristics in terms of age, professional occupation and income but differ in one aspect; namely their ethnic background. Tom is of Dutch descent and has a typical Dutch first and last name. Mohammed is of

Turkish descent and has a typical Turkish first and last name. Both men speak Dutch fluently and were born and raised in the Netherlands. Tom and Mohammed are both looking for an apartment and happen to apply for the exact same place. The rental agency, which is run by a group of people of Dutch descent, receives their applications simultaneously, but decides to offer the apartment to Tom instead of Mohammed.

At first glance, it looks like this case could be marked as discriminatory. However, a different conclusion might be reached when we hear about the following information: the rental agency has in fact many apartments available. At another point in time, the rental agency was in a very similar situation for another apartment, and that in that case the application of the person of Turkish descent was approved. In fact, out of all the application the agency accepted, there is no significant tendency of picking one group over the other in a systematic way. Because of this information, we can no longer claim the agency's actions were discriminatory. The other necessary conditions were respected: Tom and Mohammed are part of the base group of potential tenants. Tom belongs to the subgroup of "applicant of Dutch descent", and Mohammed forms the subgroup of "non-Dutch descent". Furthermore, the differential treatment of selecting Tom and not selecting Mohammed is unfair to Mohammed. Both applicants respected the rental conditions, and are similar in all characteristics except for their ethnic background. The treatment is unfair because, as the rental conditions were respected by both applicants, there did not seem to be a valid reason for why Tom was chosen over Mohammed. Although there did not seem to be any reason for the agency to favor Tom's application over Mohammed's, this action did not seem to portray a general type of behavior. The decision does not look like a general habit of favoring one type of person over another. As such, we cannot speak of a systematic or unfair type of behavior exerted by the agency. It is this systematicity that would make this case discriminatory, had the agency always decided to reject the persons of non-Dutch descent. In more general terms, the act of consistently and systematically treating members of a particular subgroup differently from members of the base group when there is no reason to do so makes the act unjustified.

If a certain situation tends to occur systematically when certain conditions are met, it seems logical to talk about a recurring problem. Adding systematicity to the definition allows to control for idiosyncratic cases, which cannot be representative of discrimination

by their very nature. In the previous example, the agency randomly selected their tenants. The fact that the agency picked the typical Dutch name over the typical Turkish name is then not representative of the way the agency makes decisions in general. The concept of discrimination describes a certain effect that results in situations being labeled as “discriminatory”. In order for that to happen, the concept of discrimination should relate to a general tendency of treating a subgroup of people in a certain way relative to a comparable subgroup within a base group of people. Isolated cases with unique conditions cannot always be called discriminatory as the lack of commonalities would make calling these actions discriminatory arbitrary. This defeats the purpose we are trying to achieve; namely, to reflect on a definition that is able to communicate which type of situation is discriminatory in order for us to improve our understanding of what it means to discriminate.

However, we cannot simply claim that systematic and unfair acts are discrimination by definition. Building on our previous example, if the decision to accept Tom’s application over Mohammed’s were systematic, meaning that in any situation where both men applied, only Tom’s would be favored given that one spot is available, it still does not necessarily prove that discrimination has taken place. For instance, if Tom is chosen over Mohammed because Tom’s earnings are higher and more stable compared to Mohammed’s, even though Mohammed still makes a good living in absolute terms and meets the requirements for renting property, it is unlikely we would accuse the agency for discrimination. Mohammed endures a differential treatment that is unfair, because he does meet the requirements for renting, but it is still insufficient to be labeled as discriminatory. Why is this the case? The reason for why this situation is acceptable even though it is systematic as well as unfair to Mohammed, is because Mohammed is not treated differently from Tom *because* of an irrelevant trait. If Mohammed’s application would have been rejected because of his ethnicity, for instance, which is no relevant reason for being rejected for housing, the story would have been different. Differential treatment, as was demonstrated previously, is not a bad thing per se. It is even unavoidable. However, differential treatment becomes discrimination when it occurs to the same type of people over and over again as a result of a trait that distinguishes them from other people, but is cannot reasonably be justified as being grounds for the differential treatment. This concludes our preliminary analysis on the concept of discrimination. As a final addition, both

the conditions of systematic treatment and treatment occurring because of a particular trait X will be included.

By separately looking at different cases, we were thus able to formulate a set of conditions that generally single out discriminatory practices. All conditions reunited give form to the following definition:

An action is discriminatory if it involves systematically differentially treating members of a subgroup with trait X from members of the base group in an unfair way, with trait X being explanatory to this treatment.

With this definition in mind, we will later turn to the analyses of two philosophers who researched the topic and concept of discrimination and what this exactly entails. First, Heinrichs' view will be presented ; second, Thomsen's view. As we will see, both views have similarities, but differ in their focus. Heinrichs emphasizes the ethical aspect of discrimination whereas Thomsen focuses on dismantling the way discrimination is conceptualized and the remedies we have chosen to counter problems with this conceptualization.

Thomsen (2013) has looked into the use of groups for the conceptualization of discrimination and, more specifically, has explored the idea that it is taken as a given that some groups with specific traits are more "legitimately discriminatable" than others. Thomsen views this way of looking at discrimination inappropriate as it would result in an arbitrary constitution of relevant groups. Heinrichs (2007) also analyzed the concept of discrimination from a group perspective and portrays the idea that discrimination clearly occurs when people who are equal and similar with regards to context are not treated equally and similarly. This thesis will shed light on the extent to which our intuition can help us understanding the concept of discrimination together with all of its characteristics. Existing literature will further provide a solid basis to that goal.

In the following sections, I will thus provide an overview of the accounts of Heinrichs and Thomsen and illustrate the extent to which they differ.

3 DEFINING DISCRIMINATION FROM A MORAL RATHER THAN A PRACTICAL PERSPECTIVE

3.1 HEINRICHS

Heinrichs looks at the concept of discrimination from an ethical viewpoint: in essence, without a valid reason for differential treatment, an action is unfair and morally wrong. It is this moral wrongness that makes the action discriminatory. Moral wrongness, in turn, is defined by the specific circumstances of the action as well as the normative premises that are in place. The problem is that our perception of specific circumstances and the normative premises used will differ from person to person. This fails to establish a unified basis for analyzing discrimination, and, thus, prevents us from determining when an action is discriminatory.

Moral wrongness is an important distinguishing feature of a discriminatory action. The biggest challenge in this approach, however, lies in clearly defining what it means for a differential treatment based on a certain trait to be morally wrong.

Differential treatments are characterized by the selection of the trait that is meant to justify the treatment. We will thus focus on the trait in question: when is having a trait X a morally legitimate reason to engage in differential treatment?

For Heinrichs, the basis of the answer to this question lies in "treating like cases alike". Being "alike" refers to the absence of any trait that shows an important difference between two people, which implies an absence of morally valid reasons for differential treatment.

The essence of this argument lies in the fact that it is unjustified to treat people differently when they are in fact "the same", which does not mean that they are identical but that they are similar in all respects. By treating people who are the same differently, we thus engage in an action that is morally wrong, for it cannot be justified. For instance, a doctor with one black patient and one white patient cannot refuse to treat the black patient when she would treat the white patient. If both patients have the same disease whereas a white patient would be treated, differential treatment would not make sense as both patients are in fact the same; namely, two people with disease X. In his quest to improve our understanding of the concept of discrimination, Heinrichs' main goal is thus

to find out what it means for two individuals to not be considered equal. Or, in simpler terms: when are two individuals not equal? The important question is thus: when are people not the same? When can we reasonably separate people on the basis of their traits, which show that they are not alike and should thus not be treated alike? This ensues in asking the following question: Which traits form a legitimate basis for differential treatment?

The lack of an answer to the previous question forms the core of the problem. Heinrichs singled out three important criteria we ought to use when deciding on the moral nature of differential treatment.

- **FAULT**

If I were to acquire a trait, but I did not do so through my own fault, meaning that I am not responsible for acquiring the trait, I ought not to be treated differently because of it. As I am not responsible for obtaining the trait, it would be unfair to have me undergo the disadvantageous differentiation. Were I to be differentially treated because of it nonetheless, this would be morally wrong and could constitute a case of discrimination. Following this logic, a person's ethnicity could not form the basis of a morally right differential treatment as this person is not responsible for having acquired this trait.

- **IMMUTABILITY**

If I were to have a certain trait, and were unable to change it regardless of how much I would want to, the trait could not form the basis of a morally acceptable differential treatment. For instance, my age is something that I cannot change, although I might want to. A similar argument holds for any physical injury I may have obtained through my own fault: Indeed, I will be responsible for having obtained the trait, but my inability to alter the trait, let's say, blindness, places the trait on the list of traits not to be used for morally right differential treatment.

- **SPECIAL RELEVANCE TO PERSONAL IDENTITY**

This criterion points out the fact that there are some traits that, although we might be responsible for having them or could choose to change them, are essential to our personal identity. One clear example in this category is our religious belief. Although

we could convert to another religion or abstain from religious stamps altogether, we might feel that it is such an important part of who we are that it would be immoral to ask us to change it.

Out of the three criteria, this one causes the most problems, and it is not hard to see why: ultimately, this criterion makes it possible for anybody to justify the use of any trait. An employer could for instance claim that her religious convictions are an important part of her identity, and that she is unable to hire homosexuals because of it. Although this is a discriminative act, she is protected from being called out on it through Heinrichs' third criterium. Heinrichs' solution to this problem consists in using the situation's circumstances to determine whether a trait could be central to one's identity and is thus off limits when it comes to differentiation.

Heinrichs rightly spotted that these criteria may not be sufficient to demarcate all discriminatory traits that exist. For instance, although gender is a widely accepted trait to the concept of discrimination, would my decision to favor male applicants for a focus group testing male products be discrimination? It would not, given that the trait "being male" was directly relevant to my decision. As such, Heinrichs argues that relevance to the circumstances ought to be an important factor we take into consideration.

Again, this allows for anybody to claim anything relevant, which does not automatically make it relevant. We must thus find out what *should* be relevant instead of what *is* relevant when engaging in differential treatment for it not to be morally wrong. To answer this question, Heinrichs has identified two main factors that contribute to relevance of a trait.

- CONTEXT

The first factor refers to specific details that play a role in the decision-making on whether or not to perform a certain act. The relevance of a trait seems to be determined through the specific circumstances at play.

- NORMATIVE PREMISES

The second factor shows that relevance all depends on the "frame" in place in any given situation. More specifically, it is the normative premises that are relevant at the time and place of the situation that will define the moral right or wrongness of an action in regards of its discriminatory aspects. Any society is implicitly guided

by a set of norms and values but also by a set of systems (economic, social, political, etc.) that will define the answer of what should be relevant. The problem is that we generally do not agree on the normative premises in play when it comes to making a decision on the moral aspects of an action.

In a society with normative premises based on liberal economic principles, it could be argued that firms have the right to remain as competitive as possible, thus using pay rates as an axe of competitiveness. Women of a certain age bear higher statistical probability of wanting to have children, which will result in a certain cost imposed on their employer. As such, from a liberal economic perspective, it can be argued that incorporating the probability of taking maternity leave into women's pay rate as a risk premium. The reference frame, which is used by individuals to make decisions regarding what is right or wrong is thus based on the normative premises in place. A society with egalitarian principles as a reference frame would argue that the first goal is to treat all members equally. A risk premium for parental leave could be justified, but there is no particular reason for why only the women would bear its financial disadvantages, as parental leave would not be perceived as a female practice, but a human one. A fee could thus be deducted from all members depending on their "probabilistic risk to take parental leave" at any given time. The problem is that within a given society, not all citizens use the same reference frame because there might not be one single set of relevant normative premises. This is Heinrich's most important point as this allows both the liberal economic viewpoint argument as well as the egalitarian viewpoint argument to remain valid even if their conclusions on discrimination are differing in this case. This might be considered problematic by those who request a single and absolute definition of the concept of discrimination. However, for those who aim at improving their understanding of the concept having accepted its fluid nature, this might not be a problem: contexts allow us to form a better informed assessment because the new information that they provide helps us in perceiving the complexity and interdependencies of the elements relevant in the situation, which we were previously blind to.

using context adds a feedback loop, which provides more information as time passes and more contexts surface.

In the next section, a different perspective on the conceptualization of discrimination will be looked into, which will build on the problems raised by Heinrichs: Thomsen (2013)

provides a detailed account on a general tendency that is commonly adopted, namely, the use of the group-criterion, which limits our objectivity as to selecting which type of person can or cannot suffer from discrimination.

3.2 THOMSEN AND THE ARGUMENT OF THE GROUP CRITERION

Thomsen (2013) puts into words the way in which discrimination is dealt with on a daily basis: by using a pre-defined list of traits to check whether a situation may be qualified as discriminatory. The way this list works is as follows: we tend to follow the group-criterion, which refers to "the idea that there is a limited and definable group of traits that can form the basis of discrimination". The group-criterion is expressed in the form of a "prohibited list", the aforementioned list, which is a selection of traits that "must not be the basis of disadvantageous differentiation". Although a list may seem practical, accepting the idea that there are conditions which are determined and inflexible, and which enable the creation of such a list is hard to accept, for the context determining the conditions remains flexible. Hence, the context of such lists then becomes arbitrary and, therefore, useless. Nonetheless, we keep using these lists, which results in a miscomprehension of discrimination as a concept.

Thomsen puts the concept of the group-criterion as a solution to the problem of defining discrimination under a critical loop. Lists generated from conditions that were set up arbitrarily are an inflexible tool that is unable to incorporate the subtleties of potentially discriminatory situations. In this section, I will expand on why the group-criterion is incapable of improving our conceptualization of discrimination and will elaborate on the types of conditions that are used to make these lists. The core idea is as follows : we are unable to reason why certain traits have a place on the list, and other traits don't.

There are certain groups that we seem to hold as a standard reference for discrimination, with traits such as race, gender or sexual orientation. These traits come to form as what Thomsen refers to as a list: the "prohibited list". This list contains traits on the basis of which we must not differentiate. The problem with this list, however, is that its length and contents do not seem to be constructed according to a clear rationale. Rather, it seems to be constructed intuitively, which poses a significant problem for traits that are considered "new", such as being transgender for instance. It seems to be constructed intu-

itively, because the traits on the list were chosen according to inflexible conditions, which, in turn, are only relevant depending on context which is inherently flexible. Whereas our society today as accepted and recognized the discrimination that exists between men and women, it has not done so for "more recent" groups, such as the transgender group. This lack of argumentation backing up the prohibited list makes its contents arbitrary, which, in turn, renders the list unusable for clearing up the concept of discrimination and defining discriminatory practices.

The prohibited list thus emerges from a general principle called the group-criterion. In essence, this means that there is a list, the prohibited list, that we unconsciously refer to when analyzing a situation for discrimination. This unconscious referral, in turn, emerges from our use of the group-criterion. When the trait that represents a situation at hand can be found on the prohibited list, we can rule the situation as discriminatory. For instance, if I would be refused an administrative job because I was categorized as "under-qualified", I would intuitively accept this rejection: the trait of "being under-qualified" does not figure on the prohibited list; it is relevant to the situation and fair given the company's demands and what I could offer. Conversely, if I would be refused the same administrative job because I was categorized as "black", I could refer to the prohibited list again, dismiss the rejection and claim discrimination had taken place. I would be able to do so as the characteristic "black" appears on the prohibited list and is thus a valid ground of discrimination. Thomsen dismisses the use of the group-criterion and the prohibited list on the grounds that we have no valid reason, apart for pragmatic reasons, for taking their conceptualization as describing discriminatory situations. Especially given the fact that using this pre-defined list can result in the acceptance and rejection of some very questionable practices. If we have no real logic backing up the group-criterion and the prohibited list, we can always find ways to justify the inclusion or exclusion of any sort of trait. The list would then become completely arbitrary and defeat its own purpose.

The problem, then, is that the group-criterion favors the inclusion of certain groups above other groups, despite the fact that there is no proven reason to do so. What kind of reasons can we think of that would validate the inclusion of some groups, but not all? There need to be some conditions that enable us to make these conclusions. Thomsen

mentions two:

- INHERENT RELEVANCE

Some groups are inherently relevant to the concept of discrimination because some traits are simply inherently relevant. According to Thomsen, we can find out whether a trait is inherently relevant by dismissing it as being non-irrelevant: if a trait is irrelevant to decision-making, it cannot be used for disadvantageous differentiation because of the moral wrongness of acting on irrelevant grounds.

- CONTEXTUAL RELEVANCE

With contextual relevance, we specify which groups "ought to be the focus of discrimination relative to current sociohistoric circumstances rather than the innate and universally applicable qualities of the traits".

Thomsen considers the criterion of the relevance of a trait with regards to differential treatment : Treating people differently because of a trait that is irrelevant to the situation at hand is morally wrong. However, Thomsen, unlike Heinrichs, comes to the conclusion that considering relevance is in any case too context-sensitive to be seen as a valid argument for keeping the list and the group-criterion. The argument of relevance depends too much on the context of a certain situation in order to be capable of generating a stable list that will remain valid across places and time.

In order to circumvent the issue of defining relevance, Thomsen, too, proposes to look at the responsibility of having a trait. If we differentiate between people based on traits they have no responsibility of having, we would engage in discriminatory treatment. As Heinrichs also stipulated, there is an important difference between possessing a trait by no doing of one's own and possessing a trait we might be responsible for but cannot alter by any means possible. Intuitively, it would be unfair to differentially treat people because of traits that fit in either of the two categories. But when it comes to the prohibited list, it is considered too inclusive, for there exist an infinite amount of traits that we are not responsible of acquiring or that we will not be able to change in the future. Examples of this include our birth year or having taken train X on day Y. It is also considered too exclusive, for some traits fit both categories and will be considered a trait on the prohibited list as the said trait is generally perceived as immutable. The most prominent example

of this is religion : although we might have a certain faith, we could convert and change our religion. The prohibited list thus provides protection for traits which we could easily change if we wanted to. If we could easily change the feature which places us in a disadvantaged position, one could argue that we might just simply change the trait in order to avoid the treatment. Thomsen rightfully notices that this type of analysis, placing the focus on responsibility of possessing a trait, diverges our attention of the essence of the problem : namely, the practice of differentiating based on irrelevant and immoral grounds.

Regarding the contextual relevance argument, which favors the inclusion of groups that have a history of discrimination (for instance, blacks) or are currently socially salient (for instance, women), a different problem emerges. The groups we select will have us focus on a targeted set of traits, which are representative of groups that occupy an important place in society because of their social and historic group identity, thereby completely excluding other groups.

Again, we find ourselves asking the question: why is having a prominent group identity grounds for being included in the prohibited list? Practical purposes seem to play a large role here, and seem to serve as a proxy for identifying those groups that are most likely to suffer from discrimination. This is not necessarily incorrect, but there needs to be room for other groups that have the potential to be discriminated against.

Another important argument that justifies the contextual relevance argument for the group-criterion is the “additional harms argument”. This argument shows that experiencing a certain treatment within socially salient group A versus socially non-salient group B will result in more harm for group A respective to group B. Let’s look at this by means of an example: Jane and John from Example I go watch the Football World Cup finale of 2018 in the streets in Paris surrounded by a large crowd of people. After France had won, Jane was assaulted by a man, who, in his joy of the victory, touched her against her will. John underwent a similar treatment by a woman. The additional harms argument argues that, in this case, Jane has suffered more harm than John because she is a woman, and thus feels part of the social group of being female. Women, generally, tend to be harassed by the opposite sex more than men. Furthermore, being female comes with other disadvantages such as the difference in salary Jane has already endured from Company X she works at. As such, all these facts together make Jane feel increasingly

aware of her belonging to the social group of female which is being disadvantaged for the very fact of being female. Every following unfair treatment that occurs due to her gender is experienced in an amplified way, because of the previous experiences. This realization, in turn, makes the treatment more hurtful. John, on the other hand, is generally less disadvantaged because of his gender, and thus may not think of actions happening because of his belonging to the category of being male. The treatment he underwent is the same as Jane's, but because he is generally less disadvantaged, this particular treatment seems like an isolated, idiosyncratic case. As such, it is probable that the harm Jane might have felt is amplified relative to John's harm.

The additional harms argument, however, does not directly justify the use of the group-criterion. When doing so, we perceive that it actually proves the ill-fittedness of the group-criterion and its prohibited list. For instance, the additional harms argument would require a certain threshold of harm in order to be incorporated into the prohibited list - a threshold, which could only be arbitrary and inflexible, as we have no logical reason for setting it at a certain height, just like the list itself. We would need a satisfactory answer to the question as to why only socially salient groups could ever surpass the threshold as well as why a threshold was needed to begin with. Furthermore, the additional harms argument requires for the self-identification of individuals into the relevant groups for an action to be perceived as discriminatory, which is not a given. For instance, a woman might experience a discriminatory treatment, but will not qualify it as such or be triggered by the additional harms argument because she does not identify herself as belonging to the category of women who are negatively and unfairly treated relative to men. The additional harms argument, then, fails to provide a solid basis for selecting discriminatable traits, and, thus, cannot support the group-criterion. Thomsen's conclusion is that a list cannot be constructed on the basis of specific groups, and that the group-criterion does more harm than good to the problem of discrimination as well as our understanding of it as a concept.

4 HEINRICHS VS. THOMSEN

In an attempt to unravel the inconsistencies around the concept of discrimination, Heinrichs has shown that *fault*, *immutability* and *special relevance to personal identity* form

a legitimate but perhaps incomplete basis for differential treatment. Heinrichs has also shown that the issue of refining which trait may be considered as relevant ought to be based on *context* and *normative premises*. Thomsen, on the other hand, aimed at dismantling our use of the group-criterion as a standard. Thomsen has done so by demonstrating how the group-criterion results in the intuitive formation of a list, which we use for defining discrimination. The group-criterion, however, is unable to support a conceptual definition of discrimination, because the two possible reasons for why some groups may be validated as relevant, but not all (namely, *inherent relevance* and *contextual relevance*), were refuted.

While both authors aimed at improving our understanding of the concept of discrimination, their approach differs. Indeed, Thomsen uses the concept of discrimination and the way we can uncover its implied conditions as a means to dismiss the use of the group-criterion, which only further confuses our idea of what it means to discriminate. Heinrichs remains broader in his conclusions by focusing on a set of conditions that seem to form the basis of the concept of discrimination such as the importance of morality, context and relevance of traits for his conceptualization of discriminatory practices. For Heinrichs, a list is not necessarily excluded as a means to solve the problem of improving our understanding of the concept of discrimination.

4.1 GROUP-CRITERION AND LISTS

With regards to the group-criterion and its implication that some groups are more equal than others, both authors agree on the fact that making a list of traits for the purpose of identifying groups that might be discriminated against has the benefit of being a very practical although ineffective solution: the contents of this list are intuitive but arbitrary due to the fact that they fail to be logically explained. Indeed, when it comes to the correct length or criteria that guide the list, we are left without an answer. This lack of certitude as to why we should take certain traits as indicative for the presence of discrimination makes the list more of a general intuition, or a rule of thumb, rather than an absolute certainty. Thomsen adds to this that any list we construct will be inflexible, whereas its contents ought to be flexible and follow the trends of society. A list that was valid 100 years ago might be different than the one that is valid 100 years from now.

Most importantly, Thomsen completely dismisses the use of the group-criterion as a means to improve the way in which we define and understand discrimination, for the traits that are used in the list are based on inflexible conditions, which, themselves, are based on very flexible contexts. As such, the group-criterion and resulting prohibited list is unable to sustain a single view of discrimination. Thomsen's dismissal of the group-criterion, however, does not weaken the importance of certain groups (based on gender, race, or ethnicity for example) when it comes to discrimination. It remains essential to remember that these groups have suffered from and keep suffering from discriminative practices, but that focusing solely on those groups discards our attention away from thinking about ways in which we can live without discriminating. As mentioned, by focusing on distinct groups, we make it easier for ourselves in the sense that we know exactly when to pay attention to equal and fair treatment. Unfortunately, it lessens the importance of paying attention to the principle of nondiscrimination in general as a social norm.

Heinrichs, on the other hand, does not draw such an absolute conclusion: a list certainly has drawbacks, but merits being looked into for the abovementioned purpose as contexts may be defined according to relevance of the context as well as normative premises. Certainly, the two latter elements come with a certain volatility. However, this volatility might be resolved if we stick to one set of normative premises. In essence, Heinrichs, although skeptical, does not dismiss the idea of a list as untenable in the quest to improve our understanding of discrimination. It is in this point that the two authors differ most prominently.

4.2 RELEVANCE

4.2.1 CONTEXT

Both authors agree that the relevance of traits plays an important role in the discussion on discriminatory practices. They also both agree that context is an essential factor in this discussion, as context provides the necessary background that could justify certain types of behavior. Contrarily, it could also provide evidence that certain behavior is unjustified. As such, context will provide the information needed to determine which type of traits are relevant in any given situation. Their views differ, however, on how to deal with context as an explanatory factor. Heinrichs, on the one hand, promotes the inclusion and active

examination of context in order to define discrimination as he believes that the uncertainty attached to context can be dealt with by looking at the relevant reference frame in place. On the other hand, Thomsen definitively rules context out as a factor that is too volatile to be incorporated into our definition. Context, according to Thomsen, is far too unstable to provide any useful contribution for the conceptualization of discrimination. Although Heinrichs defends the use of context in the discussion on the concept of discrimination, he does not propose a framework that would allow to use it as a means to find relevant traits. As mentioned in the previous section, context is the element provides a basis for the group-criterion and its list of traits. The way in which Thomsen and Heinrichs perceive the volatility of context and how to deal with it is how their divergence is most clearly demonstrated.

4.2.2 NORMATIVE PREMISES

Using context as an explanatory factor in the discussion on whether a certain situation displayed discrimination is indeed a difficult task. Context and all the details we decide to include as relevant in it are subjective components that could change from person to person. These are exactly the doubts expressed by Thomsen on the subject. It is simply too volatile to count as a stable condition for selecting traits. In this respect, Thomsen refutes Heinrichs argument on normative premises in the sense that it is unable to generate a stable definition of the concept of discrimination. The normative premises on which a society functions are not set in stone, and will count numerous subtle differences from person to person. As such, relying on normative premises to provide a solid framework for the analyses of contexts seems doubtful. Although Thomsen agrees with the fact that discriminatory situations are, in fact, context-sensitive, using this fact does not help us any further with determining when a situation is discriminatory.

How do we make sure that all the necessary details are enclosed in our consideration of a certain context? Similarly, how do we make sure that unnecessary details are discarded from it? For instance, in the situation where an employer is trying to hire a new employee but insists on the employee being protestant, we intuitively identify the situation as discriminative. But when it comes to light that the employer wishes to hire protestants because of their well-renowned work ethic, we seem to be more understanding of the em-

ployer's position. This is the case, because the employer has made the trait relevant to him or her. Following that logic, we could essentially make any trait relevant by stating that it is necessary, and thereby becomes completely subjective and, perhaps, meaningless.

4.3 PERSONAL IDENTITY

Heinrichs and Thomsen distinctly differ in their way of dealing with feelings of personal identity with respect to the conceptualization of discrimination. For Thomsen, groups with a strong identity could justify why some groups could be considered as relevant but not others. However, this identity might still be a valid reason for differentiation. In clearer terms, some groups characterized by a trait that forms the basis of their identity (for instance, being black) are central to today's society and its discourse; they are socially salient. The social salience of these groups makes the disadvantageous differentiation they undergo important as the size of the group is significant and the occasions in which they have felt this differentiation numerous. Thomsen thus speaks of an additional harms argument being central to the identity of groups as a reason to validate their presence on the list. Heinrichs, on the other hand, states that some traits are off limits and should never be the basis of differential treatment, simply because they are core to one's personal identity, regardless of responsibility or immutability. Although Heinrichs later on mentions that, in some cases, one can simply state that a trait is relevant in a given situation, and that this deprives the relevance argument from being objective, he does not seem to consider the fact that his argument on core personal traits only complicates things further in his later analysis. Heinrichs believes that the importance of certain traits for personal identity makes the traits "untouchable". A certain set of core traits should be beyond access of others, especially while considering when two people are "alike" (meaning, they do not differ with respect to relevant traits to a situation). Thomsen clearly diverges from Heinrichs at this point, as he defends the position that "a certain set of core traits" is too vague to be anything but arbitrary. Which type of traits can be defined as being "core" and essential to one's personal identity? Similar to the relevance claim, which was dismissed on the grounds of being too lenient to allow for a clearly explained selection of traits, having a condition which allows for core traits being untouchable for being important to personal identity will only allow people to call out for discrimination

through simply stating that something is core to their personal identity. What is it that conceptually distinguishes the trait of belief of Judaism from the belief of a flat earth? Why is the one acceptable and the other not? Indeed, Thomsen even goes as far as to state that the prohibited list protects traits that could easily be changed, an example of which is gender. In today's society, it is possible to switch gender, and it has thus become a changeable trait. Another example of this is religion : if we so wish, we may convert to another religion that is more suitable for our purposes (for instance, obtaining a certain job or protecting oneself from harm).

Of course, Heinrichs' idea was to find a condition that would include traits exactly like "religion", and it could be defended that differentiating on the basis of religion is wrong simply because religious groups are socially salient and thus endure harm in an increased capacity. Wouldn't it then be simpler to leave out the condition of "core to personal identity" and refer to social salience instead? For instance, people of the Catholic faith are often responsible for their faith; they are free to change faith if they so wished. However, the Catholic community is a socially salient group, and if differentially treated on a regular basis without significant reason to do so, one can speak of discrimination.

Although the methods used by the authors differ, both Heinrichs and Thomsen show different settings of the concept of discrimination in order to improve our understanding of the concept. The conclusion by both authors is similar: there is not one singular definition that completely encompasses the meaning and implications of the concept of discrimination, nor could this be possible. This conclusion shows how it is necessary to see that, indeed, "it depends" and to try to see why. Saying that it depends means that there are different contexts which are able to change our assessment of the situation completely. As such, both authors have shown how important it is to think through right up to the point where you have to consider the context and whether it could be relevant. By directing our attention and awareness towards this part of the story, we will gradually be able to develop a better understanding of what it means to be discriminative towards a person.

5 CONCLUSION

Elucidating the concept of discrimination is a necessary step in improving the understanding of its meaning and implications. Separating people in different types of groups by traits that unite them is a natural occurrence and is done by everyone. By understanding when this process becomes discriminating, we are better equipped to counter unwanted effects, such as false accusations and the defortification of the meaning of the concept of discrimination. Discrimination as a concept is a difficult one to define for the reason that it implies understanding many other important concepts such as fairness and justice. Still, it remains essential to try and grasp its meaning by untangling its premises, for doing so contributes to our understanding of its complexity and occasional ambiguity. Composing a list of traits that cannot form the basis of differential treatment was meant to eradicate this ambiguity. A list, however, is simply the output or application of the concept of discrimination, and does not say much about the concept itself. It does not answer our questions regarding its appropriate length, selection procedure or meaning of the act of discriminating for that matter. Heinrichs and Thomsen denounced exactly this problem in their papers. The group-criterion, then, does not support the improvement of our understanding of the concept of discrimination itself. The importance of circumstances in which a situation arises cannot be overlooked when it comes to defining a discriminatory situation. Although both authors disagree on the extent to which we can use circumstances as a stable means of defining discriminatory situations, they do agree on the fact that circumstances play a considerable role in labeling a situation as discriminatory. Overall, this analysis has served several purposes. The first one was elucidating the concept of discrimination by breaking down the components which it presupposes. In line with Thomsen's view, the second was to demonstrate the instability of the group-criterion as a means to select traits that cannot be discriminated against. The third was to encourage others to look beyond the common conception of discrimination, which often only targets groups with traits from the group-criterion, and reevaluate what it means to be discriminative towards a person by integrating contexts into our assessments. Ultimately, by assessing the concept of discrimination from a multitude of angles, which incorporates the connections to other concepts, we gain a better insight into the complexity and ambiguity of the concept of discrimination. By shifting the attention away from formulating a singular definition, and by accepting the fluid nature of the concept,

it becomes possible to improve our understanding of what is meant when we talk about discrimination.

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