10

Treating People as Individuals

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The question what makes discrimination wrong is captivating because it draws our attention to a central puzzle of social life. Why does differentiation among people, a routine feature of our interactions with one another, take on such a different moral aspect in the context of certain traits and certain decisions? Yet the question can also be misleading. It risks presuming that there must *be* a unified wrong of discrimination—that cases of wrongful discrimination have some essential property in common, which, if only we could describe it correctly, would explain why they are all morally condemnable.

This, I think, cannot be right. All wrongful discrimination is alike in being *discrimination*, of course, in the sense of differential treatment that has some explanatory connection to a real or perceived difference among its objects. But that is such a gross category of action that there is surely more than one way of doing it wrong. Some paradigmatic forms of wrongful discrimination express a kind of disrespect or contempt for the equal worth of those who are disfavored.[1] Much discrimination allocates opportunities unfairly, and, in so doing, entrenches status hierarchies that warp our social structure.[2] Discrimination can also humiliate, stigmatize, and demean.[3] These moral concerns form an overlapping patchwork, with different grounds of objection implicated to different degrees in different cases.

Here I propose to focus on one such line of thought that philosophers have tended to neglect. In ordinary conversation, acts of discrimination are often criticized on the further ground that they fail to *treat people as individuals*. This allegation figures prominently in the rhetoric of courts enforcing anti-discrimination guarantees as well. "At the heart of the Constitution's guarantee of equal protection", we are

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[1] See Patrick S. Shin, "The Substantive Principle of Equal Treatment", (2009) 15 *Legal Theory* 149; Matt Cavanagh, *Against Equality of Opportunity* (Oxford, UK: Oxford University Press, 2002) 166; Larry Alexander, "What Makes Wrongful Discrimination Wrong?", (1992) 141 *U. Pa. L. Rev.* 149, 158–61.

[2] See Owen M. Fiss, "Groups and the Equal Protection Clause", (1976) 5 *Phil. & Pub. Affairs* 107; Cass R. Sunstein, "The Anticaste Principle", (1994) 92 *Mich L. Rev.* 2410.

[3] See Avishai Margalit, *The Decent Society* (Cambridge, MA: Harvard University Press, 1996) (humiliation); Glenn C. Loury, *The Anatomy of Racial Inequality* (Cambridge, MA: Harvard University

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told, "lies the simple command that the Government must treat citizens as individuals, not as simply components of a racial, religious, sexual or national class".[4] The admonition that people should be treated as individuals is not self-explanatory, however. And although it is often invoked, it has rarely been explained.[5]

Taken literally, the principle seems to express broad hostility to forming judgments about *individual* people by appeal to generalizations about whole *classes* of people. Yet such generalization is both commonplace and inevitable. With people as with other objects, we can make sense of particulars only by drawing inferences from their memberships in classes whose propensities we believe we understand. If the ideal of treating people as individuals is in tension with that reality, it must give way.

In this essay, I offer an alternative account of the duty to treat people as individuals, and I argue that this distinctive obligation forms an important thread in the moral case against much discrimination. The argument begins from the thought that, schematically, a moral requirement to treat something as an X is usually a requirement to treat it in a way that *befits* or *shows appropriate respect for* an object with that feature. Thus we have the ideas of treating persons as equals, as ends-in-themselves, and so forth. Understood in this way, the putative obligation to treat people as individuals has a familiar character. It is not a simple injunction against the use of group generalizations, but rather a norm that directs us to structure our judgments and actions in ways that appropriately recognize a morally salient fact about the people involved.

If that is right, then we cannot tackle the question what it takes to treat someone as an individual without first asking just what that fact amounts to—that is, in what morally important sense people *are* individuals. After developing such a theory, we can consider what forms of deliberation or action are required or forbidden by due recognition of this quality in a person.

The core of the essay develops answers to these two questions rooted in the rich philosophical literature on autonomy. According to this tradition, persons are "individuals" in a sense it is incumbent upon others to respect not because of the bare fact of their ontological separateness, but because of their *autonomous* individuality. To treat someone respectfully as an individual, I suggest, is essentially to treat her as an autonomous being—that is, as a person who can meaningfully author her own life, and who is, as a result, partly of her own making.

The requirement to treat people as individuals calls our attention to dimensions of respect for a person's autonomy that have not been emphasized by writers in this tradition, however. Classic examples of respect for autonomy involve forbearance from interfering with a person's self-regarding projects and commitments. Perhaps

Press, 2002) 55–107 (stigma); Deborah Hellman, *When is Discrimination Wrong?* (Cambridge, MA: Harvard University Press, 2008) (demeaning).

[4] *Miller v. Johnson*, 515 U.S. 900, 911 (1995).

[5] For one other recent attempt, see Kasper Lippert-Rasmussen, "'We are all Different': Statistical Discrimination and the Right to Be Treated as an Individual", (2011) 15 *J. Ethics* 47.

the clearest "textbook" example of respect for autonomy, reflecting this focus, is the idea that we should not force medical treatment on a religious objector.[6] But to respect a person as an autonomous individual, I suggest, we must also satisfy two requirements that have attracted less notice. First, we must attend to the ways that she has exercised her autonomy in charting her life when we form judgments about her. We must pay attention to her choices, that is, not only with an eye to avoiding interfering with her, but also in order to pay her the respect of recognizing her and treating her as the individual that she is. Second, we must not make predictions about her choices in ways that demean the role of her autonomous agency in making up her own mind.

When we object that some discriminatory practice fails to treat someone as an individual, I will argue, these are often the distinctive wrongs we are identifying. It is not simply that she has been subjected to a decision-making process that is procedurally unfair, or insufficiently sensitive to qualities of hers that are relevant to the judgment being made. It is rather that, in focusing on particular socially salient traits to the exclusion of others, the decision-maker has failed to take appropriate account of the life a person has chosen for herself; maligned her capacity to continue to make such choices through an exercise of reflective choice; and thereby demeaned her standing as an autonomous individual. The essay thus aims both to clarify an important strand in the moral case against certain forms of discrimination and, in so doing, to surface some neglected dimensions of what it means to respect the autonomy of others.

I. Two Examples

As I have already suggested, acts of discrimination often instantiate several different wrongs at once. For this reason, it will help to start with some cases that isolate, so far as possible, the intuitive moral concern that people are not being treated as individuals. Here are two such examples to fix ideas.

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.

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 résumé 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 résumé 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

[6] See e.g. T.L. Beauchamp, "Methods and Principles in Biomedical Ethics", (2003) 29 *J. Med. Ethics* 269, 270 (describing "[t]he now standard treatment" of the religious-objector case as involving "a paradigmatically vital autonomy interest").

the wine tasting club. If Mark were white, Jane would have mentioned the wine tasting club and not basketball.

These examples differ in various respects, but I hope they have at least three things in common. First, they should both strike us as cases where there is at least potentially something wrong with the way the agent acts. Second, both cases involve reliance on group generalizations or stereotypes to form judgments about individual people.[7] Finally, I want to suggest that in both cases our intuitive concerns resist easy analysis in terms of certain familiar stories about why discrimination that rests on group generalizations is wrong. Specifically, in neither of these cases is the problem that the agent fails to show the requisite degree of epistemic conscientiousness in forming judgments about other people; that he or she makes consequential decisions unfairly; or, in any straightforward way, that he or she fails to treat others as of equal moral worth. If that is true, then it should help us to identify the distinctive contribution of the idea of treating people as individuals in articulating the moral dimensions of wrongful discrimination.

Consider epistemic conscientiousness first.[8] It is true that Kevin and Jane are each somewhat irresponsible or cavalier in making the judgments that they do. Each ignores obvious evidence that cuts against the probative value of the tacit generalization he or she applies. But in neither of these cases is the problem really that the agent under-invests in forming justified beliefs about the matters in question.

To confirm this, suppose Kevin misestimates Sally's ability because he is just not paying much attention during the auditions, and Jane thinks Mark probably likes basketball only because she's thoughtlessly confused him with another young associate. These are lapses of epistemic rigor in forming beliefs about other people. But, while there may be something morally amiss in these cases, it is surely not the same thing that troubles us in the original versions that involve reliance on racial generalizations.

A second common concern about reliance on certain group generalizations is that they lead us to distribute goods or opportunities unfairly. Employment discrimination often fits this paradigm: candidates with equal claims to a job or a promotion are treated unequally because of broad and unwarranted assumptions about people of one candidate's race, sex, religion, or the like. The concern in such cases is not simply the lapse of epistemic rigor, but its particular connection to injustice in the distribution of opportunities, resources, or power.

[7] Because the concept of a stereotype is itself a difficult one, I will generally avoid appealing to that notion here. Lawrence Blum has offered an insightful philosophical analysis of the concept, however, and I note some points of contact between his view and my account of the requirement to treat people as individuals below. See Blum, "Stereotypes And Stereotyping: A Moral Analysis", (2004) 33 *Phil. Papers* 251.

[8] For discussion of wrongful discrimination in terms of duties of epistemic rigor, see e.g. Richard J. Arneson, "What Is Wrongful Discrimination?", (2006) 43 *San Diego L. Rev.* 775, 788 and T.M. Scanlon, *Moral Dimensions: Permissibility, Meaning, Blame* (Cambridge, MA: Harvard University Press, 2008) 70.

But this is not an apt indictment of the agents in either of our two examples either. 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. As for Mark, we can stipulate that he already knows about the wine club and will go on to join it. What is troubling is simply the tacit assumption, against the evidence, that he would be more interested in basketball than he would be in the wine club. That assumption, though certainly problematic, need not be unfair in the sense of giving rise to any misallocation of goods or opportunities.[9]

Of course, insofar as Kevin and Jane do *something* wrong in dealing with Sally and Mark—and insofar as they do not do the same in dealing with other classes of people—there may necessarily be a kind of unfairness involved. In such cases, the underlying wrong is not unfairness, however. It simply may be unfair to mistreat some people and not others. Our question is what the nature of the underlying mistreatment in these cases *is*—in other words, why it is that acting as Kevin and Jane do towards some people and not others would even be counted as unfair to the first group.[10]

By design, these two examples pose cases where the natural answers to that question do not invoke conscientiousness or fairness, but rather respect. Discounting Sally's poor musical performance or imputing a preference for basketball to Mark is not troubling as a form of general epistemic negligence, and it is not unfair to them. Nonetheless, Kevin and Jane's actions seem to manifest a kind of failure to relate to them as one person ought to relate to another.

The disrespect here is not of the straightforward kind that has received the most attention in philosophical accounts of wrongful discrimination, however.[11] In particular, there is nothing in these cases to suggest that Kevin and Jane hold Sally and Mark in contempt, judge them to be of lesser worth, or value their interests less than those of others. It is true, of course, that nominally descriptive beliefs about classes of people are sometimes tainted by these evaluative attitudes. Regarding some people as beings of lesser value can certainly motivate a person to believe that they also have various other properties that at least appear to vindicate

[9] We sometimes speak in terms of a kind of epistemic fairness as well, as when we say it is unfair of one person to think so poorly of another. But I take it there is no unfairness of that kind here either, since there is nothing wrong with preferring basketball to wine tasting, and Jane need not think there is.

[10] A similar thought, warranting roughly the same response, is that treating Mark and Sally as Jane and Kevin do is wrong because Mark and Sally will find it offensive or insulting (or would if they knew). No doubt it is wrong to insult people without cause, but our question is what the apparent insult in these cases consists in.

[11] Disrespect-based accounts, focusing largely on either judgments of lesser moral worth or the treatment of others as inferior or subordinate, have been developed by Larry Alexander (n 1), Matt Cavanagh (n 1), and Deborah Hellman (n 3), and criticized by Kasper Lippert-Rasmussen, "The Badness of Discrimination", (2006) 9 *Ethical Theory & Moral Practice* 167. Hellman's view is distinctive in focusing on the objectively disrespectful *meaning* of discriminatory actions, rather than the effects of the action or the intentional or motivational state of the agent; I return to that dimension of the problem later.

that mindset. But it is easy enough to suppose that Kevin and Jane do not in fact hold any such attitudes, and I doubt that this would resolve our concerns about these cases.

My point is not that Kevin and Jane are not guilty of acting disrespectfully toward Sally and Mark, however. The point is that the disrespect we sense in these cases must be understood as a failure to recognize something other than Mark and Sally's standing as persons of equal worth as other persons. Suppose, for example, that Sally learns why she was selected for the orchestra, and she feels that Kevin mistreated her. It would nonetheless be odd for her to say that Kevin had not treated her *as an equal*. What she would be more likely to say, I think, is that in discounting Sally's own performance in favor of a gross generalization about people of her sex and ethnicity, Kevin failed to treat her *as an individual*. That is the distinctive respect claim that I mean to explore and elaborate here.[12]

Another important feature of both of these cases, of course, is that the imputed traits track socially salient stereotypes. No doubt that contributes to the intuitive pull of the thought that Kevin and Jane wrongfully fail to treat Sally and Mark as individuals. Suppose, by contrast, that Mark were white and unusually tall, and Jane thought he would want to join the basketball team simply because of an assumption about people of his height. Under the right conditions, this could still constitute a meaningful failure to treat Mark as an individual, but that offense plainly takes on a greater significance when it is overlaid with the social meanings implicit in the original version of the story. I note the issue here because a satisfying theory of the moral requirement to treat people as individuals should explain why this is so, or at least not require us to deny that it is.

Finally, before we leave Sally and Mark, let me emphasize that these two examples are offered not as cases where the obligation to respect people as individuals is at its most forceful, but only as cases where it may be particularly visible, by virtue of my attempt to control for the influence of some other possible normative factors. That distinction is important in part because normatively significant features of a situation are often not merely additive in their combined force.[13] By eliminating the possibility that Mark or Sally is harmed, treated unfairly, or the like, we therefore risk weakening the force of their claims to be treated as individuals as well. Indeed, it seems quite plausible that it is most troubling that someone has failed to treat you as an individual when he harms you or treats you unfairly as a result.

Many familiar forms of discrimination have that interwoven structure. Racial profiling, for instance, arguably involves simple unfairness, demeans the equal worth of those who are discriminated against, and fails to treat people respectfully as individuals, as well as inflicting broader social harms. The same may be true of hiring discrimination against women who are thought likely to underperform

[12] This is not to say that the moral demands of respect for persons as individuals and as equals are unrelated. If a person fails to treat only some others as individuals, that may itself constitute a failure to treat those people as equals—specifically, as equals in the morally important respect of being individuals.

[13] See Shelly Kagan, "The Additive Fallacy", (1988) 99 *Ethics* 5.

because of future child care responsibilities—though the textures of these cases also differ in various ways. I return to both of these examples below. For now, I mean only to underscore that the main payoff of a theory of the obligation to treat people as individuals is not that it offers an account of what is wrong with the actions in admittedly contrived cases like Mark's or Sally's, but rather that it draws out and clarifies a significant moral dimension of a much wider range of cases of discrimination that may implicate various other considerations as well.

II. Treating People as Autonomous Individuals

In both of these initial examples, I've suggested, it is natural to criticize Kevin and Jane for failing to treat Sally and Mark *as individuals*. But what exactly would we mean in saying that?

According to some, this is just another way of saying that the agents in these cases fail to make sufficiently conscientious or accurate judgments about the matters in question, or that they unfairly ignore relevant information.[14] We have already seen some reasons to be skeptical of both of these views, however. For one, it is plausible to say that Kevin fails to treat Sally as an individual, but nonetheless quite implausible to say that Kevin treats Sally unfairly by ignoring or discounting relevant information about her musical acumen. The two ideas may converge in the case of a student who is *rejected* because of a rigid group generalization, that is, but in Sally's case they come apart.

Second, setting fairness aside, not all failures to take account of readily available and relevant information are failures to treat someone as an individual. My older brother's college record may well have been relevant to predicting my own odds of success in college, for example. If an admissions committee declined to consider that information in assessing applications, however, that would hardly have constituted a failure to treat me as an individual. If anything, we would worry that an admissions committee that *did* do that had failed to treat me as an individual.

But if treating people as individuals is not a matter of fairness or conscientiousness, what is it? As I suggested at the outset, we can start from the observation that some other moral requirements are formulated in terms of an obligation to treat Xs as Ys as well. The obligation to treat humanity as an end in itself, elaborated by Kant, is the most famous of this genre.[15] The obligation to treat persons as equals is at the heart of contemporary liberal theories of political legitimacy, and also serves

[14] Kasper Lippert-Rasmussen appears to endorse a version of the first idea, and Matt Cavanagh proposes a version of the second. See Lippert-Rasmussen, " 'We are all Different' " (n 5) 54 (arguing that that a person is treated as an individual only when her treatment is informed by "all relevant information . . . reasonably available" to the decision-maker); Cavanagh, *Against Equality of Opportunity* (n 1) 187 ("But what exactly does it mean to take people seriously as individuals? Presumably it is supposed to mean that, as a matter of fairness, employers should give full consideration to every [applicant's] claim [to a job].").

[15] Kant, *Groundwork of the Metaphysic of Morals* (New York: Harper & Row, 1964) 96.

as a foundation for recent work on the nature of wrongful discrimination.[16] The obligation to treat people as individuals has received less philosophical attention, but we should consider whether it can be understood as analogous in structure to these.

In each case, the moral requirement seems to demand that we recognize some morally significant feature of the object in question and regulate our conduct toward the thing to respect this aspect of its nature. It calls, in other words, for what Stephen Darwall has labeled "recognition respect", that is, "a disposition to weigh appropriately in one's deliberations some feature of the thing in question and to act accordingly".[17]

If the idea of treating people as individuals is like this as well, then it is rooted in the more basic idea of *being* an individual. To treat someone as an individual is to treat her in a way that befits someone with that feature—whatever it is. So we need a theory of what it is to be an individual before we can think clearly about how to respect that property in others.

Of course, in a certain literal sense, people are obviously individuals. So too are mosquitoes, cars, and planets. Being an individual in this prosaic sense is simply a matter of being a singleton. But being a singleton is not a distinctive or interesting quality of persons—nor is it a quality of persons that even the most obvious failures to treat people as individuals manifest a failure to grasp. Somebody who presumes that all Muslims are terrorist sympathizers surely understands that he is dealing with multiple numerically distinct people rather than one compound entity; he is just supposing that these separate people have a particular feature in common.

Once we set aside the bare sense of an individual as a singleton, what is left? In addition to being separate entities, persons are also individuals in the sense that they vary from one to the next in significant ways. Some objects, of course, are not like this. Although each car that comes off the production line is a metaphysical singleton, they may all effectively be duplicates of one another; this constitutes a further sense in which they are *not* individuals. By contrast, something that has no duplicates is an individual not only in the sense of being a singleton, but also in the sense of being unique.

That seems closer to the sense of being an individual that could constitute a morally important feature of persons. But this idea is underspecified, in two respects. First, what are the dimensions of similarity or difference that make for the relevant sort of uniqueness? Cars of the same make are qualitatively unique in that they have different imperfections than one another. So to say that persons are unique, without specifying some dimension of similarity, is not to distinguish persons from cars. Second, for any given dimension in which objects of some kind are

[16] See Ronald Dworkin, *A Matter of Principle* (Cambridge, MA: Harvard University Press, 1985) 205; Hellman, *When is Discrimination Wrong?* (n 3) 29.

[17] Stephen Darwall, "Two Kinds of Respect", (1977) 88 *Ethics* 36, 38. T.M. Scanlon offers an account of treating people as ends in themselves that has a similar character: "[T]he idea that we must treat others as ends in themselves can . . . be understood as a claim about the attitude we must have in order for our actions to have a certain kind of meaning—namely, for them to express an important kind of respect for others". Scanlon, *Moral Dimensions* (n 8) 117–18.

unique, it remains an open question why uniqueness of that kind is significant—something that demands recognition and respect.

Here, then, is the beginning of an answer. People are individuated by their standing as the owners or authors of their respective choices and actions—by their autonomy. That feature makes persons unique individuals in a significant way that other objects are not. Of course, insofar as many or perhaps all persons are autonomous, we are not each, in this very respect, unique. But this dimension in which we are alike gives rise to one in which we are not. By virtue of our standing as autonomous agents, which we hold in common, my choices are mine, yours are yours, and so on. That sets us apart.

To be sure, this metaphysical foray takes much for granted and leaves much unanswered. Why does the relationship we hold to our choices individuate us in a way that matters? Nonetheless, this idea—that autonomy invests the boundaries among persons with moral significance—has a powerful claim on our thinking and deep roots in the liberal tradition. As Gerald Dworkin articulates this view, "What makes an individual the particular person he is reflects his pursuit of autonomy, his construction of meaning in his life".[18] When we say that persons are individuals in a sense worth caring about—worth respecting—I think this is most plausibly the dimension of difference we have in mind.

In the philosophical literature, talk of respect for autonomy calls to mind the demands of consent and the related limits on coercion or manipulation,[19] as well as the cases for various kinds of pluralism.[20] In what follows, however, I propose that respecting a person as an autonomous individual grounds a further requirement as well: that we form judgments about *what she is like* with due attention to evidence of the ways she has constructed her life, and with awareness of her power to continue to do so. This normative implication of autonomy has received less notice, but it contributes a good deal to explaining our unease about the ways in which generalization-based discrimination sometimes seems to disrespect a person "as an individual".

Before developing this argument, however, I offer a slightly fuller sketch of the concept of autonomy on which it relies. With a theory of what it is to *be* an autonomous individual in hand, we can then turn to exploring what it takes to duly recognize that feature in others—and how various discriminatory acts may manifest a failure to do so.

[18] Gerald Dworkin, *The Theory and Practice of Autonomy* (Cambridge, UK: Cambridge University Press, 1988) 110.

[19] See e.g. Dworkin, *The Theory and Practice of Autonomy* (n 18) 85–149; Robert Paul Wolff, *In Defense of Anarchism* (Berkeley, CA: University of California Press, 1970).

[20] See e.g. Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986) 369–99; Ronald Dworkin, *A Matter of Principle* (n 16) 181. Gerald Dworkin offers a more exhaustive summary of the uses of autonomy in contemporary moral and political philosophy in "Autonomy", in Robert E. Goodin et al., eds., *A Companion to Contemporary Political Philosophy* (Oxford, UK: Wiley-Blackwell, 2007) vol 2, 443, 444.

A. What is autonomy?

Autonomy derives from the Greek for "self-rule", and its application to individuals may have originated as a metaphor rooted in the political independence or sovereignty of states.[21] Fittingly, then, autonomy is widely understood as a matter of self-determination—of governing oneself by means of choices that are one's own, and which cumulatively make a person "(part) author of his own life".[22]

Competing accounts of personal autonomy thus revolve around a core of shared images.[23] The autonomous person, Joseph Raz says, is such that "[h]is life is, in part, of his own making".[24] Such an understanding of autonomy as a form of self-authorship or self-creation is widely shared.[25] That is because, as Stanley Benn suggests, the very idea of "making a choice", which is at the core of our concept of autonomy, supposes a relationship to one's action that is "more like that between a potter and his pot or an architect and his plan, than like the relationship between a skidding car and the resulting accident".[26]

These initial characterizations of autonomy suggest an important distinction, however. Sometimes "autonomy" names a realized condition, and sometimes it names the capacity for such a condition.[27] Consider, for example, someone imprisoned for much of his life in a very small cell. Although his freedom has been dramatically curtailed, we might hesitate to say that he is therefore less of an autonomous being. For his being autonomous, in one important sense, consists in his possession of a certain faculty—a capacity which imprisonment may suppress but normally does not eliminate. Indeed, at least in part, it is *because* he retains that capacity that his imprisonment stands in need of extraordinary justification. The primary connection between the imprisonment and the prisoner's autonomy, then, seems to be that the former may fail to *respect* the latter, not that it erases or even reduces it.

At the same time, the prisoner plainly does not live an autonomous life—a life he chooses for himself—at least not to the extent that he could if he were free. That is because the prisoner lacks the adequacy of choice that seems a prerequisite of exercising his capacity for autonomy.[28] So he is not autonomous (or his autonomy is reduced) in the no less important sense of an actualized condition. Cases like

[21] See Joel Feinberg, *The Moral Limits of the Criminal Law Volume 3: Harm to Self* (Oxford, UK: Oxford University Press, 1989) 27.

[22] Raz, *The Morality of Freedom* (n 20) 369.

[23] Personal autonomy should be distinguished from moral autonomy, which has to do specifically with a person qua moral agent. See Dworkin (n 18) 34; Raz (n 20) 370. I use "autonomy" to refer to personal autonomy.

[24] Raz (n 20) 204.

[25] See e.g. Dworkin (n 18) 32 ("Our notion of who we are, of self-identity, of being *this* person is linked to our capacity to find and re-fine oneself."); Steven Wall, *Liberalism, Perfectionism and Restraint* (Cambridge, UK: Cambridge University Press, 1998) 132 (describing autonomy as "the ideal of people charting their own course through life, fashioning their character by self-consciously choosing projects and taking up commitments…").

[26] Stanley I. Benn, *A Theory of Freedom* (Cambridge, UK: Cambridge University Press, 1988) 91.

[27] Some version of this distinction is drawn by each of Dworkin (n 18) 31, Raz (n 20) 372, and Feinberg (n 21) 28, among others.

[28] Raz (n 20) 374 offers an instructive discussion of a similar case.

this one serve to confirm, then, that there are two senses of personal autonomy in ordinary use—one a kind of faculty or capacity, the other a realized state of being.

We should first ask what the capacity for autonomy involves. What is it that the prisoner, though deprived of actual control over his life, retains such that we would call him an "autonomous" being? The core of the answer must be a collection of mental faculties sufficient at least to deliberate about and form intentions of some degree of complexity.[29] According to one particularly influential formulation of this idea, autonomy is the "second-order capacity of persons to reflect critically upon their first-order preferences, desires, wishes and so forth, and the capacity to accept or attempt to change these in light of higher-order preferences".[30] Without committing to the particulars of this account, we can suppose that, understood as a capacity, 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.

This kind of deliberative agency may not always be sufficient to be capable of autonomy—that capacity may be threatened by undue influence by others that undermines one's independence, for example—but it is certainly necessary, and it is at the conceptual core of the idea.[31] What is more, this core condition—possessing the kind of agency required for making choices that, if they were among adequate options and immune to undue influence, *would* be autonomous—is plausibly viewed as a constitutive feature of persons as such. Some people will not lead autonomous lives; and some will not lead such lives because they lack adequate options, or because they are subject to undue influence. But these failures do not threaten their very standing as persons. To the extent that one is not an agent of the right kind for autonomy, by contrast, it seems plausible that one is that much less a person.[32] This is significant, since it suggests that actions which manifest a failure of recognition for the agency element of someone's autonomy disrespect her not only as an autonomous individual, but also, in the same breath, as a person.

With an account of the capacity for autonomy in view, it is easy enough to see, in outline, what the realized condition of autonomy is as well. Together reflective agency and certain other conditions comprise a theory of what it takes for a person to make a choice in a manner that renders it authentically *his* choice. It is the cumulative accretion of such choices that defines a person's life as her own, and thereby qualifies a person as autonomous in the sense of an actualized condition. We might say that to be autonomous in this latter sense is not merely to possess a certain kind of agency, then, but, as Gerald Dworkin puts it, to have a *character*.[33]

[29] Raz (n 20) 372.

[30] Gerald Dworkin, "Autonomy" (n 20). A similar idea animates Harry Frankfurt's influential account of the connection between second-order reflection and personhood. See Harry G. Frankfurt, "Freedom of the Will and the Concept of a Person", (1971) 68 *J. Phil.* 5.

[31] For a helpful discussion of the connection between independence and autonomy, see Raz (n 20) 377–78.

[32] Here I draw on an understanding of personhood elaborated in Harry G. Frankfurt, "Freedom of the Will and the Concept of a Person" (n 30).

[33] Dworkin (n 18) 32.

When we talk about autonomy as something that demands recognition or respect, which of these two dimensions of the concept do we have in mind? Both, I think. There is normative significance to a person's being an agent of the sort required for autonomous choice (and indeed for personhood), and to her being in part the cumulative product of such choices. As such, both of these should cast light on what it means to treat someone as an individual.

B. Generalization and respect for autonomy

As I noted earlier, many normative appeals to respect for autonomy have a common structure. In one way or another, they demand that we not supplant a person's distinctive role as the controlling force in her own life. That is what we are being called upon to do, for instance, when we forbear from imposing a blood transfusion on someone out of respect for her autonomy. We recognize that her scheme of values, commitments, and projects differs from our own; and we recognize that, when it comes to her life, it would be wrong for us to pursue ours at the expense of hers.

Respecting someone's autonomy in this way is primarily a matter of allowing her to shape her own life, and only secondarily involves attending to the *way* she shapes it, with an eye to avoiding wrongful interference with the self-regarding commitments she makes. But this second aspect of respecting someone's exercise of autonomy—seeing her as the person she has made herself—is also of significance in its own right. It would be odd, after all, to commit to respecting someone's autonomy, but then, when called upon to make certain judgments about what she is like, to willfully pay no heed to the ways in which she has contributed to determining that for herself.

Perhaps this point can be illustrated by appealing to the recurring metaphor of autonomy as a form of authorship. Suppose, for instance, that I have crafted a sculpture through successive deliberate choices over a period of years, and that you know this. You view the sculpture, and I ask for your honest critical assessment of it. In appraising the work, however, you consider only the texture of the material with which I began, and which you know I did not choose. It is not that you dislike my artistic choices; you simply disregard them.

Of course, I would feel slighted by this, and not only because your assessment was in some way unfair to me or to the merits of the sculpture. My complaint would be more basic: that you had cut the elements of *me* out of my work, for better or worse, altogether. In other words, your mode of engagement with the sculpture does not manifest appropriate recognition of my authorship of it. To respect or duly recognize my standing as the author, I think, you have to do more than acknowledge that fact abstractly; you have to attend to the differences my authorship made to the product in confronting it.

To be sure, it is an open question whether respect for an artist's standing as the author of his work is morally obligatory in any given context, or whether it is of much importance. But respect for a person's standing as the author of her *life* is obligatory and important. For I take it to follow from our analysis of the concept

of autonomy that to respect a person's authorship of her life is at least part of what it means to respect her autonomy.[34]

The upshot of this preliminary argument is that we respect a person's individual autonomy in part by attending to the influence that her exercise of autonomy has had on who she, individually, is. We can approach the same idea from another angle by considering a linguistic ambiguity implicit in the notion of treating people as individuals.

In particular, suppose that someone objects to some form of treatment on the ground that it fails to treat him "as an individual". On its face, that could be viewed as a demand to be treated in a manner that accords with a general quality—the property of being an individual—that he is claiming to possess. So understood, the relevant property is possessed equally by other people, if they too are individuals, as well. But his demand can also be heard differently, as insisting that he be treated as *the* individual that he is. In either case, the objector is in some sense demanding recognition. On the latter interpretation, however, he is demanding to be recognized not under the general description of "an individual", which is one thing that he is, but rather under whatever description makes him the *particular* individual, distinct from others, that he is.

These are not competing interpretations of the objector's demand if the general quality of being an individual, in the relevant sense, is such that what recognition respect for it requires *is* at least in part that one treat a person as the particular individual that he is. Then it would be natural to understand him as essentially making both demands at once: he is demanding to be treated in a manner befitting his standing as an individual, which is (in part) to say, to be recognized as the particular individual he is.

That dual interpretation coheres well if individuality of the relevant sort is understood in terms of autonomy as we have analyzed it. In our opening discussion of what it might mean to be an individual, I suggested that autonomy is both a quality we share, and a quality that grounds the morally important ways in which we differ. *Respect for* autonomy partakes of this dualism as well. On the one hand, respecting someone's autonomy means taking account of his choice of commitments, values, and projects; it is these which, in different ways and to different degrees, define his character and constitute him as *the* particular individual that he is. On the other hand, respecting his autonomy also means recognizing that, whatever his background and whatever his past, insofar as he is *an* autonomous individual—an agent of a certain kind—he has some ongoing capacity to chart his course for himself.

[34] The sculpture example may suggest a more controversial stance on issues in aesthetics than I intend. Without wandering too far afield, I believe my suggestion about this case is consistent with the view, associated with New Criticism, that "the design or intention of the author is neither available nor desirable as a standard for judging the success of a work of literary art". W.K. Wimsatt and M.C. Beardsley, "The Intentional Fallacy" (1954), reprinted in Joseph Z. Margolis, ed., *Philosophy Looks At The Arts* (Philadelphia, PA: Temple University Press, 1987) 367. The argument supposes only that respect for me as the author of the work necessitates attending to the significance of what I *did*, not to what I may have intended in doing it.

Let me suggest, then, the following more formal account of treating people as individuals, which I will call *the autonomy account* for short.

> In forming judgments about Y, X treats Y as an individual if and only if:
>
> (*Character Condition*) X gives reasonable weight to evidence of the ways Y has exercised her autonomy in giving shape to her life, where this evidence is reasonably available and relevant to the determination at hand; and
>
> (*Agency Condition*) if X's judgments concern Y's choices, these judgments are not made in a way that disparages Y's capacity to make those choices as an autonomous agent.

This formula is meant to give content to the idea that treating a person as an individual involves recognizing her both as an individual (an agent with a certain autonomous capacity) and as the particular individual that she is (as this is constituted from the choices she has made, the projects she has undertaken, and so on).

According to this theory, therefore, treating someone as an individual demands two things. First, it means paying reasonable attention to relevant ways in which a person has exercised her autonomy, insofar as these are discernible from the outside, in making herself the person she is. Second, it means recognizing that, because she is an autonomous agent, she is capable of deciding how to act for herself. When we act in accordance with these requirements, we deal with people in a way that respects the role they can play and have played in shaping themselves, rather than treating them as determined by demographic categories or other matters of statistical fate.

Put another way, the relationship between these two conditions reflects the interplay of self-definition and freedom in the exercise of autonomy. The character condition enjoins us to pay attention to a person's past choices in making sense of who he now is, and hence also in forming judgments about how he is likely to behave in the future. Metaphorically, it presses us to see his life as an unfolding narrative he is writing, and to look at what he has written thus far, to the extent he shares it with us, in predicting what will happen next. The agency condition insists that any such predictions not only take account of evidence of his past choices, or the scheme of incentives or first-order desires he now confronts, but also recognize his capacity as an autonomous agent to continue to make his own choices through an exercise of reflective judgment.

We can get a sense of how the autonomy account works in practice by considering a concrete case. To take a familiar example, many believe it would be wrong for an employer to discriminate against female job applicants because statistics suggest that they are more likely than male counterparts to take parental leave. As David Miller writes:

> [W]e cannot say of any particular woman we are considering for a position that she is liable to perform at a lower level because of a decision to have children. To make that assumption is to fail to treat her respectfully as an individual, and potentially to commit an injustice.[35]

[35] David Miller, *Principles of Social Justice* (Cambridge, MA: Harvard University Press, 1999) 168–69.

Unlike Sally and Mark's examples, this case raises a wide array of moral considerations. For one thing, we might think it is important that people be able to take parental leave without fearing professional repercussions, particularly given the gendered nature of parental work.[36] If so, we might object to or seek to prohibit the employer's conduct on this ground alone. That objection has little to do with his reliance on a predictive generalization about women, however: it would apply equally if he disfavored people who *volunteer* that they intend to take leave.

Without discounting this and other moral questions posed by the employer's discrimination, then, the autonomy account brings two particular dimensions of the situation to the fore. First, it is significant that the employer makes his prediction by appeal to a reference class—women—which a person has essentially no say in belonging to. Information about the tendencies of that class is genuine information about its members, but it is not information that reflects their own autonomous commitments. According to the autonomy account, there is nothing wrong per se with making use of such information. But the character condition does require that one also consider relevant information that *does* manifest a person's self-authorship.

The first way in which the employer may fail to treat a female candidate as an individual, then, is by failing to give due evidential weight to the manner in which she has constructed her life, as this bears on the judgment he must make. Perhaps she has a clear history of putting her career ahead of her personal life, for instance, or disclaims any interest in children. More broadly, the predictive relationship between sex and taking parental leave is no doubt sensitive to many other variables, some of which are markers of the kind of a life an individual person is in the course of constructing for him or herself, and some of which should be evident to a socially competent interviewer. To disregard that evidence, when it speaks both to a person's particular character and to her future performance, would be to fail to treat her as an individual.[37]

Of course, this is only a contingent indictment of the employer's conduct. It finds no fault in the skeletal description of the case with which we began; for what it objects to is not his use of statistical evidence about women in assessing female applicants, but his possible failure to attend to certain other relevant evidence as

[36] U.S. law aims to vindicate this entitlement, at least in a limited fashion. See Family and Medical Leave Act of 1993, Pub. L. No. 103-3, 29 U.S.C. §§ 2601 et seq; *Nevada Dep't of Human Resources v. Hibbs*, 538 U.S. 721, 731 (2003) (understanding the FMLA as in part a calculated means to undermine "the pervasive sex-role stereotype that caring for family members is women's work").

[37] In this respect the character condition is reminiscent of the U.S. Supreme Court's explanation of the constitutional prohibition on racial discrimination in *Rice v. Cayetano*, 528 U.S. 495, 517 (2000). "One of the principal reasons race is treated as a forbidden classification", Justice Kennedy explained, "is that it demeans the dignity and worth of a person to be judged by ancestry instead of by his or her own merit and essential qualities". Such treatment is constitutionally impermissible, in other words, because it "is not consistent with respect based on the unique personality each of us possesses". The character condition can be seen as offering one way of fleshing out the moral requirement to which the Court was appealing, understanding a person's "essential qualities" or "unique personality" as given by her autonomous choices (and foregoing a special concern for her "merit"). Importantly, however, the character condition requires attention to those "essential qualities" rather than forbidding attention to others.

well. Similarly, what is disrespectful of me as the author of my sculpture is not taking your view of the material into account in assessing the piece, but rather ignoring everything else. This is, in effect, what the employer may do to the female candidate—focus excessively on the raw material she was handed, rather than the life she has crafted out of it. But the employer does not have to blind himself to the candidate's sex, or to its genuine predictive relevance, to treat the candidate as an individual. On the other hand, as noted above, this is not to say that there are not other good reasons for objecting to what the employer does, quite apart from the suggestion that he fails to pay the candidate the respect of attending to the ways she has exercised her autonomy.

Before turning to the second, agency-centered condition of the autonomy account, this discussion highlights two virtues of the character condition that warrant emphasis. First, because it poses an *inclusive* rather than an *exclusive* requirement, the character condition does not create or suggest a conflict between moral and epistemic norms. It does not imply, in other words, that in order to respect someone as an individual one must form beliefs about her irrationally, by discounting relevant evidence. Rather, because it insists that certain evidence at least be given its appropriate weight, its prescription coincides with demands of epistemic rationality. What the account adds is an explanation of why certain epistemic lapses have a moral significance that others lack.

Second, the character condition avoids any reliance on the unstable notion of "statistical" evidence. On some accounts, the employer in the parental leave case fails to treat the female candidate as an individual because he assesses her on the basis of "probabilistic information . . . that relates to the whole group or class to which [she] belongs".[38] But it is hard to see how this distinction among kinds of probabilistic information could be made to work. Even if an employer disfavors an applicant because she states an intention to take parental leave, his decision involves the tacit application of a statistical generalization about the odds that a "whole group or class" of people will take parental leave: the class of people who avow an intention to do so.[39]

From the perspective of the character condition, by contrast, the difference between these two scenarios is clear. In this modified case, the employer's reference class ranges over people who have made the choice to avow a certain intention. Reliance on evidence about that class is not even a contingent mark of a *possible* failure to attend to the ways in which a person has exercised her autonomy, for it is itself an instance of such attention. My hope, then, is that the character condition can vindicate the instinct that leads us to invoke a distinction between "individualized" and "statistical" evidence—the instinct that people should be treated as individual

[38] Miller (n 35) 168.

[39] See Lippert-Rasmussen (n 5) 51. This point is elaborated in broader terms by Frederick Schauer, *Profiles, Probabilities, and Stereotypes* (Cambridge, MA: Harvard University Press, 2003) 103 ("[E]ven the [inferential] processes that initially appear to us to be 'direct', 'actual', or individualized turn out to rely far more on generalizations from past experience than is often appreciated").

persons with their own individual characters—without pressing us to eschew relevant information or adopt a general skepticism about statistical generalization.

Turn now to the agency condition. Staying with the parental leave case, it is significant not only what reference class the employer invokes, but also what he is using it to predict.[40] He is making judgments about the choices that a given candidate will make. According to the agency condition of the autonomy account, then, he can also fail to treat a candidate as an individual by forming these judgments in a way that treats her as determined by statistical tendencies, rather than as an autonomous choice-maker who can reach reflective decisions that are her own.

Once again, this is not to deny that being a woman may be predictive of making the choice to take parental leave, or that the employer can reasonably take account of that fact. One can perfectly well acknowledge that this choice is each individual's to make, while predicting that some are more likely than others to make it in a certain way. Recognition of a person's autonomous agency, in other words, does not require us to forbear altogether from making predictions about how she will exercise it. But to be consistent with respect for her autonomous agency, our predictions about what she will do must take precisely that form: they must be predictions about how she will exercise her agency, rather than tacit denials that she *has* a full measure of such agency.

To respect her as an autonomous agent, that is, one must not misrepresent the nature of her decision-making process by understating its degree of autonomy. This requirement is violated, for instance, if the employer considers a woman's decisions excessively by appeal to the first-order desires he ascribes to her—the maternal drive to nurture one's children, say—with little attention to the ways in which she may exercise reflective choice among such desires. That is to treat her as less of a person than she is, and more as a stimulus-response machine of some kind.[41]

It is a difficult question just when deliberation about someone's choices abridges this requirement. People *are* subject to first-order desires of various kinds, and respect for persons as individuals should not be taken to require idealizing these away, or supposing that they are all of equal strength (so we would simply be at a loss to predict which will win out). But there is a comparative question that is happily more straightforward. The employer certainly disrespects women if he predicts their choices on the basis of simple desires that he believes will very likely "out" in their eventual choices, but affords a greater role to autonomous reflection in considering the choices of men.

This sort of disrespect for the agency of some people is an important aspect of many traditional group stereotypes. When people subscribe to gross cultural

[40] I use "predict" loosely, since what is being predicted may sometimes be in the past, but unknown to the agent making a judgment about it.

[41] Here again I draw on Frankfurt's (n 30) influential account of the connection between freedom, second-order reflection, and our concept of personhood. A similar idea animates David Wasserman's theory of the morality of relying on statistical proof in imposing liability. See Wasserman, "The Morality of Statistical Proof and the Risk of Mistaken Liability", (1991) 13 *Cardozo L. Rev*. 935.

generalizations—"Jews are pushy", "Hispanics are lazy", and so on—they often fail to regard Jews or Hispanics as individual autonomous persons who are just as capable of choosing whether to act pushily or lazily as others are. What is significant about these attitudes, in other words, is not only the character of the traits that are being ascribed but the constriction of autonomous agency that ascribing them to whole groups often implies. Acting on these attitudes very often involves a related failure to abide by the character condition of the autonomy account as well. For these generalizations, when applied as cavalierly and unscrupulously as they usually are, crowd out attention to the characters of individual group-members, as these are constituted by their cumulative autonomous choices.[42]

Indeed, these two forms of disrespect for autonomy also ably explain what is often common, morally speaking, to reliance on pejorative and nominally laudatory generalizations about social groups. Antebellum abolitionists in the U.S. who "ascribe[d] fancifully noble qualities" to enslaved black people,[43] for instance, may have failed to appreciate the autonomy of individual black people just as much as contemporary racists do. Like those who regard black people as endemically violent or promiscuous, those who took them to be loyal or compassionate by nature thereby demeaned their standing as autonomous agents. These same attitudes surely also involved and encouraged a failure to attend to the characters of individual black people, as constituted by their successive autonomous choices, in forming judgments about them.

As I have described it, the autonomy account aims to identify and characterize a requirement of recognition respect for a morally salient property of persons. But autonomy is not only a static property, which, taken as given, we ought to recognize or respect. It is also a valuable dimension of people's lives that we ought to avoid undermining—or which, indeed, we may bear a collective obligation to promote. In the next section, I explore the connections between these moral imperatives of recognition respect and autonomy promotion in the context of another concrete setting of discrimination.

C. Respecting and promoting autonomy

In respecting a person's autonomy in the manner required by the character condition, we often *further* his actual condition of autonomy as well—or, perhaps, forbear from constraining it—insofar as we allow his choices to influence his treatment by us in fitting and predictable ways. That is, we promote his control over his life in allowing or enabling his plans to come off, and we do that by being appropriately sensitive to the evidential significance that his choices ought to have with respect to questions we are called upon to judge. By contrast, if a person invests

[42] Lawrence Blum has offered an incisive philosophical account of stereotyping that develops a similar claim, arguing that "[s]tereotyping involves seeing individual members through a narrow and rigid lens of group-based image, rather being alive to the range of characteristics constituting each member as a distinct individual". Blum, "Stereotypes And Stereotyping" (n 7) 272.

[43] Arneson (n 8) 788.

in shaping himself in certain ways, but we are insensitive to the effects of this endeavor on who he is—adverting instead to aggregate evidence regarding people of his race, sex, nationality, or the like—we undercut the efficacy of those efforts on his part as a means of charting the course of his life.

This argument about the effects of different forms of conduct *on* people's autonomy complements the more fundamental thesis that our actions ought to be structured to respect the fact *of* people's autonomy.[44] Moreover, both perspectives suggest that discrimination on the basis of certain traits is troubling not so much because of what a discriminator is wrongly sensitive to, but because of what it suggests he is *not* being sensitive to—a person's autonomous choices. To whatever extent someone's treatment is determined by traits that are beyond her control, in other words, she is denied the opportunity to shape that treatment for herself. Abiding by the strictures of the autonomy account will tend to vindicate that opportunity by directing our attention to people's self-defining choices. At the same time, however, it offers no guarantee that there will not be judgments about us for the purposes of which our unchosen traits are very telling as well, and it furnishes no ground of objection when those decisions are made accordingly.[45]

Anthony Walton's 1989 essay "Willie Horton And Me" offers a helpful vehicle for thinking through these different moral demands.[46] The essay recounts Walton's experience of the use of Willie Horton, a convicted murderer and rapist, in an influential political advertisement in the 1988 U.S. presidential election. The ad recounted the gruesome details of Horton's case—voiced over a grainy photo of his black face—to accuse the more liberal candidate of being too lenient on criminals.

In the essay, Walton describes a wide range of indignities and frustrations that confront black men in the U.S., such as standing "in blazer and khakis, in front of the New York University Law School for 30 minutes, unable to get a cab". More broadly, he writes:

> I must battle, like all humans, to see myself. I must also battle, because I am black, to see myself as others see me; increasingly my life, literally, depends upon it.... And they won't see a mild-mannered English major trying to get home. They will see Willie Horton....
>
> I think we, the children of the dream, often feel as if we are holding 30-year bonds that have matured and are suddenly worthless. There is a feeling, spoken and unspoken, of having been suckered.... I know that I disregarded jeering and opposition from young blacks in adolescence as I led a "square," even dreary life predicated on a coming harvest of keeping-one's-nose-clean. And now I see that I am often treated the same as a thug, that no

[44] John Gardner develops a similar line of thought about the autonomy *effects* of discrimination in "On the Ground of Her Sex(uality)", (1998) 18 *Oxford J. L. Stud* 167, 170–71.

[45] The autonomy account thus fits naturally with the insight that much discrimination wrongfully denies us "freedoms to deliberate about and decide how to live in a way that is insulated from pressures stemming from extraneous traits of ours". Sophia Moreau, "What is Discrimination?", (2010) 38 *Phil. & Pub. Affairs* 143, 147. It does not demand that those pressures be relieved, however, so much as that they be counterbalanced under certain conditions.

[46] Anthony Walton, "Willie Horton And Me" (*New York Times,* 20 August 1989) <http://www.nytimes.com/1989/08/20/magazine/willie-horton-and-me.html>. I came to Walton's essay by way of Randall Kennedy's helpful discussion of related issues. See Randall Kennedy, *Race, Crime, and the Law* (New York, NY: Random House, 1997) 157–58.

amount of conformity, willing or unwilling, will make me the fabled American individual. I think it has something to do with Willie Horton.

When cab drivers pass Walton by out of fear, because he is black, they rely on a tacit statistical generalization about black men that is unwarranted—not just incorrect as applied to Walton, but unjustified as such. But, as Walton implicitly argues, they do something more than that as well: they disregard and undercut a lifetime of choices and efforts on his part, aimed at distinguishing himself from the others who lend the generalization whatever plausibility it may appear to possess.

Those choices, Walton is suggesting, are manifest in his clothes, his manner, his location at the moment, and so on. The cab drivers disregard this information about him. That means, for one thing, that they apply their generalization about black men far more indiscriminately than is warranted. But the information that they disregard is not just *any* information that distinguishes Walton from the class of people whom they fear. Walton's complaint is not the same, for instance, as that of a black woman who is passed by out of fear when in fact (let us imagine) the rate of taxi-driver robbery is elevated only for black men. For the information that is disregarded in Walton's case is the material expression of his efforts, as an autonomous agent, to be and to be seen as a certain kind of person. When they proceed to treat him simply on the basis of their generic attitudes towards black men, the cab drivers fail to respect that aspect of his nature—the fact that he has an individual *character*—by refusing or otherwise failing to see him as the person he has made himself. That is an important part of what we would mean, I think, in saying that they fail to treat or respect him as an individual.[47]

That objection is closely related to the concern that his project of self-authorship has been undermined or rendered inefficacious. Walton voices that concern as well when he describes feeling "suckered". The success of our efforts to construct particular lives for ourselves, valorized in our culture, partly rests on others recognizing us as the individual people we come to be and responding appropriately—much as the autonomy of a Jehovah's Witness rests on a doctor's correctly interpreting and honoring her decisions. So there are at least two different moral concerns here, both sounding in the value of autonomy. First, when a person treats Anthony Walton as if he were Willie Horton, despite the obvious evidence of their differences, that fails to *respect* Walton as an autonomous individual. Second, if this reaction is widespread, then in the aggregate it may also *deny* him the chance to effectively exercise autonomous control over his life.

This argument also helps to explain why the requirement to treat others as individuals takes on heightened moral stakes when socially salient traits and stereotypes are at issue. First, only when discrimination on the basis of a trait is widespread do concordant failures to treat people of that description as individuals threaten jointly to deny them autonomous control over the course of their lives.

[47] There may be room for an objection cast in terms of the agency condition of the autonomy account in this case as well, though it is perhaps more peripheral. Specifically, the cab drivers fail to treat Walton as an individual if they approach him as less than an autonomous choice-maker in forming the fear that he will rob them, since this is a choice that is his to make.

That partly explains the special significance of these cases—and also points toward a powerful reason for imposing legal restrictions on the prerogative to discriminate on certain grounds. Second, as Walton's essay suggests, socially salient images of those with whom we share unchosen traits are often the foils we most strive to define ourselves against, and our projects of self-definition are therefore all the more deeply undercut when they are displaced by those very assumptions. Both the effect and the meaning of failures to treat people as individuals are thus sensitive to broader social patterns, and for reasons internal to the autonomy-centric perspective I have outlined. At the same time, discrimination on the basis of entrenched stereotypes is distinctively troubling for reasons external to that perspective as well—ranging from the attitudes these actions express, to the objective meanings they carry, to the various other wounds they inflict.[48]

III. Clarifications and Applications

Let me highlight a few features of the autonomy account that call for some further explanation. First, I have said that one fails to treat someone as an individual by disregarding some evident exercise of her autonomy—in the form of her choices, projects, and so on—despite its availability and informational value relative to the question at hand. Importantly, this means that one can fail to treat someone as an individual even if *all* one considers is an exercise of his autonomy, if one also fails to consider other available information of the same sort.

Suppose, for instance, that an employer rejects everyone with a criminal history. Let us grant for the sake of the example that applicants come to have this history by virtue of their own autonomous choices. Nonetheless, some go on to make other choices that bear materially on their fitness for a job later in life. Insofar as evidence of such choices is reasonably available to an employer and he disregards it, he fails to treat an applicant as an individual, even though he is judging the applicant's fitness on the basis of *a* choice the applicant made. Put another way, the applicant could still legitimately claim that the employer has failed to recognize him as the individual person that he is, and that the employer ought to have made more of an effort to do so.

Second, the character condition is compatible with the recognition that our exercise of autonomy is dynamically related to aspects of ourselves that we do not choose. A person exercises his autonomy not only in making "unencumbered" choices, but also in determining which of his antecedent traits to identify with and embrace, although he did not choose them, and which others to do his best to sand down or eschew.[49] Thus, for instance, I did not choose my sex, but I do choose to

[48] Cf. Elizabeth S. Anderson and Richard H. Pildes, "Expressive Theories of Law: A General Restatement", (2000) 148 *U. Pa. L. Rev.* 1503, 1533–45 (defending attention to the attitudes legal classifications express as an element in equal protection analysis); Hellman (n 3) 34–58 (arguing that discrimination is wrong when it is objectively demeaning); and Lippert-Rasmussen (n 11) (arguing that discrimination is bad because of the harm it does).

[49] See Michael J. Sandel, "The Procedural Republic and the Unencumbered Self", (1984) 12 *Political Theory* 81, 86 (articulating the idea of "the unencumbered self").

what extent to self-identify as male. Such identification does not consist primarily in the literal self-application of the descriptor "male", but in a complex of tastes and behaviors through which I embrace or reject masculinity.[50] Like other choices, these will normally manifest in a variety of self-presentational behavior. Forming judgments about me on the basis of my race or sex, to the exclusion of relevant evidence that reflects my exercise of autonomy, infringes the character condition. But appropriate attention to the ways in which I perform my race or gender will, on the contrary, sometimes be required by it.

Third, some bits of information are obviously more probative than others with respect to a given question, and some are more costly than others to ascertain. In deciding what information to procure or attend to in making some judgment about someone, it is reasonable to take both of these considerations into account. Thus whether a decision-making procedure respects someone as an autonomous individual should be taken to rest on the agent's "value-adjusted" investments in different bits of information. Part of what is egregious about Walton's treatment by the cab drivers, for instance, is that the information that reflects his autonomous choices is neither less visible nor less telling than his race.

To be sure, going out of one's way to understand a person's autonomous choices before forming judgments about her is often admirable, since it is likely to facilitate her self-determination, and in any case makes it more likely that she will be more fully recognized as the individual person that she is. But there must be limits to what is morally obligatory as a matter of respect. I will leave the question of these limits unresolved—though not without some regret—and rely on the unanalyzed notion of information that is "reasonably" available to a decision-maker, asking whether it is given "reasonable" weight. Note that even this modest requirement surely implies that one ought not to discount information that (1) appears to reflect a person's autonomous choice and (2) is not less available or less probative than other information that one *does* take into account.

The reasonableness condition embedded in the autonomy account has the significant consequence that one can sometimes decline to treat people *individually*, in the sense of scrutinizing their particular qualities, without failing to treat them *as individuals*.[51] When the information required for assessing people on the basis of their autonomous choices is not reasonably available, for instance, there is no disrespect in declining to treat them individually in this regard—that is, in employing gross statistical categories or blanket policies. Of course, certain ways of going about this may be objectionable on grounds of fairness or reliability nonetheless.

While emphasizing that the demandingness of the obligation to treat people as individuals varies with context, I think we should resist efforts to limit the principle's scope. Lawrence Blum, for example, suggests that "[t]reating or seeing others as individuals is not always a required or appropriate standard of conduct", because "some interactions with others are too fleeting for the idea of treating as

[50] This point is developed by Gardner, "On the Ground of Her Sex(uality)" (n 44) 178, note 23.

[51] Similarly, "[s]ometimes treating people equally is the only way to treat them as equals; but sometimes not". Dworkin, *A Matter of Principle* (n 16) 190.

an individual to get any traction".[52] From the perspective of the framework I have described, it may be better to say that in many situations one simply discharges one's obligation to treat others as individuals with ease. That could be because one is not really engaged in the business of forming judgments about those one interacts with in the first place, or because the interaction is too fleeting to give one the kind of information that, if it were available and relevant, respect for a person's autonomous individuality would require one to consider in making the judgments one does.[53]

If the obligation to treat people as individuals is understood in terms of autonomy, however, its scope *is* limited to judgments about a person that could at least in principle implicate her autonomy, and hence is also restricted to beings that possess at least some measure of autonomy in the first place. I think these features buttress the plausibility of the analysis. If we are estimating the odds that a person is a genetic carrier for some trait or disease, for instance, it makes no sense to worry about treating her respectfully as an individual in doing so, because this question implicates her only as a biological entity and is correspondingly unaffected by any possible or actual exercise of her autonomy.

For some entities, moreover, *all* judgments we could make about them may have this character. We can disrespect infants or non-human animals as beings of moral worth, for example, if our actions manifest a failure to weigh their interests at an appropriate weight. But it would indeed seem strange to say that we can disrespect them by failing to treat them *as individuals*. Of course, out of concern for their interests, we ought to be epistemically conscientious in making decisions that affect them, including by being sensitive to their relevant differences. But the inaptness of the specific requirement to treat them respectfully as individuals is plausibly explained by the fact that they simply are not (or, in the case of infants, are not yet) individuals in the sense that is relevant to this requirement. There are no autonomous commitments of theirs, the significance of which we could be obligated to respect; and there is no possibility of failing to recognize their standing as reflective choice-makers, which they are not.[54]

Finally, the autonomy account is compatible with the recognition that much generalization-based discrimination is unconscious and unintended. Insofar as disrespect consists in a failure of recognition—in the reality that, as Harry Frankfurt puts it, "some important fact about the person is not properly attended to or is not

[52] Blum (n 7) 272.

[53] Relatedly, we should recognize that failing to treat someone as an individual is a moral offense that comes in degrees. Even among genuine failures to treat people as individuals, that is, some may well show greater disrespect for a person's autonomy than others—for instance, because what is disregarded about a person is more obviously central to the life he has made for himself.

[54] It is thus ironic that the U.S. Supreme Court's fullest articulation of the need to respect individual autonomy as a constraint on discriminatory state action came in *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007), in which the Court struck down two race-based school assignment plans that sought to integrate local school systems. Specifically, Justice Kennedy's controlling opinion worried that rigid race-based assignments "reduc[e] . . . an individual to an assigned racial identity", which he considered an affront because "[u]nder our Constitution the individual, child or adult, can find his own identity, can define her own persona, without state

taken appropriately into account"[55]—the onus is placed on each of us affirmatively to appreciate certain elemental facts about one another, in the sense of taking account of the reasons they furnish for acting in some ways rather than others. The autonomy account specifies a certain understanding of what recognizing someone as an individual, in particular, entails. Conscious awareness is of no basic significance to that requirement.

Relying on *unconscious* generalizations, in other words, does not constitute an exception to what would otherwise be a failure to treat people as individuals. But neither is it in itself a mark of such a failure. We fit individual cases into general categories in order to make sense of the world. The fact that this comes so naturally to us that we may be unaware of doing it need not be a sign that anything untoward is going on. What is disrespectful of people as individuals, rather, is failing to give reasonable weight to certain kinds of evidence in making judgments about them, or misrepresenting their natures as autonomous agents in certain ways.

The notion of "reasonable" weight invoked here cannot but be understood as relative to the weight accorded to other factors in making a judgment about someone. But whether those other factors are afforded their weight consciously or not makes no difference to whether the requirement is satisfied. Indeed, it may make no difference whether the traits that manifest people's autonomy—which we are required to attend to out of respect for their standing as partial authors of their lives—are given their due weight consciously or not either. Much of the time this too just comes to us naturally and unreflectively. That is, often our judgments about people are appropriately sensitive to the ways they have defined themselves as individuals, without the need to *consciously* advert to beliefs about the various reference classes they have joined.

To the extent that unconscious generalization is troublesome, then, it is because it makes regulation of one's judgment-forming procedures more difficult. Failing to guard against various cognitive biases that exert an unconscious pull on us is often a manner of failing to exercise due care in forming fair and reliable judgments. That particular concern only applies in contexts where, and to the extent that, one is morally required to make fair and reliable judgments; the domain of the autonomy account is, by design, more general than that. But the same basic point

intervention that classifies on the basis of his race or the color of her skin". *Parents Involved,* 551 U.S. at 797–98 (Kennedy, J., concurring).

That idea, though not elaborated at length, has some resonance with the understanding of respect for individual autonomy that I have sketched here. But in fact the concerns I have emphasized will have much *less* force in assigning young children to primary schools than in, say, assessing the persons young adults have made themselves in crafting a university community. To the extent that a young child has not yet undertaken significant autonomous self-definition, she is not the kind of thing we are obligated to respect in the manner imagined by the character condition. Various other concerns must inform the choice whether to make school assignments on the basis of race, of course, including the social meanings of the practice, and whatever effects it may have on the future course of the child's life. But before a certain age, talk of treating a person respectfully as an individual—at least in the sense of paying her the respect of engaging with her as the distinctive person she has made herself—seems misplaced.

[55] Harry G. Frankfurt, *Necessity, Volition, and Love* (Cambridge, UK: Cambridge University Press, 1999) 153.

applies: it will be difficult to monitor whether one is treating people as individuals if one is unaware of the various ways in which one relies on group generalizations. That is an important *instrumental* reason for being introspective about the way we form judgments about people. It allows, however, that some people may have dispositions such that they can safely take a more hands-off approach. Conversely, some of us should realize that we have to be especially cautious about the generalizations we employ—perhaps particularly concerning certain groups of people—in order to ensure that we treat them as individuals.

IV. Conclusion

I have argued that treating people as individuals is not a matter of eschewing statistical evidence about them, but rather of paying attention to their own roles in determining who they are and respecting their capacities to make choices for themselves as autonomous agents. This does not suffice to work out the concrete demands of respect for individual autonomy in particular cases, much less to determine when a given act of discrimination is or is not wrong all things considered. But it gives us a conceptual framework for thinking through one dimension of that question—a dimension that is easily lost amidst concerns of procedural fairness, distributive justice, and the ways in which some people's well-being may be improperly discounted in an agent's decision-making. Central among the various moral problems with much discrimination is a distinctive failure to engage with the person who is discriminated against in the right way—including by failing to treat him 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.