

## **WRONGFUL DISCRIMINATION AND A SOCIAL CONCEPT OF AUTONOMY**

WRONGFUL DISCRIMINATION AND A SOCIAL CONCEPT OF AUTONOMY

By TYRA LENNIE, M.A.

A Thesis Submitted to the School of Graduate Studies in Partial Fulfillment of the  
Requirements the Degree Doctor of Philosophy

McMaster University © by Tyra Lennie (2025)

McMaster University DOCTOR OF PHILOSOPHY (2025) Hamilton, Ontario  
(Philosophy)

TITLE: Wrongful Discrimination and a Social Concept of Autonomy

AUTHOR: Tyra Lennie, M.A. (Toronto) and B.A. (McMaster)

SUPERVISOR: Violetta Igneski

NUMBER OF PAGES: 157

## **Lay Abstract**

In this thesis, I develop a theory of wrongful discrimination that uses a social concept of autonomy as its foundation. Chapters One and Two examine how extant accounts of wrongful discrimination lack a robust explanation of how our social and external environments impact the formation and exercise of autonomy. Chapters Three and Four develop a detailed social concept of autonomy and explain how external forces can infringe upon autonomy. Chapters Five and Six of this thesis explain how infringements on autonomy become wrongful discrimination when they attach to systems of oppression and subordination, before testing the theory by analyzing fifteen cases from Canadian case law. Ultimately, this thesis fills a gap in existing literature by using a feminist and social formulation of autonomy to discuss how acts of differentiation become acts of wrongful discrimination through connection to hierarchy and systems of oppression.

## **Abstract**

This six-chapter thesis forwards a social concept of autonomy as the foundation to describe acts of wrongful discrimination in a way that fills a gap in the existing literature. Although many common accounts speak of wrongful discrimination as a failure to treat an individual as an equal, or a type of “demeaning” treatment, I argue that these accounts fail to fully acknowledge the impact of our external social environments on autonomy. In Chapter One, I provide a snapshot of wrongful discrimination (in the context of Canadian law) before arguing against using “treatment as equals” to describe what goes wrong in cases of wrongful discrimination. Instead, I suggest that an account that takes on a feminist concept of autonomy will provide a stronger foundation for describing acts of wrongful discrimination. In Chapter Two, I describe the respective strengths and weaknesses of two extant accounts of wrongful discrimination by Sophia Moreau and Benjamin Eidelson. This chapter takes forward strengths from their work and adds a host of further concerns to support my own theory-building. In Chapter Three, I present my social concept of autonomy in full, outlining each element in detail before describing how one should measure autonomy on this account. Chapter Four examines four types of infringements on autonomy that can occur due to being socially situated and subject to an oppressive and controlling external environment. Each infringement links back neatly to the social concept of autonomy outlined in the previous chapter. In Chapter Five, I examine how not all infringements on autonomy can be properly called wrongful discrimination. I describe how mere infringements on autonomy become acts of wrongful discrimination when they fall along lines of current or historical oppression. Further, I

explain how this thesis admits of levels of wrong outside the realm of wrongful discrimination—some acts of differentiation and sorting can be *wrong* without being *wrongful discrimination*. Finally, Chapter Six displays the strengths of the theory in action by applying the framework to fifteen unique cases from Canadian case law. The goal of this chapter is to showcase the practical usefulness of the theory when it comes to sorting concrete cases and identifying when wrongful discrimination has occurred. Here, I will examine three landmark cases discussed in Chapter One of the thesis along with thirteen new cases.

## **Acknowledgements**

Thank you to my committee members, Violetta Igneski, Allauren Forbes, and Alice Pinheiro Walla, for reading many drafts of this thesis over the past several years and striking the perfect balance between critiquing and motivating the work. Thank you to Natalie Stoljar for playing the role of my external examiner and offering up important insights on my work. Thank you to the wonderful department community at McMaster. Thank you to my husband, Matt, for supporting me throughout my degree.

**Table of Contents**

**Introduction – 1**

**Chapter One: A Snapshot of Wrongful Discrimination – 5**

**Chapter Two: The Shortcomings of Extant Accounts – 27**

**Chapter Three: A Social Concept of Autonomy – 48**

**Chapter Four: Infringements on Autonomy – 80**

**Chapter Five: From Infringements to Wrongful Discrimination – 100**

**Chapter Six: Theory in Action – 117**

**Conclusion – 151**



## Introduction

Although cases of wrongful discrimination may seem alike by intuition, a unifying concept to describe the central and shared features of these cases proves elusive. Recent philosophical accounts have explained the type of wrong involved in cases of discrimination as a failure to treat people as individuals or equals. Consider a scenario where someone in charge of hiring firefighters only selects male-identifying candidates based on the assumption that female-identifying persons are not strong enough to fulfill the duties associated with the role. It seems intuitive that something wrong has occurred here—but how can we explain what this wrong consists of? The simple answer is that female-identifying candidates face discrimination here based on gender. In this case, discrimination goes hand-in-hand with a denial of opportunity in the realm of employment. Consider a second scenario where someone in charge of hiring at a nursing home only selects female candidates based on the assumption that female-identifying persons are empathetic and, therefore, better caregivers. This case presents more issues; once again, we can resort to a simple answer—candidates who are not women are discriminated against and denied employment. I acknowledge that extant philosophical accounts that focus on treating people as equals can describe the simple version of the wrong in cases like these. On accounts of wrongful discrimination based on equality, a wrong has occurred because candidates were not treated as *equals*.<sup>1</sup> This reliance on treatment as equals easily explains why we see male-identifying candidates as

---

<sup>1</sup> Importantly, treatment as *equals*, which is for the most part focused on *sameness*, is distinct from an approach focused on either fairness or parity.

discriminated against in the second of the two scenarios. However, we can also see that female-identifying candidates have been subject to wrongful discrimination *despite* receiving preferential treatment. On this side, female-identifying candidates were subject to stereotyping when they were labelled as empathetic, and therefore better caregivers, in a generalized manner. It seems that we must move beyond treatment as equals to describe cases like the second one that involve preferential treatment or more complicated wrongs. Treatment as equals will struggle to explain how *discriminating* treatment that involves *preferential* treatment is wrongful, as will be shown throughout the first two chapters of this thesis. As well, treatment as equals will fail to explain why treating people as *equals* might even be wrong in some cases—for example, when it comes to accommodating people in regards to mobility infrastructure. In short, in the early chapters of this thesis, I will show how treatment as equals is a simple answer that can solve straightforward cases. However, I will illustrate how, when it comes to more complex cases, we need a more robust and detailed explanation of wrongful discrimination. Although treatment-as-equals accounts initially focus on equality, autonomy enters the picture since being treated as an equal *implicitly* involves being afforded status as an autonomous agent. Further, on treatment-as-equal accounts, autonomy comes into the picture only in an underdeveloped manner. On these accounts, autonomy is composed of simple parts: usually only thought of in terms of desire identification, critical and reflective abilities, and the preservation of one's inner citadel. These accounts lack mention of how the formation and exercising of one's autonomy is reliant on and highly influenced by external environments and how we are socially situated. Ultimately, this means that

treatment-as-equal accounts do not account for how the autonomous person can be infringed upon by outside forces in a controlling, oppressive, and recurring sense that impacts personhood.

This thesis aims to account for the gap in the literature surrounding wrongful discrimination left by reliance on treatment as equals and underdeveloped accounts of autonomy. The early chapters establish drawbacks to treatment as equals and formulate a feminist and social concept of autonomy. Later chapters connect the developed social concept of autonomy to infringements that *become* wrongful discrimination when they connect to systems of oppression and hierarchies. To begin, I will provide a snapshot of wrongful discrimination in the context of Canadian case law and examine some of the initial of treatment as equals before arguing for the benefits of employing autonomy as a foundation in Chapter One. Chapter Two will examine two promising accounts of wrongful discrimination by Sophia Moreau and Benjamin Eidelson, describing their strengths, before considering some drawbacks motivated by feminist critiques of traditional autonomy. Here, the goal is to explain why external environmental and social conditions impact the way in which autonomy is both formed and exercised. Chapter Three sets the basis for my social concept of autonomy, presenting the concept in full and clarifying some parameters around how to measure autonomy. Chapter Four describes how autonomy can be infringed upon by referring to four specific types of infringements that arise from existing in social environments with external forces at play. Chapter Five describes how infringements on autonomy become wrongful discrimination when they attach to lines of oppression and subordination and discusses the *multitude* of wrongs that

involve differentiation and unequal treatment but are outside the realm of wrongful discrimination. Finally, Chapter Six showcases the theory in action by analyzing fifteen cases from Canadian case law using the framework developed in this thesis. Ultimately, this final chapter exemplifies how the account of wrongful discrimination developed throughout this thesis can provide a detailed description of victim impact in cases of wrongful discrimination. Centering the impact of wrongful discrimination on victims allows us to easily identify, address, and avoid repeating acts of wrongful discrimination.

Taken all together, in this thesis, I suggest that wrongful discrimination involves specific infringements ([1] limitations on the ability to plan, [2] restrictions on access to resources, options, and opportunities, and [3] constraints on the projection of an agent's outward and inward sense of self), that fall along historical or current systems of oppression and subordination, and impact the victim's autonomy (thought of in a social manner, comprised of [1] desire identification, [2] critical and reflective abilities, [3] value formation, [4] access to options, and [5] two senses of self. By taking up this structure, this thesis presents a way forward to fill the gap in the literature by using a social and feminist concept of autonomy as a foundation to describe acts of wrongful discrimination in a clear and distinct manner—applying the theory to Canadian case law in the final chapter helps show the practical usefulness of the theory when it comes to describing victim impact and identifying acts of wrongful discrimination.<sup>2</sup>

---

<sup>2</sup> To be clear, the central aim of this thesis is not to set out to analyze and shape legal codes and cases. Rather, throughout this thesis, I provide moral arguments that may be used to make and inform legal arguments—I do not make arguments that are strictly legal in themselves.

## **Chapter One: A Snapshot of Wrongful Discrimination**

This chapter begins with three sections that work together to provide a snapshot of wrongful discrimination—what is wrongful discrimination and what are some of the standard approaches to capturing this wrong. This chapter outlines the nature of wrongful discrimination in the Canadian context and will refer to some concrete legal cases to frame wrongful discrimination in a non-abstract manner. Next, this chapter examines approaches that argue that wrongful discrimination involves a failure to treat a victim as an “equal” in a morally relevant sense. In this section, I will explore specific strengths and weaknesses of this approach. In particular, I will focus on how treatment as an equal often collapses into discussions about *autonomy*, leading to my argument that autonomy should be the foundational building block of a robust theory of wrongful discrimination. After examining how approaches focused on treatment as equals collapse into views focused on autonomy, I explain why autonomy is a strong basis for a theory of wrongful discrimination. Despite the existence of other foundations, like equality, which can describe wrongful discrimination in terms of “treatment as an equal” or “demeaning” treatment, I will maintain that grounding an account in autonomy properly captures the wrong that victims experience in cases of wrongful discrimination in a clear and theoretically elegant manner. Finally, I conclude the chapter by reviewing some upshots—given the strength of an approach grounded in autonomy, I move to justify the way in which my work fills an apparent gap in the literature. This chapter begins to unravel the basics of defining wrongful discrimination by outlining the main features of these acts.

### 1.1: Wrongful Discrimination in the Canadian Context

In the context of Canadian law, wrongful discrimination is a category of actions constituted by certain practices that attach to a set of prohibited grounds. The preamble of the *Ontario Human Rights Code* (1990) does not define wrongful discrimination in clear and explicit terms but notes that;

whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations; And Whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province.

Ultimately, the *Ontario Human Rights Code* acknowledges that individuals have dignity and equal rights. Wrongful discrimination threatens this foundation by damaging access to equal rights and opportunities. Therefore, protection from wrongful discrimination involves a right to equal treatment and access to services, goods, and facilities. Wrongful discrimination, on this definition, consists in treating people unequally based on traits that are not morally significant. In further detail, these traits, the prohibited grounds of discrimination, include race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability in the context of the *Ontario Human Rights Code*. Under the *Canadian Human Rights Act*, the prohibited grounds of discrimination include:

race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability, and conviction for an offence for which a pardon has been granted or in

respect of which a record suspension has been ordered.<sup>3</sup>

These prohibited grounds are characteristics that determine when an act of differentiation (treating people differently) constitutes an act of wrongful discrimination. The *Canadian Human Rights Act* describes the features we can look for when picking out cases of wrongful discrimination. For example,

it is a discriminatory practice in the provision of goods, services, facilities, or accommodation customarily available to the general public (a) to deny, or to deny access to, any such good, service facility, or accommodation to any individual, or (b) to differentiate adversely<sup>4</sup> in relation to any individual on a prohibited ground of discrimination.<sup>5</sup>

In general, denying access to a good does not automatically count as wrongful discrimination, even if this denial includes differentiation. For example, being denied entry to a restaurant because of being blatantly intoxicated is not wrongful discrimination given that serving guidelines prohibit allowing already intoxicated individuals into an establishment. Instead, Canadian law is concerned with a set of actions that become discriminatory practices due to how they correspond to one or more overlapping prohibited grounds. Among these instances, Canadian law also notes how wrongful discrimination in the workplace can impact equal wages, access to accommodation, access to opportunity, and freedom from harassment.

Other government agencies have provided their own standard descriptions of the *Ontario Human Rights Code*. The Ontario Human Rights Commission (OHRC) defines discrimination as *usually* including the following,

---

<sup>3</sup> *Canadian Human Rights Act*, 1985, c. H-6, 3 (1).

<sup>4</sup> To differentiate adversely is to provide differential treatment in a way that specifically disadvantages or harms a certain individual or group.

<sup>5</sup> *Ibid*, 5 a-b.

- Not individually assessing the unique merits, capacities and circumstances of an individual.
- Instead, making stereotypical assumptions based on a person's presumed traits.
- Having the impact of excluding persons, denying benefits or imposing burdens that are not imposed on other individuals.<sup>6</sup>

Based on this description, wrongful discrimination is the practice of making *assumptions* rather than proper *assessments* of an individual's merits, capacities, or circumstances, which results in an undesirable impact. We can read into the OHRC's definition that the "unique merits, capacities and circumstances of a person" are, in legal terms, the prohibited grounds. Similarly, the Canadian Human Rights Commission (CHRC) describes wrongful discrimination as "an action or a decision that mistreats a person or a group for reasons such as their race, age, or disability."<sup>7</sup> Once again, the focus here is on how a particular class of actions becomes wrongful discrimination when they link up to certain prohibited grounds protected under the law.

Wrongful discrimination takes various forms—one important and preliminary division includes the distinction between direct and indirect discrimination, respectively called disparate treatment and disparate impact in the American legal context. Direct discrimination involves the straightforward cases of wrongful discrimination we might think of when we call standard cases to mind. Some individual or group is treated differently on the basis of a prohibited ground; for example, we can imagine a scenario where someone is denied service at a business because of their race. Indirect discrimination usually involves a practice or policy that discriminates against a person or

---

<sup>6</sup> "What is Discrimination?" Ontario Human Rights Commission, 2008. <https://www.ohrc.on.ca/en/iii-principles-and-concepts/2-what-discrimination>.

<sup>7</sup> "What is Discrimination?" Canadian Human Rights Commission, 2021, <https://www.chrc-ccdp.gc.ca/en/about-human-rights/what-discrimination>.



group in a far more subtle way. We can look at the 1990 Royal Canadian Mounted Police (RCMP) uniform policy to see this kind of discrimination in action.<sup>8</sup> Baltej Singh Dhillon met the requirements for entry into the RCMP in 1998, but the dress code required a clean-shaven face and banned head covering—since members were expected to wear the traditional Stetson. As a practicing Sikh, Dhillon could not meet either of these requirements. This policy disadvantaged individuals like Dhillon, but in a more roundabout way. The RCMP's stated goal was to have members wear a specified uniform. Still, without due consideration for how this goal impacted individuals of a specific faith, this policy was discriminatory in an indirect sense. Policies that are indirectly discriminatory often impact a group or individual as a side effect of an intended goal. Often, cases of indirect discrimination involve a failure to recognize how *seemingly* neutral policies can be discriminatory in practice.

This section has provided a brief snapshot of what counts as wrongful discrimination under Canadian law. In particular, wrongful discrimination involves a failure to treat someone as an equal on the basis of a prohibited ground(s), which impacts access to services, goods and facilities. The law has little to say about the impact of wrongful discrimination on victims or the mindset of perpetrators. Rather, the law is restricted to classification on the basis of prohibited grounds that cannot be the basis for acts of differentiation and attaches these to something tangible: services, goods and facilities.

---

<sup>8</sup> “Baltej Dhillon Case” *The Canadian Encyclopedia*, 2019, <https://www.thecanadianencyclopedia.ca/en/article/baltej-dhillon-case>.

## 1.2: Three Landmark Cases

To further illustrate the shape of wrongful discrimination in the Canadian legal context, I will briefly state the facts of three landmark cases, *Vriend*, *Andrews*, and *Brooks*. The aim is to identify what is characteristic of wrongful discrimination by examining concrete instances that we can return to throughout this chapter. Here, the role that a prohibited ground plays in determining if a given act counts as wrongful discrimination becomes clearer.

*Vriend v Alberta*. In this landmark Canadian Supreme Court case, the appellant, *Vriend*, was dismissed from his college position in Alberta due to his sexual orientation. *Vriend*, who was employed at the college starting in 1988, disclosed to the president of the college that he was homosexual in 1991. Up until his disclosure, *Vriend* received positive evaluations, salary increases, and promotions, indicating a strong overall record of employment. After this disclosure, the college adopted an anti-homosexual position and requested *Vriend's* resignation. *Vriend* declined to resign, so the college terminated his employment. The reason for his termination was that he had not complied with the college's anti-homosexual policy. When *Vriend* initially filed a complaint with the Alberta Human Rights Commission, it was dismissed. The Court of Queen's Bench found, however, that dismissal based solely on the grounds of sexual orientation violated the Canadian Charter. This case presents a straightforward case of direct discrimination—*Vriend* was dismissed from employment based on a characteristic unrelated to his duties, merit, or fit for the position. Here, we can see how an act of differentiation between homosexual employees like *Vriend* and heterosexual employees led to a groundless

dismissal.<sup>9</sup> As noted earlier, *Vriend's* employment record was positive before his disclosure, and his dismissal was *solely* based on sexual orientation. The wrong here is that judgements about the relevance of *Vriend's* sexuality impacted his employment in an unfair and unjustified manner.

*Andrews*. In 1989, section 42 of the *Barristers and Solicitors Act* stated that Canadian citizenship was a provincial bar requirement to practice law in British Columbia. Mark *Andrews*, a British lawyer, argued that this citizenship requirement violated his Charter-based right to equality since he met all other merit-based standards. The British Columbia Supreme Court initially dismissed the case, stating that this requirement did not constitute a denial of equality. The case moved to the Canadian Supreme Court, where the court stated that,

Discrimination is a distinction which, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, has an effect which imposes disadvantages not imposed upon others or which withholds or limits access to advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed.<sup>10</sup>

Given this definition of discrimination, two questions had to be answered. First, the court had to determine “whether or not an infringement of a guaranteed right has occurred.”<sup>11</sup> If so, the court had to examine if this infringement could be justified under s. 1 of the Charter, which holds that rights are guaranteed only under reasonable limits. The court

---

<sup>9</sup> *Vriend v. Alberta*, [1998] 1 S.C.R. 493 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1607/index.do>.

<sup>10</sup> *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/407/index.do>.

<sup>11</sup> *Ibid*.

acknowledged that the present list of prohibited grounds was not exhaustive; wrongful discrimination on some currently un-noted grounds is never out of the question. Given the ever-shifting nature of prohibited grounds, the court held that “a rule which bars an entire class of persons from certain forms of employment, solely on the grounds of a lack of citizenship status and without consideration of educational and professional qualifications or other attributes or merits of the individual or the group infringes s. 15 equality rights.”<sup>12</sup> Generally, because citizenship is both out of the control of individuals and usually unrelated to job performance, the admission requirement for the British Columbia bar was a form of indirect discrimination. In short, in this case, the “wrong” was that *Andrews* and other non-Canadian citizens were barred from employment based on a trait unrelated to merit or job performance. Non-Canadian citizens were subject to wrongful discrimination on the grounds of something out of their control.<sup>13</sup>

*Brooks*. The employee insurance plan used by Canada Safeway, a supermarket chain, stated that employees would not receive general health benefits in the seventeen-week period around pregnancy. In the case of accident or sickness unrelated to pregnancy, these employees would be without insurance. In 1982, three employees (Susan *Brooks*, Patricia Dixon, and Patricia Allen) argued that this treatment was an instance of sex discrimination; employees who were able to bear children were subjected

---

<sup>12</sup> Ibid.

<sup>13</sup> Some might wonder about classifying *citizenship* as the kind of trait that one cannot control. In some sense, we can see that citizenship is very much under the control of an individual given that someone can apply for it and proceed through standard steps to become a citizen. Of course, no one can control where they are born but many people can control where they work and live in their adult years. In this sense, the *Andrews* case may feel considerably different compared to the *Vriend* and *Brooks* cases, which seem to contain *fully* uncontrollable and natural traits. Citizenship as the grounds for discrimination will be explored further in Chapter Six: Theory in Action.

to unequal treatment. *Brooks*, Dixon, and Allen ultimately connected their treatment during pregnancy to sex, now described in the *Manitoba Human Rights Code* as an applicable characteristic:<sup>14</sup> “sex, including sex-determined characteristics or circumstances, such as pregnancy, the possibility of pregnancy, or circumstances related to pregnancy.”<sup>15</sup> All three employees suffered from ailments unrelated to childbearing during the period when their insurance plans only covered pregnancy-related benefits. The court concluded that “pregnant employees receive significantly less favourable treatment under the plan than other employees. The plan singles out pregnancy for disadvantageous treatment, in comparison with any other health reason which may prevent an employee from reporting to work.”<sup>16</sup> In this case, the characteristic of being pregnant acted as a proxy that disadvantaged a set of employees, in this case, three women. Disadvantageous treatment, in the form of wrongful discrimination, followed from a fact unrelated to the nature of the employment or the insurance policy itself.<sup>17</sup>

These three cases from the Canadian context show the general shape of central instances of wrongful discrimination. Throughout this thesis, my focus will be on cases which involve differential treatment based on a prohibited ground. Some non-standard cases will be examined in later chapters, but the bulk of cases examined will seem similar in structure and content to these first three cases outlined.

---

<sup>14</sup> An “applicable characteristic” is a similar term to “prohibited ground,” used in the context of Ontario and Canadian code.

<sup>15</sup> *Manitoba Human Rights Code*, C.C.S.M. c. H175 (2023).

<sup>16</sup> *Brooks v. Canada Safeway Ltd.*, [1989] 1 S.C.R. 1219 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/455/index.do>.

<sup>17</sup> *Ibid.*

### **1.3: Capturing Wrongful Discrimination**

Given the shape of wrongful discrimination as just described in Canadian law, how should we describe the wide variety of legal cases that fall under the umbrella of wrongful discrimination in a unifying manner? Philosophical accounts of wrongful discrimination aim to describe the shared features and characteristics of this set of cases with detail and accuracy. Part of the challenge is constructing a theory broad enough to capture distinctions between cases of wrongful discrimination—a theory must acknowledge the variety of cases that fit this label—but fine-tuned enough to include *only* those cases rightfully called wrongful discrimination. On either end of the spectrum of over and under-inclusivity, constructing a theory sensitive to the intricacies of cases of wrongful discrimination presents challenges. In the next section, I will outline a standard approach to this task, a theoretical commitment to the idea that cases of wrongful discrimination involve a failure on the part of perpetrators to treat people as equals. This discussion will begin to illustrate just one philosophical approach to the question at hand. I will argue that this approach moves in the right direction by acknowledging the impact of wrongful discrimination on victims but can be collapsed into a more straightforward approach based on autonomy.

### **1.4: Treatment as Equals**

One common approach to wrongful discrimination solves the questions asked above by arguing that cases of wrongful discrimination involve a failure to treat people as equals. I will explore such an account by Benjamin Eidelson in the next chapter; for now, I will discuss the general approach. On treatment as equals accounts, cases of wrongful

discrimination involve some person or group not being treated equally compared to some other person or group. Returning to the previously outlined instances, we can see this approach in action. In the case of *Vriend*: due to his sexuality, *Vriend* was not treated as an equal compared to employees that had not openly identified themselves as queer. In the case of *Andrews*: due to his citizenship, *Andrews* was not treated as an equal to other contenders for the British Columbia bar exam, despite his merit and ability-based characteristics. In the case of *Brooks*: the three pregnant employees were not treated as equals to employees unable to bear children when it came to insurance coverage. Following this approach, the wrong we pick out in cases of wrongful discrimination is based on a comparison between parties. We care about this poor treatment because it involves differentiation based on held or perceived characteristics, which results in some level of poor treatment. This approach has several layers of appeal.

First, this approach captures something easily identifiable; when looking at cases of wrongful discrimination, we can see how the victim in a given situation stands in relation to others not like them. We can identify how *Vriend's* treatment differs from heterosexual employees at his place of work to explain the act of wrongful discrimination.

Second, this approach acknowledges how the law relies on prohibited grounds. Generally, when we argue that wrongful discrimination treats people unequally, we can see how this tracks our legal efforts to protect individuals from poor treatment based on considerations tied to race, sexuality, age, and more. This approach is preferable because it restricts our effort to describe cases of wrongful discrimination to those cases involving victims who face oppression and restriction along current or historical lines. By using

prohibited grounds instead of appealing to something more general like “traits,” we can avoid someone claiming that they faced wrongful discrimination (in a legal and moral sense) without treatment that attaches to either historical or present disadvantage.<sup>18</sup> We can think of the illustrative cases of a white student who sued Howard University, a historically in Washington, due to alleged “race discrimination”<sup>19</sup> or Abigail Fisher’s case against the University of Texas, where she alleged that she was denied admission because of her whiteness.<sup>20</sup> If we simply looked to find acts that involved *differentiation* based on *traits*, ruling out these cases becomes harder. Specifically, ruling out cases like this can become difficult when a university has affirmative action programs or does weigh some traits positively during admissions, meaning other applicants “lose out” in some limited sense. Ultimately though, it does not seem plausible to label something like affirmative action as wrongful discrimination, even if acts of differentiation occur here. Instead, when aiming to identify if wrongful discrimination has taken place, we should look at how certain *traits* historically or currently link up to systems of oppression—these are the kinds of traits we wish to protect against wrongful discrimination, and generally these are the kinds of traits that line up with legally prohibited grounds. In these cases, we find that wrongful discrimination is about differentiation not just because of *any* trait but because

---

<sup>18</sup> To be clear, wrongful discrimination involves intersectional judgement and looking at a whole person. Someone can hold a trait that has not subjected them to historical or present disadvantage or oppression (for example, whiteness) but be discriminated against due to their sexuality as a queer person (a trait that is historically and presently disadvantaged). To determine if someone holds the sorts of traits we are interested here, we must look at identity in a holistic manner. In the case outlined above, the individual may face wrongful discrimination due to their sexuality, but this does not mean that they face wrongful discrimination based on their race.

<sup>19</sup> <https://www.nbcnews.com/news/nbcblk/white-student-suing-howard-university-racial-discrimination-rcna72711>.

<sup>20</sup> <https://www.nytimes.com/2016/06/24/us/politics/supreme-court-affirmative-action-university-of-texas.html>.



of traits that necessarily connect to systems of oppression. In cases that involve differentiation, and sometimes even unequal or unfair treatment, but no linkage to the kind of traits this thesis is interested in, there may be a *wrong* occurring but not *wrongful discrimination*. This topic will be explored more in later chapters of the thesis, but for now, hopefully, this preliminary argument has explained why states and individuals might consider relying on *prohibited grounds* rather than *traits* more generally, to avoid a problem of over inclusivity where any act of differentiation based on traits might be considered wrongful discrimination. In Chapter Five, there will be a more extended discussion of how some scenarios can involve differential treatment and some category of wrongdoing (but importantly, not wrongful discrimination) by way of several examples.<sup>21</sup>

Finally, this approach describes wrongful discrimination beyond mere differentiating treatment. It is not the case that we are *just* worried about acts that distinguish, sort, or differentiate people. We are concerned with acts that make these kinds of distinctions in a way that treats people unequally and connects to larger systems of oppression and hierarchy. We can think of a job advertisement for a high-end restaurant that calls for applicants and notes that “applicants with relevant serving experience” are preferred. Here, the advertisement sorts between different sorts of potential applicants, those with relevant experience and those without. During hiring, this factor comes in as a way to differentiate between applicants and ultimately may decide who is offered a job. But this act of differentiation is *not* wrongful discrimination—here,

---

<sup>21</sup> See Chapter Five section 2.1: Infringement Without Discrimination and section 2.2: Infringement With Discrimination.

applicants with experience are preferred because of the work environment. In a high-scale dining experience, some level of knowledge is required beforehand. This would be much different than an advertisement that called for applicants based on a distinction that treats people unequally. For example, imagine an advertisement for an upscale restaurant that calls for applicants that are heterosexual—a factor that clearly does not connect to any industry standards or work-related duties. This kind of differentiation treats people unequally, given that it picks people out in a way unrelated to the type of employment, barring applicants without reason. Treatment as an equal identifies that we are worried about differentiation connected to equality and fairness rather than the mere sorting or grouping of individuals.

### **1.5: Why Autonomy?**

Even though treatment as equals captures how the law relies upon prohibited grounds and avoids the trap of identifying mere differentiation, I want to maintain that it is not a preferable basis for a theory of wrongful discrimination. Mainly, because when someone is subject to wrongful discrimination, their autonomy and personhood, in addition to equality, are under attack, as will be explored in Chapters Three and Four. In short, in those chapters, I will examine how wrongful discrimination involves a failure to treat a person as an autonomous being. Returning to the current line of questioning, a skeptical reader might ask why something like *equality* is not the strongest basis for a view. One might argue that making autonomy central misses the point since what we are really concerned with when we treat people as *autonomous* is treating them as *equals*. If this is the case, autonomy might collapse into treatment as equals upon further

consideration. In the following section, I aim to assuage these worries and point out three unique benefits that come with making autonomy central. Before recounting the most convincing accounts of wrongful discrimination in the next chapters of my thesis, I want to provide thorough support for the use of autonomy as the foundation for a theory of wrongful discrimination. Although I will examine two robust theories of wrongful discrimination that make autonomy central in the next chapter, not all views of wrongful discrimination subscribe to this starting point. Making clear why I take this path explains my focus when it comes to examining extant accounts and my own commitments for theory-building.

First, accounts of wrongful discrimination based on autonomy can adequately focus on the harm the victim experiences as an individual. Accounts based on equality must focus on a comparison between groups or individuals to explain harm. This approach is intuitive in some cases and, in others, involves a substantial amount of imagination on the part of the person trying to describe the act of wrongful discrimination. For example, we can imagine a simple case where a comparison between groups comes naturally. If a tech company only hires male candidates, despite a pool of non-male applicants with strong resumes, we can easily compare the treatment of these two groups throughout the process of hiring. We can quickly conclude that non-male applicants are treated differently in an unfair way. The divide in treatment between the two broad groups evidently showcases inequality. But not all cases of wrongful discrimination are clear-cut in this way—an example that illustrates how wrongful

discrimination can avoid seemingly *positive* stereotypes will help bring this point to the surface. We can use one of Benjamin Eidelson's examples to make this point:

*The Discounted Performance.* Sally, who is of East Asian descent, auditions for her school orchestra. Sally plays the violin, but not seriously, and she is not particularly talented. Kevin, the orchestra director, thinks Sally performed poorly at her audition. But Kevin figures that Sally is probably a dedicated musician who just had a bad day and selects her for the orchestra anyway. Kevin would not have made this assumption or selected Sally if not for her ethnicity and her sex.<sup>22</sup>

In *Treating People as Individuals*, Eidelson employs this example to suggest how “acts of discrimination often instantiate several different wrongs at once.”<sup>23</sup> In some general sense here, we could try to talk about Sally's experience and Kevin's actions in terms of comparison between groups. Here, we might look at those who auditioned who are East Asian and those who are not East Asian as two broad groups. There is also the added layer of grouping people based on being a woman or otherwise. However, there are complications when we try to explain what goes wrong for Sally under the terms of a comparison based on equal treatment. Sally was subject to a kind of unfair advantage—she benefitted from the selection process—but she experienced discrimination, nonetheless. As Eidelson puts it, “in Sally's case, it may be true that Kevin has awarded spots in the orchestra unfairly, but that cannot explain the sense that he has somehow mistreated *Sally*, since Sally is a beneficiary, not a victim, of his unfairness.”<sup>24</sup> We of course may look at how some of those individuals outside of her group(s) were wronged given they did not get a spot in the school orchestra (although some undoubtedly would

---

<sup>22</sup> Benjamin Eidelson, “Treating People as Individuals” in *Philosophical Foundations of Discrimination*, eds. Deborah Hellman and Sophia Moreau (Oxford: Oxford University Press 2013) 206.

<sup>23</sup> *Ibid.*, 205.

<sup>24</sup> *Ibid.*, 207.

have not been selected, despite their lack of membership in her circles). But the wrong experienced by those candidates not selected does not seem to describe all of the *wrongs* in this example. An approach based on comparison de-centralizes the experience of the victim by looking outwards for a benchmark, for something to compare to. There seems to be a more straightforward way to examine the wrong in this case—by just looking at the type of act and the impact the act has on the victim. Here, we can see that Sally was the victim of stereotyping and assumption regardless of who else auditioned for the orchestra. As Eidelson suggests, Kevin places his picture of Sally on her without considering the type of person she might be<sup>25</sup>—this case “involve[s] reliance on group generalizations or stereotypes to form judgments about individual people.”<sup>26</sup> This realization does not need comparison when we simply recognize Sally as an autonomous person with a particular life plan, desires, and values. When we view Sally as a whole and unique person, it is easy to see why we might think autonomy is well-suited for the foundation of a theory. The use of autonomy allows us to identify quickly and easily what goes wrong in these sorts of cases. Here, there was a failure to treat someone as an individual and autonomous agent (despite the fact that Sally was potentially *overestimated* and benefitted in some sense), which we can spot *without* moving away

---

<sup>25</sup> Of course, we are all judged by others in ways that may not perfectly align with how we think of ourselves. This kind of asymmetry between how we see ourselves and how those other than us see us is unavoidable given the social context we exist in. However, there are limits when it comes to what is appropriate on this topic. We should worry more about cases that involve incorrect judgments that attach to stereotypes or group generalization. Especially because of how stereotypes are attached to historical and present forms of oppression and injustice, these kinds of improper judgments have a more serious impact compared to more subtle misjudgments. As a short example, it would be more concerning to assume something about an individual based on their *race* compared to assuming something about an individual based on the kind of *shoe* they are wearing that day.

<sup>26</sup> *Ibid.*, 206.

from the victim's experience. In sum, "discounting Sally's poor musical performance [...]" is not troubling as a form of general epistemic negligence, and it is not unfair to them. Nonetheless, Kevin's [...] actions seem to manifest a kind of failure to relate to them as one person ought to relate to another."<sup>27</sup> These kinds of cases are puzzling because they do not involve ill intent or judgments about worth. Rather, here it seems that something goes wrong when it comes only to treating someone as an individual or autonomous person in the most basic sense. This is why Eidelson concludes that this example showcases how an act can fail to treat someone as an individual without involving a failure to treat someone as an *equal*.

In a related way to the previous point, approaches based on treatment as an equal sometimes must make an unclear leap from language concerning equals to language concerning individuals. Suppose we want to describe the wrong Sally was subject to in terms of equality but find it difficult to either identify the "other" in the comparison or describe why this act of differentiation harms her. In that case, we might have to leap from treatment as equals to treatment as individuals. To adequately describe the situation here, we are more concerned with Sally's *individual* personhood and less with how she stacks up to *other* people who auditioned. If this is the case, it seems that the approach based on equality can collapse into an approach based on autonomy. When we look at how some acts make unjustified and wrongful comparisons between individuals, we can take out an intermediate step and simply examine how these acts impact autonomy. Generally, acts that make wrongful comparisons sidestep or overrule the autonomy of

---

<sup>27</sup> Ibid., 207.

victims. In this sense, the individual is usually treated as someone without a life plan, desires, and held values. Rather than respecting complete and complex identity, through acts of wrongful discrimination, individuals are reduced to a stereotype or assumption.<sup>28</sup> A comparison between a victim of wrongful discrimination and an individual who does not face wrongful discrimination (whether real or imagined) is an unnecessary step to make this point. When we look at the core of how wrongful discrimination restricts and impairs autonomy, this is all we need to ground the wrong.

Second, treating individuals as “equals” poses a less clear standard than treating individuals as “autonomous.” Since different individuals have varying needs, desires, and values, there is no singular way to ensure that we correctly treat agents as equals. When it comes to treating individuals as autonomous, there are clear standards that I will outline in the following chapters. In short, we should allow individuals to exercise their critical

---

<sup>28</sup> Some may still wonder if being reduced to a stereotype that is *positive* is really a wrong. If someone benefits from the stereotype assigned to them, might this promote dignity and autonomy? I will still maintain that this is not the case. It might be helpful to work through this worry by thinking about the stereotypes related to the myth of the *model minority*. A model minority is a group where individuals within are considered to possess certain desirable qualities (often intelligence or good work habits) that causes them to be perceived favourably on the whole. It could be argued that group members *benefit* from association with a model minority group. However, this is not the case. The model minority myth fails to treat individuals within a group as individuals, these myths involve generalization and stereotypes (despite these being *positive*, they are still generalization and stereotypes). As well, these myths are used to shame group members who do not *live up* to the myth in relevant ways. A group member who is not perceived as hardworking as their co-members is treated more harshly than someone outside of the group. Finally, the myth of the model minority is used against other minority groups. Asian Americans are often particularly subject to the model minority myth. In full, “For many Asians living in the United States, these characterizations do not align with their lived experiences or reflect their diverse socioeconomic backgrounds. Among Asian origin groups in the U.S., there are wide differences in economic and social experiences. Additionally, academic research has investigated how the pressures of the model minority stereotype can impact Asian Americans’ mental health and academic performance. Critics of the myth have also pointed to its impact on other racial and ethnic groups, especially Black Americans. Some argue that the myth has been used to minimize racial discrimination and justify policies that overlook the historical circumstances and impacts of colonialism, slavery and segregation on other non-White racial and ethnic groups” (Neil G. Ruiz et al., 2023). See *Discrimination Experiences Shape Most Asian American’s Lives* (2023) by Neil G. Ruiz et al. for more on this topic.

thinking skills and procedural independence. We should enable value formation to occur free from coercive or oppressive conditions. Further, we should help agents craft their own sense of self free from stereotypes, assumptions, and control. Treating individuals as “autonomous” presents clear standards and a path forward.

Finally, as a quick note, autonomy is unarguably foundational and valued enough to serve as a solid basis for a theory of wrongful discrimination. We care about promoting and protecting autonomous choices so people can live the kind of life they wish to author. In the next chapter, I will speak to why I take issue with traditional autonomy and instead find strong utility in a feminist conception of autonomy.

## **Conclusion**

In this chapter, I have aimed to present several introductory threads that come together to establish the gap in the literature that I hope to fill throughout this thesis. I began by illustrating the shape of wrongful discrimination in Canadian law by outlining the legal language, which is supplemented by content from governmental agencies. I sketched the main features of three central cases in Canadian law to draw out further what wrongful discrimination looks like in action. Next, I outlined the basics of wrongful discrimination: how can we meaningfully describe the central features of these cases? Following this, I argued that we should take an approach based on autonomy over one with a foundation based on equality or more traditional versions of autonomy. Overall, this chapter has set up the backdrop for discussing wrongful discrimination by surveying the Canadian legal context and some common approaches to the topic. In the following chapter, I will explore feminist critiques of traditional brands of autonomy along with two



strong approaches to describing wrongful discrimination by Benjamin Eidelson and Sophia Moreau to examine extant literature more concretely

## Chapter One Notes

*Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/407/index.do>.

“Baltej Dhillon Case” *The Canadian Encyclopedia*, 2019.  
<https://www.thecanadianencyclopedia.ca/en/article/baltej-dhillon-case>.

*Brooks v. Canada Safeway Ltd.*, [1989] 1 S.C.R. 1219 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/455/index.do>.

*Canadian Human Rights Act*, 1985, c. H-6. <https://laws-lois.justice.gc.ca/eng/acts/h-6/fulltext.html>.

Eidelson, Benjamin. “Treating People as Individuals.” In *Philosophical Foundations of Discrimination Law*, edited by Deborah Hellman and Sophia Moreau. Oxford: Oxford University Press, 2013.

Mackenzie, Catriona and Stoljar, Natalie. *Relational Autonomy Feminist Perspectives on Autonomy, Agency and the Social Self*. New York: Oxford University Press, 2000.

Ruiz, Neil G., Carolyne Im, and Ziyao Tian. “Discrimination Experiences Shape Most Asian Americans’ Lives.” (2023).

*Vriend v. Alberta*, [1998] 1 S.C.R. 493 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1607/index.do>.

“What is Discrimination?” Ontario Human Rights Commission, 2008.  
<https://www.ohrc.on.ca/en/iii-principles-and-concepts/2-what-discrimination>.

“What is Discrimination?” Canadian Human Rights Commission, 2021.  
<https://www.chrc-ccdp.gc.ca/en/about-human-rights/what-discrimination>.

## Chapter Two: The Shortcomings of Extant Accounts

In this chapter, I survey what I consider to be the two most convincing accounts of wrongful discrimination that are grounded in autonomy and then analyze these accounts in light of feminist critiques of traditional brands of autonomy. The main task of this chapter is two-fold. First, I will take guidance from the two accounts surveyed, acknowledging their strengths. Specifically, I review the accounts of Benjamin Eidelson in his article “Treating People as Individuals”<sup>29</sup> and Sophia Moreau’s in her book *Faces of Inequality: A Theory of Wrongful Discrimination*.<sup>30</sup> Part of this chapter involves clarifying what aspects of Eidelson and Moreau’s theories I take forward as groundwork in my own theory-building. Both Eidelson and Moreau identify important core aspects of wrongful discrimination. Second, beyond this initial task, I will illustrate that despite these strengths, there is a need to ground a theory of wrongful discrimination by using a feminist concept of autonomy that thoroughly describes how environmental and social considerations fill in the picture of what it means to be autonomous. Since accounts of wrongful discrimination grounded in autonomy are not novel, I aim to illustrate how even the strongest accounts present an unclear picture of how autonomy relates to wrongful discrimination. These accounts get something right by pointing to how wrongful discrimination infringes on autonomy. Nonetheless, I argue that the concepts of autonomy

---

<sup>29</sup> Benjamin Eidelson, “Treating People as Individuals” in *Philosophical Foundations of Discrimination*, eds. Deborah Hellman and Sophia Moreau (Oxford: Oxford University Press 2013).

<sup>30</sup> Sophia Moreau, “Faces of Inequality: A Theory of Wrongful Discrimination,” (Oxford: Oxford University Press, 2020).

used in these accounts to describe wrongful discrimination are *thin*<sup>31</sup> and underused.<sup>32</sup> These concepts begin to describe what it takes to be an autonomous agent by pointing to internal authorship but do not account for important social and environmental factors surrounding desire creation and fulfillment outlined by feminist philosophers. Both Moreau and Eidelson keep autonomy in the *background* of their theories while this thesis aims to *foreground* autonomy. Much of the content in this chapter, when it comes to illustrating the shortcomings of extant accounts, clears the way for developing my own concept of autonomy in Chapter Three by way of examining a gap in the literature. This chapter sets the groundwork for the task of building a concept of autonomy in the next chapter by reviewing the extant literature and feminist critiques of traditional autonomy.

### **1.1: Eidelson’s Treating People as Individuals**

The following section details Eidelson’s approach to describing wrongful discrimination as a failure to treat an agent as an individual. After laying out the central claims of Eidelson’s account, I move to suggest what I find lacking in light of the feminist critiques leveled at traditional concepts of autonomy—namely that he does not fully acknowledge the impact of external environments on the formation and exercise of autonomy. I find elements of Eidelson’s account convincing because he acknowledges that “to treat someone respectfully as an individual [...] is essentially to treat her as an autonomous being—that is, as a person who can meaningfully author her own life, and

---

<sup>31</sup> In this thesis, when I refer to conceptions of autonomy as “thin” I am simply referring to the simplicity of the conceptions and the fact that they do not account for social and environmental factors. This use of thin differs from the labelling of ethical concepts as “thin” and “thick” going back to Bernard Williams.

<sup>32</sup> By underused, I mean that the concepts of autonomy that I will explore in the following chapter do not explore all of the relevant ways in which autonomy is formed and exercised, meaning that they are insufficiently used or used too little in terms of describing and capturing our social complex environments.

who is, as a result, partly of her own making.”<sup>33</sup> Although I ultimately take issue with the conception of autonomy that Eidelson’s account applies, he fittingly describes wrongful discrimination as failing to treat someone as an equal—ultimately, as *autonomous* in a meaningful sense. Eidelson’s account is motivated by the same building blocks I use for my own theory, which also takes autonomy as a starting point.

Eidelson begins by acknowledging that although wrongful discrimination fits into the broader category of discrimination, there is something particularly unique about this class of actions. Eidelson notes that the difference between discrimination, more generally, and wrongful discrimination cannot simply be that it involves forming judgements about particular people based on their membership in a group. This kind of judgement from group to particular is “both commonplace and inevitable.”<sup>34</sup> We tend to make sense of individuals by reference to the membership they have in various groups. Given this, Eidelson argues that when we condemn acts of wrongful discrimination, we do not oppose mere generalization but instead aim to “structure our judgements and actions in ways that appropriately recognize a morally salient fact about the people involved.”<sup>35</sup> To illustrate what it truly means to treat someone as an individual in a way that respects the type of autonomy that Eidelson has in mind, let us return to one example from the previous chapter along with a new case.

*The Discounted Performance.* Sally, who is of East Asian descent, auditions for her school orchestra. Sally plays the violin, but not seriously, and she is not particularly talented. Kevin, the orchestra director, thinks Sally performed poorly at her audition. But Kevin figures that Sally is probably a dedicated musician who

---

<sup>33</sup> Benjamin Eidelson, “Treating People as Individuals” in *Philosophical Foundations of Discrimination*, eds. Deborah Hellman and Sophia Moreau (Oxford: Oxford University Press 2013) 204.

<sup>34</sup> Ibid, 204.

<sup>35</sup> Ibid., 204.

just had a bad day and selects her for the orchestra anyway. Kevin would not have made this assumption or selected Sally if not for her ethnicity and her sex.

*The Imputed Preference.* Mark, who is Black, is a young associate at a law firm. The firm has a wine tasting club and a basketball team. Mark's resume noted that he was a member of his law school's wine tasting club and mentioned no sports. Mark's firm mentor, Jane, reviewed the resume before taking Mark out to a get-to-know-you lunch. At the lunch, Jane makes a point of mentioning the basketball team to Mark, and neglects to mention the wine tasting club. If Mark were white, Jane would have mentioned the wine tasting club and not basketball.<sup>36</sup>

Eidelson suggests that these examples share some features; they both involve a wrong perpetrated by an individual that rests on generalizations and stereotypes. Eidelson describes Kevin and Jane as having “lapses of epistemic rigor in forming beliefs about other people” when they commit these wrongs. Neither of these examples involves the sort of wrong that bleeds into realms that distribute goods or opportunities—such as in cases of employment discrimination. Rather, Eidelson suggests that we must think of these cases differently since it would be hard to describe Sally as subject to unfairness since she benefits from Kevin's assumptions. On the other hand, Mark seems to come out neutral on Eidelson's reading—although he has been subject to undue speculation, he can still join the wine club after this conversation. In these examples, there is no evidence of Kevin or Jane valuing Sally or Mark less than others. However, there seems to be “a kind of failure to relate to them as one person ought to relate to another.”<sup>37</sup>

Given that Eidelson wants to describe this failure to treat someone as an autonomous agent in terms of a failure to treat them as an individual, he moves on to

---

<sup>36</sup> Ibid., 206. I have chosen to preserve the exact wording of Eidelson's two examples, as I come back to their exact details throughout this chapter.

<sup>37</sup> Ibid., 207.

define precisely what he means by this. Eidelson argues that the best way to respect someone as an individual goes beyond treating them as a separate entity, as unique from others.<sup>38</sup> What makes someone an individual, on Eidelson's account, follows the traditional style of autonomy mentioned in the previous chapter, which focuses on how agents are the owners or authors of their choices and actions. In line with Gerald Dworkin, Eidelson notes that being an autonomous agent requires the satisfaction of two conditions:

- (1) *Desire Identification*: an agent identifies with their lower-order desires and can critically reflect on and fulfill their higher-order desires. As well, an agent can evaluate and amend their motivations to act.
- (2) *Critical and Reflective Abilities*: factors surrounding an agent promote critical and reflective abilities instead of diminishing them.<sup>39</sup>

Agents should have a “collection of mental faculties” that allow them to form intentions and deliberate, with some level of complexity.<sup>40</sup> Although this agency can come under attack from outside influences, what is essential is that an agent can be capable of this kind of autonomy. Suppose someone with the capacity for autonomy fails to live up to this standard because of undue influence or lack of opportunities. In that case, Eidelson notes that “these failures do not threaten their very standing as persons.” In contrast, if someone “is not an agent of the right kind of autonomy,” such as a young child, they are

---

<sup>38</sup> Ibid., 210.

<sup>39</sup> See Gerald Dworkin's “The Concept of Autonomy” in *Science and Ethics*, ed. Rudolph Haller (Amsterdam: Rodopi Press, 1981). Reprinted in *The Inner Citadel*, ed. John Christman (New York: Oxford University Press, 1989) for an example of a theory that relies on these two general conditions.

<sup>40</sup> Benjamin Eidelson, “Treating People as Individuals” in *Philosophical Foundations of Discrimination*, eds. Deborah Hellman and Sophia Moreau (Oxford: Oxford University Press 2013) 213.

“much less a person” because of this fact.<sup>41</sup> Eidelson’s account highlights how being the sort of agent capable of autonomous choice demands respect and recognition.<sup>42</sup> Beyond the two Dworkinian elements outlined above, Eidelson points out how respect for autonomy involves a kind of dualism. We should take account of one’s past choices, values, and commitments which have shaped them into a particular sort of individual—a backwards-looking sort of autonomy. Further, we should commit to acknowledging how being autonomous gives someone the power to “chart his course for himself”—a forward-looking sort of autonomy.<sup>43</sup> In sum, we should look at how someone has exercised their autonomy in the past to shape themselves and how they might continue to make certain types of judgements to continue this project. Treating someone as an individual involves a deep recognition of their commitments, desires, and values.<sup>44</sup> When we treat someone as an individual, on Eidelson’s account, we “pay attention to a person’s past choices in making sense of who he is now, and hence also in forming judgments about how he is likely to behave in the future.”<sup>45</sup> Using this model, it is appropriate to make predictions about one’s behavior based only on relevant facts about how they have acted in the past—not because of stereotyping or mere membership in a group. So, when we encounter a case of wrongful discrimination, we are troubled by how these cases are not “sensitive to—a person’s autonomous choices.”<sup>46</sup> A standard telling of what goes wrong in cases involving wrongful discrimination focuses on the other end of the problem, such as

---

<sup>41</sup> Ibid., 213.

<sup>42</sup> Ibid., 214.

<sup>43</sup> Ibid., 215.

<sup>44</sup> Ibid., 216.

<sup>45</sup> Ibid., 216.

<sup>46</sup> Ibid., 221.



statistical errors or generalizations. For example, the standard telling usually describes wrongful discrimination as an act that relies on stereotypes and groups people based on traits. In contrast, beyond a reliance on describing wrongful discrimination as alike to stereotyping, Eidelson suggests that we should be concerned with how cases of wrongful discrimination involve a failure to pay attention to how an autonomous agent has authored their life. Eidelson concludes that wrongful discrimination involves “failing to treat [a victim] as, in part, a product of his own past efforts at self-creation, and as an autonomous agent whose future choices are his own to make.”<sup>47</sup>

Although Eidelson’s account picks out important internal factors needed for autonomous agency, here I will suggest some ways in which his work fails to account for the main social elements of wrongful discrimination. The main point I will focus on here is that self-governance depends on *more* than mere internal self-authorship. Eidelson’s account, informed by Dworkin, is mainly concerned with an agent’s internal self-preservation. As noted earlier, the Dworkinian style of autonomy focuses on if an agent has:

- (1) *Desire Identification*: an agent identifies with their lower-order desires and can critically reflect on and fulfill their higher-order desires. As well, an agent can evaluate and amend their motivations to act.
- (2) *Critical and Reflective Abilities*: factors surrounding an agent promote critical and reflective abilities instead of diminishing them.<sup>48</sup>

---

<sup>47</sup> Ibid., 227.

<sup>48</sup> See Gerald Dworkin’s “The Concept of Autonomy” in *Science and Ethics*, ed. Rudolph Haller (Amsterdam: Rodopi Press, 1981). Reprinted in *The Inner Citadel*, ed. John Christman (New York: Oxford University Press, 1989) for an example of a theory that relies on these two general conditions.

Though I recognize that the psychological element of autonomy is undoubtedly a vital part of the picture, one cannot describe what it means to be autonomous in a meaningful way without substantial reference to interaction with others. I argue that status as an autonomous agent is highly dependent on social and environmental elements. How we relate to others determines just how free we are to make choices and form values that are genuinely our *own*. The only mention of external conditions on Eidelson's account is whether they impact our internal skills and critical abilities. However, we care about external conditions for reasons beyond this. The crux of the problem for accounts like Eidelson's is describing what goes wrong when an agent satisfies the psychological conditions for autonomy but is subject to oppressive conditions in a theoretically consistent manner. These sorts of theories struggle to account for the ways in which oppressive conditions negatively impact autonomy. For example, we can think of a woman who lives in an oppressive society and has internalized norms about careers that are "suitable" for her.<sup>49</sup> Because of her social conditions, she believes that pursuing a specific career aligns with her inner desires and considers her environment as one that heightens her reflective and critical abilities. If we use the Dworkinian-style test for autonomy, what matters is that her desires are fulfilled. Missing is a picture of how certain social environments or relations with others can change or warp our desires in

---

<sup>49</sup> This kind of example aligns with the way in which Stoljar and Mackenzie have criticized brands of autonomy similar to that which Eidelson employs. Although Stoljar and Mackenzie do not touch on Eidelson's work, in particular, what they have to say on *traditional* types of autonomy applies here. For a reminder of the kind of critiques they have in mind, see Chapter One, Section 1.6: *Feminist Critiques of Traditional Autonomy*. There, I describe the *symbolic* and *metaphysical* critiques of traditional autonomy forwarded by feminist thinkers. Thinking through those two critiques will help think through this kind of example about internalized norms and social influence.

explicit or implicit ways. The conditions under which a person's desires or values develop determine if someone is truly in control of their life.<sup>50</sup> An agent who can cultivate their desires and values free of oppression and reasonable limitation can decide what matters to them without heavy constraint.<sup>51</sup> Victims of discrimination are often socially marginalized and marked out as inferior in a way that makes accounting for external factors critical. Further, pervasive stereotypes, social expectations, and the impact of overarching oppressive structures shape the ability to act autonomously. The freedom to form thoughts and opinions should factor into what it means to be an autonomous agent.<sup>52</sup>

## **1.2: Moreau and Thin Autonomy**

In the previous section, I suggested that Eidelson's account lacks a thorough description of how social conditions impact the ability to act autonomously. Without these details, Eidelson's view suggests which internal conditions are needed to be autonomous but is missing a description of the social conditions surrounding an agent. Given this gap, I will examine a second promising option, Sophia Moreau's theory of wrongful discrimination. Here, the aim will be to outline another account that is centered

---

<sup>50</sup> Of course, how to determine if someone is truly in control of their life by examining their values and environment is a separate and complicated manner. This will be explored in detail during Chapter Three section 2.0 where the thesis discussed "Measuring Global, Local, Unclear, and Clear Autonomy." The goal of that subsection is to examine what it takes to measure autonomy in a more concrete sense from an outsider perspective. Here, the puzzle of respecting insider judgement while measuring autonomy from an outsider perspective is unpacked.

<sup>51</sup> The idea of reasonable limitations will be explored in later chapters—although no one can be fully in control of their life or free from limitations, such as material limitations, there is a limit to what it means to live without heavy constraint. A fully autonomous agent must exist in the right sort of environment that cultivates, rather than hinders, their development and personhood.

<sup>52</sup> Here, I am not aiming to suggest that my criticism of Eidelson's view is novel in terms of content. Of course, other feminist work has critiqued brands of autonomy that fail to take social and environmental impact on autonomy seriously. What is novel here is critiquing the particular way I criticize Eidelson's concept of autonomy to then suggest a new way forward, a social concept of autonomy, as the foundation of a theory of wrongful discrimination.

on the concept of autonomy and gives a strong and detailed picture of what goes wrong in cases of wrongful discrimination. In particular, the pluralist-list structure of Moreau's account has benefits when describing varying cases of wrongful discrimination. Moreau advances a pluralist theory where wrongful discrimination ultimately involves a failure to treat some people as equal to others. Moreau outlines how a failure to treat someone as an equal can take several forms, including acts that involve unfair subordination, a denial of deliberative freedom, or bar access to essential goods.<sup>53</sup> After summarizing Moreau's work, I make some brief critical comments on the brand of autonomy—what I call *thin* autonomy,<sup>54</sup> that Moreau employs throughout her account.

Moreau's entire account is motivated by what she calls "the question of inequality." She asks, "when we disadvantage some people relative to others on the basis of certain traits, when and why do we wrong them by failing to treat them as the equals of others?"<sup>55</sup> Her theory is framed by this question, and the types of wrongful discrimination I will outline below describe "when" and "why" an act of differentiation becomes wrongful discrimination. Moreau points out that we care only about *some* cases that create inequality, generally, those where people are treated as inferiors or cases that involve a skewed distribution of resources or opportunities.<sup>56</sup> Ultimately, this means that Moreau is concerned with how acts of wrongful discrimination involve treating people

---

<sup>53</sup> Sophia Moreau, "Faces of Inequality: A Theory of Wrongful Discrimination," (Oxford: Oxford University Press, 2020).

<sup>54</sup> On page 90 of *Faces of Inequality*, Moreau describes herself as "using the term 'autonomy' in a relatively thin sense," leading me to call her concept of autonomy "thin autonomy" in this section.

<sup>55</sup> *Ibid.*, 7.

<sup>56</sup> *Ibid.*, 8.

“as though they were not the equals of others.”<sup>57</sup> In focusing on this, Moreau aims to explain wrongful discrimination not strictly by referencing the perpetrator’s act but by referencing the impact of wrongful discrimination on victims. Through discussing how wrongful discrimination involves failing to treat people as equals, autonomy comes into the picture, as will be explored soon. Moreau focuses on the following three types of wrongful discrimination, which make up her picture of the shape that wrongful discrimination takes.

*Unfair Subordination.* On Moreau’s account, one type of wrongful discrimination involves unfair subordination, the act of failing to treat someone as equal to others. Moreau uses the example of the Jim Crow laws, which turned Black Americans into second-class citizens.<sup>58</sup> Unfair subordination often involves a relationship between an individual and a group—by way of membership in a group, an agent is treated as less than equal in their individual life. This kind of act can take place in the form of (1) a stereotype: a generalization applied to an individual because of their membership in a group, or (2) a structural accommodation: an embedded practice in a society that implicitly or explicitly accommodates the needs of one group while subordinating another group.<sup>59</sup> These two forms share in common their ability to mark a group, and therefore individuals, as “invisible and inferior” on Moreau’s account. Wrongful discrimination simultaneously subordinates and forgets the needs of those who are treated as less than

---

<sup>57</sup> Ibid., 9.

<sup>58</sup> Ibid., 39-40.

<sup>59</sup> Ibid., 62. As an example of a structural accommodation, the way that public spaces are often set up for able-bodied individuals implicitly makes it harder to exist as a disabled individual in these spaces. This kind of set up automatically prioritizes the needs of one group over the other.

equal.<sup>60</sup>

*Deliberative Freedom.* Another type of wrongful discrimination, on Moreau's account, involves acts that impact the deliberative freedom of victims. Moreau notes that she is explicitly interested in deliberative freedom because this type of freedom is "important to us because we care about having the opportunity to shape our lives through our own deliberations and choices."<sup>61</sup> Ideally, each of us should be able to deliberate and make decisions about our lives without having to adjust these plans due to certain traits we hold. We should not have to treat *some* traits as "costs" that influence our every move.<sup>62</sup> Of course, we all adjust our life plans based on traits in some sense. My lack of athletic ability and coordination, which prevents me from becoming a professional basketball player, shapes my life. However, it would be very different if I could not pursue sports because of being banned from participation because of my sexuality. Here, we are concerned with when wrongful discrimination makes people unequally and unjustly shape their life plans. Although no one can be entirely free from limitations, being a fully autonomous agent involves existing in an environment that cultivates, rather than hinders, personhood. When we must *always* make choices based on traits, this can begin to hinder our personhood. Moreau explains how a lack of this kind of deliberative freedom is crucial to understanding wrongful discrimination.

The loss of this kind of freedom is a salient feature of the lives of people who suffer from systemic discrimination. It is something they mention very often, when describing their experiences. It may even be *the* salient feature of the oppression that marks their lives. For instance, if you are African American, you

---

<sup>60</sup> Ibid., 69.

<sup>61</sup> Ibid., 81.

<sup>62</sup> Ibid., 84.

can never enjoy the luxury of forgetting about your race. You carry the burden of other people's assumptions about your race wherever you go.<sup>63</sup>

In short, Moreau is concerned with how wrongful discrimination makes victims less free to choose the kind of life they wish to have or become the people they want to be. In cases of wrongful discrimination, victims are forced to consider a trait as a cost that they *cannot* ignore. Because of this, victims of wrongful discrimination are less free to construct the kinds of lives they may wish to live.

*Essential Goods.* Finally, Moreau outlines a final type of wrongful discrimination that treats victims as less than equal by denying them access to essential goods. Moreau uses a clear example of how Indigenous populations in Canada lack easy access to clean drinking water.<sup>64</sup> Being denied or not given access to basic goods bars individuals from participating “fully and as an equal” in society.<sup>65</sup> This denial also makes it so others, and victims themselves, struggle to see themselves as full and equal citizens.<sup>66</sup>

These three forms of wrongful discrimination link back to a failure to treat one as an equal—an infringement of this “thin” sense of autonomy. For Moreau, this “thin” sense of being an autonomous agent involves deciding what is important and living one's life, as much as possible, following those judgements of what is important.<sup>67</sup> For example, if I decide that teaching others is a core element of how I wish to live, I might consider pursuing a career in education. Victims cannot entirely follow their own

---

<sup>63</sup> Ibid., 85-86.

<sup>64</sup> Ibid., 121.

<sup>65</sup> Ibid., 125.

<sup>66</sup> Ibid., 126.

<sup>67</sup> Sophia Moreau, “Faces of Inequality: A Theory of Wrongful Discrimination,” (Oxford: Oxford University Press, 2020) 90.

judgements when subject to wrongful discrimination due to unfair subordination, a lack of deliberative freedom, and diminished access to basic goods. When victims must hold certain traits as costs, this thin sense of autonomy is damaged. Moreau is interested in the type of autonomous respect that goes towards all those agents who are “capable” of being autonomous, not just those who achieve autonomous agency at the moment.<sup>68</sup> Because of this commitment, we must respect choices that an agent has already made and maintain continued support for their future choices—the assumptions of others should not unduly influence the choices made by an agent.<sup>69</sup>

Given the aims of Moreau’s account, employing a “thin” concept of autonomy seems appropriate. Since Moreau’s theory is pluralist, a general picture of autonomy has benefits since this broadness can help capture different types of wrongful discrimination. Moreau’s account has specific merits above accounts that aim to describe all acts of wrongful discrimination in overly broad strokes. By bringing in even a thin sense of autonomy, on Moreau’s view, she can illustrate how cases of wrongful discrimination vary. Sometimes, we should look at how wrongful discrimination diminishes access to essential goods or deliberative freedom. At other times, wrongful discrimination simply involves unfair subordination. A pluralist-list account, like Moreau’s, can unite all acts under a singular umbrella while being sensitive to the nuance we see in cases of wrongful discrimination. We can see how all types of wrongful discrimination relate to a failure to treat people as equals and thinly autonomous, but the exact shape of different cases

---

<sup>68</sup> Ibid., 90.

<sup>69</sup> Ibid., 90.



varies. However, because autonomy should explain internal authorship and external social factors, Moreau's thin concept of autonomy is lacking because she *backgrounds* autonomy rather than *foregrounding* it.

Part of the reason Moreau's concept of autonomy is *thin*, on my reading, is because it does not explain the social conditions that autonomy is impacted by in detail. Beyond noting that an agent must decide what is important and live their life as much as possible, following those judgements, there is limited information on what this really encompasses. We can think about, for example, how value formation, and therefore decisions about what someone finds important, can grow in and become intertwined with oppressive environmental conditions. Without a thorough picture of what it takes to be an autonomous agent, especially in oppressive environments, Moreau's concept of autonomy provides little help to describing wrongful discrimination, which exists in the context of a social world shaped by oppressive hierarchies, stereotypes, and generalized judgements about groups. Developing a concept of autonomy that works in external and relational concerns in a *foundational* manner is crucial for my theory of wrongful discrimination. Moreau's account illustrates how employing a list-based approach to wrongful discrimination captures the way in which cases of wrongful discrimination vary in form. Rather than describing acts of wrongful discrimination in a single way, Moreau lists the different forms wrongful discrimination might take as unfair subordination or denials of deliberative freedom and essential goods. Missing from the picture is a thorough description of social conditions, including the oppressive hierarchies that impact the

ability to be autonomous.<sup>70</sup> For example, existing as a person with a disability in an ableist environment changes what desires a disabled person can even form and pursue in the first place. If an environment sets some options aside as unattainable or inappropriate due to stereotypes, an agent's choice of life plan is impacted from the start. These social factors require us to go beyond a simple description of the psychological conditions of autonomy—we need to account for the complex social conditions that impact an agent's ability to form their values and exercise their autonomy meaningfully.<sup>71</sup> By acknowledging how social factors affect an agent's ability to act autonomously, we create a concept of autonomy that fits with social realities. For many individuals, self-authorship is a project that happens within complex settings impacted by pervasive stereotypes and oppressive structures that work against this endeavor. As will become apparent in the following three chapters of my thesis, I take guidance from how Moreau meticulously structures her account of wrongful discrimination. I similarly employ a pluralistic strategy while developing my account of autonomy and describe the types of infringements on autonomy that are central to cases of wrongful autonomy. My main concerns with the thin brand of autonomy that Moreau employs are kept in mind while developing my own account of autonomy throughout the thesis.

## **2.1: Feminist Critiques of Traditional Autonomy**

In Chapter One, I argued that autonomy, rather than a foundation like equality, provides a strong basis for describing wrongful discrimination. However, as has been

---

<sup>70</sup> Once again, this criticism links up with foundational work explored at the end of Chapter One.

<sup>71</sup> Although Moreau may accept that we should account for complex social conditions, she does not address this fact head on in her work. Her lack of acknowledgement of social factors leaves these factors underexplained in her theory.

shown in the previous two sections, not just *any* conception of autonomy seems suitable for the task at hand. In the following section, I will briefly describe two feminist critiques of traditional autonomy to suggest why we might move away from these more classic conceptions of autonomy that an account like Eidelson's relies on or a *thinner* conception like Moreau's. Discussing these critiques helps add support to the critiques raised in this chapter regarding extant literature. As I build my social concept of autonomy in Chapter Three, it will become clear how feminist concerns help craft an understanding of autonomy suitable for discussing wrongful discrimination. For now, the aim in this section is only to suggest moving away from traditional or *thin* autonomy. In future chapters, the exact brand of autonomy I see as useful for describing acts of wrongful discrimination comes into play.

Two types of critiques of the traditional conception of autonomy motivate me to formulate a new concept of autonomy and add to the discussion in the previous two sections on Eidelson and Moreau. Catriona Mackenzie and Natalie Stoljar list several feminist charges against traditional autonomy—I will focus on the “symbolic” and “metaphysical” critiques here.<sup>72</sup> The *symbolic critique* of autonomy points to how traditional autonomous agents lead “self-sufficient, isolated, independent lives.”<sup>73</sup> If this is the autonomous ideal, no matter how *symbolic* or unattainable it may be in reality, several issues follow as people aim at this sort of life. This ideal encourages us to:

- (1) Value independence and self-sufficiency over relationships involving interdependence.

---

<sup>72</sup> See Catriona Mackenzie and Natalie Stoljar, *Relational Autonomy: Feminist Perspectives on Autonomy, Agency and the Social Self* (New York: Oxford University Press, 2000) for all five critiques: symbolic, metaphysical, care, postmodernist, and diversity, 5-12.

<sup>73</sup> *Ibid.*, 6.

(2) View agents as “atomistic bearers of rights, a conception in which the diversity and complexity of agents are pared away, and agents are reduced to an interchangeable sameness.”<sup>74</sup>

(3) See cooperation and interdependence as threats to autonomy.

Overall, theories that take the symbolic critique seriously are concerned about how reaching for the ideal of traditional autonomy might harm our social relationships and the concept of what it means to be an individual.

The *metaphysical critique* similarly sees the traditionally autonomous agent as atomistic and “radically individualistic.”<sup>75</sup> Those who mount metaphysical critiques point out how “agents are socially embedded and seem to be at least partially constituted by the social relations in which they stand.”<sup>76</sup> If traditional autonomy ignores how social relations constitute us, the picture of the self on these accounts lacks nuance. Feminist accounts critique and aim to supplement concepts of autonomy that do not acknowledge the importance of our connections to others.

These lines of critique point to significant flaws in traditional conceptions of autonomy but do not necessarily suggest that we should do away with autonomy in general. Instead, feminist accounts aim to create something new from the shortcomings, to build concepts of autonomy that make our relations with others central. As I mentioned previously, overlooking the social element of autonomy when it comes to wrongful discrimination is especially troublesome. Wrongful discrimination is often motivated by

---

<sup>74</sup> Ibid., 6.

<sup>75</sup> Ibid., 7.

<sup>76</sup> Ibid., 7.

stereotypes, generalizations based on group membership, and assumptions. These acts, and stereotypes and generalization more generally, rely on the *social* and historical context in which individuals are situated. This line of thought will become more apparent as I build my concept of autonomy in the following chapters. For now, these feminist critiques of traditional autonomy present a promising way forward in terms of theory-building. Keeping the symbolic and metaphysical critiques in mind will allow me to create a robust concept of autonomy moving forward.

## **Conclusion**

In this chapter, I began by presenting two strong options from Moreau and Eidelson that start to describe wrongful discrimination as a class of actions. Although both theories have specific benefits, I aimed to show how something is left missing—namely, a robust account of autonomy that properly accounts for the complex social conditions surrounding acts of wrongful discrimination. Without a complete picture of how factors like historical lines of oppression, coercion, and control influence choice and desire, the accounts examined in this chapter cannot fully capture the experiences of victims of wrongful discrimination. In the following chapters, I take forward several strengths of the two accounts examined. While building my own theory of autonomy in the next chapter, I use Eidelson’s conditions of autonomy as a foundation and build in social and environmental concerns. I will also draw from the way Moreau creates a theory *expansive* enough to cover the vast differences between types of wrongful discrimination. This kind of umbrella theory—which captures many types of wrongful discrimination under cover of central features—provides help for the difficult task of capturing the

wrong of wrongful discrimination. My new task at hand, moving forward, is to build up a unified account of wrongful discrimination that preserves the strengths but grows from the shortcomings of the work explored in this chapter. Building my own concept of autonomy, in this way, will address the concerns outlined in this chapter.

## Chapter Two Notes

Dworkin, Gerald. “The Concept of Autonomy.” In *Science and Ethics*, edited by Rudolph Haller.

Amsterdam: Rodopi Press, 1981. Reprinted in *The Inner Citadel*, edited by John Christman. New York: Oxford University Press, 1989.

Eidelson, Benjamin. “Treating People as Individuals.” In *Philosophical Foundations of Discrimination Law*, edited by Deborah Hellman and Sophia Moreau. Oxford: Oxford University Press, 2013.

Mackenzie, Catriona and Stoljar, Natalie. *Relational Autonomy Feminist Perspectives on Autonomy, Agency and the Social Self*. New York: Oxford University Press, 2000.

Moreau, Sophia. *Faces of Inequality: A Theory of Wrongful Discrimination*. Oxford: Oxford University Press, 2020.

Shin, Patrick S. “Is There a Unitary Concept of Discrimination?” In *Philosophical Foundations of Discrimination Law*, edited by Deborah Hellman and Sophia Moreau. Oxford: Oxford University Press, 2013.

Veltman, Andrea and Piper, Mark. *Autonomy, Oppression and Gender*. New York: Oxford University Press, 2014.

### Chapter 3: A Social Concept of Autonomy

In this chapter, I detail what I consider to be the natural progression to a social concept of autonomy that follows from the shortcomings of the previously explored accounts. To recap the thrust of the previous chapter, I argued that despite the strengths of accounts by Sophia Moreau<sup>77</sup> and Benjamin Eidelson,<sup>78</sup> which take desire identification as well as critical and reflective abilities as the foundation of autonomy, these accounts leave something missing. Mainly, they leave out a robust account of autonomy that describes the complex social environment in which we exist. Given how social conditions and environmental factors can influence the formation and usage of autonomy, there is a need for a social concept of autonomy. This chapter fills these gaps by building up a social concept of autonomy that takes desire identification and critical and reflective abilities as a starting point, as do Moreau and Eidelson, and adds additional factors. By the end of this chapter, I construct a social concept of autonomy that can provide the basis for describing how infringements on autonomy impact victims and become wrongful discrimination in Chapters Four and Five of this thesis. I will argue that when we take the foundation provided by Eidelson and Moreau and then add the further conditions surrounding value formation, access to options, and two senses of self, we are able to construct a more robust picture of autonomy. By adding these further conditions, the feminist critique explored in the previous chapter is diminished by way of acknowledging

---

<sup>77</sup> Sophia Moreau, “Faces of Inequality: A Theory of Wrongful Discrimination,” (Oxford: Oxford University Press, 2020).

<sup>78</sup> Benjamin Eidelson, “Treating People as Individuals” in *Philosophical Foundations of Discrimination*, eds. Deborah Hellman and Sophia Moreau (Oxford: Oxford University Press 2013).



how our environments and social conditions influence both the formation and exercise of autonomy. By including these concerns, the social concept of autonomy that follows lacks the merely atomistic and individualistic nature of the more traditional conceptions that feminist philosophers critique.

In the first section of this chapter, I outline the five components of my social concept of autonomy. Section two clarifies the parameters of this social concept of autonomy by discussing global, local, unclear, and clear cases of autonomy and tackles how we might measure autonomy based on the framework suggested in this chapter.

### **1.0: The Concept, in Full**

The following section outlines the social concept of autonomy developed in this chapter, in list form for simplicity. Before drawing out these components, describing the goals of this concept will help illuminate why each element of the concept adds to the task at hand. First, it is important for a concept of autonomy to keep intact what classic concepts have already pointed to—part of being autonomous involves internal authorship and strong critical and reflective abilities. On this front, the building blocks offered by Eidelson in the previous chapters can be used. As argued in Chapter Two, Eidelson is right to point to the importance of internal authorships skills when it comes to being autonomous. Because of this, I borrow from the way that Eidelson thinks of internal authorship because I agree with this part of his work and see the opportunity to improve on the foundation that he offers.<sup>79</sup> However, on top of this, a concept of autonomy should

---

<sup>79</sup> One might argue that rather than borrowing from Eidelson, I might instead reject his work in full and start from scratch. The appeal of this kind of approach is clear. However, the way in which Eidelson speaks to internal authorship and connects these skills to treatment as individuals fits cleanly into the framework I

be sensitive to social environments and the threat of coercion or control. Without this fuller and more social picture, what it takes to be autonomous is limited. In the previous chapter, this was the main criticism of Eidelson and Moreau’s work, which struggled due to employing a *thin* sense of autonomy. Further, a concept of autonomy should identify how we are not *always* in control of our “inner citadel” given our environment and outside sources. Because of this, a concept of autonomy should be sensitive to how our sense of self and access to options can be either damaged or limited, given our surroundings. Finally, regarding mere over and underinclusivity, a concept of autonomy should capture the right *kind* of agent, rightly labelling them as autonomous without including those who lack rudimentary critical and reflective skills. Here, a concept of autonomy should be built in the right way as to not either be over or under inclusive. These goals and the concept of autonomy outlined below *certainly* set a high bar for being autonomous in a meaningful sense. Given the importance of determining what kind of person we have in mind when we talk about autonomy, I will explore this topic at length in the final section of this chapter. For now, we will focus on laying out the *conditions* of autonomy before clarifying the idea of an autonomous *person*. The following sections take time to fill out the details of this list. In their simplest form, here are the conditions that make up this social concept of autonomy.

1. *Desire Identification*: an agent identifies with their lower-order desires and can critically reflect and fulfill their higher-order desires. Additionally, an agent can evaluate and amend their motivations to act.<sup>80</sup>

---

have in mind and suggest below. For this reason, I adopt a “if it ain’t broke, don’t fix it” mentality on this topic.

<sup>80</sup> Adapted from Eidelson’s work “Treating People as Individuals,” as discussed in the previous chapter.

2. *Critical and Reflective Abilities*: factors surrounding an agent promote critical and reflective abilities rather than diminishing them.<sup>81</sup>
3. *Value Formation*: the desires and values an agent holds, when examined, result from the skills outlined in (2) *and* are formed under conditions without substantial and reoccurring infringement, coercion, or control by other parties.<sup>82</sup>
4. *Access to Options*: an agent has a range of *real* options available to them.<sup>83</sup>
5. *Two Senses of Self*: an agent has *reasonable* control over their outward sense of self; they can choose how they want to project themselves into the world without *undue* infringement and assumption by others. An agent is free from *serious* damage to their inward sense of self, including harm to their self-respect and self-image.<sup>84</sup>

### 1.1: Desire Identification

*An agent identifies with their lower-order desires and can critically reflect and fulfill their higher-order desires. Additionally, an agent can evaluate and amend their motivations to act.*

Desire identification, taken here as when an agent identifies with their lower-order desires, can critically reflect and fulfill their higher-order desires, and can evaluate and amend their motivations to act, is a foundational component taken from Eidelson's Dworkinian style autonomy examined in the previous chapter. This section will briefly describe why it is worthwhile to keep this component intact and use it as a building block for a more robust concept of autonomy. As outlined in the previous chapter, Eidelson describes how agents should possess certain mental faculties that allow them to deliberate at *some* level of complexity. For example, an agent should identify with their lower-order

---

<sup>81</sup> Adapted from Eidelson's work "Treating People as Individuals," as discussed in the previous chapter.

<sup>82</sup> This condition is original.

<sup>83</sup> As I will discuss in section 1.4, the need to include this component came from Marina A.L. Oshana's 1998 article "Personal Autonomy and Society" in the *Journal of Social Philosophy*.

<sup>84</sup> This condition is original.

desires, such as the desire to eat cake, play video games, or spend time with friends, but also fulfill their higher-order desires, such as the desire to spend the majority of their time focused on school to graduate with honours. Here, an agent must reflect and amend their desires in a way that allows them to fulfill higher-order desires. As Eidelson puts it, “autonomy consists in a kind of deliberative agency that permits critical choice not only among simple options for how to *act*, but among ways of valuing one’s own volitions, desires, and plans.”<sup>85</sup> As well, Eidelson adopts a dualistic approach when it comes to respecting autonomous individuals—we should respect autonomy in a (1) *backward-looking sense* by acknowledging one’s past actions, which have shaped them and (2) *forward-looking sense* by recognizing that being autonomous includes the power to chart one’s course. Autonomy is centred around a specific collection of capacities that allow for essential skills in authorship, deliberation, and critical reflection. Keeping this condition intact from Eidelson’s work proves fruitful in several ways. Autonomy is undoubtedly tied to the skills that Eidelson includes in his description of desire identification. Without these skills, we would be unable to describe the process and the motivation to act that agents have when it comes to the authorship of one’s life. Eidelson’s first condition also helps us identify how being autonomous includes a high level of self-creation—a skill that requires particular critical and reflective abilities. Given all this, I keep Eidelson’s first condition intact in my theory of autonomy since it provides an important basis for how we think about autonomy in terms of deliberative agency. Rather than creating a

---

<sup>85</sup> Benjamin Eidelson, “Treating People as Individuals” in *Philosophical Foundations of Discrimination*, eds. Deborah Hellman and Sophia Moreau (Oxford: Oxford University Press 2013) 213.

different basis for my concept of autonomy, I keep what Eidelson gets right intact.

## **1.2: Critical and Reflective Abilities**

*Factors surrounding an agent promote critical and reflective abilities rather than diminishing them.*

The idea that factors surrounding an agent should promote, rather than diminish, critical and reflective abilities is another component kept intact from the more traditional concept of autonomy forwarded by Eidelson. By critical and reflective abilities, Eidelson refers to the skills that allow for critical choice and deliberation between options. For example, an autonomous person can use their critical and reflective abilities to choose a suitable career path or life partner. Exercising these skills is a core part of what it means to be autonomous, given the close ties between autonomy and self-authorship. This condition also importantly contains Eidelson's *only* acknowledgment of how external and environmental factors might influence autonomy by impacting our internal critical and reflective abilities. Eidelson identifies that critical and reflective abilities are not exercised in a vacuum; our surroundings can promote or diminish these skills. Keeping this condition intact allows me to account for how our environment can aid or limit our ability to exercise skills that are vital to examining and altering our lower-order and higher-order desires. Yet again, re-inventing this condition seems unnecessary, especially given that this condition gets closer to acknowledging how features of autonomy can be impacted by external considerations.

## **1.3: Value Formation**

*The desires and values an agent holds, when examined, result from the skills outlined in (2) and are formed under conditions without substantial and reoccurring infringement, coercion, or control by other parties.*

This next component is an *addition* I make to Eidelson's two conditions to ensure we acknowledge how the factors surrounding an agent can either promote or diminish *value formation*. Eidelson carefully notes how factors surrounding an agent might promote or diminish critical and reflective abilities, as we see in the previous section, but does not explicitly identify the same worry for value formation. As outlined in the previous chapter, a theory not sensitive to how our environmental surroundings influence value formation can be left without an explanation of what happens when an agent's critical and reflective abilities are intact, but they are subject to oppressive environmental conditions that influence initial value formation and amendments to desires. What should we make of a person who has intact critical and reflective abilities and identifies with their desires but has limited choice regarding the *content* of their values? For example, we may worry about an individual's autonomy under recurring and substantial infringements on their desires and wishes—the kind of person who is only permitted to form particular desires based on societal expectations or environmental pressures.<sup>86</sup> Missing from Eidelson's account is a picture of how specific environments rife with substantial and reoccurring infringement, coercion, or control by other parties can make us less free to form our own values. Given this, I suggest how we might account for environmental concerns beyond their impact on critical and reflective abilities. This addition ensures that we account for the ways in which autonomy depends on our social positioning and environmental surroundings when it comes to value formation.

#### **1.4: Access to Options**

---

<sup>86</sup> See the chart in the subsection *Measuring Autonomy* for a more specific example.

*An agent has a range of real options available to them.*

The idea that we need substantial access to options pinpoints how our environments can impact choice and value formation, along with providing the practical backing for the previous condition. To describe the importance of access to options, it will be helpful to refer to Marina A.L. Oshana's 1998 article "Personal Autonomy and Society" where Oshana centers the importance of access to options in her account of autonomy. Oshana spends the bulk of the article contrasting what she calls "internalist" and "externalist" theories of autonomy to show how socially grounded concepts of autonomy are of "greater philosophical value and intuitive appeal."<sup>87</sup> In terms of widely shared intuitions about autonomy, Oshana points to how autonomous persons are classically described as self-directed, able to formulate and pursue goals according to "values, desires, and convictions that have developed in an uncoerced and conscious fashion."<sup>88</sup> Autonomous persons are seen as "in control" of their will—but the way control is described by those thinking about autonomy varies greatly. Oshana exemplifies how control is possible (for internalist theories) "even in the absence of alternate possibilities and in the face of factors that are sufficient to determine one's actions."<sup>89</sup> An example of an internalist theory that accepts this picture of control is Dworkin's hierarchical account of autonomy.<sup>90</sup> Oshana criticizes how internalist theories rely far too heavily on mere psychology and the preferences one forms without a robust social element. As Oshana

---

<sup>87</sup> Marina A.L. Oshana, "Personal Autonomy and Society," *Journal of Social Philosophy* 29, no. 1 (Spring 1998) 81.

<sup>88</sup> *Ibid.*, 82.

<sup>89</sup> *Ibid.*, 82.

<sup>90</sup> Dworkin, Gerald. *The Theory and Practice of Autonomy*. Cambridge Studies in Philosophy. Cambridge: Cambridge University Press, 1988.

puts it, “the agent’s psychological condition—specifically, the structural and historical character of her judgements and preferences—is alone important for her autonomy,” meaning that internalist theories miss out on discussing the impact of factors beyond an agent’s inner skills and psychology, leaving out important environmental and social influences.<sup>91</sup> Oshana describes internalist theories as concerned with preserving the “inner citadel” and categorizing autonomy as an individual pursuit independent of our social world.

Given the shortcomings of internalist accounts, Oshana moves to establish the conditions for personal autonomy—a list of conditions that must be satisfied to a certain threshold degree for a person to be autonomous. Condition three, “Access to a Range of Relevant Options,” will be the focus of this section. In full, Oshana states:

The self-governing individual must have access to an adequate assortment of options. It is not enough that a person acknowledges the state of affairs in which she finds herself as one she would consent to even if she were lacking any other options, for the fact that a person finds her choice acceptable does not mean that an acceptable range of choices was hers. An assortment is not adequate if a person can only choose nonautonomy. Thus the option to choose nonsubservience must be available to the agent. Nor is an assortment adequate if the agent's choices are all dictated by duress (economic, emotional, etc.) or by bodily needs. The social climate must be sensitive to the fact that humans are not brute creatures; they are individuals whose physical and emotional well-being depends on the ability to engage the body and the mind variously and creatively. Moreover, these options must be "real"-they must be options that a person can, in fact, hope to achieve, and they must be relevant to the development of her life.

In this passage, Oshana highlights the force of adaptive preferences—pointing to how mere *agreement* with one’s situation does *not* signal that one has an adequate assortment of

---

<sup>91</sup> Marina A.L. Oshana, “Personal Autonomy and Society,” *Journal of Social Philosophy* 29, no. 1 (Spring 1998) 85.



options. Access to options for an autonomous agent must be real and *available*, an agent must have the actual ability to pursue them, and options must exist in an acceptable and assorted range, notably including options of non-subservience. I adopt this condition into my social concept of autonomy to avoid what Oshana would call the internalist mistake of considering mere psychology and preference.

A simple example will show how access to options should factor into how we think about autonomy. Picture a society where all left-handed people may only pursue two career options: dentistry or construction. These choices are promoted from a young age; left-handed children are identified in elementary school and taught early on that these are their options. Left-handed children still attend school as usual and socialize with right-handed children. They are afforded the same opportunities in terms of subjects in school up until when they must decide to either attend dentistry school or move into construction assignments. Picture a young man named Arlo who has entirely accepted his situation and is even excited about pursuing a career in construction. As a child, he gravitated towards working with his hands, and the career choice fit his natural skill set. Even if Arlo has intact critical and reflective abilities and his values have formed around this life plan in a seemingly organic and natural manner, we might hesitate to call Arlo fully autonomous. With a life plan that was so pre-determined, Arlo was severely restricted from the start. Even if he feels like he has satisfied an element of choice due to his wish to pursue construction, there is a lack of real and viable options available to him when it comes to self-authorship of his life plan. In this example, we can see how ensuring that persons have true access to a diverse and attainable set of options avoids

labelling persons with limited<sup>92</sup> avenues for self-discovery and self-authorship as autonomous. This condition ensures that we do not view self-authorship and the planning of one's life in a vacuum. Rather, we should consider how social environments impact these skills and, in some cases, cut off avenues and options.

### 1.5: Two Senses of Self

*An agent has reasonable control over their outward sense of self; they can choose how they want to project themselves into the world without undue infringement and assumption by others. An agent is free from serious damage to their inward sense of self, including harm to their self-respect and self-image.*

This dual condition sets the highest bar for being autonomous out of the requirements I propose. Here, we see how personhood can be negatively impacted when other persons' expectations limit how we might project ourselves outwardly and understand ourselves inwardly.

First, to cut off an apparent avenue for objection before it forms in the reader's mind, let me say that I do not believe that any person has *complete* control over their sense of self, especially given how socially situated I have argued we all are. Of course, our sense of self will be impacted by those we interact with—even beyond those we are intimately close with; we are prone to be influenced and changed by those who touch our lives in large and small ways. I might see myself a certain way because of my parental upbringing, relationships with my siblings, romantic partners, or mentors in educational settings. There are proper and helpful ways in which our sense of self can be moulded and

---

<sup>92</sup> See the subheading on *Thresholds in Autonomy, Measuring Autonomy*, and *Unclear Autonomy and Non-Autonomy* in the final section of this chapter for more on how we might think about qualifications like “limited avenues for self-discovery and self-authorship” in a more particular sense.

changed by those around us. For example, those close to us might help us develop and cultivate virtues like patience, courage, or kindness. I might gain confidence in a healthy romantic relationship or develop new work habits from a mentor. However, our sense of self, roughly thought of as self-image and self-respect, can also be damaged and negatively impacted in a *substantial*, *serious*, and *recurring* sense through our social relationships and environments.

*Self-Image and Self-Respect.* In a straightforward sense, self-image is our idea or picture of ourselves. Self-image encapsulates various elements of personhood, including judgements about intellect, appearance, and perceived virtues and vices. For example, one might consider themselves imaginative, empathetic, bold, and analytical. These self-judgments build as we grow and experience the world around us. It is important to note how self-image is *not* only an activity of internal labelling. How we understand ourselves impacts how we act and move through the world. An overwhelmingly positive self-image might give us the confidence to pursue projects and take calculated risks. An overwhelmingly negative self-image might generate doubt and anxiety around value formation and choice. John Rawls<sup>93</sup> sees self-respect as one of the most important social primary goods. In short, self-respect is a proper valuing of one's own worth, described by Rawls as "necessary if they are to pursue their conception of the good with zest and to delight in its fulfillment."<sup>94</sup> Our self-respect is highly influenced by others—put simply,

---

<sup>93</sup> I draw from Rawls here because I find importance in the way that he describes self-respect as a *social primary good* that has political power. Pursuing our conception of the good connects to properly valuing ourselves, and our desires, in a larger political context. When it comes to using self-respect to describe infringements on autonomy, this labelling becomes particularly important given that we are interested in how autonomy is influenced by social and environmental concerns.

<sup>94</sup> John Rawls, *A Theory of Justice*, 1st ed. (Cambridge: Harvard University Press, 1971): 178.

“our self-respect normally depends upon the respect of others. Unless we feel that our endeavors are honored by them, it is difficult if not impossible for us to maintain the conviction that our ends are worth advancing.”<sup>95</sup> Rawls argues that we should accept a mutual duty of respect that is “reciprocally self-supporting” given that “one may assume that those who respect themselves are more likely to respect each other and conversely.”<sup>96</sup> In the context of thinking about autonomy, self-respect is a foundational requirement for *being* and *acting* autonomously. With proper self-respect, one has the confidence and conviction to author one’s life, stand behind one’s choices, and advance one’s ends. The properly autonomous agent has intact and robust self-respect. Self-image and self-respect exist in a mutual and reciprocal relationship. Positive self-image can engender greater self-respect, and greater self-respect improves self-image.

*Inward and Outward Sense of Self.* The condition mentions two distinct versions of the sense of self. First, we are concerned with our inward sense of self; this is instantiated by self-image and self-respect which make up the idea we have of our self. Not yet discussed is our outward sense of self. Here, we are concerned with the way in which we project ourselves out into the world. This outward sense of self is connected to self-image and self-respect, given that our projection of self into the world depends on how we esteem and value ourselves. But, this outward sense is distinct—concerned with the presentation and performance of self. Further, this outward sense of self is socially situated—the projection we send out makes contact with other persons, and these persons

---

<sup>95</sup> Ibid., 178.

<sup>96</sup> Ibid., 179.

view and interpret us based on their own assumptions, biases, and experiences.

Importantly, as will be explored below, infringements on sense of self can impact both sides of self. Often when one's inward sense of self is impacted, they become unable to properly project their outward sense of self.

*Substantial, Serious, and Recurring Infringements on Sense of Self.* Autonomy can be threatened by substantial, serious, and recurring infringements to one's sense of self. As mentioned earlier, no one is *entirely* free from being judged and interpreted by others. Part of being socially situated involves being influenced by others, especially when it comes to self-image and self-respect. However, this influence can tarnish autonomy when it takes up a certain kind of nature. Influence becomes infringement when one has limited avenues to properly esteem and value oneself. These infringements are substantial when one finds that much of their self-image is negatively impacted by outside judgements when one cannot form a self-image without the heavy weight of others' judgements and expectations weighing down on them. These infringements are serious when one seems to no longer be the author of their own life or assessor of their own worth. Finally, these infringements are recurring when they are not one-off scenarios. Rather, these infringements occur periodically and often across different areas of one's life.

An example might showcase how infringements can meet these three conditions and threaten the basis of autonomy. Consider a case where a young woman, Megan, finds her self-respect and self-image negatively impacted by a shared view from her mentors and family members about proper courses of study for women. Megan finds herself fascinated by mathematics. She considers herself to be a very logical, precise, and curious

person when she calls up her self-image. This picture of herself gives her confidence in educational settings, allowing her to thrive in STEM-related subjects. While finishing her undergraduate degree and considering pursuing graduate studies in mathematics, comments and opinions from those around her begin to impact her view of herself as an academic. Her parents suggest she might be best suited for a career in science that incorporates caregiving since women are “naturally” predisposed to this work. They suggest she pursue nursing or work in long-term care. She asks her instructors, whose views she respects as mentors, for advice and reference letters. An older male professor suggests that she might find graduate school in mathematics dry, challenging, and isolating as a woman. This advice is gendered both in terms of the social implication that her studies may be isolating and in terms of his suggestion that *woman* may find the content dry and challenging. She speaks to the only female graduate student in her undergraduate department and asks if she is happy with her choice. This student recounts a lonely experience characterized by a lack of female mentors, a lack of trust from students she works with in lab settings, and cases of sexual harassment. Megan’s sense of self shifts—she finds herself questioning her choice of studies and weighing the cost of pursuing knowledge if it means a loss of safety and belonging. Here, we see how our environments, especially when they are rife with gendered expectations and social hierarchies, can shift our life plans and impact how we see ourselves. As exemplified in this scenario, our sense of self can be negatively affected in a way that influences our self-authorship and choice by outside opinions and expectations. The kind of example outlined here is not unique—many people experience limitations on choice and a changed

sense of self due to environmental and social conditions. Megan must ultimately decide if she is willing to pay a certain price to pursue her studies, even if this means being subject to an environment which can impact her sense of self. Once again, though, we are concerned *only* when these undue influences impact one's esteem and value in a negative sense.

One further example will help explain the contents of this condition in terms of our outward sense of self. The previous example concerned how our inward esteem and value might change based on social surroundings in particular. In this example, I will clarify how infringements on our outward sense of self can similarly influence how autonomous we are. Often, we have some degree of control over how others view us. We can make pointed decisions in terms of how we present ourselves—through dress and appearance. We can let our actions speak for us, choosing how we treat others and interact with our social surroundings. We are often able to shape how we are viewed in this way. And yet, we cannot always be in complete control of how others view us—especially given how others' experiences and values will colour how they interpret us as persons. Consider the example of a young female professor who is newly hired at a university to teach at the undergraduate level. This young professor may try to influence her outward sense of self in several ways. She may dress the part—taking extra care compared to her male colleagues when it comes to dressing “professionally.” In particular, she will find that her body exists differently and is more readily sexualized if she does not carefully consider each article of clothing she wears while teaching. She may also find that dressing professionally and wearing a drab tweed pantsuit gives her some

level of authority, allowing her students to take her and the words she utters during class more seriously. She may also choose her words carefully—her male colleagues can lecture freely, injecting “ums” and “uhs” and pauses when they need a second to collect themselves. If she stutters, and especially if she pauses by saying “like,” she may find herself labelled as unprepared or slow. So, she practices her lecture scripts diligently, dresses carefully, and smiles just enough to appear warm without being overly “motherly.” However, it may just be the case that none of this takes hold as she wishes. Her course evaluations are filtered through a lens of gendered expectations from her students. Her research is taken less seriously than her colleagues. She often finds herself in service roles, organizing events and helping out the department socially. Her students often attend office hours to discuss their personal lives instead of philosophy. She is the subject of “locker-room talk” by her peers. All of this impacts her experience in her career and takes away her ability to choose how she is seen. Despite being a passionate teacher, dedicated researcher, and involved community member at the department level, she is reduced based on how others see her. Her ability to project an outward sense of self that correctly corresponds with her inward sense of self is curtailed.

More will be said about this dual sense of self in the coming chapters. In particular, this component will be explored more thoroughly when it comes to thinking about the impact of wrongful discrimination on victims. For now, we have seen how this sense of self involves both inward understanding of oneself (relating to self-image and self-respect) and outward projection of this into our social environments.

## **2.0: Measuring Global, Local, Unclear, and Clear Autonomy**



Taken together, these conditions set a high bar for what it means to be autonomous. An agent must possess specific critical and reflective skills that allow them to identify with and amend their various desires. Agents must exercise these skills around critical reflection and value formation against the backdrop of an environment that promotes, rather than diminishes, these abilities. Further, an agent must have access to a *real* range of options. Finally, an agent must have some amount of reasonable control over how they project their outward self and understand their inward self in terms of self-image and self-respect. Now that we have described each component of this concept, I will establish how the sum of these conditions tracks with how we intuitively think about autonomy despite the high bar set by this social concept. Before examining how these conditions of autonomy may be threatened by infringements in the next chapter, some further qualifications will help ground the conditions forwarded in this chapter. Here, the aim is to gain further clarity on what autonomy is on the account. In particular, I will cover how we should measure autonomy on this account.

*Global or Local Autonomy.* One important and foundational question to consider is whether this social concept of autonomy operates on a *global* or *local* level. Gerald Dworkin describes how we should think about autonomy in a *global* manner, given how “a feature that evaluates a whole way of living one’s life can only be assessed over extended portions of a person’s life.”<sup>97</sup> Global autonomy theories maintain that we should think of people as either autonomous or non-autonomous in a wholesale manner,

---

<sup>97</sup> Gerald Dworkin, *The Theory and Practice of Autonomy*, Cambridge Studies in Philosophy. (Cambridge: Cambridge University Press) 1988, 16.

evaluating the entirety of an individual's life. However, as Jonathan Pugh points out, "it is not clear why it must be odd to suppose that an agent might be autonomous with respect to a particular decision but not to another one shortly after."<sup>98</sup> Pugh describes how this is particularly true in medical settings, especially surrounding informed consent—we can imagine a scenario where someone properly consents to an intervention because a physician gains proper informed consent but fails to for a procedure shortly after. In this way, we can see that it is not improper to, at least sometimes, consider and evaluate autonomy in a local manner. The distinction between global and local autonomy shows how we might respectively think of autonomous agents or autonomous acts. Following Pugh, though, we can see how it could be coherent to "conceive of autonomy as a global property, but we can also conceive of it as a *local* property that an agent instantiates in a specific time-slice with respect to particular acts and decisions."<sup>99</sup> Thinking of autonomy in this dual sense may have its benefits. Pugh highlights how measuring and assessing global autonomy is a complicated manner—it may often be helpful to address the less complex question of whether an agent was locally autonomous in the context of an isolated decision or act. Given all of this, I take a dual approach and do not strictly adhere to assessing autonomy on a global or local scale. I will speak of autonomy as a property of agents and as a property of actions and decisions throughout this thesis. Often, I will choose to speak of autonomy locally or globally based on practical use. For example, it may be helpful to speak of autonomy globally when we think about the previously

---

<sup>98</sup> Jonathan Pugh, *Autonomy, rationality, and contemporary bioethics* (Oxford University Press, 2020) 17.

<sup>99</sup> *Ibid.*, 17.

discussed sense of self, self-image, and self-respect. In this case, thinking about an agent's self-view might warrant a broader approach that encapsulates one's larger life plan. In contrast, we might evaluate autonomy in a more narrow local sense when we think about access to options. When an agent chooses from an array of available options, we can look at this isolated instance of decision-making.

*Thresholds in Autonomy.* A further and needed discussion involves addressing whether this social concept of autonomy is satisfied in an *all-or-nothing* or *sliding-scale* manner. In some theories, autonomy is thought of in a binary all-or-nothing sense. We either see agents or choices as “autonomous” or “non-autonomous” with no area of uncertainty. Alternatively, we might think of autonomy as a concept that requires the use of thresholds. Here, we might see beyond agents or choices being “autonomous” or “non-autonomous” and admit levels of autonomy.

A group of bioethicists working in the area of adolescent autonomy can help us see how we might avoid the temptation to think of autonomy in a flat and binary manner. Amy Mullin describes how it is compatible to exercise paternalism over children *while* they simultaneously exercise limited local autonomy in her article “Children, Autonomy, and Care.”<sup>100</sup> Children are generally seen as fully non-autonomous, namely due to their strong dependence on primary caregivers. Mullin argues that despite this dependence, we should not consider children incapable of exercising local autonomy. Strong relationships and love in social situations can be a source of autonomy—children can gain the necessary

---

<sup>100</sup> Amy Mullin “Children, Autonomy, and Care” *Journal of Social Philosophy*, Vol. 38, no. 4 (2007) 537.

skills to exercise their autonomy, especially through familial relationships.<sup>101</sup> To have their children to gain these skills, parents can allow children to practice exercising their autonomy under limited but required paternalism rather than seeing them as completely non-autonomous. This way, parents can help children develop the skills necessary for decision-making as adults. Autonomy here is not thought of in a binary sense; although children lack the ability to be fully autonomous, they can still exercise context-specific autonomy with help from their caregivers and family members.

Similarly, the social concept of autonomy explored in this chapter admits *levels* of autonomous action and personhood. Especially given the various components that combine to establish autonomy in full, we can see how a given action or agent might satisfy some elements while falling short in other areas. In short, on this account, autonomy can be *limited* in a serious sense without being labelled as non-autonomy. There will be a range of acceptable levels of autonomy and clear cases of non-autonomy on this picture. When it comes to the five conditions listed at the start of this chapter and explored throughout, we must take a mix of approaches to determine if someone passes the necessary threshold at hand. Take *Desire Identification*, for example; an agent identifies with their lower-order desires and can critically reflect and fulfill their higher-order desires. As well, an agent can evaluate and amend their motivations to act. This condition does not require the need for a careful threshold-based examination. Here, an agent either possesses the skills necessary to engage with identifying with, reflecting on, and fulfilling their desires or does not. In contrast, though, we must take a more nuanced

---

<sup>101</sup> Ibid., 545.

approach when examining *Two Senses of Self*: an agent has *reasonable* control over their outward sense of self; they can choose how they want to project themselves into the world without *undue* infringement and assumption by others. An agent is free from *serious* damage to their inward sense of self, including harm to their self-respect and self-image. Here, the qualifier of having “reasonable” control over the outward sense of self requires looking into a person’s global exercise of autonomy. Determining when someone is subject to serious damage to their inward sense of self also admits degrees of severity. We cannot simply establish if someone possesses a skill or set of skills. Rather, we must look at someone’s life plan, considering them as an author, to carefully determine if someone meets this condition.

In this way, the social concept of autonomy developed in this chapter poses a bar that is simultaneously high and low. Since we are not *just* examining critical and reflective abilities, for example, to determine if someone is autonomous, this means that someone facing setbacks in this area has the space to exercise autonomy in other spheres, such as in the way they project their outward sense of self. In this way, the bar is low—we need not call someone non-autonomous based only on how they satisfy a single component that we take to encompass what it means to be autonomous. However, the use of multiple factors also means that bar is high—to be autonomous, there are multiple fronts that one must satisfy. This is not to say, though, that autonomy on this account requires *perfectly* satisfying each condition laid out. Rather, we should decide if someone is autonomous or not in a more holistic and rounded manner. When we look at the factors listed, we should be concerned with the general picture of how someone, and their

environmental conditions, measure up. We will see how we can do this in a more concrete manner in the following subsection.

*Measuring Autonomy.* Now that we have established some foundational characteristics of this social concept of autonomy, I will discuss how we should measure autonomy on this account. First, I will describe cases of *apparent autonomy* and *apparent non-autonomy* as they pertain to each condition of this social concept of autonomy. The point here is to clarify the simple boundaries of these conditions—how should we think about each condition as they relate to the basics of autonomy and non-autonomy? For simplicity, I will speak of autonomy here in a more global sense, employing examples about autonomy in terms of broad personhood rather than specific choices and acts. After completing this task, I will speak to some of the more complicated measurements we might have to take up in cases of *unclear autonomy* and *unclear non-autonomy*.

CONDITION	APPARENT AUTONOMY	APPARENT NON-AUTONOMY
<p><i>Desire Identification:</i></p> <p>An agent identifies with their lower-order desires and can critically reflect and fulfill their higher-order desires. As well, an agent can evaluate and amend their motivations to act.</p>	<p>Lauren possesses many desires that she often reflects upon and fulfills. For example, she has a lower-order desire to begin attending pottery lessons, so she reflects on this goal (concerning her finances and schedule) and pursues this option. This reflection leads her to form the desire, in time, to open up a small business selling her work. Her desires are realistic, attainable, and mesh with her larger life plan.</p>	<p>Arlo has desires but does not strictly identify with many of them and finds it hard to motivate himself to fulfill these desires. He believes he should desire to attend college (given familial pressure on this topic) but does not adjust his plans or pursue any actions to fulfill this desire. Ultimately, he finds himself unmotivated and without self-directed desires—the desires he considers are only from</p>

		outside pressure.
<p><i>Critical and Reflective Abilities:</i></p> <p>Factors surrounding an agent promote critical and reflective abilities rather than diminishing them.</p>	<p>Graeme lives in a household with a loving and supportive environment. His housemates are attuned to each other's needs and goals, meaning they often have house meetings to discuss their progress at work, passion projects, and romantic lives. Because of this, they find themselves building upon their critical and reflective abilities, especially as these skills relate to progress on their larger life plan. He also pursues higher education, spending time writing, debating, and reading.</p>	<p>Erin lives in a household where she is discouraged from freely thinking and asking questions. Instead, her controlling parents make decisions for her and demand compliance with their choices. As a result, Erin spends little time building her critical and reflective abilities. Her environment diminishes these skills through a simple lack of practice and employment.</p>
<p><i>Value Formation:</i></p> <p>The desires and values an agent holds, when examined, result from the skills outlined in (2) and are formed under conditions without substantial and reoccurring infringement, coercion, or control by other parties.</p>	<p>Sydney decides to attend law school in a foreign country. She decides to do so out of a genuine interest in law as a career (and as a path in higher education) and a desire to live in a new and exciting place. She makes this decision on her own at first, and later, she receives positive encouragement from her family and friends, who see how much she will enjoy pursuing this option.</p>	<p>Megan is a stay-at-home mom despite having gone to school for nursing. Her husband suggested the arrangement as proper and preferable, "someone has to stay home with the kids, and it will not be me in any scenario." Megan resisted the arrangement initially, but her husband blatantly implied that he would not stay with her without this being a live option. Megan was held hostage, in a sense, by the decision to either single</p>

		<p>parent or accept the stay-at-home arrangement. She now finds joy and fulfillment in spending time with her children and around the house, but the conditions her values are formed under are questionable, given the level of control employed by her husband.</p>
<p><i>Access to Options:</i></p> <p>An agent has a range of <i>real</i> options available to them.</p>	<p>When deciding what career path to pursue, Matt is unconstrained by his identity and has a wide array of paths he might realistically pursue. Specifically, he selects from the options (1) jazz drummer, (2) composer, (3) music teacher, and (4) producer based on his specific skill set and training. Matt is in a lucky position, given that he would be happy in any of these roles and faces limited barriers when choosing, pursuing, and fulfilling these paths.</p>	<p>When deciding what career path to pursue, Lindsey is highly restricted due to societal perceptions surrounding her disability. In particular, Lindsey can not freely choose from a wide array of options because of perceptions of persons with Down Syndrome. Despite her hard-working, organized, and detail-oriented nature, Lindsey struggles to be selected for interviews and is rarely offered positions that complement her as a worker. Instead, Lindsey may only pursue a small set of employment options.</p>
<p><i>Outward Sense of Self:</i></p> <p>An agent has <i>reasonable</i> control over their <u>outward</u> sense of self; they can</p>	<p>Grace is a motivated, focused, and careful scholar—and her work colleagues know this to be true. Despite working in a male-dominated career, Grace</p>	<p>Even though Chantalle has lived in Canada for ten years, her boss repeatedly provides her with</p>



<p>choose how they want to project themselves into the world without <i>undue</i> infringement and assumption by others.</p>	<p>is respected for who she is without undue assumption by others. Her perceived value at work and the opinions of her peers match with how she sees herself, meaning that she thrives at work and feels respected and well-supported.</p>	<p>resources related to English reading and writing and assigns her lower-priority tasks that are not customer-facing. Chantalle’s boss assumes that she is a “newcomer” based on her race rather than how she presents herself and in a manner untethered to her performance. Because of this, she is also passed over for larger projects and promotions.</p>
<p><i>Inward Sense of Self:</i></p> <p>An agent is free from <i>serious</i> damage to their <u>inward</u> sense of self, including harm to their self-respect and self-image.</p>	<p>Esther has a support network (including her husband, family, and friends), which boosts her self-respect and self-image. Her husband, in particular, is her biggest supporter and has helped her work through self-doubt and self-criticism.</p>	<p>Jordan’s boss routinely disciplines him in a targeted and personal manner. In particular, his boss ridicules his sexuality as a bisexual man in front of other employees under the guise of joking around. As a result, John has become more private and guarded about this aspect of himself. He begins to associate being bisexual with a significant amount of shame, given how much it has been brought up in the context of his workplace. Because of this, John’s esteem and confidence suffer greatly. Ultimately, John’s inward sense of self is harmed in a serious and recurring manner.</p>

*Unclear Autonomy and Non-Autonomy.* In the previous chart, I outlined some clear cases of autonomy and non-autonomy linking to each condition of this social concept of autonomy. These initial examples help us move towards an understanding of how we might examine and measure autonomy when it comes to clearcut cases. However, most of the time, autonomy is not something that admits of easy measurement. Instead, we will often find that measuring autonomy involves nuance and detail. Autonomy does not admit of easy measurement given how these criteria may overlap and conflict with one another. For example, it will not always be possible to determine if someone's home environment supports their critical and reflective abilities in a clear-cut manner. Often, determining the level of one's sense of self can be difficult, especially given how our sense of self is highly subjective and personal. Often, we will have to be exacting and detail-focused when we measure autonomy on this account. This social concept of autonomy rejects the idea that autonomy is a simple binary categorization, as discussed earlier in this chapter. Rather, autonomy is multifaceted—many different considerations factor into how we think about measuring autonomy. Although this may not satisfy our desire to easily label agents and related actions as autonomous or non-autonomous, it does not mean that this social concept of autonomy fails to have practical applicability. Despite the extra care we will need to take to measure autonomy, this social concept gives us the output we need in a more detailed and careful manner. By filling out what it means to be autonomous beyond the “inner citadel” described by Oshana, this concept of autonomy complicates the picture but only in a way reflective of our complex social and environmental conditions. In the coming chapters, increased clarity on the

careful task of measuring autonomy will come into focus. In particular, the next chapter, which speaks to how we see the different components of autonomy being infringed, will add to the toolkit needed to use this social concept of autonomy practically.

*Accounting for Adaptive Preferences.* As a final preliminary note, I will end this chapter by touching on two intertwined worries about adaptive preferences and insider/outsider judgements. Given that this account of autonomy relies heavily on personal judgment, one might worry about the weight of adaptive preferences. In particular, this worry arises when assessing if someone has access to options and intact two senses of self. In a related sense, one might worry about how we balance respecting the *insider* judgments of agents and the seemingly required overstepping of assessing the autonomy of others from an *outsider's* perspective.

Adaptive preferences are formed when someone's desires are shaped by outside forces—namely structural and overarching injustice and oppression.<sup>102</sup> Consider the earlier example of a left-handed individual only given the option to pursue two different careers—dentistry and construction. In this case, one might adjust their preferences to conform with their limited opportunities. In this way, preferences *adapt* to injustice and lack of choice. Even if someone is pleased with their options, we might wonder how this acceptance formed. In short, we might worry that preferences forming under this substantial amount of control cannot be fully autonomous. In a more concrete manner

---

<sup>102</sup> The kind of circumstances that result in adaptive preferences are different from the kind of control that comes from well-meaning and measured paternalism. For example, a small child may find their preferences and desires adjusted by their family members, but for this to be mere paternalism and for the impact to be positive, the family members must have the child's best interests in mind and cannot wade into control that is oppressive or unjust.

(rather than in the case of fictional oppression of left-handed individuals), adaptive preferences can form around gendered lines of oppression. A woman raised to namely value her beauty, body, and role as a caregiver might grow to find this focus appropriate despite initially being interested in pursuing a career that required a high-level of education and time away from childrearing and household duties. In the case of measuring autonomy, the existence of adaptive preferences poses a challenge. How might we determine if someone's value formation is free from severe and recurring infringement, for example, if the agent we are evaluating does not *see* these infringements as unwanted or unwarranted?

This problem ties into the second consideration mentioned above—how might we balance respecting *insider* judgment while performing the necessary task of overstepping, in some sense, and providing *outsider* judgment on an agent's situation? These two intertwined considerations become even more complicated when one wishes to create a social concept of autonomy attuned to how individuals experience the world differently due to their intersectionality and how they more generally move through the world. I, as a white woman, for example, will often have a hard time judging the specific way self-image forms and is impacted by social environments for those who are different than me in relevant ways.

Ultimately, measuring autonomy will involve a careful avoidance of sorts of paternalism,<sup>103</sup> given these two intertwined issues. Despite the need to examine the

---

<sup>103</sup> Importantly given the topic at hand, we should be wary of the kind of paternalism that rejects one's desires or wishes based on the idea that someone is *too oppressed* to form their own judgements or exercise their autonomy meaningfully.

autonomy of others from an outsider's perspective, we should be wary of characterizing the personhood of others without some reliance on how individuals describe their own experiences. This need for careful measurement will become more evident in a concrete manner when we begin to examine how infringements on autonomy connect to case histories of wrongful discrimination in the coming chapters. Here, we will see how part of determining what *counts* as the kind of infringement on autonomy, which results in an act of wrongful discrimination, is paying careful attention to victim testimony and how victims interpret acts of wrongful discrimination. In this way, listening to victims allows us to get clear on how even seemingly "neutral" or "non-malicious" actions constitute instances of wrongful discrimination. For now, as a promissory note before the coming chapters, what can be said about these two related concerns is that measuring autonomy requires a balance somewhere between taking an *outsider's view* while respecting the experiences and testimony of individuals who often do know their own experience and desires best.

## **Conclusion**

This chapter has started to examine the emerging social concept of autonomy that provides the basis for discussing wrongful discrimination in the coming chapters. Here, we saw that we must describe autonomy in a multifaceted and complex manner, beyond the "inner citadel" or purely psychological picture of what it takes to be autonomous. In short, this chapter developed a social concept of autonomy that spoke to how autonomy requires intact (1) desire identification, (2) critical and reflective abilities, (3) value formation, (4) access to options, and (5) inward and outward sense of self. To describe the

interplay between these elements, the chapter carefully described each component in turn, alongside several examples. This chapter has also discussed several preliminary qualifications necessary to make this concept more concrete. In particular, the chapter outlined how we might measure autonomy in light of the distinction between global and local autonomy, thresholds in each component, and worries about adaptive preferences. The next task of describing how this social concept of autonomy is subject to infringements will connect this picture of autonomy to the subject of wrongful discrimination.

### Chapter Three Notes

Dworkin, Gerald. *The Theory and Practice of Autonomy*. Cambridge Studies in Philosophy. Cambridge: Cambridge University Press, 1988.

Eidelson, Benjamin. “Treating People as Individuals.” In *Philosophical Foundations of Discrimination Law*, edited by Deborah Hellman and Sophia Moreau. Oxford: Oxford University Press, 2013.

Moreau, Sophia. *Faces of Inequality: A Theory of Wrongful Discrimination*. Oxford: Oxford University Press, 2020.

Mullin, Amy. “Children, Autonomy, and Care.” *Journal of Social Psychology* 38, No. 4 (2007): 536-553.

Oshana, Marina A.L. “Personal Autonomy and Society.” *Journal of Social Philosophy* 29, no. 1 (Spring 1998): 81-102.

Pugh, Jonathan. *Autonomy, Rationality, and Contemporary Bioethics*. Oxford University Press, 2020.

Rawls, John. *A Theory of Justice*, 1st ed. Cambridge: Harvard University Press, 1971.

## Chapter Four: Infringements on Autonomy

In this chapter, I describe five types of *infringements*<sup>104</sup> on autonomy. Each of these infringements links up to one or more of the components of the social concept of autonomy developed in this thesis, and each infringement has a *specific* impact on victims. This specificity, and the range of infringements discussed in this chapter, are not captured by a more general account of wrongful discrimination. Some accounts describe all acts of wrongful discrimination as instances of “unequal” treatment or “demeaning” treatment in broad strokes.<sup>105</sup> My understanding of wrongful discrimination departs from singular descriptions like these by suggesting a more specific and detailed relationship between infringements on autonomy and wrongful discrimination. I argue that these infringements take *specific* form based on what part of autonomy is impacted. Here, examining how a particular infringement touches social autonomy determines the kind<sup>106</sup> of impact on the victim, when it comes to an act of wrongful discrimination, beyond a singular statement of “unequal” or “demeaning” treatment.

The chapter aims to indicate how elements<sup>107</sup> of one’s autonomy can come under threat from external environments and actors. As we saw in Chapter Three, autonomy is

---

<sup>104</sup> It is important to note that this chapter does not use the term infringement in a legal sense related to breaking the law or a formal agreement. Rather, this chapter employs the term infringement understood as the act of *undermining* or *limiting* an autonomous agent. Here, the infringement is on *autonomy* and not the terms of a legal or formal agreement.

<sup>105</sup> See Chapter Two for these kinds of accounts.

<sup>106</sup> Being able to focus on the *kind* of impact on a victim will be of particular importance in the next chapter when discussing how infringements on autonomy become wrongful discrimination. For now, I will note that it is important to be specific about how an infringement impacts a victim beyond a more general sense of “negative impact” or “demeaning” treatment. It is valuable, in a practical sense, to get clear and specific on victim impact when examining wrongful discrimination.

<sup>107</sup> The language of *elements* is used here to indicate how autonomy has distinct, but not separate, elements. These elements often overlap and have interplay with one another. However, some types of infringements attach neatly to a single element, as we will see in examples explored in the final part of this chapter.



social, meaning it is subject to and vulnerable to impact from social environments. In this chapter, we see how these infringements on autonomy are divided into four elements: (1) limitations on the ability to plan, (2) restrictions on access to resources, options, and opportunities, (3) constraints on the projection of an agent's outward sense of self, and (4) damage to an agent's inward sense of self.<sup>108</sup> Part of the task of this chapter is to preserve a thread between Chapters Three to Five. In short, Chapters Three to Five contain a thread which establishes how wrongful discrimination involves specific infringements (Chapter Four) that fall along the lines of historical or current systems of oppression and subordination (Chapter Five) on a social concept of autonomy (Chapter Three). This chapter keeps intact the connection between speaking about *autonomy* and *wrongful discrimination* by examining how specific infringements impact the different components of social autonomy.

In the first section of this chapter, I describe the infringements in list form. In section two, I connect each infringement to its corresponding component of social autonomy. Following this, I describe each infringement in dedicated subsections.<sup>109</sup> In section three, I consider several concrete examples and cases to clarify the way in which these infringements limit, restrict, constrain, and damage autonomy before I make some concluding remarks.

---

<sup>108</sup> As one might already notice, this chapter organizes infringements under four general elements, meaning that these elements do not map on 1:1 to the *six* components of social autonomy described in Chapter Three. This smaller grouping is organized by the fact that three components of social autonomy fit under the element "limitations on the ability to plan," see section 2.0 for this mapping.

<sup>109</sup> Much of the first part of this chapter is a descriptive task that follows from the arguments in previous chapters that established the different components of social autonomy. Given how arguments in this thesis have shaped a particular type of social autonomy, the descriptions of different infringements follow in a more descriptive manner.

## 1.0: The Infringements, in Full

This section briefly outlines each type of infringement that can impact autonomy as described throughout this thesis. Infringements on autonomy, as suggested in the introduction to this chapter, can arise from either environments or actors. In the case of environments, one can find themselves limited, restricted, constrained, or damaged by societal norms, rigid expectations, and strict hierarchies that are at play in their respective social world.<sup>110</sup> In the case of actors, one can find themselves limited, restricted, constrained, or damaged by specific individuals in their orbits—for example, if we think of central cases of infringements in employment by managers or coworkers. For now, I describe these infringements in rather broad terms before providing concrete examples in the final section of this chapter. These concrete examples will help fill out the picture but for now, here are the four infringements on autonomy.<sup>111</sup>

- (1) *Limitations on the ability to plan*: an agent cannot conduct their life according to their values, desires, and goals—in short, their aspirations for a realized life plan.

---

<sup>110</sup> As well, the physical conditions of an environment can impact autonomy, especially when it comes to being able to pursue one's life plan. For example, think of the way that physical environments exacerbate and create the conditions for inaccessibility. Restrictions related to physical environments are more often than not, social and non-accidental in form, relating to poor design and a lack of foresight.

<sup>111</sup> The point of stating these infringements in an undefended manner is an organizational point. In the following sections, each infringement will be unpacked and related to the previously defended components of social autonomy.

- (2) *Restrictions on access to resources, options, and opportunities*: an agent is unable to access ends (namely resources and opportunities) or pursue various options due to control, manipulation, or barriers.<sup>112</sup>
- (3) *Constraints on the projection of an agent's outward sense of self*: an agent loses control of the ability to project their self into the world in a way that aligns with their values, desires, and goals. Of course, no one can have complete control over how others perceive them. However, in a central case of this kind of infringement, one is barred from expressing their personhood severely and persistently.
- (4) *Damage to an agent's inward sense of self*: An agent experiences internal degradation of the self, generally from cases of stereotyping, hate speech, or oppressive environments. Again, no one can be utterly free from external influence on internal selfhood, but we all should be afforded the opportunity to exist in environments that promote self-respect.

## 2.0: Infringements on Autonomy

Given the social nature of autonomy described in Chapter Three, this chapter explores the specific vulnerabilities that follow from the social nature of autonomy.<sup>113</sup>

Before describing each infringement in turn, this chart quickly details which

---

<sup>112</sup> It is, of course, relevant to examine if these restrictions apply equally to everyone in a society or if they only apply to certain groups or individuals. One could imagine a society in which no one has choice and everyone is limited in their access to resources, options, and opportunities. In this case, it would be hard to argue that any specific individual or group could make a claim of this sort about restriction. In most cases, though, we can see how certain individuals are subject to restriction on a higher level because of holding certain traits or belonging to a specific group. This need for comparison applies mostly neatly to this specific infringement regarding access to resources, opportunities, and options but also does generally apply to the other three infringements. Overall, comparison can help determine when someone is facing an infringement in a unique or unusual manner—in a way that impacts them more heavily and frequently than other individuals.

<sup>113</sup> Some may worry that this account of autonomy might be ever-shifting because of social vulnerability. If autonomy is subject to vulnerability because of external factors and social environments, it cannot be “won” by an agent in the same way someone can stably claim more internalist sorts of autonomy. Despite this worry, I think that there are practical and philosophical benefits that come with acknowledging how autonomy is socially vulnerable. Practically, acknowledging this can help us build towards the sort of ideal environments that promote *more* than mere critical and reflective abilities—a higher bar means that autonomy can be protected in more detailed ways. Philosophically, acknowledging this allows us to get clear on the components of autonomy that are impacted by various social vulnerabilities. Ultimately, both of these advantages mean that this social concept of autonomy has broader application than more stable or static accounts.

corresponding component(s) of autonomy connect to each infringement. While discussing each infringement, it will be essential to keep in mind which corresponding component is at play. The subsections to come lay out the mapping between each infringement and corresponding component of social autonomy. As seen below, *limitations on the ability to plan* includes three components of the social concept of autonomy: the original components from Eidelson and Dworkinian-style autonomy fit neatly under this kind of infringement. This specific infringement acts as an umbrella by capturing the more *internalist* and psychological elements of autonomy. Otherwise, each of the other three infringements corresponds to a single component of social autonomy.<sup>114</sup> Following this chart, I explore each infringement in detail.

Infringement	Corresponding Component(s)
<i>Limitations on the ability to plan:</i> An agent cannot conduct their life according to their values, desires, and goals—in short, their aspirations for a realized life plan.	<i>Desire Identification:</i> an agent identifies with their lower-order desires and can critically reflect and fulfill their higher-order desires. Additionally, an agent can evaluate and amend their motivations to act.

<sup>114</sup> One might object to the 1:1 mapping between some of these infringements and the components of social autonomy. For example, might it be the case that Desire Identification and Value Formation could relate to infringements on the self along with limitations on the ability to plan? This kind of worry identifies how infringements, and the components of social autonomy, are often tightly linked to one another and involve some level of interplay. As will be seen in examples in the latter half of this chapter, most cases where autonomy is negatively impacted involve infringements on *several* fronts rather than on a singular front. For example, being denied employment based on one's sexuality does not *just* impact one's ability to plan—sense of self (both internal and external) is at play as well. The goal of dividing up the different kinds of infringements is to allow for more specificity while describing victim impact. The goal is *not* to suggest that infringements on autonomy can always be clean cut and divided into neat categories. Often, an infringement will involve several kinds of impact on the victim at once. However, for the goal of neatly describing different kinds of impact on victim autonomy, spelling out the types of infringements, and explaining how they relate back to the components of social autonomy, helps clarify what kinds of wrongdoing we have in mind. This will become especially important when applying this theory to concrete case histories in the final chapter of this thesis.

	<p><i>Critical and Reflective Abilities:</i> factors surrounding an agent promote critical and reflective abilities rather than diminishing them.</p> <p><i>Value Formation:</i> the desires and values an agent holds, when examined, result from the skills outlined in (2) <i>and</i> are formed under conditions without substantial and reoccurring infringement, coercion, or control by other parties.</p>
<p><i>Restrictions on access to resources, options, and opportunities:</i> An agent is unable to access ends (namely resources and opportunities) or pursue various options due to control, manipulation, or barriers.</p>	<p><i>Access to Options:</i> an agent has a range of <i>real</i> options available to them.</p>
<p><i>Constraints on the projection of an agent's outward sense of self:</i> An agent loses control of the ability to project their self into the world in a way that aligns with their values, desires, and goals. Of course, no one can have complete control over how others perceive them. However, this becomes infringement when one is barred from expressing their personhood severely and persistently.</p>	<p><i>Two Senses of Self:</i> an agent has <i>reasonable</i> control over their <u>outward</u> sense of self; they can choose how they want to project themselves into the world without <i>undue</i> infringement and assumption by others.</p>
<p><i>Damage to an agent's inward sense of self:</i> An agent experiences internal degradation of the self, generally from cases of stereotyping, hate speech, or oppressive environments. Again, no one can be utterly free from external influence on internal selfhood, but we all should be</p>	<p><i>Two Senses of Self:</i> an agent is free from <i>serious</i> damage to their <u>inward</u> sense of self, including harm to their self-respect and self-image.</p>

afforded the opportunity to exist in environments that promote self-respect.	
--	--

## 2.1: Limitations on the Ability to Plan

*An agent cannot conduct their life according to their values, desires, and goals—  
in short, their aspirations for a realized life plan.*

This first type of infringement relates to three components of autonomy as defined throughout this thesis. The inability to pursue one's life plan according to values, desires, and goals impacts (1) desire identification, (2) critical and reflective abilities, and (3) value formation. These three components of autonomy captured are the original psychological elements preserved from inner-citadel style autonomy and value formation.

To fully grasp the nature of this first kind of infringement, outlining how each component of autonomy suffers will help illustrate the impact on an autonomous agent. To employ an example, in a central case involving this kind of infringement, we could imagine a woman living in a highly sexist society who is limited to a minimal number of socially acceptable career options given her environment. Given the limited avenues available to this woman, she cannot conduct her life in a way that aligns with her values, desires, and goals. Rather, this kind of case first reduces the possibility of planning for a specific life plan *or* realizing a specific sort of life plan.<sup>115</sup>

---

<sup>115</sup> Of course, as mentioned before in this thesis, there will be cases like this where agents adjust to their surroundings in a way that suggests that the restraints in place do not impact them negatively. Some agents will adopt restrictive and demanding pressures as their own, suggesting that their current situation is what they would have wished for in the first place. These kinds of adaptive preferences can be difficult to untangle but the mere existence of them cannot suggest that these conditions are proper or preferable. Rather, we should be concerned with how to properly examine an agent's motives and wishes in a way that is respectful but takes the possibility of self-deception into account.

First, desire identification is impacted in this kind of case because it cannot be said<sup>116</sup> that an agent fully identifies with either their lower-order or higher-order desires. When weighty expectations and pressures bear down on someone, there is little choice to be exercised when it comes to desires. Without this choice, the possibility of *identifying* with one's desires is curtailed in a significant manner. Further, an agent's ability to evaluate and modify their motivations to act can be diminished in this kind of situation. Without the ability to imagine *something different* or practically pursue an alternate path, an agent is left without the right conditions to, in a sense, change their mind or their wishes.

Critical and reflective abilities also suffer because cases involving pre-determined choices and a lack of range of possibilities generally diminish, rather than promote, an agent's critical and reflective abilities. When an agent is presented with a limited range of acceptable avenues that are highly influenced by hierarchy or strong social norms, the environment created is not one that offers up space for critical and reflective abilities to flourish. This is not to say that individual agents cannot push back against pre-determined choices or acts of subordination. Of course, critical and reflective abilities can remain intact and grow *despite* these conditions. However, these cases do not suggest that these sorts of environments promote these skills. Instead, these cases suggest that even under harsh conditions that diminish these skills, autonomous agents have the ability to push back in meaningful ways.<sup>117</sup>

---

<sup>116</sup> Other than in a surface level manner in cases of adaptive preference or self-deception.

<sup>117</sup> Some may argue that examples of people under harsh conditions who still exercise autonomy is a point against social autonomy. If agents can be autonomous in a meaningful sense under harsh conditions, maybe autonomy really is just concerned with internal authorship and critical or reflective skills. This seems too

Finally, value formation is damaged because the desires and values an agent holds, when examined, cannot be said to be formed under conditions *without* substantial and reoccurring infringement, coercion, or control by other parties. This kind of situation involves the creation of a life plan under conditions of control, either from outside actors, societal pressures, or environmental conditions. Once again, I do not aim to suggest that it is impossible to form values and desires that an agent identifies with under these conditions. However, it is worth noting how infringement, coercion, and control from outside parties influence value formation. Especially in environments heavy with subordination, these outside forces are heavy-handed regarding how values are formed and developed in the first place.

## **2.2: Restrictions on Access to Resources, Options, and Opportunities**

*An agent is unable to access ends (namely resources and opportunities) or pursue various options due to control, manipulation, or barriers.*

This infringement links singularly with the access to options condition of autonomy explored in the previous chapter. Infringements of this sort that impact access to resources, options, and opportunities have the result of damaging an agent's ability to pursue a range of *real* options available to them. This sort of infringement, as suggested

---

simple, however. The existence of exceptional people who persist under harsh conditions does not suggest that social environments have no impact on autonomy. First, we can think about how many agents lack the ability to push back here. For these kinds of people, there are serious and persisting social and environmental barriers that damage the development, and ability to exercise, autonomy. Second, we can think about how even in cases where an agent does meaningfully exercise autonomy, this is done under non-ideal circumstances. In another scenario, all other things equal in terms of critical and reflective abilities, the agent would likely have a more robust and stable chance at acting autonomously. In short, although the existence of agents who exist under harsh social conditions may seem to frustrate a social picture of autonomy, it does not seem that this kind of example completely diminishes the role of social environments on autonomous agents.



in the chart above, usually arises from control and manipulation on the level of other individuals or barriers on the level of environmental conditions. Central cases of this kind of infringement include being denied fundamental rights or employment. Consider the all-too-real example of the barriers that individuals with Down Syndrome face when pursuing employment. In 2022, the *Canadian Down Syndrome Society* highlighted these difficulties in their Inemployable campaign.<sup>118</sup> Individuals with Down Syndrome describe how, despite experience reflected on their resume, employers simply “aren’t looking for people like me.” Overall, over 50% of people with Down Syndrome cannot access paid employment despite a strong desire to work. There is a self-reinforcing loop at play here. Individuals with Down Syndrome are unable to access work in spite of a desire to pursue paid employment because of bias and prejudice about disability in the workplace. Because of this, over 50% of individuals with Down Syndrome are unemployed. Given this, employers’ biases are reinforced—individuals with Down Syndrome are viewed as un-hireable since so few people with Down Syndrome have paid work positions. Bias loops in this kind of example where the barriers that keep a group from working in the first place also justify this continued treatment. This kind of barrier cuts off the ability of an agent to access resources or opportunities and pursue various options. Moreover, this barrier restricts access to a real and substantial range of options. An agent is left unable to pursue what aligns with their specific life plan due to external factors.

### **2.3: Constraints on the Projection of an Agent’s Outward and Inward Sense of Self**

---

<sup>118</sup> Canadian Down Syndrome Society, “LinkedIn: I’m Inemployable Tv Commercial Ad 2022” YouTube, December 25, 2022. <https://www.youtube.com/watch?v=i7CUN6OeJhs>.

*An agent loses control of the ability to project their self into the world in a way that aligns with their values, desires, and goals. Of course, no one can have complete control over how others perceive them. However, this becomes infringement when one is barred from expressing their personhood severely and persistently.*

This infringement corresponds with the outward sense of self condition of social autonomy. Infringements related to how we project ourselves into the world impact how we can use our autonomy to be *seen* in a way that aligns with our values, desires, and goals. While thinking about this kind of infringement, consider restrictive and highly gendered dress codes in the service industry that might make it hard for non-binary or gender-nonconforming individuals to express themselves in an outward sense in the workplace.<sup>119</sup> For example, the requirement that “men wear pants and women wear skirts or dresses” in a workplace puts non-binary and gender-nonconforming individuals in a grey area.<sup>120</sup>

Similarly, the requirement to wear some level of makeup for a service-related job, as a woman, presents a puzzle for those outside the strict idea of a gender binary.

---

<sup>119</sup> To prevent an apparent objection from coming to mind, I do not aim to suggest that individuals should be allowed to express themselves in *any* way in the workplace when it comes to dress. Many workplaces have dress codes for good reason. In service-related jobs, (1) a dress code often conveys a level of class in a dining experience (in terms of fine vs. casual dining) and (2) allows all of the workers to present as a unified front, visually. In the case of jobs involving physical labour, certain dress code rules, such as having close-toed shoes or steel toe boots, protect workers from physical harm. Even in a more aesthetic sense, it is straightforward that some types of clothing are simply not professional in the way a certain workplace might require. However, not being allowed to wear a shirt with a curse word or a short skirt does not seem to have the same impact as not having a clothing option that reflects one’s gender identity. In a more serious sense, the kind of dress code that excludes an entire type of person has a stronger impact than a code based on something like “appropriateness,” “safety,” or “professionalism.” In a similar sense, dress codes that fail to account for cultural or religious grooming or dress standards present a similar issue. A dress code that bans head coverings, for example, seems to overstep in a far more serious way than one that asks employees to dress in neutral and muted colours.

<sup>120</sup> This discomfort also applies to women who lack a more traditionally “feminine” sense of style.

Especially in cases of full-time employment, the workplace is not somewhere one passes through briefly each day. Given this prolonged exposure, outward projection suffers when dress codes fail to recognize the diverse needs of employees when it comes to this kind of self-expression.

*An agent, in this case, experiences internal degradation of the self, generally from cases of stereotyping, hate speech, or oppressive environments. Again, no one can be utterly free from external influence on internal selfhood, but we all should be afforded the opportunity to exist in environments that promote self-respect.*

This final infringement is related to the previous infringement but is concerned with internal self-respect and self-image. We can return to the same example about dress codes to examine how these two types of sense of self wrap into one another. When an individual is barred from outwardly projecting themselves, this, in turn, impacts their inward sense of self in a serious manner. Being required to dress and present in a way that does not align with one's sense of self generates feelings of not belonging and even a return to feelings of gender dysphoria. Especially given how dress impacts social interaction, it is important to allow for appropriate self-expression through clothing in the workplace. Without allowing for this, dress codes run the risk of impacting internal selfhood.

### **3.0: Concrete Examples and Cases**

In this final subsection, the aim is to draw out four thorough examples to exemplify how we might identify what kind of infringement is taking place and how different types of infringements might overlap or interact. Often, certain actors and

environments infringe upon an agent's autonomy in a multitude of ways rather than in a clear-cut and singular manner. Especially given the complex nature of infringements related to wrongful discrimination that will be explored in the next chapter, it is essential to clarify what these infringements look like in action.

*CASE A: Environmental Barriers and Access to Education.* Imagine a case where a young woman with cerebral palsy who requires a wheelchair is unable to attend a set of graduate programs due to barriers on the level of accessibility. First, there are programs where the main department building is simply not outfitted for wheelchair users. She would struggle not with getting up and down floors (there is an elevator), but there are no lifts between smaller flights of stairs (around two to five stair breaks in the middle of floors) and some seminar rooms have a curb without a ramp by the door. Further, she is hesitant about attending programs that seem to have no guidelines for disabled students or support networks. The lack of direction on this front makes her suspicious about how she will be welcomed and accommodated as a disabled student. Finally, some graduate programs are hesitant to consider her grades from her third year of undergraduate when she was a part-time student. This barrier ignores the fact that “students with disabilities are more likely to pursue part-time studies” and undervalues this pacing of education.<sup>121</sup> Given this, her **ability to plan** is negatively impacted—she cannot conduct her life according to her values, desires, and goals. Of course, none of us can perfectly conduct our lives based on these factors. However, this kind of limitation seems serious and

---

<sup>121</sup> Ontario Human Rights Commission, “The Opportunity to Succeed: Achieving Barrier-Free Education for Students with Disabilities: Post-Secondary Education,” n.d. <https://www.ohrc.on.ca/en/opportunity-succeed-achieving-barrier-free-education-students-disabilities/post-secondary-education>

pervasive in a worrying manner. Here, a set of external factors limits the way that she can conduct and realize her life plan as well as move through her physical surroundings. The infringement is not contained to just her ability to plan, however. It is also clear that this kind of case restricts her access to resources, options, and opportunities. Her set of *real* possibilities is reduced from the start by the lack of accommodation from several programs that she would consider otherwise if she were a different kind of student or if programs were more aware of diverse student needs. Finally, depending on her emotional and personal reaction to this case, this situation might<sup>122</sup> even damage her inward sense of self relating to her sense of belonging and self-image. If she does not see herself reflected in the spaces she wants to enter and if graduate programs are not accommodating of someone like her because of disability alone, this can, in turn, negatively impact her sense of self. In this case, we can see how multiple infringements can overlap in a single scenario. We can tease these infringements apart—her inward sense of self is impacted by specific factors compared to the way that her ability to plan is diminished. Taken all together, though, we can see how multiple infringements describe the impact that this scenario has on her autonomy. Ultimately, an inaccessible environment that fails to promote belonging for disabled students negatively impacts their ability to plan, restricts access to resources, options, and opportunities, and may damage their inward sense of self.

---

<sup>122</sup> Here, I say “might” only because this final piece is rather personal and situational. Someone may only find their ability to plan, and access impacted. Someone else may find their sense of self changed or damaged by this kind of scenario. Here, victim testimony is important—we should be interested in this testimony as a tool to examine how sense of self is impacted, if at all, but a situation like this. This topic will be explored further in the next chapters, especially in the context of stereotyping, a kind of wrong that requires the use of victim testimony to be unpacked.

*CASE B: Incarceration and Access to Employment.* In many countries, a previous record of incarceration impacts access to employment.<sup>123</sup> In particular, *Public Safety Canada* reports how “individuals with criminal records face considerable barriers when seeking employment in Canada with only half of the individuals released from federal institutions finding employment after an average of 14 years.”<sup>124</sup> Even when individuals with criminal records can find paid work, “the average reported income was \$14,000” which is “less than half of what Canadians in the general population earn through employment.”<sup>125</sup> Beyond these general statistics, access to employment with a criminal record has gender, race, and age-based dimensions. *Public Safety Canada* finds that women, Indigenous, and older individuals face increased barriers when gaining employment after offending.<sup>126</sup>

Based on all of this, consider a case where an elderly Indigenous woman seeks employment after a five-year sentence for a non-violent offense. She faces barriers when it comes to accessing employment on three fronts: on the grounds of gender, race, and age. These barriers persist even though she has served her time, made excellent personal progress, and been engaged in educational and work programs within the prison. Employers hesitate to hire her in a way that impacts her autonomy on several fronts—namely when it comes to **restrictions on access to resources, options, and opportunities**, as well as **constraints on the projection of an agent’s outward sense of**

---

<sup>123</sup> See, and Babchishin, Kelly Melanie, Leslie-Anne Keown, and Kimberly P. Mularczyk. *Economic outcomes of Canadian federal offenders*. Public Safety Canada, 2021.

<sup>124</sup> Ibid., 2.

<sup>125</sup> Ibid., 2.

<sup>126</sup> Ibid., 21.

**self and damage to an agent's inward sense of self.** In the first case, it is apparent that her access to opportunities is heavily restricted. Additionally, if she remains unable to secure employment despite being willing and qualified to work, she will fail to secure the resources necessary for basic needs. Further, her gender, race, and age are viewed by potential employers in a way that constrains the way she may try to project her *outward* sense of self. Even if she tries to illustrate how her work experience before incarceration makes her a certain type of worker or puts a positive spin on her educational and work experience within the prison, many potential employers will have their minds made up about the kind of person they see her as. In many cases, she will be unable to project herself into the world in a way that aligns with who she is. Rather, the way that others see her will be heavily influenced by her status as an offender of a certain sort. In turn, this inability to be seen correctly may impact how she feels about herself inwardly. This treatment can lead to damaged self-respect and self-image, especially when it is pervasive and persistent.

*CASE C: Queer Identity and Traditional Spaces.* Consider a case where a young closeted queer man is attending a traditional and religious all-boys high school. At this school, along with bible study, there is a heavy emphasis on being the *right* kind of person as a child of God. Part of this teaching includes cautionary warnings against homosexual activity and even the advice to seek religious guidance in the case that this activity “arises.” Since this imagined young man is closeted and conceals this part of himself in a highly skilled manner, he is not impacted socially or in terms of opportunities and resources. At school, he maintains high grades, has a flourishing social circle, and

participates in several extracurriculars. However, we can see how this kind of environment wears down his sense of self—it cannot be said that he is free from **damage to an agent’s inward sense of self**. Even if he takes the teachings at the school with a grain of salt or dismisses the prejudicial attitude promoted in his classes, prolonged time spent in an environment that devalues the kind of person one is at the core can damage self-respect and self-image. Further, it is abundantly clear that he cannot maintain **reasonable control over his outward sense of self**. Since being closeted is necessary here for self-preservation and *safety* at a more basic level, he is unable to truly choose how to project himself into the world. All of his interactions and actions involve a layer of deception, given that he cannot authentically project himself without harm and assumption from others.<sup>127</sup>

*CASE D: Studying Abroad and a Sense of Belonging.* Finally, consider a case where a young man immigrates from China to Canada to attend university on a student study permit. Although he has spent years studying English, even taking classes outside of school, and is excited by the program he has chosen to pursue, a political philosophy and international ethics specialization, he faces assumptions from others because of his identity. Early on, he hears classmates discussing how “there are way too many international students admitted to this school,” a statement which impacts his sense of belonging immediately. Because of his non-English name, a teaching assistant refers him to the reading and writing center by email before he has submitted any work—“this kind

---

<sup>127</sup> Whether or not this example is a case of someone being discriminated against is a separate matter—for now, it is just worth pointing out how this kind of scenario impacts one’s sense of self.



of resource is usually helpful for international students like you.” While this gesture does not come from a malicious place, it seems both unwarranted and presumptuous, given that the teaching assistant has not assessed the quality of his work. He also finds that assumptions about his economic positioning and level of “seriousness” are at play throughout the semester. One professor attempts to joke around by saying that they are always jealous of international students who have “rich parents that can finance them going to school in another country just so they can explore and have fun.” This comment, of course, hits hard, given how hard he has worked to attend this university. All of this impacts his **inward and outward sense of self**. In such an environment, these two conditions are affected by undue assumptions and prejudice from others. He may also experience **limitations on his ability to plan** and **restrictions on access to resources, options, and opportunities** because of these judgments about the *kind* of student he is. Although he is not *formally* barred from resources, if he cannot somehow break out of the mould that those around him have set, his academic performance may worsen, and his ability to pursue work-study options, internships, research assistant positions, or scholarships may diminish. In short, if those around him have already decided what kind of student he is, breaking out of this to excel may prove difficult.

## **Conclusion**

In this chapter, I have described the four types of infringements that can impact the five conditions of social autonomy described in Chapter Three. In short, I suggest that autonomy may be affected in terms of (1) limitations on ability to plan, (2) restrictions on access to resources, options, and opportunities, (3) constraints on the project of an agent’s

outward sense of self, and (4) damage to an agent's inward sense of self. These four infringements can be specific—sometimes, a scenario involves infringement on the front of just one of these categories. These infringements often overlap or connect in substantial ways, meaning that an agent may experience multiple at once. In particular, this chapter explored how these infringements overlap in situations involving barriers, hierarchy, subordination, control, and coercion. This chapter has also suggested a move away from singular descriptions of how autonomy might be impacted. Rather than suggesting that all of these infringements might present as “unequal treatment” or “demeaning” treatment, this chapter indicates how different infringements constitute diverse types of treatment. Examining how a particular infringement impacts victim autonomy helps identify the specific act at hand in each case. In the next chapter, I piece together the work conducted in Chapters Three and Four to establish how specific infringements on autonomy become wrongful discrimination, namely when they fall along the lines of historical or current systems of oppression and subordination.

## Chapter Four Notes

Babchishin, Kelly Melanie, Leslie-Anne Keown, and Kimberly P. Mularczyk. *Economic outcomes of Canadian federal offenders*. Public Safety Canada, 2021.

Canadian Down Syndrome Society. “LinkedIn: I’m Inemployable Tv Commercial Ad 2022” YouTube. December 2022. <https://www.youtube.com/watch?v=i7CUN6OeJhs>.

Ontario Human Rights Commission, “The Opportunity to Succeed: Achieving Barrier-Free Education for Students with Disabilities: Post-Secondary Education,” n.d. <https://www.ohrc.on.ca/en/opportunity-succeed-achieving-barrier-free-education-students-disabilities/post-secondary-education>

## Chapter Five: From Infringements to Wrongful Discrimination

One may object that the types of infringements described in the previous chapter are not unique to cases involving wrongful discrimination. Rather, these infringements can impact individuals in a context *unrelated* to discriminatory acts. If this thesis is interested in describing the wrongs that fall along the lines of discrimination, I must explain how these infringements move from being *infringements* to becoming *wrongful discrimination*. I propose that this shift occurs when the previously described infringements are related to, or fall along the lines of, historical or present oppression. This occurs when an infringement is based on a trait that has a sort of social baggage related to historical and present oppression, what I will call a *loaded trait*. These are traits that may not be used to differentiate amongst individuals in most cases and include grounds such as race, sexual orientation, age, and disability. *Loaded traits* are simply the qualities within a single ground, such as race, that attach to lines of oppression and are subordinated within the hierarchy of other qualities within the same ground.<sup>128</sup> In this way, this thesis is interested in which *specific* qualities within larger grounds attach to historical or current systems of subordination. This focus matters because when we aim to protect individuals from wrongful discrimination, we are concerned with individuals who

---

<sup>128</sup> A *loaded trait* is similar to the prohibited grounds for discrimination in Canadian law. However, the language of loaded trait, and the specific discussion of how these traits attach to lines of oppression and subordination, goes beyond the language used to describe prohibited groups in Canadian law in an important manner. The concept of loaded trait identifies how certain qualities make it far more likely that an individual will face discrimination due to overarching systems of power. In contrast, the language around prohibited grounds is more interested in specifying large grounds (for example, race or disability) rather than indicating specific loaded traits that attach to types of social baggage. In this thesis, talking about loaded traits rather than prohibited grounds allows for more specificity and ease when describing victim impact, especially when it comes to impact on victim autonomy.

face pervasive and systematic treatment based on their held attributes. Individuals may be subject to an infringement on their autonomy without possessing a *loaded trait* but those who do hold a loaded trait are far more likely to face infringements on their autonomy in any and all areas of their lives. Someone can be wronged simply by being forced to conduct their life in a certain way and only pursue a limited number of options. The possession of some loaded traits makes the realization of this sort of wrong far more likely. These are the central cases we are interested in: when a *loaded trait* that attaches to historical or present oppression makes it such that an individual's autonomy is infringed upon in a systematic and pervasive manner.

### **1.0: Deborah Hellman and HSD Traits**

This appeal to historical or present oppression is similar to Deborah Hellman's discussion of HSD (History of mistreatment current Social Disadvantage) traits, which "stamp a person or group with a badge of inferiority" and lock individuals into a web of discriminatory legal restrictions.<sup>129</sup> In her book *When is Discrimination Wrong?*, Hellman is primarily concerned with solving the discrimination "puzzle."<sup>130</sup> As Hellman states, "we often need to distinguish among people" so we must determine "when discrimination is morally permissible and when it is not."<sup>131</sup> In short, Hellman identifies how discrimination alone, acts of differentiation, can exist outside of a *wrongful* context. To begin unravelling what makes certain acts of differentiation cases of wrongful

---

<sup>129</sup> Deborah Hellman, "Demeaning and Wrongful Discrimination" in *When is Discrimination Wrong?* (Massachusetts: First Harvard University Press, 2008) 40-41.

<sup>130</sup> *Ibid.*, 1-9.

<sup>131</sup> *Ibid.*, 4.

discrimination, Hellman takes as a given the “equal moral worth of all persons.”<sup>132</sup>

Wrongful discrimination is a class of acts involving a *failure* to uphold equal worth. So then, we are not just flatly concerned with the moral permissibility of drawing distinctions between different people based on traits—we are concerned with the moral permissibility of drawing distinctions between different people based on traits *when* this fails to uphold equal worth.<sup>133</sup>

For Hellman, this kind of morally impermissible distinguishing takes place when the act is connected to what she calls “HSD” traits, History of mistreatment or current Social Disadvantage.<sup>134</sup> Hellman explains why wrongful discrimination involves HSD traits by referring to how this treatment involves “demeaning.”<sup>135</sup> For Hellman, “to demean is to treat someone in a way that denies her equal moral worth and thus picks out a wrong that is intimately tied to the value that underlies our worries about differentiation in the first place.”<sup>136</sup> Hellman sees “demeaning” treatment as to “insult,” “put down,” “diminish,” “denigrate,” and “treat another as lesser.”<sup>137</sup> Hellman is careful to distinguish “demeaning” from connected concepts. For example, she notes that although “demeaning” may lead to subordination, it is not equivalent to subordination. However, given that wrongful discrimination can take many forms, this account still seems to leave wrongful discrimination murky in terms of this variety. This worry will be explored in the next subsection.

---

<sup>132</sup> Ibid., 6.

<sup>133</sup> Ibid., 7.

<sup>134</sup> Ibid., 21.

<sup>135</sup> Ibid., 29-33.

<sup>136</sup> Ibid., 29.

<sup>137</sup> Ibid., 29.

## **2.0: Can “Demeaning” Capture All Acts of Wrongful Discrimination?**

It should be unsurprising, at this point, to find that I am not immediately convinced by accounts that try to capture all acts of wrongful discrimination with a single “core wrong” or attitude. Although “demeaning” and related wrongs like subordinating, diminishing, and denigrating capture many instances of wrongful discrimination, there are acts that remain outside this scope left unexplained by this approach by Hellman.

Most clear are cases of indirect discrimination—it seems odd to think of some seemingly neutral requirements that unknowingly single out people as “demeaning” in nature. We can return to an example from the previous chapter to examine this further.

Consider restrictive and highly gendered dress codes in the service industry that might make it hard for non-binary or gender-nonconforming individuals to express themselves in an outward sense in the workplace. For example, the requirement that “men wear pants and women wear skirts or dresses” in a workplace puts non-binary and gender-nonconforming individuals in a grey area.

Here, a wrong has occurred—certain kinds of employees have not been considered while constructing a dress code. Because of this lack of attention and exclusion, some employees exist in a grey area and may struggle to find a place within the dress code that allows for comfortable and accurate self-expression. But does this kind of case involve a “demeaning” aspect? If so, this seems like a high bar. Although individuals may be in a grey area, this kind of policy does not necessarily involve denying inherent worth or a loss of dignity or respect. It seems like something else is going on here—a lack of consideration, accommodation, or recognition. This example also does not seem to pick out a case of treating another as “lesser,” a way that Hellman often describes “demeaning,” if the policy is truly neutral and stems from a lack of knowledge about how

binary dress codes can be restrictive. Further, this kind of description fails to account for the often-mentioned examples in this thesis of receiving benefit or so-called “positive” stereotypes. If an act of wrongful discrimination involves the kind of stereotype that overvalues one’s talents or traits based on identity and improper assumption, the avenue to label this kind of treatment as “demeaning” appears slim. Overall, it seems difficult to capture such a complicated wrong with a single net. Although many acts of discrimination involve “demeaning” attitudes or treatment, a broader approach can help avoid the kind of singularism that attempts to put all acts of wrongful discrimination under a single umbrella term.

## **2.1: Infringement Without Discrimination**

Hellman gets something right with her description of wrongful discrimination when it comes to her use of HSD traits. The account offered so far in this thesis has not forwarded a way to describe *when* an infringement becomes wrongful discrimination. Before describing why one should consider historical or present oppression when determining if an act of differentiation is wrongful discrimination, as Hellman does, I will briefly exemplify how infringement on the social concept of autonomy developed in this thesis and some level of *wrong* can occur without this being wrongful discrimination. Doing this will quickly show how we cannot just rely on differentiation and the existence of an infringement on autonomy to determine that wrongful discrimination has occurred—we will need more of an explanation and further details to determine when wrongful discrimination has taken place, making the appeal of a Hellman-style approach based on historical or present oppression clear.



*CASE A: Candidate Selection by Initials.* First, imagine a case where a hiring manager offers interview slots to ten candidates out of twenty by putting the applicants in alphabetical order by last name and preferring the first ten individuals. Those individuals with last names starting with letters earlier in the alphabet end up getting interviews. The hiring manager continues to ignore content and qualifications once the interviews begin—to select the final five candidates offered jobs, the hiring manager sorts the candidates again, this time by the first letter of their given name, to offer positions. In the end, candidates benefit if they have given and last names that happen to have first initials early in the alphabet—no other considerations are in the mind of the hiring manager when offering both interviews and actual positions.

*CASE B: Grading by Seat Selection.* Next, imagine a professor who assigns final paper grades based on where undergraduate students happen to sit during the lecture before they begin grading. While the students are occupied with completing small group discussion, the professor draws out a chart of the seating plan and numbers off students from one to forty, starting in the top right corner, going along rows, and ending in the bottom left corner of the classroom. The professor then makes a sliding scale based on these numbers, with students near the front of the class benefiting from this arrangement and students in the back of the class losing out. Ultimately, the professor has no need to read the papers since it was already made clear that no comments would be provided: the final paper was a stand-in for a final exam, meaning the grading would be too condensed at the end of the term for the professor to provide written feedback.

In both of these cases, individuals are subject to differentiation and infringement

on the basis of some trait, but neither appears to be wrongful discrimination in a straightforward manner. In the first case, candidates are differentiated from one another based on given and last name initials, which results in an infringement since some candidates are unable to access an opportunity (employment), leading to an inability to pursue a specific life plan. In the second case, students are differentiated from one another based on seat selection, which results in an infringement given that students are graded (with some receiving benefit and others losing out), which does not properly evaluate their intellectual merit and could impact future plans and life goals (for example, receiving a specific final grade in the course as a prerequisite for attending professional schooling after undergraduate). Missing in these cases, though, is differentiation and infringement based on *meaningful* traits. In both scenarios, there is an element of randomness and arbitrariness that makes the choices made by the hiring manager and professor *puzzling* and *wrong*, but not in a way that aligns with how cases of wrongful discrimination unfold. Both the hiring manager and professor do something wrong when they allow initials and seats to determine outcomes that should be influenced by merit. Both the hiring manager and professor also likely break institutional workplace rules by allowing these outside considerations to infiltrate a process that should be informed by standards and rules. However, it would seem strange to say that because of this, either the hiring manager or professor has acted in a *discriminatory* manner. It seems more straightforward to describe the two as acting in an arbitrary or random manner, differentiating between individuals on the basis of traits or choices that should not influence the process at hand. So, in these two cases, differentiation and infringement

have occurred without becoming wrongful discrimination. Because of the existence of cases like these, it is of extra importance to figure out when *exactly* cases become wrongful discrimination. Doing so ensures that a theory of wrongful discrimination avoids an over-inclusive nature that would result in cases like these, that include differentiation in a random, unfair, and arbitrary manner being included.

*CASE C: Grading Based on Annoying-ness.* Before moving on to consider two clear cases that involve infringement with discrimination, here is one more case that admits of more of a grey area. Imagine a scenario where a professor assigns grades to their students based on how annoying they find each individual. Students who get on the professor's nerves during class time score poorly on their essays whereas students who are affable and friendly score well. The professor scores like this intentionally: they keep a note where they record instances of annoyance and rank students into different categories based on this system.

In some sense, this case seems worse than assigning grades in a more arbitrary manner by way of last initial or seat selection. There is something more pointed and wrong about grading people based on a judgement about their personality, something that gets to the core of who they are as individuals. However, despite this seeming more wrong in some sense, this is still not wrongful discrimination, unless it turns out that “annoying-ness” is a stand in for something else. If it just so happens that only female students end up in the category of “annoying” or that only queer students occupy this space, then it seems that the professor is indirectly discriminating against a group by using “annoying-ness” as a stand in or proxy. But, in this most pure instance of this

scenario where a professor ranks students based on “annoying-ness” alone, something very wrong has occurred but once again in a more institutional and duty-based sense. Part of being an instructor and working with students means putting aside personal differences to assess the merit of work and the amount of effort students put into the class in an unbiased and fair manner. When the professor ranks their students based on something outside of the criteria for the course, they insert their personal judgement somewhere improperly. This means that the grading scheme of the class becomes unfair and unequal, so a wrong has occurred. Further, this wrong may impact student autonomy in terms of access to resources, options, and opportunities. But this simply is *not* wrongful discrimination for three reasons. First, annoying-ness does not link to a historical or present category marked for oppression or subordination. Second, there is no clear way to practically map a trait like “annoying-ness” onto current legal understandings of wrongful discrimination. Although this thesis does not aim to *merely* mirror legal conceptions of wrongful discrimination, lining up does matter when it comes to thinking about prohibited grounds and what traits have been historically or presently disadvantaged. Third, and more importantly, it seems extremely difficult to prove a case of wrongful discrimination based on the trait of “annoying-ness.” The bar is too high here—it seems like any student graded poorly could reach for this justification if it was considered like a prohibited ground. Many students may *feel* that they received a bad grade because “my instructor does not like me,” but proving this based on a nearly untraceable and hard to pin down trait seems overly complicated. In comparison, it can be straightforward to spot wrongful discrimination on the basis of a more solid and identifiable trait like sexuality,

race, or gender. In short, it seems that this case is *more wrong* than the previous two cases, but still not wrongful discrimination since the trait lacks connection to systems of oppression and is untraceable in some sense, despite being connected to personality and one's identity. Labelling this as a wrong worse than one based on a more arbitrary measurement means that this thesis acknowledges that outside of the class of wrongful discrimination, there are *different levels* of wrongs involving differential treatment and infringements on autonomy. In some cases, like the one described above, the wrong is a *serious moral wrong* when it connects to one's identity and personhood, but this level of wrong still does not push the act into the realm of wrongful discrimination.<sup>138</sup>

## **2.2: Infringement With Discrimination**

Now that we have a clear picture and examples of how an infringement can occur *without* discrimination, the following subsection will illustrate a typical case of when an infringement becomes discrimination due to a connection to a *loaded trait*. To think clearly about when an infringement becomes wrongful discrimination, let us return to the two previous examples in an altered format, preserving the context of the infringement but changing what factors determine candidate selection and grading.

*CASE D: Candidate Selection by Race.* First, imagine an alternate case where a hiring manager offers up interview slots by sorting the candidates by race (the job posting requires a headshot along with a resume and cover letter) and prefers white candidates. Only ten white candidates end up getting interviews. The hiring manager continues to

---

<sup>138</sup> As a final note, it is worth mentioning the ever-shifting nature of prohibited grounds. It may be the case that something that at one point is considered a serious moral wrong outside the realm of wrongful discrimination could one day be considered wrongful discrimination through inclusion as a prohibited ground.

ignore content and qualifications once the interviews begin—to select the final five candidates offered jobs, the hiring manager sorts the candidates again, this time by light hair colour and fair skin tone, to offer positions. In the end, candidates benefit if they are white and happen to have lighter skin and hair—no other considerations are in the mind of the hiring manager when offering both interviews and actual positions.

*CASE E: Grading by Religious Affiliation.* Next, imagine an alternate case where a professor assigns final paper grades based on the religious affiliation of their undergraduate students. At the start of the course, the professor circulates a welcome survey that includes some “get to know you” style questions. Amongst these questions are things like “what are you most excited about in this course?” and “do you have any concerns about assignments and course structure?” However, the professor also asks some more personal questions, such as, “do you have any cultural, spiritual, or religious views that might influence how you engage with the philosophical work in this course?” This question is asked in a way that *could* make students assume that the professor simply wants to know what kinds of attitudes and beliefs are in the classroom. If used properly, this information could help the professor conduct and facilitate conversations involving contentious topics or understand contributions made by students. However, the professor decides to use this information in the wrong sort of way—while grading final papers, the professor returns to this question on the welcome survey and sorts each student by religious affiliation or lack thereof. Students who are religious receive a grade of B- on the paper, and students who are not religious receive a grade of A-. Ultimately, the professor has no need to read the papers since it was already made clear that no comments

would be provided: the final paper was a stand-in for a final exam, meaning the grading would be too condensed at the end of the term for the professor to provide written feedback.

Despite the fact that the context and some details are preserved in these cases, they seem incredibly different from cases A, B, and C from the previous subsection. There still seems to be an element of arbitrariness and randomness here—individuals are differentiated from one another based on traits that lack any connection to merit or the tasks at hand. However, something beyond arbitrariness and randomness is occurring here. Sorting based on race and religion is far more wrongful and targeted than sorting based on initials and seat selection. Sorting based on race and religion and creating a hierarchy in terms of benefits and outcomes involves making judgements and decisions that connect to and reinforce existing systems of power and hierarchies of oppression. All four cases involve considerations that simply should not factor in—job candidates should be selected based on merit, experience, and institutional fit, and students should receive final paper grades based on the quality of the work submitted. But there is something *wrongful* about when these extra considerations that are outside of the scope of what *should* be considered happen to disadvantage individuals who are already, as Hellman puts it, within a *web* of discriminatory circumstances. Individuals who are disadvantaged by existing hierarchies and power systems are more likely to face discriminatory attitudes and actions in various spheres of their lives. This is the kind of wrong this thesis is concerned with—the sort of wrong that involves differentiation and discrimination on the

basis of traits that disadvantage individuals more generally—and not the kind of wrong that only involves seemingly random and arbitrary (although often unfair) measures.

### **2.3: Why Look to Larger Systems?**

Throughout this thesis, I have repeatedly advocated for a victim-centered approach when it comes to examining acts of wrongful discrimination. An account centered on autonomy must consider the lived experience of the autonomous agent to get at the act of wrongful discrimination. If this is the case, one might wonder why we should look towards larger systems and hierarchies of oppression to fill out the picture. If the account is victim-centric, why do we need to look to larger systems?

There are two connected answers to this question. First, looking to larger systems can help correct any discrepancies when it comes to individual judgements and attitudes. As mentioned before in this thesis, it is important to avoid an account that is so victim-centric that acts become wrongful discrimination only because a certain individual *feels* that they experienced wrongful discrimination. Due to this worry about over-inclusivity, an account should have an external way to test and sort acts—one that focuses on lived experience and victim testimony but also looks outside individual matters. Second, looking to larger systems allows for an account that is sensitive to how wrongful discrimination is the kind of act that exists within and is reinforced by hierarchies informed by prejudices and injustice. Wrongful discrimination does not exist in a vacuum and instead relates to judgements made by individuals who hold prejudicial beliefs that lead to acts of differentiation based on traits. Without referring to larger systems, this social fact is unclear. By thinking about *loaded traits*, this account can identify how we



are concerned with the kind of differentiating that becomes wrongful discrimination by way of connection to systems of oppression. Further, this account can easily rule out the kind of arbitrary or unfair treatment that cannot be rightly called wrongful discrimination, as illustrated in the first two examples of the four provided in the previous subsection.

### **3.0: Types of Discrimination**

Before we consider several concrete cases from Canadian legal history in the following chapter, briefly commenting on how this idea of wrongful discrimination connecting to *loaded traits* maps onto direct and indirect discrimination will help situate the comments made in this chapter. In the following two subsections, the goal is to get clear on how loaded traits function in the two most common forms of wrongful discrimination.

*Direct Discrimination.* As explored in the first chapter of this thesis, wrongful discrimination appears in multiple ways—one essential distinction is between direct and indirect discrimination.<sup>139</sup> Direct discrimination is straightforward, comprising the central set of cases of wrongful discrimination. In cases of direct discrimination, an individual or group is treated differently on the basis of a trait. Mapping the use of loaded traits to cases of direct discrimination just involves thinking about how a trait that is used for differential treatment maps onto existing hierarchies and social prejudices. In a case of direct discrimination, a group is treated differently on the basis of a trait which links up with historical or present systems of oppression. Cases involving differential treatment on

---

<sup>139</sup> Respectively called disparate treatment and disparate impact in the American legal context.

traits outside the scope of this, such as the examples used above, contrast by being arbitrary or unfair, but not wrongful discrimination.

*Indirect Discrimination.* Indirect discrimination occurs when a practice or policy discriminates against a person or group in a far more subtle and seemingly neutral manner. As exemplified in Chapter One, the 1990 Royal Canadian Mounted Police (RCMP) uniform policy showcases this kind of discrimination in action.<sup>140</sup>

Baltej Singh Dhillon met the requirements for entry into the RCMP in 1998, but the dress code required a clean-shaven face and banned head covering—since members were expected to wear the traditional Stetson. As a practicing Sikh, Dhillon could not meet either of these requirements. This policy disadvantaged individuals like Dhillon, but in a more roundabout way. The RCMP's stated goal was to have members wear a specified uniform. Still, without due consideration for how this goal impacted individuals of a specific faith, this policy was discriminatory in an indirect sense.

Indirectly discriminatory policies often impact individuals as a *side effect* of a larger goal due to a failure to recognize how *seemingly* neutral policies can be discriminatory in practice. Here, tying in the use of loaded traits has to be done in a more roundabout manner, given the seemingly neutral stance of acts of indirect discrimination. In the example outlined above, we must examine how requirements about dress and presentation end up targeting *faith*, even though this may be a side effect. In cases of indirect discrimination that are wrongful, policies or actions target individuals or groups that hold a loaded trait, albeit not in a straightforward way.

## Conclusion

In this chapter, I have described how acts of differentiation become wrongful

---

<sup>140</sup> “Baltej Dhillon Case” *The Canadian Encyclopedia*, 2019, <https://www.thecanadianencyclopedia.ca/en/article/baltej-dhillon-case>.

discrimination when they link up to *loaded* traits. I have now fully laid out an account of wrongful discrimination. For the sake of clarity, here are the different elements that come together to establish this account:

1. Wrongful discrimination involves specific infringements (1. limitations on the ability to plan, 2. restrictions on access to resources, options, and opportunities, 3. constraints on the projection of an agent's outward and 4. inward sense of self),
2. That fall along historical or current systems of oppression and subordination,
3. And impact the victim's autonomy (thought of in a social manner, comprised of 1. desire identification, 2. critical and reflective abilities, 3. value formation, 4. access to options, and 5. two senses of self).

With the three major pieces of this account laid out, the next and final chapter of this thesis puts the theory to the test by applying this framework to fifteen concrete cases of wrongful discrimination from Canadian case law.

## Chapter Five Notes

“Baltej Dhillon Case” *The Canadian Encyclopedia*. 2019.

<https://www.thecanadianencyclopedia.ca/en/article/baltej-dhillon-case>.

Hellman, Deborah. “Demeaning and Wrongful Discrimination” in *When is Discrimination Wrong?* Massachusetts: First Harvard University Press, 2008.

## Chapter Six: Theory in Action

In this final chapter, the goal is to examine how the theory of discrimination developed throughout this thesis handles concrete cases. To achieve this goal, the chapter uses the theory developed in this thesis to analyze fifteen concrete cases of wrongful discrimination from Canadian case law. The test at hand, to show the theory in action, involves examining how clearly each concrete case of wrongful discrimination can be described using the framework developed in this thesis. The goal, however, is not to illustrate coherence between the theory developed in this thesis and Canadian legal decisions. Rather than comparing the legal outcome in each case, the concrete details of each case provide an opportunity to test the theory outside the realm of hypotheticals or examples. Further, this chapter aims to showcase how this theory has practical importance. Given how the framework developed in this thesis can handle concrete legal histories, there is potential for use by legislators and legal professionals. In particular, this framework can help identify unique victim impact, providing a sort of practical test that can apply to concrete case histories. In each section, I will outline the basic facts of a case before examining how each case involves (1) a specific kind of infringement on (2) a social concept of autonomy, before turning to inspect how this infringement links up to (3) current or historical lines of oppression. To be properly called *wrongful* discrimination, as delineated in the previous chapter, an infringement on social autonomy must connect to a *loaded trait*. As a reminder, here again is the chart from Chapter Four, which details how infringements impact different components of the brand of social autonomy outlined in this thesis for easy recall.

Infringement	Corresponding Component(s)
<p><i>Limitations on the ability to plan:</i> An agent cannot conduct their life according to their values, desires, and goals—in short, their aspirations for a realized life plan.</p>	<p><i>Desire Identification:</i> an agent identifies with their lower-order desires and can critically reflect and fulfill their higher-order desires. Additionally, an agent can evaluate and amend their motivations to act.</p> <p><i>Critical and Reflective Abilities:</i> factors surrounding an agent promote critical and reflective abilities rather than diminishing them.</p> <p><i>Value Formation:</i> the desires and values an agent holds, when examined, result from the skills outlined in (2) and are formed under conditions without substantial and reoccurring infringement, coercion, or control by other parties.</p>
<p><i>Restrictions on access to resources, options, and opportunities:</i> An agent is unable to access ends (namely resources and opportunities) or pursue various options due to control, manipulation, or barriers.</p>	<p><i>Access to Options:</i> an agent has a range of <i>real</i> options available to them.</p>
<p><i>Constraints on the projection of an agent's outward sense of self:</i> An agent loses control of the ability to project their self into the world in a way that aligns with their values, desires, and goals. Of course, no one can have complete control over how others perceive them. However, this becomes infringement when one is barred from expressing their personhood severely and persistently.</p>	<p><i>Two Senses of Self:</i> an agent has <i>reasonable</i> control over their <u>outward</u> sense of self; they can choose how they want to project themselves into the world without <i>undue</i> infringement and assumption by others.</p>

<p><i>Damage to an agent's inward sense of self:</i> An agent experiences internal degradation of the self, generally from cases of stereotyping, hate speech, or oppressive environments. Again, no one can be utterly free from external influence on internal selfhood, but we all should be afforded the opportunity to exist in environments that promote self-respect.</p>	<p><i>Two Senses of Self:</i> an agent is free from <i>serious</i> damage to their <u>inward</u> sense of self, including harm to their self-respect and self-image.</p>

For reasons of continuity, this chapter begins by returning to the three landmark cases of wrongful discrimination explored at the very start of this thesis: *Vriend*, *Andrews*, and *Brooks*. When it comes to all three of these cases, the analysis in this chapter goes beyond the facts of the case and legal analysis offered in Chapter One of this thesis. For *Vriend*, *Andrews*, and *Brooks* this chapter will add to the analysis by examining the specific impact of wrongful discrimination on each victim—something that goes beyond what was offered in Chapter One. The pure legal analysis from the start of this thesis focuses more heavily on connection to prohibited grounds and denials of opportunity and resources, whereas this chapter looks at how infringements impact victims. After examining these three familiar cases, the chapter turns to account for several other central cases. By the end of the chapter, it is clear how the framework developed in this thesis should be practically employed. Rather than spending a significant portion of the chapter describing the legal outcomes of each of these central cases, the chapter focuses more heavily on describing the initial *act* of wrongful discrimination in each case. The practical outcome of a given case will only be outlined if

it helps fill out the details of why a certain scenario should properly be called wrongful discrimination. For example, in landmark cases involving the acknowledgement of a new or novel ground, the court findings will be helpful.

### **1.1: *Vriend v. Alberta***

*Facts of the Case.* In this landmark Canadian Supreme Court case, the appellant, *Vriend*, was dismissed from his college position in Alberta due to his sexual orientation. *Vriend*, who was employed at the college starting in 1988, disclosed to the president of the college that he was homosexual in 1991.<sup>141</sup> Up until his disclosure, *Vriend* received positive evaluations, salary increases, and promotions, indicating a strong overall record of employment. After this disclosure, the college adopted an anti-homosexual position and requested *Vriend's* resignation. *Vriend* declined to resign, so the college terminated his employment. The *only* reason for his termination was that he had not complied with the college's anti-homosexual policy. When *Vriend* initially filed a complaint with the Alberta Human Rights Commission, it was dismissed. The Court of Queen's Bench found, however, that dismissal based solely on the grounds of sexual orientation violated the Canadian Charter. The Supreme Court of Canada agreed during an appeal.

*Analysis.* This case presents a straightforward case of direct discrimination—*Vriend* was dismissed from employment based on a characteristic unrelated to his duties, merit, or fit for the position. Here, we can see how an act of differentiation between homosexual employees like *Vriend* and heterosexual employees led to a groundless

---

<sup>141</sup> Original wording from Chapter One preserved for the facts of this case.



dismissal.<sup>142</sup> As noted earlier, *Vriend's* employment record was positive before his disclosure, and his dismissal was *solely* based on sexual orientation. The wrong here is that *Vriend's* sexuality impacted his employment in an unfair and unjustified manner. Given the straightforward nature of this case of wrongful discrimination, the account developed in this thesis applies neatly. In this case, *Vriend* suffered two types of infringements on autonomy. First, *Vriend's* limitation on the ability to plan was negatively impacted by his employers—he was unable to conduct his life according to his desires and goals due to his sexual orientation being held against him. Second, *Vriend* was restricted when it came to options and opportunities: his ability to continue his employment was cut short in this case, curtailing his access. Given that this case involved *Vriend's* access to employment being removed, it is not immediately clear if this case neatly impacted his two senses of self, given that he was taken out of the environment that could have eroded this part of his autonomy. As a result of these infringements, *Vriend's* autonomy is impacted, in particular when it comes to his ability to fulfill his higher-order desires related to employment and his life plan (an aspect of desire identification) and access a range of *real* options. Finally, this case is a straightforward case of direct, and wrongful discrimination given how it connects to historical and current systems of oppression and subordination—queer individuals have long been disadvantaged and singled out because of their sexuality in the realm of formal employment. Given all of this, *Vriend v. Alberta* presents as a standard and central case of wrongful discrimination under this theory.

---

<sup>142</sup> *Vriend v. Alberta*, [1998] 1 S.C.R. 493 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1607/index.do>

## 1.2: *Andrews v. Law Society of British Columbia*

*Facts of the Case.* In 1989, section 42 of the *Barristers and Solicitors Act* stated that Canadian citizenship was a provincial bar requirement to practice law in British Columbia. Mark *Andrews*, a British lawyer, argued that this citizenship requirement violated his Charter-based right to equality since he met all other merit-based standards.<sup>143</sup> The British Columbia Supreme Court initially dismissed the case, stating that this requirement did not constitute a denial of equality. The case moved to the Canadian Supreme Court, where the court stated that,

Discrimination is a distinction which, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, has an effect which imposes disadvantages not imposed upon others or which withholds or limits access to advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed.<sup>144</sup>

Given this definition of discrimination, two questions had to be answered. First, the court had to determine “whether or not an infringement of a guaranteed right has occurred.”<sup>145</sup> If so, the court had to examine if this infringement could be justified under s. 1 of the Charter, which holds that rights are guaranteed only under reasonable limits. The court acknowledged that the present list of prohibited grounds was not exhaustive; wrongful discrimination on some currently unnoted grounds is never out of the question. Given the ever-shifting nature of prohibited grounds, the court held that “a rule which bars an entire class of persons from certain forms of employment, solely on the grounds of a lack of

---

<sup>143</sup> Original wording from Chapter One preserved for the facts of this case.

<sup>144</sup> *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/407/index.do>

<sup>145</sup> *Ibid.*

citizenship status and without consideration of educational and professional qualifications or other attributes or merits of the individual or the group infringes s. 15 equality rights.”<sup>146</sup> Generally, because citizenship is both out of the control of individuals and usually unrelated to job performance, the admission requirement for the British Columbia bar was a form of indirect discrimination. In short, in this case, the “wrong” was that *Andrews* and other non-Canadian citizens were barred from employment based on a trait unrelated to merit or job performance. Non-Canadian citizens were subject to wrongful discrimination on the grounds of something out of their control.<sup>147</sup>

*Analysis.* As noted in the facts of this case, *Andrews* was subject to a sort of indirect discrimination that was out of his control. Regarding the framework presented in this thesis, *Andrews* suffers two infringements on his autonomy when it comes to his ability to plan (in the context of employment, a realm that greatly influences one’s broader life prospects) and his access to resources, options, and opportunities (once again, when this crops up in the context of employment, one can find themselves severely restricted in access). In turn, these infringements impact *Andrews*’ desire identification—due to the impact on his autonomy, *Andrews* will be unable to fulfill higher-order desires, in particular, due to discriminatory barriers. This case does present an interesting level of analysis when it comes to thinking through how citizenship falls along lines of historical

---

<sup>146</sup> Ibid.

<sup>147</sup> Some might wonder about classifying *citizenship* as the kind of trait that one cannot control. In some sense, we can see that citizenship is very much under the control of an individual given that someone can apply for it and proceed through standard steps to become a citizen. Of course, no one can control where they are born but many people can control where they work and live in their adult years. In this sense, the *Andrews* case may feel considerably different compared to the *Vriend* and *Brooks* cases, which seem to contain *fully* uncontrollable and natural traits. Citizenship as the grounds for discrimination will be explored further in Chapter Six: Theory in Action.

or present systems of oppression. As a British lawyer, *Andrews* would certainly be at an advantage in some areas and in some contexts due to his race. However, in the context of Canadian law, non-Canadian citizenship does disadvantage individuals in a systemic manner. In Canada, non-citizens have been subject to poor treatment and disadvantage both historically and presently. What is unique about this case is that *Andrews* can only make this sort of claim in a context where he is labelled as a non-citizen. Another interesting part of this case is how little impact it has on his two senses of self. The policy says nothing *degrading* or *demeaning* about non-citizens but excludes them in a wholesale manner on the basis of prioritizing Canadian lawyers. This factor explains why this case can so easily be called indirect discrimination.<sup>148</sup>

### **1.3: *Brooks v. Canada Safeway Ltd.***

*Facts of the Case.* The employee insurance plan used by Canada Safeway, a supermarket chain, stated that employees would not receive general health benefits in the seventeen-week period around pregnancy.<sup>149</sup> In the case of an accident or sickness unrelated to pregnancy, these employees would be without insurance. In 1982, three employees (Susan *Brooks*, Patricia Dixon, and Patricia Allen) argued that this treatment was an instance of sex discrimination; employees who were able to bear children were subjected to unequal treatment. *Brooks*, Dixon, and Allen ultimately connected their treatment during pregnancy to sex, now described in the *Manitoba Human Rights Code* as

---

<sup>148</sup> Given the highly indirect nature of this policy, one might not be convinced about this case being wrongful discrimination. To clearly see this case as wrongful discrimination, on the account developed in this thesis, it is worth emphasizing the historical treatment of non-citizens within a state.

<sup>149</sup> Original wording from Chapter One preserved for the facts of this case.

an applicable characteristic:<sup>150</sup> “sex, including sex-determined characteristics or circumstances, such as pregnancy, the possibility of pregnancy, or circumstances related to pregnancy.”<sup>151</sup> All three employees suffered from ailments unrelated to childbearing during the period when their insurance plans only covered pregnancy-related benefits. The court concluded that “pregnant employees receive significantly less favourable treatment under the plan than other employees. The plan singles out pregnancy for disadvantageous treatment, in comparison with any other health reason which may prevent an employee from reporting to work.”<sup>152</sup> In this case, the characteristic of being pregnant acted as a proxy that disadvantaged a set of three female employees. Disadvantageous treatment, in the form of wrongful discrimination, followed from a trait unrelated to the nature of the employment or the insurance policy itself.<sup>153</sup>

*Analysis.* This case presents another straightforward instance of indirect discrimination where pregnancy acted as a proxy for sex, specifically disadvantaging a set of women. This treatment primarily attaches to the infringement related to restrictions on access to resources, options, and opportunities. In this case, women were barred from accessing general health benefits during pregnancy. This barrier involves a linkage that occurred in an *almost* accidental (but very apparent) manner—people who can become pregnant end up having fewer options and are subject to unequal and unfair treatment because of this proxy trait. This case is a clear instance of wrongful discrimination because

---

<sup>150</sup> An “applicable characteristic” is a similar term to “prohibited ground,” used in the context of Ontario and Canadian code.

<sup>151</sup> *Manitoba Human Rights Code*, C.C.S.M. c. H175 (2023).

<sup>152</sup> *Brooks v. Canada Safeway Ltd.*, [1989] 1 S.C.R. 1219 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/455/index.do>

<sup>153</sup> *Ibid.*

the linkage singles out a group of people who have been disadvantaged historically, especially in the context of healthcare and employment. Women, and other marginalized individuals outside of the category of women who biologically can become pregnant, lose out on access to important health coverage just because of this trait being held negatively against them.

#### 1.4: *M v. H*

*Facts of the Case.* *M.* and *H.* were two women in a relationship who also jointly owned a business and property (one primary home, one business property, and one vacation home).<sup>154</sup> Although their business was initially successful, a “dramatic downturn” in the late 1980s put the couple in debt and led to the deterioration of their relationship.<sup>155</sup> *M.* sought “an order for the partition and sale of the house and other relief” and amended the application to include a *spousal* claim.<sup>156</sup> However, the definition of “spouse” at the time of this application was “a person who is actually married” or “either of a man and woman who are not married to each other and have cohabited continuously for a period of not less than three years.”<sup>157</sup> Cohabitation included living together *outside* of marriage, a detail important to *M*’s claim. However, the wording of “a man and woman” regarding cohabitation barred same-sex couples from consideration for spousal support in housing-related claims.

*Analysis.* This case includes three clear infringements that impact both *M* and *H* when it comes to the definition of “spouse” and the treatment of same-sex couples in the

---

<sup>154</sup> *M. v. H.*, [1999] 2 S.C.R. 3 <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1702/index.do>

<sup>155</sup> *Ibid.*

<sup>156</sup> *Ibid.*

<sup>157</sup> *Ibid.*

realm of housing-related claims. First, it is clear that *M* and *H* are subject to limitations on their ability to plan—the state definition of spouse has made it so they cannot conduct their life according to their desires and rights (namely for stability, support, and financial recovery). Second, *M* and *H* have restrictions on their access to resources, options, and opportunities—they are unable to access benefits that normally follow from cohabitation in an unequal manner because of the definition of “spouse,” in comparison with those who fit the standard definition which includes a “man and woman who are not married to each other and have cohabitated continuously for a period of not less than three years.” Finally, all of this impacts their sense of self, but I argue only in an inward sense. *M* and *H*’s inability to access cohabitation benefits does not necessarily impact how they can project themselves outwardly—the two can still continue to live together and project their identity out into the world. However, the definition of “spouse” likely has an impact (how much is a personal question that only *M* and *H* could quantify) on their inward sense of self. When the state itself excludes *certain* types of people and relationships from definitions like “spouse,” this can impact how one feels about the validity of their sexuality, relationship, and partners. By forwarding definitions like this, the state, in a sense, limits what *counts* as marriage, cohabitation, and a spouse. This, in turn, can impact one’s self-respect and self-image—if the state and society at large devalue certain ways of life, this can damage one’s inward sense of self. To tie in the final piece of this framework, this case is clearly wrongful discrimination because queer individuals, and queer couples, have routinely been forced to consider their sexuality and relationships as a cost when it comes to how the state considers them. *M* and *H* were subject to an all-too-

common type of wrongful discrimination that fell along the lines of both the historical and present oppression of the queer population by the state.

### **1.5: *R. v. Keegstra***

*The Facts of the Case.* The accused, Mr. James *Keegstra*, was dismissed from his job as a high school teacher in Alberta in 1982 for “unlawfully promoting hatred against an identifiable group by communicating anti-semitic statements to his students.”<sup>158</sup> In particular, Mr. *Keegstra* “attributed various evil qualities to Jews” and promoted falsehoods about the Holocaust.<sup>159</sup> Further, these “teachings” impacted student success—if students did not “reproduce his teachings in class and on exams” their grades were impacted.<sup>160</sup> The Supreme Court found that the promotion of hatred was not guaranteed by any reference to freedom of speech or freedom of expression.<sup>161</sup> In particular, because “breeding hate is detrimental to society for psychological and social reasons and that it can easily create hostility and aggression which leads to violence.”<sup>162</sup> Restrictions on hate speech exist as a “rational means of preventing real and serious damage to both individuals and society generally” and can be enacted in a way that has “a very minimal effect on the over-all right of freedom of expression.”<sup>163</sup>

---

<sup>158</sup> *R. v. Keegstra*, [1990] 3 S.C.R. 697 <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/695/index.do>

<sup>159</sup> *Ibid.*

<sup>160</sup> *Ibid.*

<sup>161</sup> It is worth noting that this case moved through three courts before coming to the Supreme Court decision described here. This progression is left out of the discussion here as it does little to add to the context needed to apply the theory of wrongful discrimination developed in this thesis. What matters here is that hate speech cannot be allowed under the guise of free speech. Further, it is important to note the way in which Keegstra’s actions are a type of direct group discrimination. For more details on the legal proceedings of *R. v. Keegstra*, see the full decision here: <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/695/index.do>

<sup>162</sup> *Ibid.*

<sup>163</sup> *Ibid.*



*Analysis.* As noted by the court in this case, the promotion of hatred is not covered by freedom of speech or expression. In this case, *Keegstra* is infringed upon in the sense that he cannot conduct his life according to his (antisemitic) values, and he loses out in the realm of employment, which impacts his ability to plan. These infringements do impact his autonomy in a certain sense—he cannot conduct his life following his desires. However, this is not a case of employment discrimination under the account forwarded in this thesis for two reasons. First, *Keegstra*’s dismissal is not related to certain traits he holds, rather, his dismissal is related to his promotion of hate speech that *targets* certain traits.<sup>164</sup> Second, as already noted, hate speech is not protected and is instead restricted, meaning that *Keegstra* cannot claim that his dismissal was related to a fair expression. All of this means that *Keegstra* cannot make a claim that his case is wrongful discrimination—it lacks a connection to a loaded trait, despite how he might *feel* like his autonomy has been infringed upon in some sense.

#### **1.6: *Singh v. Security and Investigation Services Limited***

*Facts of the Case.* This case concerns “discrimination in employment” because of creed.<sup>165</sup> The complainant, Mr. Ishar *Singh*, was a practicing Sikh who was born in India but had been living in Canada for six years. Mr. *Singh* was a Sikh minister, “registered with the government of Ontario to celebrate marriages, has studied the Sikh religion in school and through the temples he has attended, and is permitted to conduct religious

---

<sup>164</sup> This is not to say that if *Keegstra* held these traits, or other historical or presently loaded traits, that he would get some sort of pass for hate speech. Of course, members of oppressed groups can wrongfully discriminate.

<sup>165</sup> *Singh v. Security and Investigation Services Limited*, [1977] BOI 79  
[https://archive.org/stream/boi079/boi079\\_djvu.txt](https://archive.org/stream/boi079/boi079_djvu.txt)

services.”<sup>166</sup> Mr. *Singh* was called in for an interview after responding to a newspaper advertisement for a job at Security and Investigation Services Limited (Security). Mr. *Singh* had immediate worries while reading through the application materials, given that he was three inches too short for a 5’5 height requirement. However, at the interview, this worry was dismissed and instead replaced by a different concern—“the policy of Security was to only hire clean-shaven persons, and those who could comply with the uniform requirement, which necessitated the wearing of a hat.”<sup>167</sup> Given Mr. *Singh*’s creed, shaving, cutting his hair, or removing his hat was not possible. The company remained firm on the policies, leading Mr. *Singh* to file a complaint, alleging that he was discriminated against on the basis of creed for a matter of employment. The investigation conducted by the Human Rights Commission revealed that the company had no explicit screening of applicants based on creed. However, unlike the height requirement, which was routinely waived, the dress code-related requirements were firm. The company argued that dress code-related requirements exist for reasons of personal cleanliness, neatness, and to distinguish workers from the general public by way of an official uniform.<sup>168</sup> Given this justification, the sort of discrimination at play here is *indirect*, as discussed in the previous chapter. Although the dress code-related requirements aimed to target cleanliness, neatness, and professionalism, these requirements ended up targeting individuals on the basis of creed. The Human Rights Commission also found that comparable security businesses not only employed Sikh workers but also were able to

---

<sup>166</sup> Ibid.

<sup>167</sup> Ibid.

<sup>168</sup> Ibid.

waive dress-code-related requirements. For example, the son of the complainant described working at Alert Security in Toronto—“neither his employer nor anyone else questioned his use of a turban, his long hair, or the fact of his having a beard.”<sup>169</sup> Given that Mr. *Singh* has strong religious reasons not to alter his beard, long hair, or turban use, the Commission found that the requirements resulted in creed-based discrimination. The Commission held that “for the future Security is to make an exception, for Mr. *Singh* and for any other sincere, practising member of the Sikh faith who is a prospecting employee of Security, in respect to Security’s employment regulations of requiring all their guards to wear caps while on duty and to be clean-shaven.”<sup>170</sup> Ultimately, Security was required to accommodate creed-based concerns when it came to their dress code.

*Analysis.* This case presents a unique opportunity for analysis when it comes to the framework presented in this thesis because *Singh* is subject to infringements on his autonomy from *all* fronts. First, it is apparent that his autonomy is impacted in terms of being able to access employment, meaning that he faces limitations on his access to options and opportunities. Second, in a related sense, this lack of access to employment negatively impacts his ability to conduct himself according to his desires and life plan. In turn, all of this brings on the final impact on his two senses of self—the “reasons” behind the discriminatory dress code relate to standards around professionalism, grooming, and cleaning. Given this, one can see how *Singh* is both unable to project himself outward in a way that aligns with his faith (if he chooses to go against these standards, he faces

---

<sup>169</sup> Ibid.

<sup>170</sup> Ibid.

discrimination) and may be negatively impacted by a poor self-image given these restricted guidelines (he may be impacted by feeling as though these standards say something about someone of his faith and appearance). Overall, this case is straightforward in terms of identifying how it touches on every type of infringement on the social concept of autonomy. *Singh* is subject to a four-part infringement that impacts his ability to plan, access to options, and two senses of self. These infringements become wrongful discrimination since they relate to unequal and unfair treatment on the basis of belonging to a marginalized faith and following certain creed-based rules. Here, the dress-code policy discriminates in an indirect but very clear sense against individuals like Singh.

### **1.7: *Commission Scolaire Régionale de Chambly v. Bergevin***

*Facts of the Case.* Jewish teachers in Quebec in 1985 were permitted to take the day off to celebrate Yom Kippur, but had to do so without pay.<sup>171</sup> This lack of pay indicated that the school board was failing to fully accommodate and consider different religious holidays. In particular, it was clear that “the school calendar, although neutral on its face, had the effect of adversely discriminating against Jewish teachers,” given that other religious holy days were set in the calendar as official holidays.<sup>172</sup> Further, it was clear that accommodating Jewish teachers with pay on holy days was not a significant financial burden for the school board.<sup>173</sup>

---

<sup>171</sup> Commission scolaire régionale de Chambly v. Bergevin, [1994] 2 S.C.R. 525 <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1155/index.do>

<sup>172</sup> Ibid.

<sup>173</sup> Ibid.

*Analysis.* This case presents a case where individuals lose out on the ability to conduct their lives according to their religious values and are deprived of access to a resource (in this case, a paid day off to celebrate a religious holiday) in a way that presents as a double standard—other religious individuals can celebrate holidays without losing out financially. Here, autonomy is impacted in terms of both the ability to plan and access. As noted above in the facts of the case, although this policy may seem neutral at face value, a discriminatory practice takes place, given that other faiths are permitted to take time off with pay and are accommodated by the school board. This case is wrongful discrimination given that historically, Jewish holidays and observances have been deprioritized and not accommodated in the realm of employment, in particular.

### **1.8: *Eldridge v. British Columbia (Attorney General)***

*Facts of the Case.* The following case deals with discrimination on the basis of disability at the level of governmental funding. The three appellants in this case were all deaf and communicated using American Sign Language.<sup>174</sup> In the province in which they resided, British Columbia, hospital funding did not cover sign language interpretation for deaf patients.<sup>175</sup> The three appellants had previously accessed funding through a non-profit agency, the Western Institute for the Deaf and Hard of Hearing, until September 1990, when the service was discontinued due to a lack of available funds.<sup>176</sup> After this cancellation, the appellants found “that the absence of interpreters impairs their ability to communicate with their doctors and other health care providers, and thus increases the

---

<sup>174</sup> *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1552/index.do>

<sup>175</sup> *Ibid.*

<sup>176</sup> *Ibid.*

risk of misdiagnosis and ineffective treatment.”<sup>177</sup> Further, having to take on the burden of cost for every medical visit was simply not financially feasible for the appellants. Visits without an interpreter can be “very stressful and confusing” for deaf individuals due to a lack of proper communication.<sup>178</sup> The following description from two married deaf appellants puts the situation into concrete terms:

The other appellants, John and Linda Warren, see their doctor frequently. Although they had planned to hire an interpreter for the birth of their twin daughters, they were unable to procure one in time as the girls were born prematurely. Linda Warren testified that in the absence of an interpreter, the birth process was difficult to understand and frightening. During the birth, the nurse communicated to her through gestures that the heart rate of one of the babies had gone down. After the babies were born, they were immediately taken from her. Other than writing a note stating that they were “fine,” no one explained their condition to her.<sup>179</sup>

Beyond creating confusion on the receiving end, handwritten notes are described as time-consuming, impractical, and having “the potential to result in harm in some circumstances” by physicians.<sup>180</sup> This is compounded by the fact that the average deaf individual has a grade-three literacy level.<sup>181</sup> The government pointed out that many services are not covered for patients—examples include “clinical psychologists, occupational therapists, speech therapists, nutritional counsellors, and dentists.”<sup>182</sup>

*Analysis.* This case presents another instance where all four infringements on autonomy occur within a single scenario. The three appellants in this case face an impact on their ability to plan—without proper accommodation and services, the appellants

---

<sup>177</sup> Ibid.

<sup>178</sup> Ibid.

<sup>179</sup> Ibid.

<sup>180</sup> Ibid.

<sup>181</sup> Ibid.

<sup>182</sup> Ibid.

cannot conduct themselves in a way that aligns with their goals in the setting of the hospital. This inability to pursue goals and one's life plan is serious here, as noted above, an inability to properly communicate with the hospital and medical staff increases the risk of misdiagnosis and ineffective treatment for the appellants. Second, the lack of support for deaf individuals represents a central case of a group facing restrictions on access to resources, options, and opportunities. Once again, this infringement relates back to a lack of accommodation in the medical setting. Finally, this lack of accommodation has a strong impact on two senses of self. The ability to communicate and have one's needs heard is an integral part of projecting one's outward self into the world. The self is socially situated, meaning that part of projecting it *outwards* involves being able to make contact and communicate with others. Without this ability, appellants in this case suffer when it comes to the projection of their outward sense of self. In turn, the attitude of non-accommodation in this case can impact one's inward sense of self. One can begin to consider oneself a burden or annoyance in light of not being accommodated properly. In contrast, being accommodated properly can generate better self-image and self-respect. All of these infringements become wrongful discrimination given how historically, and presently, disability has been linked to overarching systems of oppression and domination.

### **1.9: *R. v. Kapp***

*Facts of the Case.* This case has helpful details regarding special group status and claims of "reverse" discrimination on the basis of race. The federal government of Canada permitted three Aboriginal bands to fish for salmon in the Fraser River during an

exclusive 24-hour period.<sup>183</sup> Several non-Indigenous fishers engaged in a “protest fishery” and were charged with fishing during this designated period.<sup>184</sup> During the trial, the group of fishers “argued that the communal fishing licence discriminated against them on the basis of race.”<sup>185</sup> Important for the proceeding analysis is the following statement made by the Supreme Court of Canada:

A distinction based on an enumerated or analogous ground in a government program will not constitute discrimination under s. 15 if, under s. 15(2): (1) the program has an ameliorative or remedial purpose; and (2) the program targets a disadvantaged group identified by the enumerated or analogous grounds. Given the language of the provision and its purpose, legislative goal is the paramount consideration in determining whether or not a program qualifies for s. 15(2) protection. The program’s ameliorative purpose need not be its sole object.

Here, the court clarifies that a program with *an ameliorative or remedial purpose* that targets a *disadvantaged group* cannot be properly classified as discriminatory. Rather than being the basis for discrimination, a program which has an ameliorative or remedial target can “pro-actively combat discrimination” in a specific group.<sup>186</sup>

*Analysis.* Although this case contains two infringements on autonomy to the non-Indigenous fishers, this is not a case of wrongful discrimination on the basis of race. Arguably, non-Indigenous fishers are subject to two types of infringements: because of the exclusive fishing period, these fishers face limitations on their ability to plan and access resources, options, and opportunities. The exclusive fishing period restrains their actions and contradicts their desires. However, it is not the case, as the fishers attempted

---

<sup>183</sup> R. v. Kapp, [2008] 2 S.C.R. 483, 2008 SCC 41 <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/5696/index.do>

<sup>184</sup> Ibid.

<sup>185</sup> Ibid.

<sup>186</sup> Ibid.



to argue, that this policy is a case of wrongful discrimination on the basis of race. On the account forwarded in this thesis, the infringements outlined just above cannot be wrongful discrimination because non-Indigenous fishers do not constitute a group that has faced systemic and hierarchical oppression either historically or presently. Rather, this policy is one that “pro-actively” combats the discrimination and disadvantage of Indigenous fishers. This kind of policy does not seem to aim at disadvantaging non-Indigenous fishers at face value and only limits them in service of bolstering another group to create equality and fairness. For this reason, although the fishers may *feel* disadvantaged, they really are feeling the effects of a sort of balancing of the scales, which corrects for the way in which Indigenous people and communities exist in a web of discriminatory practices and policies that disadvantage them in all areas of life. Such a policy aims to fix this web, albeit in just one small context. So, although white fishers may feel wronged in some sense by the seemingly negative impact of this policy, what they are feeling is not wrongful discrimination.<sup>187</sup>

**1.10: *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)***

*Facts of the Case.* The appellants, owners of *Little Sisters Book and Art Emporium*, found that their inventory faced increased scrutiny from customs officials at the Canadian border. The bookstore “carried a specialized inventory catering to the gay and lesbian community which consisted largely of books that included gay and lesbian literature, travel information, general interest periodicals, academic studies related to

---

<sup>187</sup> As discussed in previous chapters, it can be the case that a group or individual experiences some sort of negative impact without that being wrongful discrimination. Not every infringement on autonomy is wrongful discrimination and not every loss of opportunity is wrongful discrimination. Rather, these can be negative circumstances unrelated to the class of acts that we call wrongful discrimination.

homosexuality, AIDS/HIV safe-sex advisory material and gay and lesbian erotica.”<sup>188</sup>

Canadian Custom officers could seize erotica deemed to be “obscene” at the border. The trial judge found that customs officers had “wrongly delayed, confiscated, destroyed, damaged, prohibited, or misclassified” stock imported by Little Sisters to the point of there being “systemic targeting” of the store’s imports.<sup>189</sup> Two important findings are worth laying out before analysis. First, the court found that:

On a more general level, there was no evidence that homosexual erotica is proportionately more likely to be obscene than heterosexual erotica. It therefore cannot be said that there was any legitimate correspondence between the ground of alleged discrimination (sexual orientation) and the reality of the appellants’ circumstances (importers of books and other publications including, but by no means limited to, gay and lesbian erotica).<sup>190</sup>

Second, the court held that the adverse treatment of their stock by border officers “violated their legitimate sense of self-worth and human dignity,” given the “high-handed and dismissive” nature of the treatment of imports.<sup>191</sup>

*Analysis.* This case is another instance where all four types of infringements occur for the owners of *Little Sisters*. In the realm of the workplace, as owners, the appellants cannot conduct their lives in service of their aspirations of a life plan and face restrictions when it comes to the success of their business. Unlike some of the other cases examined in this chapter in the realm of the workplace, though, this case also has an impact on two senses of self, given the label of “obscene” applied to material seized at the border. This labelling by customs officers signals that queer erotica is somehow more dangerous that

---

<sup>188</sup> *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] 2 S.C.R. 1120  
<https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1835/index.do>

<sup>189</sup> *Ibid.*

<sup>190</sup> *Ibid.*

<sup>191</sup> *Ibid.*

heterosexual erotica that was not subject to this labelling at the border—meaning that there is a double standard and an apparent judgement passed about queer sexuality and identity more generally. For the owners of *Little Sisters*, and the queer community more generally, the label of obscene impacts both the ability to project identity outward without undue judgement and one's self-image when it comes to being labelled as perverse in some sense. The infringements just described are wrongful discrimination because queer identity and sexuality are called into question, which relates to a long history of marginalization of queer groups and individuals.

**1.11: *Ont. Human Rights Comm. v. Simpsons-Sears***

*Facts of the Case.* The appellant, Mrs. O'Malley, became a Seventh-Day Adventist while working at Simpsons-Sears in the ladies' department. Because of her faith, she was unable to work during the Sabbath, which is observed from sundown on Friday to sundown on Saturday, making it impermissible for her to work on Saturdays.<sup>192</sup> However, "it was a condition of employment that full-time sales clerks employed by the respondent would work on Friday evenings, on a rotating basis, and on two Saturdays out of three."<sup>193</sup> This condition was primarily based on Fridays and Saturdays being situated in the busiest time of the week for the store.<sup>194</sup> Because of this requirement, Mrs. O'Malley found herself "in a position where she could no longer fulfill her employment obligations without compromising her religious beliefs" despite the store not aiming to

---

<sup>192</sup> *Ont. Human Rights Comm. v. Simpsons-Sears*, [1985] 2 S.C.R. 536 <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/101/index.do>

<sup>193</sup> *Ibid.*

<sup>194</sup> *Ibid.*

disadvantage her based on creed.<sup>195</sup> The store’s policy was “adopted for sound business reasons and not as the result of any intent to discriminate against the complainant, nor out of any malice towards the complainant or members of her faith.”<sup>196</sup> Given all of this, the case represents another scenario of *indirect* discrimination.

*Analysis.* O’Malley loses out on the ability to conduct her life according to her religious values and is deprived of accommodation on this front. Importantly, here, the policy indirectly impacts O’Malley, only attempting to target “sound business reasons” rather than certain faith-based requirements. Given this, O’Malley’s autonomy is infringed upon in terms of her ability to plan and access options, resources, and opportunities. Once again, as noted in the previous case regarding faith-based observances and employment, this case is wrongful discrimination given that historically, Jewish holidays and observances have been deprioritized and not accommodated in the realm of employment, in particular.

#### **1.12: *Audmax Inc. v. Ontario (Human Rights Tribunal)***

*Facts of the Case.* Saadi, a Bengali-Canadian Muslim woman, was hired “on a probationary basis as an intake worker for the employer’s Immigration Settlement Assistance Program, a federally-funded project designed to assist newcomer women in finding work in Canada.”<sup>197</sup> Saadi was dismissed from the position before her

---

<sup>195</sup> Ibid.

<sup>196</sup> Ibid.

<sup>197</sup> *Audmax Inc. v. Ontario (Human Rights Tribunal)*, [2011] O.J. No. 210 [https://www.charneylawyers.com/docs/default-source/casedocuments/audmax-20inc-20v-20ontario-20\(human-20rights-20tribunal\).pdf?sfvrsn=c52f0595\\_0](https://www.charneylawyers.com/docs/default-source/casedocuments/audmax-20inc-20v-20ontario-20(human-20rights-20tribunal).pdf?sfvrsn=c52f0595_0)

probationary period was up “due to a lack of organizational fit.”<sup>198</sup> Saadi described discriminatory treatment on two fronts in the workplace. First, Saadi “alleged that she was singled out for discriminatory enforcement of the microwave policy,” which included a ban on reheating “foods that had a strong odour” or food containing common allergens.<sup>199</sup> Saadi found that she was “singled out” when it came to the food she brought into work based on “the intersection of her race, ancestry, ethnic origin and place of origin.”<sup>200</sup> Further, Saadi found that she was subject to discriminatory enforcement regarding the workplace dress code. In particular, her “employer failed to accommodate her personal choice with respect to the style of hijab that she wore.”<sup>201</sup>

*Analysis.* This case is a clear instance of direct discrimination in which Saadi was subject to infringements of all four types. First, we can see that being in an environment where she is “singled out” due to race, ancestry, and ethnic origin (specifically because of dress code and microwave policies) would impact Saadi’s desire identification. Such an environment interferes with one’s ability to conduct their life according to their values, desires, and goals. Second, given that her dismissal was tied to unequal treatment, Saadi faced restrictions on her access to opportunities (employment, in this case). Finally, such recurring and directly subordinating behaviour has an impact on both one’s outward and inward sense of self. Being at work while subject to discriminatory policies relating to dress and food means that one has to change how they outwardly project themselves to avoid demeaning treatment. Further, this treatment has an impact on self-image and self-

---

<sup>198</sup> Ibid.

<sup>199</sup> Ibid.

<sup>200</sup> Ibid.

<sup>201</sup> Ibid.

respect, given how these policies devalue certain ways of living and being. This case is a direct and clear case of wrongful discrimination given that both Saadi's race and faith come into play when we examine how these policies impact her—these policies become the proxy or stand-in for race and faith to unequally impact people like Saadi.

### **1.13: *Knibbs v. Brant Artillery Gunners Club***

*Facts of the Case.* Heather *Knibbs* was a bartender at the Brant Artillery Gunners Club, a war veterans' organization in Brantford, Ontario, which provides "social, recreational, and charitable activities for its members."<sup>202</sup> Ms. *Knibbs* "alleged that between July and October 2008, the respondents harassed and discriminated against her because of her disability and subjected her to reprisal with respect to employment."<sup>203</sup> Specifically, Ms. *Knibbs* described how, while she was on medical leave, she was first demoted from full-time to part-time before her medical information was publicized and she was laid off.<sup>204</sup> In a letter posted at the Club, her employers described how Heather was on medical leave and "has been suffering from the symptoms of depression, along with being evaluated for diabetes and high cholesterol."<sup>205</sup> Further, after her legal counsel notified her employers of their misconduct, they falsely accused her of theft of money.<sup>206</sup> Her employers "stated that they reduced Ms. *Knibbs*'s employment status from full-time

---

<sup>202</sup> *Knibbs v. Brant Artillery Gunners Club*, [2011] HRTO 1032  
<https://www.canlii.org/en/on/onhrt/doc/2011/2011hrto1032/2011hrto1032.html>

<sup>203</sup> *Ibid.*

<sup>204</sup> *Ibid.*

<sup>205</sup> *Ibid.*

<sup>206</sup> *Ibid.*

to part-time based on operational needs, only posted publicly known medical information about her, and laid her off temporarily, not permanently.”<sup>207</sup>

*Analysis.* In this case, Ms. *Knibbs* faced infringements on all fronts—she was dismissed in a way that impacted her ability to pursue her realized life plan and cut back the range of real options available to her. Further, the treatment described, especially the workplace’s public posting of medical knowledge, constitutes a type of demeaning and unequal treatment that would certainly impact one’s self-image and self-respect. Being dismissed on the grounds of disability communicates certain demeaning attitudes about being “fit” to work. These infringements become wrongful discrimination given the long history of disabled workers being undervalued or rejected on the basis of their disability.

#### **1.14: *Chuvalo v. Toronto Police Services Board***

*Facts of the Case.* Ivania *Chuvalo*, a Latin-American woman, alleges that she was subject to discrimination and harassment “on the basis of sex, colour, ancestry, place of origin, and ethnic origin” when she returned to work as a probationary constable for the Toronto Police Service (TPS) after a five-year disability-related absence.<sup>208</sup> *Chuvalo* described the environment in her unit as “poisonous in nature,” many comments were made about women by her coworkers “which she ignored because she wanted to fit in.”<sup>209</sup> Another female officer in her unit described colleagues directing sexual remarks towards her, “now that you’re married, you must be having a lot of sex” and “you must have your legs up all the time [now that you are married]” in response to her legs being up on her

---

<sup>207</sup> Ibid.

<sup>208</sup> *Chuvalo v. Toronto Police Services Board*, [2010] HRTO 2037  
<https://www.canlii.org/en/on/onhrt/doc/2010/2010hrto2037/2010hrto2037.html>

<sup>209</sup> Ibid.

desk at work.<sup>210</sup> The following are specific instances reported by *Chualo* in their original wording to keep details intact:

**The “cookie” incident:** The applicant testified that in July 2007, the personal respondent brought in a plate of cookies, which he offered to her several times. Each time she declined his offer. When he came over and offered her the last cookie on the plate, she refused it by saying, “I don’t want your cookie,” to which he responded, “Oh, but I want your cookie.” The applicant testified that this last remark was made in a sexually suggestive manner and made her feel as though he were referring to her “female parts.” She testified that this made her feel as if she had been “stabbed.” Thereafter, she avoided being in the personal respondent’s presence.<sup>211</sup>

**The joke printout incident:** The applicant testified that the personal respondent handed out a sheet of paper to her at her workstation, which turned out to be a printout of a joke email forwarded to him. She glanced at it and then subsequently misplaced it. She approached the personal respondent to tell him she misplaced it because she was under the impression that he wanted the paper returned. His response to her was, “Next time, make sure to tell me that you don’t know how to read English.” She testified that she experienced this remark, which made no sense to her in terms of their interaction, as a “slap to the face.”<sup>212</sup>

**Salvadorian gang magazine article incident:** The applicant testified that the personal respondent handed her an article from *Toronto Life* about Salvadorian gangs. When he did this, he said in a forceful tone, “Here, I want you to read this; I want you to see what your people are doing.” She felt obliged to read it, in light of his previous remark about not reading English, but the exchange made her feel degraded. It was her belief that he did this because she had been ignoring him, and that she would pay for not giving him the attention he wanted. In the statement made at the time of her internal complaint, the applicant stated she believed this incident took place in early August.<sup>213</sup>

These three specific instances of harassment exist on a more general workplace backdrop where sexual harassment and sexually suggestive comments were the norm. *Chualo* also

---

<sup>210</sup> Ibid.

<sup>211</sup> Ibid.

<sup>212</sup> Ibid.

<sup>213</sup> Ibid.



recalls being referred to as a “bimbo” in the context of the respondent claiming that he “had other bimbos complain about me over the 30 years and I’m still here.”<sup>214</sup>

*Analysis.* Although this case took place in the context of the workplace, the harassment faced by *Chuvalo* did not impact her ability to continue working. Many of the cases analyzed in this chapter involve wrongful dismissal or threats to the status of victims’ employment. In *Chuvalo*’s case, since the treatment did not impact her employment, it seems here that we have a case involving isolated impact on her two senses of self. First, it is apparent that being referred to as a “bimbo” and subject to gender-based harassment would certainly change how one would project oneself outward. Often, victims of this sort of harassment may change, albeit sometimes in subtle ways, the ways they choose to dress, groom, and present themselves in an attempt to avoid degrading treatment. *Chuvalo*’s situation is related to one’s outward sense of self, given that her projection of self, as a woman in a male-dominated space, results in harassment on the basis of her appearance, gender, and identity. Further, given the harsh and degrading nature of her treatment in the workplace, it is likely that this would have an impact of *Chuvalo*’s inward sense of self—she describes the atmosphere at work as “poisonous in nature,” indicating the impact that such treatment can have—being harassed can mean that external values and statements seep into our self-image and self-respect. This case becomes wrongful discrimination, and not merely harassment, given that this treatment was doled out unequally to *Chuvalo* (and not other employees) on the basis of her sex. It is also relevant here that this occurred after a disability-related leave of

---

<sup>214</sup> Ibid.

absence. This case then presents a very clear case of direct discrimination that impacted the victim's two senses of self.

### **1.15: *Garrow v. Vanton***

*Facts of the Case.* Donna Garrow, the complainant, describes how Toren Vanton, the son of her boss, Monte Vanton, made “sexually suggestive remarks, comments on her appearance and her body, and invitations to have sexual intercourse with him” in front of staff members and customers in the work environment.<sup>215</sup> Mr. Vanton routinely had Ms. Garrow come to his house to discuss business matters. At work, Mr. Vanton routinely made comments about Ms. Garrow's appearance and clothing, even suggesting, “let's run off and get married” on one occasion.<sup>216</sup> Mr. Vanton suggested the two would be “back in an hour” since they were going to a motel in front of customers. Mr. Vanton also touched Ms. Garrow without reason or consent, often in the context of the workplace.<sup>217</sup> Ms. Garrow “testified the respondent's behaviour affected her work as she was constantly on edge in his presence,” stating that “it's affected me in that I have a deep, sad feeling for this whole situation and it's going to take me a long time to get over it. I feel guilty that I let it go on so long without saying anything.”<sup>218</sup> Ultimately, Ms. Garrow was fired on the grounds that she was “curt, rude, and feisty” while dealing with Mr. Vanton, which threw

---

<sup>215</sup> Garrow v. Vanton, [1992] 18 CHRR 148  
[https://www.canlii.org/en/bc/bchrt/doc/1992/1992canlii14266/1992canlii14266.html?autocompleteStr=Garrow v. Vanton,\(1992\)&autocompletePos=1&resultId=384bbd5adfbe47dabe3419f7f5b18099&searchId=2024-06-25T12:19:20:532/99b1d5f0c4294691b8a513305a31a29b](https://www.canlii.org/en/bc/bchrt/doc/1992/1992canlii14266/1992canlii14266.html?autocompleteStr=Garrow v. Vanton,(1992)&autocompletePos=1&resultId=384bbd5adfbe47dabe3419f7f5b18099&searchId=2024-06-25T12:19:20:532/99b1d5f0c4294691b8a513305a31a29b)

<sup>216</sup> Ibid.

<sup>217</sup> Ibid.

<sup>218</sup> Ibid.

her life into financial turmoil.<sup>219</sup> In short, this scenario indicates that Ms. *Garrow* was let go because “she refused to accept sexual harassment as a condition of her employment.”<sup>220</sup>

*Analysis.* Unlike the previous case, here we have treatment that would not only have impacted *Garrow*’s two senses of self but also resulted in her firing on the grounds of being “curt, rude, and feisty.” In this case, *Garrow* cannot conduct herself in alignment with her vision of a life plan and loses out on employment because of Vanton’s actions. Further, because of the degrading and sexual nature of the remarks made towards her, *Garrow*’s two senses of self are impacted—similar to in the case of *Chualo*, *Garrow* is subject to the kind of demeaning comments that seep into how one both views and projects themselves. And once again, as in the case of *Chualo*, *Garrow* is subject to this treatment on the basis of her sex and appearance in an unequal manner compared to other employees of Vanton. Given all of this, *Garrow* is subject to wrongful discrimination, which impacts her autonomy in a multitude of ways, on the basis of sex.

## **Conclusion**

In this chapter, I have examined fifteen cases from Canadian law and applied the framework developed in this thesis to the facts of each case. Ultimately, this chapter has indicated how the theory has strong practical application—examining each case illustrates how the framework can apply to a multitude of cases and generate detailed answers as to why a certain act or policy is, or is not, wrongful discrimination. In particular, this chapter

---

<sup>219</sup> Ibid.

<sup>220</sup> Ibid.

has showcased how this account can speak to the fine details of victim impact, as will be explored in more detail in the full conclusion of this thesis. Given the multi-step process suggested by this thesis to identify wrongful discrimination, this theory also helpfully avoids classifying mere infringements on autonomy as wrongful discrimination by default. By carefully examining if each case involves a connection to historical or present systems of oppression and subordination, the framework can carefully avoid classifying any disadvantage or different treatment as wrongful discrimination.

## Chapter Six Notes

*Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143  
<https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/407/index.do>

*Audmax Inc. v. Ontario (Human Rights Tribunal)*, [2011] O.J. No. 210  
[https://www.charneylawyers.com/docs/default-source/casedocuments/audmax-20inc-20v-20ontario-20\(human-20rights-20tribunal\).pdf?sfvrsn=c52f0595\\_0](https://www.charneylawyers.com/docs/default-source/casedocuments/audmax-20inc-20v-20ontario-20(human-20rights-20tribunal).pdf?sfvrsn=c52f0595_0)

*Brooks v. Canada Safeway Ltd.*, [1989] 1 S.C.R. 1219 <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/455/index.do>

*Chuvalo v. Toronto Police Services Board*, [2010] HRT0 2037  
<https://www.canlii.org/en/on/onhrt/doc/2010/2010hrto2037/2010hrto2037.html>

*Commission scolaire régionale de Chambly v. Bergevin*, [1994] 2 S.C.R. 525  
<https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1155/index.do>

*Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624  
<https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1552/index.do>

*Garrow v. Vanton*, [1992] 18 CHRR 148  
[https://www.canlii.org/en/bc/bchrt/doc/1992/1992canlii14266/1992canlii14266.html?autoCompleteStr=Garrow v. Vanton, \(1992\)&autocompletePos=1&resultId=384bbd5adfbe47dabe3419f7f5b18099&searchId=2024-06-25T12:19:20:532/99b1d5f0c4294691b8a513305a31a29b](https://www.canlii.org/en/bc/bchrt/doc/1992/1992canlii14266/1992canlii14266.html?autoCompleteStr=Garrow%20v.%20Vanton,(1992)&autocompletePos=1&resultId=384bbd5adfbe47dabe3419f7f5b18099&searchId=2024-06-25T12:19:20:532/99b1d5f0c4294691b8a513305a31a29b)

*Knibbs v. Brant Artillery Gunners Club*, [2011] HRT0 1032  
<https://www.canlii.org/en/on/onhrt/doc/2011/2011hrto1032/2011hrto1032.html>

*Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] 2 S.C.R. 1120 <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1835/index.do>

*M. v. H.*, [1999] 2 S.C.R. 3 <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1702/index.do>

*Ont. Human Rights Comm. v. Simpsons-Sears*, [1985] 2 S.C.R. 536 <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/101/index.do>

*R. v. Kapp*, [2008] 2 S.C.R. 483, 2008 SCC 41 <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/5696/index.do>

*R. v. Keegstra*, [1990] 3 S.C.R. 697 <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/695/index.do>

*Singh v. Security and Investigation Services Limited*, [1977] BOI 79  
[https://archive.org/stream/boi079/boi079\\_djvu.txt](https://archive.org/stream/boi079/boi079_djvu.txt)

*Vriend v. Alberta*, [1998] 1 S.C.R. 493 <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1607/index.do>

## Conclusion

This thesis has forwarded an original account of wrongful discrimination based on a social concept of autonomy. As explored in Chapter One, which presented a snapshot of wrongful discrimination, the common approach of describing wrongful discrimination as a failure to treat someone as an “equal” has specific strengths and weaknesses.

Ultimately, I suggested in Chapter One that treatment as an *equal* can be collapsed into discussions about how wrongful discrimination impacts victim *autonomy*. By examining this collapse, much of Chapter One explored why autonomy (informed by feminist critiques of standard conceptions of autonomy) presents a strong foundational starting point for an account of wrongful discrimination. Chapter One identified an apparent gap in the literature, motivating the need for an account of wrongful discrimination that uses autonomy in a socially situated and feminist manner.

In Chapter Two, I surveyed two promising accounts (by Eidelson and Moreau) of wrongful discrimination with the two-fold aim of describing and taking guidance from their strengths while acknowledging their drawbacks. By the end of the chapter, I showed that, despite apparent strengths, each account would benefit from considering how environmental and social considerations impact what it means to be autonomous.

Chapter Three forwarded my original social concept of autonomy, which is the foundation for my theory of wrongful discrimination. Based on my survey of extant literature from the previous chapter, I presented the concept fully, which took desire identification and critical and reflective abilities as the foundation and added important social and environmental concerns to the picture. By discussing value formation, access

to options, and two senses of self, I showed how a social concept of autonomy can adequately describe how our environmental conditions impact the formation and exercising of autonomy. After fully outlining the concept, I took steps to clarify it by discussing whether autonomy is global and outlining “unclear and clear” cases.

Chapter Four continued to develop the social concept of autonomy by describing the different infringements that can impact the various components of autonomy. This chapter explored how an account that refers to specific infringements can do better when describing victim impact—more general accounts that describe wrongful discrimination as “unequal treatment” or “demeaning” treatment may struggle to capture all types of wrongful discrimination under a single umbrella. By discussing how autonomy can come under attack from external sources, the chapter explored four kinds of infringements: (1) limitations on the ability to plan, (2) restrictions on access to resources, options, and opportunities, (3) constraints on the projection of an agent’s outward sense of self, and (4) damage to an agent’s inward sense of self.

Chapter Five outlined how mere infringements on autonomy *become* wrongful discrimination, namely when they attach to or fall along lines of current systems of oppression and subordination. Since infringements on autonomy can occur in a context outside of wrongful discrimination, this chapter carefully excluded mere infringements by describing how wrongful discrimination attaches to these larger systems and hierarchies. In Chapter Five, I described what I call a “loaded trait” to explain how certain qualities within a single ground attach to lines of oppression and are subject to subordination. For



those people who hold certain loaded traits, wrongful discrimination is more likely to crop up in any and all areas of their lives.

Finally, Chapter Six examined fifteen cases from Canadian case law, giving an opportunity to see the theory in action. Here, the goal was to provide analysis to specific case histories to indicate the practical use of the theory developed throughout this thesis.

By way of creating this more detailed and robust account of autonomy, the theory has benefits beyond those accounts explored in Chapter One and Two (which focus on treatment as equals). In particular, the theory developed in this thesis does better when describing the impact of environmental and social impacts on autonomy, which in turn allows the theory to clearly explain victim impact and the broad range of cases that count as wrongful discrimination. Ultimately, this means that not only can we identify cases of wrongful discrimination, but we can also focus on uncovering injustice against individuals and groups that are subject to oppression and control due to traits that burden them in all areas of their lives. With a theory in hand that can clearly identify these wrongs, we can focus on how to remedy and avoid repeating these actions. By forefronting the experience of victims of wrongful discrimination by way of discussing infringements on autonomy, there is increased awareness of the impact of wrongful discrimination in a way that provides a path forward for remedy—for example, when we identify how wrongful discrimination can impact sense of self, we can see how self-respect and self-image must be repaired in the wake of these acts. Alternatively, thinking through how an infringement on autonomy can impact an individual's ability to access options, opportunities, and resources can help us think about victim impact in central

cases of employment discrimination. Taken all together, in this thesis, I have addressed an apparent gap in the literature by employing a social concept of autonomy sensitive to victim experiences and the impact that our environments have on the formation of autonomy to describe acts of wrongful discrimination. By doing so, I have addressed a gap in the literature and brought in concerns about traditional brands of autonomy raised by feminist philosophers.

## Full Works Cited

*Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/407/index.do>.

*Audmax Inc. v. Ontario (Human Rights Tribunal)*, [2011] O.J. No. 210 [https://www.charneylawyers.com/docs/default-source/casedocuments/audmax-20inc-20v-20ontario-20\(human-20rights-20tribunal\).pdf?sfvrsn=c52f0595\\_0](https://www.charneylawyers.com/docs/default-source/casedocuments/audmax-20inc-20v-20ontario-20(human-20rights-20tribunal).pdf?sfvrsn=c52f0595_0)

Babchishin, Kelly Melanie, Leslie-Anne Keown, and Kimberly P. Mularczyk. *Economic outcomes of Canadian federal offenders*. Public Safety Canada, 2021.

“Baltej Dhillon Case” *The Canadian Encyclopedia*, 2019. <https://www.thecanadianencyclopedia.ca/en/article/baltej-dhillon-case>.

*Brooks v. Canada Safeway Ltd.*, [1989] 1 S.C.R. 1219 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/455/index.do>.

Canadian Down Syndrome Society. “LinkedIn: I’m Inemployable Tv Commercial Ad 2022” YouTube. December 2022. <https://www.youtube.com/watch?v=i7CUN6OeJhs>.

*Canadian Human Rights Act*, 1985, c. H-6. <https://laws-lois.justice.gc.ca/eng/acts/h-6/fulltext.html>.

*Chuvalo v. Toronto Police Services Board*, [2010] HRT0 2037 <https://www.canlii.org/en/on/onhrt/doc/2010/2010hrto2037/2010hrto2037.html>

*Commission scolaire régionale de Chambly v. Bergevin*, [1994] 2 S.C.R. 525 <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1155/index.do>

Amsterdam: Rodopi Press, 1981. Reprinted in *The Inner Citadel*, edited by John Christman. New York: Oxford University Press, 1989.

Dworkin, Gerald. *The Theory and Practice of Autonomy*. Cambridge Studies in Philosophy. Cambridge: Cambridge University Press, 1988.

Dworkin, Gerald. “The Concept of Autonomy.” In *Science and Ethics*, edited by Rudolph Haller.

Eidelson, Benjamin. “Treating People as Individuals.” In *Philosophical Foundations of Discrimination Law*, edited by Deborah Hellman and Sophia Moreau. Oxford: Oxford University Press, 2013.

*Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624  
<https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1552/index.do>

*Garrow v. Vanton*, [1992] 18 CHRR 148  
[https://www.canlii.org/en/bc/bchrt/doc/1992/1992canlii14266/1992canlii14266.html?autoCompleteStr=Garrow v. Vanton, \(1992\)&autocompletePos=1&resultId=384bbd5adfbe47dabe3419f7f5b18099&searchId=2024-06-25T12:19:20:532/99b1d5f0c4294691b8a513305a31a29b](https://www.canlii.org/en/bc/bchrt/doc/1992/1992canlii14266/1992canlii14266.html?autoCompleteStr=Garrow%20v.%20Vanton,(1992)&autocompletePos=1&resultId=384bbd5adfbe47dabe3419f7f5b18099&searchId=2024-06-25T12:19:20:532/99b1d5f0c4294691b8a513305a31a29b)

Hellman, Deborah. “Demeaning and Wrongful Discrimination” in *When is Discrimination Wrong?* Massachusetts: First Harvard University Press, 2008.

*Knibbs v. Brant Artillery Gunners Club*, [2011] HRTO 1032  
<https://www.canlii.org/en/on/onhrt/doc/2011/2011hrt01032/2011hrt01032.html>

*Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] 2 S.C.R. 1120 <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1835/index.do>

Mackenzie, Catriona and Stoljar, Natalie. *Relational Autonomy Feminist Perspectives on Autonomy, Agency and the Social Self*. New York: Oxford University Press, 2000.

Moreau, Sophia. *Faces of Inequality: A Theory of Wrongful Discrimination*. Oxford: Oxford University Press, 2020.

Mullin, Amy. “Children, Autonomy, and Care.” *Journal of Social Psychology* 38, No. 4 (2007): 536-553.

*M. v. H.*, [1999] 2 S.C.R. 3 <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1702/index.do>

Ontario Human Rights Commission. “The Opportunity to Succeed: Achieving Barrier-Free Education for Students with Disabilities: Post-Secondary Education.” n.d. <https://www.ohrc.on.ca/en/opportunity-succeed-achieving-barrier-free-education-students-disabilities/post-secondary-education>

*Ont. Human Rights Comm. v. Simpsons-Sears*, [1985] 2 S.C.R. 536 <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/101/index.do>

Oshana, Marina A.L. “Personal Autonomy and Society.” *Journal of Social Philosophy* 29, no. 1 (Spring 1998): 81-102.

Pugh, Jonathan. *Autonomy, Rationality, and Contemporary Bioethics*. Oxford University Press, 2020.

Rawls, John. *A Theory of Justice*, 1st ed. Cambridge: Harvard University Press, 1971.

Ruiz, Neil G., Carolyne Im, and Ziyao Tian. “Discrimination Experiences Shape Most Asian Americans’ Lives.” (2023).

*R. v. Kapp*, [2008] 2 S.C.R. 483, 2008 SCC 41 <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/5696/index.do>

*R. v. Keegstra*, [1990] 3 S.C.R. 697 <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/695/index.do>

Shin, Patrick S. “Is There a Unitary Concept of Discrimination?” In *Philosophical Foundations of Discrimination Law*, edited by Deborah Hellman and Sophia Moreau. Oxford: Oxford University Press, 2013.

*Singh v. Security and Investigation Services Limited*, [1977] BOI 79  
[https://archive.org/stream/boi079/boi079\\_djvu.txt](https://archive.org/stream/boi079/boi079_djvu.txt)

Veltman, Andrea and Piper, Mark. *Autonomy, Oppression and Gender*. New York: Oxford University Press, 2014.

*Vriend v. Alberta*, [1998] 1 S.C.R. 493 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1607/index.do>.

“What is Discrimination?” Ontario Human Rights Commission, 2008.  
<https://www.ohrc.on.ca/en/iii-principles-and-concepts/2-what-discrimination>.

“What is Discrimination?” Canadian Human Rights Commission, 2021.  
<https://www.chrc-ccdp.gc.ca/en/about-human-rights/what-discrimination>.