



Equality and Non-discrimination in Hiring – Introduction

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Abstract

In this introduction, the author briefly presents the way in which Clayton, Segall and Lippert-Rasmussen deal with what egalitarianism has to say about non-discrimination in hiring. Parallels and differences between their approaches are stressed.

Keywords

Egalitarianism, non-discrimination, meritocracy, intentions, hiring

This symposium is the outcome of a workshop on discrimination in hiring that took place in October 2009 at the University of Louvain (UCL, Belgium) as part of the project “Social responsibility in economic life” funded by the Emile Bernheim Foundation. In the papers gathered here, three egalitarian philosophers look at what makes discrimination in hiring wrong.

Matthew Clayton takes resource egalitarianism as a starting point. He briefly sketches the positive content of his approach. A selection procedure (in education or employment) is fair if it serves the wide goals of resource egalitarianism, which makes its content sensitive to, e.g. whether a tax-and-transfer scheme is in place or not. It does not exclude the possibility of tougher criteria being imposed on some, provided that a plausible justification is available. And the demeaning nature of the criteria might be a third consideration relevant to egalitarians.

Most of Clayton’s paper then aims at rebutting three objections to the claim that issues of discrimination in selection ought to be looked at from a pluralist egalitarian perspective. The first objection claims that we do not need such an egalitarian approach to account for why and when discrimination is wrong (the *redundancy* objection). While Clayton accepts

the view that a selection procedure can be unfair for reasons other than egalitarian ones, there are also cases in which the egalitarian intuition provides the best account of why a given selection method is unfair. He shows that it is typically so when one alternates between two selection procedures, both being morally permissible while one is tougher than the other. Clayton then addresses a second set of objections – the *misdirection* ones. They claim that egalitarianism cannot be the right account since it would commit us to two undesirable policies: punishing all innocents when some turn out to be punished, and levelling down to no-one's benefit whenever the situation of the least well off cannot be improved. He shows that egalitarians are not bound to accept this portrayal of their view. The third objection – the *stringency* one – claims that looking at discrimination cases through the lens of resource egalitarianism renders us unable to account for the fact that some forms of discrimination – namely racist or sexist ones – are much worse than other ones. Clayton shows that egalitarians are in fact able to account for such differences in stringency.

Clayton's account is such that egalitarians would not necessarily oppose "hiring individuals who are likely to be the most productive within the organisation". Segall's specific focus is on meritocracy, understood as the view according to which some job applicants have a claim to a given job because they are the best qualified, on grounds of forward-looking considerations. He proposes a luck-egalitarian answer to whether the best qualified should be appointed. In doing so, Segall does essentially two things. First, he shows that whenever the answer to this question is positive – discussing whether one should aim at hiring the most qualified surgeons – hiring the best qualified cannot rest on the idea that the latter are *entitled* to that job. Second, he provides us with an account of a separate principle of non-discrimination. The latter – he claims – is not bound to fall back on a position that whenever the grounds for hiring a person depart from a focus on their qualification, they should be considered discriminatory.

One should be especially attentive to a few features of Segall's account. First, Segall – like Clayton – considers that one may have a luck egalitarian reason to appoint the best qualified, for example if it allows to better satisfy basic needs through producing cheaper necessity goods. But he says that such a reason does not translate into an *entitlement* to this job on the side of the best qualified job applicant. In a sense, while it could be unjust *to the least well off* not to hire the best qualified in certain circumstances, it would not be an injustice *to the job applicant herself*. This raises interesting questions about the nature of a meritocratic argument. Segall says that meritocracy entails that the job applicant has a claim to that job on forward-looking

grounds. One could very well imagine that such grounds be of a luck egalitarian nature in some cases. If, as Segall claims, “the allocation of jobs must be used to improve the welfare of the worse off”, it is not entirely clear why this could not translate into an entitlement to the job for the applicant who would best contribute to improve the welfare of the worse off. The precise contours of what Segall refers to as a meritocratic argument are thus crucial to his account. A broad understanding of meritocracy would probably be perfectly compatible with his own view. Moreover, the weight Segall assigns to the egalitarian ideal seems to be less central and stringent than expected when one reads the following: “qualifications do not give a person a *claim* on a job but rather give society a *reason*, one among many, to appoint her.”

Another salient feature of Segall’s account is how he relates the idea of non-discrimination to luck-egalitarianism. It comes as an “added” feature as Segall claims that his luck-egalitarian account of justice in hiring “builds on a prior requirement of non-discrimination” and that “there is nothing particularly luck egalitarian” in his account of non-discrimination. His account of when discrimination is unjust is thus claimed to be neither meritocratic nor luck-egalitarian as such. Difficult cases involving forms of reactive or statistical discrimination are discussed and proposals are made as to how to account for the wrongness of taking some client’s reactions into consideration or of not hiring a potentially pregnant woman.

Clayton’s and Segall’s starting point are roughly comparable (resource or luck egalitarianism respectively), and both of them accept the view that hiring the best qualified may be compatible with or even required by egalitarianism. However, they differ in the way in which they characterize the wrongness of discrimination. In Clayton’s case, egalitarianism is essential to the account (internalism), while in Segall’s it isn’t (externalism). In reading these two papers, the reader will be attentive to the key role of the stylized examples used. Clayton relies on a case of alternating between two equally acceptable selection procedures, one being tougher than the other, which leads to an impact in terms of equality without any apparent problematic discrimination. In contrast, Segall rests part of his claim on a multiple discrimination example involving the allocation of two perfectly substitutable goods (apples and oranges), each of them being sold by a grocer in a discriminatory manner (blacks banned from buying apples and whites being banned from buying oranges) with no impact in terms of overall equality (given the substitutability of these goods).

While examining the relevance of discriminatory intentions to the moral assessment of discriminatory practices is not central to Clayton’s

and Segall's papers, it is the focus of Lippert-Rasmussen's. He discusses specifically Scanlon's account of whether and why such intentions may contribute to account for the wrongness of some discriminatory practices. Lippert-Rasmussen's main claim is "that the wrongness of discrimination cannot be accounted for in terms of disrespectful insults".

Lippert-Rasmussen focuses especially on Scanlon's account of the matter. For Scanlon, intentions are not directly relevant in assessing the permissibility of an action. This is problematic for those who consider that there needs to be something wrong in, e.g. a racist intention underlying a given action. Scanlon proposes two possible accounts of the *indirect* moral relevance of discriminatory intentions. First, intentions can help predict future behaviour. Second, and more importantly, they can transform the expressive meaning of an action, rendering the non-hiring of an applicant problematically insulting in some cases, carrying a message of inferiority. This is a problem if his message of inferiority needs to be shared by a significant number of people – unlike in the case of an employer who would associate superiority with a feature that most people would definitely not associate with it (e.g. charm).

This is Scanlon's account. Lippert-Rasmussen shows that it raises important questions as to the proper articulation of typically egalitarian concerns (whether the discrimination leads to unequal access to "important goods and opportunities") and independent reasons to worry about the permissibility of discrimination, an issue equally central to Clayton and Segall's papers. Lippert-Rasmussen's claim is that Scanlon's view does not give us a clear answer in a hypothetical multiple discrimination case involving 1,000 racial groups of equal size, wealth and power and in which all discriminate against one other race only, in such a way that none of the racial groups end up being more disadvantaged than another overall. The example is of the same type as Segall's apples and oranges one. Lippert-Rasmussen's worries arise from racial discrimination cases in which either the "inferiority message" lacks any credibility, or in which the inferiority message applies to the person who is hired rather than to the one who isn't (as in affirmative action cases), or where racial discrimination is strictly non-evaluational, i.e. is not premised at all on any inferiority/superiority assessment on the part of the employer. On the latter case, Lippert-Rasmussen imagines a case in which potentially excluded people care about whether people in the majority camp enjoy their company, and not at all whether they would deem them inferior or not. This suggests that the inferiority-judgment-based account is at best incomplete.

In the end, while their claims and focus differ, all three authors invite readers to think carefully about how and to what extent a general egalitarian theory of justice is needed and/or able to fully account for the wrongness of discrimination in hiring. As this introduction has already conveyed, this is far from an easy task.