

Affirmative action and relational egalitarianism

1. Introduction

Affirmative action has been a common feature of admission and employment practices of many public institutions as well as private companies for almost 50 years now. Robert Fullinwider describes it as ‘positive steps taken to increase the representation of women and minorities in areas of employment, education, and culture from which they have been historically excluded’ (Fullinwider 2014; cf. Anderson 2010, 135). By ‘positive steps’ he probably has in mind steps that go beyond eliminating all forms of direct discrimination that lower the representation of women and minorities relative to what it would have been in the absence of direct discrimination against them.

No doubt Fullinwider’s characterization can be improved in various ways. For instance, if we do not use ‘exclude’ in a very wide sense, in principle at least, there could be areas where women and minorities are less well represented than men and the majority, not as a result of exclusion, but simply because they did not in large numbers form ambitions of entering these areas and where measures to boost their representation, intuitively, should be classified as measures of affirmative action. Also, it is not clear that some steps, e.g., quotas, that are known to have the expected consequence of increasing the representation of women and minorities, but are not adopted for this reason but for some other reason, e.g., to increase the legitimacy of the institution in question, should not be classified as affirmative action. For present purposes, however, I shall take Fullinwider’s characterization as a point of departure.

At least one important justification of affirmative action is that it is a way of eliminating or neutralizing the effects of indirect discrimination.¹ Like affirmative action, indirect discrimination can be defined in various ways, and again I will rely on a pretty rough characterization of indirect discrimination:

Under many legal systems, an act that imposes a disproportionate disadvantage on the members of a certain group can count as discriminatory, even though the agent has no intention to disadvantage the members of the group and no other objectionable mental state, such as indifference or bias, motivating the act (Altman 2014).

Two features of this characterization are striking. First, it says that an act can be (not: is) indirectly discriminatory if it imposes a disproportionate disadvantage on members of a certain group. Thus, an act which disadvantages members of a certain group does not count as indirectly discriminatory, if the aim behind it is legitimate and the adopted means appropriate and necessary to achieve it (Osin and Porat 2005, 864). For instance, avoiding bankruptcy might be considered a legitimate aim of a company such that it would not amount to indirect discrimination were it to adopt a laying-off scheme that would impose a disproportionate disadvantage on women and minorities provided that this scheme is necessary and sufficient to avoid bankruptcy.²

¹ This is far from the only justification offered in favour of affirmative action. Equally important are justifications in terms of diversity, compensation, and social cohesion (see Anderson 2010, 135-154). The former of these two additional justifications is not always clearly distinguished from discrimination-related ones, since the intended beneficiaries of increased diversity tend to be groups subjected to discrimination.

² Presumably, for a means to an end to be appropriate it might have to satisfy further conditions than being sufficient, e.g., not being unlawful on non-discrimination related grounds.

Second, the notion of disproportionate disadvantage is crucial and can be variously interpreted, since one might have different baselines in mind relative to which one identifies what counts as a disadvantage. I shall assume, however, that the relevant disproportionality obtains between, on the one hand, the importance of a certain valuable end being achieved, e.g., maximizing profitability, and, on the other hand, how the relevant act affects different groups in terms of harm and benefits relative to other groups (cf. Lippert-Rasmussen 2015a).³ By way of illustration, if an agent has a choice between two or more acts and these will result in different ratios of benefits (and harms) to women relative to benefits (and harms) to men, then the concern to avoid indirect discrimination is some reason to prefer acts that result in a ratio closer to one than the other available acts.⁴ Hence, suppose a company can ensure financial survival either by laying-off 10 workers all of whom are women, or 11 workers six of whom are women. In that case, the former option might disproportionately disadvantage women (assuming that minimizing the number of

³ There are other ways to construe the second relata of the disproportionality requirement. However, the comparative conception I expound here is the one usually adopted by friends of indirect discrimination. Note also that an end can be valuable, but not appropriate for a certain agent to pursue, e.g., because the agent does not have the authority to pursue this aim. However, the way I am describing indirect discrimination here allows that an act may disproportionately disadvantage a group and yet not qualify as indirect discrimination, e.g., because it is appropriate for the agent to pursue the relevant aim in question. This could be the case if all the involved parties have consented in advance to the agent pursuing this aim even when this would involve disadvantages for the consenting agents.

⁴ This description is not fully determinate, since it is unclear relative to which baseline we identify which group is worse off. Suppose a company has 80 male and 20 female workers. It has two and only two options that will enable it to avoid bankruptcy. One involves laying-off 10 workers, all male. The other option involves laying-off 10 workers, eight male and two female workers. Here one could say that since males are already overrepresented, the first option does not disproportionately disadvantage men, since even after the lay-off, seven out of nine workers will still be men. (Indeed, one could say that because men are overrepresented on the job market as such, the first option does not disproportionately disadvantage them.) Alternatively, one could say that the first option imposes disproportionate disadvantages on men, since while they make up only 80% of the present workforce, they make up 100% of workers laid-off. For present purposes I can set these complications aside.

workers laid-off is not sufficiently important). However if instead the choice were between the previous first option and a different second option—to lay-off 50 workers only six of whom are women—then perhaps the first option would not, in the relevant sense, disproportionately disadvantage women.

There is much more to be said about Altman’s characterization (see Lippert-Rasmussen 2013, 54-78). What I want to focus on for present purposes is that indirect discrimination is tied by way of its definition to a concern for the distribution of (dis)advantages across groups. The reason I want to focus on this is that, in recent years, a number of so-called social relations egalitarians (henceforth: relational egalitarians), notably Elizabeth Anderson and Samuel Scheffler, have criticized the view that the proper focus of a theory of justice is distribution. On their view, justice is basically about ‘the establishment of a society of equals, a society whose members relate to one another on a footing of equality’ (Scheffler 2015, 21; cf. Scheffler 2003, 21; Scheffler 2005, 23). While achieving this requires the elimination, or at least the reduction, of certain distributive inequalities, e.g. gross inequalities across racial groups or gender, there is a fairly wide set of possible distributions all of which are compatible with egalitarian social relations and within this set justice is silent on which one we should realize. Offhand, this would seem to suggest that within this set indirect discrimination is not unjust and, accordingly, that standard justifications of affirmative action that appeal to how it eliminates indirect discrimination or neutralizes its effects fail, if social relations egalitarianism is true.

In this paper, I shall not discuss whether relational egalitarianism is a correct account of justice. However, I shall defend two main claims about what follows, if it is. First, if relational egalitarianism is the correct theory of injustice, indirect discrimination is not unjust as such. Indeed, in principle it could be the case that in

certain contexts indirect discrimination *is required* by justice, since it promotes egalitarian social relations. Second, to the extent that affirmative action is justified, it is not tailored specifically to promoting the interests of groups subjected to indirect discrimination. Justified affirmative action might favour privileged groups and disfavor underprivileged groups, when doing so promotes people's relating to one another as equals.

Both of my claims are significant in part because relational egalitarians often contend that they, unlike egalitarians, who accept the distributive paradigm, e.g. luck egalitarians, capture the concerns of real-life egalitarians. Anderson, for instance, complains that 'with respect to both the targets of egalitarian concern and their agendas, recent egalitarian writing seems strangely detached from existing egalitarian movements' (Anderson 1999, 288; cf. Scheffler 2015, 22; Scheffler 2003, 38). However, if my two main claims are correct, the view that they are committed to hold regarding indirect discrimination and affirmative action diverge radically from what most real-life egalitarians believe. That is, most real-life egalitarians find indirect discrimination unjust and affirmative action that counteracts it just. In itself this is not an objection to relational egalitarianism. However, it is an objection to the view many relational egalitarians take of their own theory as well as of the view they take of competing luck egalitarian accounts that focus on distributions.

Section 2 sets out the relevant parts of the positions of the two leading relational egalitarians, Anderson and Scheffler. Section 3 takes up the first of my two main questions arguing that both of their views imply that indirect discrimination is not unjust as such. Section 4 addresses the second of my main questions arguing that on both of their views justified forms of affirmative action are quite different from those forms of affirmative action that we know of. Section 5 concludes.

2. *Anderson and Scheffler*

In this section I sketch the anti-distributive views of two of the most prominent relational egalitarians, Anderson and Scheffler, starting with the former. In a much-quoted 1999 *Ethics* article Anderson launches a staunch criticism of luck egalitarianism and sketches an alternative position, democratic equality.

While her criticism of luck egalitarianism is very rich I will focus on an aspect of it, which, despite Anderson's rather narrow target, applies much more broadly (to the extent that, as a matter of fact, it applies to any view at all). Contrasting luck egalitarianism and her own view, Anderson writes:

equality of fortune [i.e. luck egalitarianism: KLR] regards two people as equal as long as they enjoy equal amounts of some distributable good—income, resources, opportunities for welfare, and so forth. Social relations are largely seen as instrumental to generating such patterns of distribution. By contrast, democratic equality regards two people as equal when each accepts the obligation to justify their actions by principles acceptable to the other, and in which they take mutual consultation, reciprocation, and recognition for granted. Certain patterns in the distribution of goods may be instrumental to securing such relationships, follow from them, or even be constitutive of them. But democratic egalitarians are fundamentally concerned with the relationships within which goods are distributed, not only with the distribution of goods themselves (Anderson 1999, 313-314).⁵

⁵ Note that a description of what everyone accepts or takes for granted is not a description of a certain relationship. (I make a similar observation about Scheffler below.)

Anderson's point about 'equality of fortune' applies to any view that takes justice to be concerned exclusively and non-instrumentally with the distribution of goods. More specifically, it applies to such views that, unlike luck egalitarianism, ascribes no significance to people's choices or exercise of their responsibility, e.g. outcome egalitarianism, and it applies, *mutatis mutandis*, to such views that, unlike luck egalitarianism, do not take the relevant distributive pattern sanctioned by justice to be equality, but, say, sufficiency or, like prioritarianism, the maximization of the overall sum of morally weighted benefits. For instance, according to resource sufficientarians justice is satisfied when, in a distribution involving two people, both of them have enough resources whether or not they relate to one another as equals.⁶ To the extent that luck egalitarianism is incompatible with relational egalitarianism, such a distributive view is too.

Moving on to Anderson's positive ideal—that we relate to one another as equals—it is probably fair to say that she is more detailed in her description of what standing in relations of equality with others is incompatible with—to wit, that distributions matter non-instrumentally and independently of how they are constitutive of social relations—than in her description of what equal social relations amount to, positively speaking. Still, there are various things we can say about what it is for people to relate to one another as equals.

Before setting out the claims, which I take to capture, in part at least, Anderson's ideal of democratic equality, I need to establish a certain claim about how

⁶ You could imagine a version of sufficientarianism according to which what counts as enough is defined on the basis of the requirements of relating to one another as equals. In fact, Anderson herself seems to endorse such a position. However, it is a very special version of sufficientarianism and all the more common versions of it clash with Anderson's democratic egalitarianism.

to interpret Anderson's ideal. This claim is not needed *per se* in an evaluation of indirect discrimination from an Andersonian point of view, but it is needed for determining the content of this ideal. The relevant interpretative point is that the scope of Anderson's ideal does not just include individual citizens, but also extends to the state. That is, even if every citizen treated every other citizen as an equal, Anderson's ideal would not be satisfied provided that the state did not treat its citizens as equals. Anderson assumes that a community in which people stand in relations of equality to others, the state (insofar as it exists) acts from principles that express equal respect and concern for all citizens and to the extent that it does not, the ideal of democratic equality is unsatisfied. So, for instance, she thinks that a paternalistic state that makes insurance against various misfortunes mandatory acts disrespectfully by, in effect, acting from principles implying that citizens are 'too stupid to run their own lives' (Anderson 1999, 301). Similarly, she thinks that, in recommending not assisting victims of very bad option luck because 'they deserve their misfortune', a luck egalitarian state does not 'treat them with respect' (Anderson 1999, 301). The interpretative point that I shall rely on is that the features of a relation between the state and its citizens that make it the case that democratic equality is violated are also features that, to the extent that they characterize relations between individual citizens, violate the ideal of democratic equality.

With this interpretative point in mind, I can state the first positive claim about the nature of democratic equality. To the extent that relations between individuals involve failure to help destitute people on the ground that their situation is their own fault, paternalistic coercion, contemptuous pity, condescension, envy, or demeaning and intrusive judgments of people's (or, for that matter, one's own) capacities to exercise responsibility (Anderson 1999, 289, 295, 306-307, 314), the relevant

community is not one, in which people relate to one another as equals. Call this Anderson's *no disrespect requirement*.

Second, a community of equals is incompatible with hierarchies where 'human beings' are 'ranked according to intrinsic worth' (Anderson 1999, 312). So, most obviously, a community of equals is incompatible with a society where people are ranked in terms of intrinsic worth on the basis of race, sex, or gender, and, thus, relations between citizens are relations between 'inferior and superior persons'. An aspect of this is that equality is incompatible with oppression—that is, 'forms of social relationships by which some people dominate, exploit, marginalize, demean, and inflict violence upon others' (Anderson 1999, 313).⁷ Positively, [the equal moral worth of persons] asserts that all competent adults are equally moral agents; everyone equally has the power to develop and exercise moral responsibility, to cooperate with others according to principles of justice, to share and fulfill a conception of their good' (Anderson 1999, 312). Hence, every member of the community has a right to take part on an equal footing in the collective self-determination of the community (Anderson 1999, 313). Call this set of claims the *no-ranking requirement*.

Three, in a society of equals there are certain capabilities—those required for avoiding entanglement in oppressive relationships and those required for participating as an equal citizen in a democratic state and in a democratic civil society—that people 'have access over the course of their whole lives' (Anderson 1999, 314, 316). Call this the *sufficiency requirement*. This requirement does not support comprehensive equality in the space of capabilities, e.g., in the capability for welfare, but it is incompatible with any group of people being 'excluded from or segregated within the

⁷ Anderson says that 'distinct roles in the division of labor' (among other things) never justifies the forms of social relationships involved in oppression (Anderson 1999, 313). While this does not entail, it certainly suggests, that distinct roles in the division of labour is compatible with Anderson's ideal of democratic equality.

institutions of civil society, or subjected to discrimination on the basis of ascribed social identities by institutions of civil society’ (Anderson 1999, 317). Democratic ‘equality guarantees all law-abiding citizens effective access to the social conditions of their freedom at all times’ (Anderson 1999, 289). Even setting aside non-law-abiding citizens, this sufficientarian strain in Anderson’s thinking suggests that there could be inequalities between groups of people compatible with everyone enjoying the social conditions of their freedom. Indeed, it suggests that there could be inequality of opportunity under democratic equality. I will return to this in Section 3.

For the remainder of this paper, I will take the no-disrespect, no-ranking, and the sufficiency requirements to capture Anderson’s ideal of democratic equality. While satisfying one of the three requirements might render it more likely that the two other constraints are satisfied, in principle each of them can be satisfied even if none of the other requirements is satisfied. For instance, the sufficiency requirement might be satisfied even if citizens are often disrespectful to one another and even if citizens are ranked in certain ways, e.g. in terms of looks, that, however, do not affect people’s ability to avoid ending up being entangled in oppressive relationships or participating in politics and civil society, e.g., while it is *more difficult* for people at the bottom of the hierarchy to do so, they are *able*, expending sufficiently low levels of effort, to do it—it is just that they have to exert themselves more.

I shall now leave Anderson’s views to set out Scheffler’s position before, in the next section, returning to the first of my two main questions. In a recent elucidation of the relational egalitarian ideal, Scheffler takes his point of departure in a simple personal relationship between two persons—a marriage—and asks what it is for such a relation to be a relation between equals. One component of such a relationship draws on values other than equality. So, for instance, an egalitarian

relation is one in which individuals treat one another with respect and each see the other as a moral agent with the rights and responsibilities accruing to moral agents. Another, and distinctively egalitarian component, is what Scheffler dubs the *egalitarian deliberative constraint*:

If you and I have an egalitarian relationship, then I have a standing disposition to treat your strong interests [understood broadly to include the person's needs, values, and preferences] as playing just as significant a role as mine in constraining our decisions and influencing what we do. And you have a reciprocal disposition with regard to my interests. In addition, both of us normally act on these dispositions (Scheffler 2015, 25).⁸

Scheffler (2015, 28-29) explicitly notes that satisfying the constraint is compatible with reaching decisions that do not leave the parties, who relate to one another as equals, equally well off.⁹ Indeed, he thinks that it is unlikely that participants in egalitarian personal relationships will 'attempt to satisfy the [deliberative] constraint through the self-conscious application of a fixed distributive formula', though the constraint will 'exert pressure in the direction of egalitarian distribution' (Scheffler 2015, 33, 34). Conversely, even if a strict distributive formula of equality was

⁸ Note, incidentally, that at least part of the egalitarian deliberative constraint is not a constraint on the nature of social relations. It could be satisfied by a group of people, who all have the relevant disposition but simply have no occasion to interact. True, these people would not normally act on these dispositions, but one may wonder how it could be part of a plausible ideal of relational egalitarianism that people often interact even assuming that, normally, they do not have any occasion for doing so. Perhaps relational egalitarians have different views here.

⁹ This is compatible with luck egalitarianism, which, like relational egalitarianism does not focus on distributive outcomes *per se*. The harder question is whether the deliberative constraint is satisfied in a situation where all parties have the relevant dispositions, but some people have better opportunities than others of having their interests etc. promoted.

continuously satisfied, the ideal of relating to one another as equals could fail to be satisfied even if one of the parties to the relationship continuously flouted the deliberative constraint. This connects with a more general point that he makes, to wit, that equality, as he construes it, is ‘a form of practice rather than a normative pattern of distribution’ (Scheffler 2015, 31). Hence, we cannot helpfully define a certain good, say, social standing, as something that, all other things being equal, two people have equal amounts of if, and only if, they relate to one another as equals and one has more of than the other to the extent that the former relates to the latter as superior and the latter relates to the former as inferior (cf. Lippert-Rasmussen 2015b, 195). Doing so would simply leave out the ‘deliberative and practical dimensions’ of relational equality. More generally, it shows that there is a deep and genuine difference between distributive views of equality and those subscribed to by relational egalitarians.

What can we learn about a society of equals from this characterization of a two-persons egalitarian relationship? Very much, Scheffler thinks. The deliberative constraint applies to a society of equals as well: ‘each member accepts that every other member’s equally important interests should play an equally significant role in influencing the decisions made on behalf of the society as a whole. Moreover, each member has a normally effective disposition to treat the interests of others accordingly’ (Scheffler 2010, 35). So, for instance, in a society of equals gay marriage laws would be decided on the basis that the interests of gays in being able to marry is just as strong as the interests of heterosexuals and everyone being disposed to treat these interests equally. While the deliberative constraint exerts a strong pressure in direction of social and political equality, e.g., it seems incompatible with the huge inequalities generated under *laissez-faire*, this pressure can give way to other considerations such that it does not issue in a fixed distributive formula, even when

interpreted against the broader background of the ideal of relating to one another as equals (Scheffler 2015, 40).

Before exploring how Anderson's and Scheffler's bears on indirect discrimination, let me briefly comment on whether Anderson's three requirements follow from Scheffler's deliberative constraint, or vice versa. First, the satisfaction of the deliberative constraint does not imply the satisfaction of Anderson's three requirements. Citizens can comply with the deliberative constraint even if not everyone, perhaps not anyone, has enough to participate as an equal in a democratic state or in civil society, e.g. because there is extreme scarcity. Perhaps the constraint could even be satisfied in the presence of ranking of people, e.g., in a scenario where we take turns being nobles and undoing the relevant changing-places hierarchy would be bad for all concerned. Lastly, it seems citizens might comply with the deliberative constraint and still be motivated in part by attitudes, e.g., pity, that clash with Anderson's no-disrespect requirement. More generally, Scheffler's deliberative constraint is not concerned with what principles or acting from certain principles expresses.¹⁰

Second, the satisfaction of Anderson's three requirements does not imply the satisfaction of the deliberative constraint. Suppose everyone has a sufficient set of freedoms such that Anderson's sufficiency requirement is satisfied. Suppose, moreover, that people subscribe to *laissez-faire*, whenever everyone is above the required minimum. They do not take any disrespectful attitudes towards one another or act from principles that express disrespect but simply disregard the interests of others in such cases, except to the extent that not doing so instrumental from the point

¹⁰ Scheffler's deliberative constraint is merely a central component in his ideal of relating to one another as equals and what I say here leaves open that the less central components of his ideal imply the satisfaction of Anderson's three requirements.

of view of promoting their own interests. (I am assuming with Anderson that indifference to the interests of someone above the minimum threshold is not disrespectful.) Lastly, the no ranking requirement is satisfied because, let us suppose, it alternates who is harmed by the fact that no one satisfies the deliberative constraint, i.e. (roughly) of each of us it is true that sometimes we gain and sometimes we lose. We can infer that while Anderson and Scheffler might share certain views about the flaws of distributive conceptions of justice, their positive ideals of relating to one another as equals are quite different. This warrants treating their views separately in what follows.

3. Relational egalitarians on the injustice of indirect discrimination

Is indirect discrimination unjust *per se* on either of the two relational egalitarian views laid out in Section 2? Again, I will start with Anderson's view.

Initially, I should remind the reader that I am focusing on indirect discrimination. By definition, the indirect discriminator 'has no intention to disadvantage the members of the group and no other objectionable mental state, such as indifference or bias, motivating the act'. Hence, while there might be many forms of direct discrimination which *are* incompatible with people relating to one another as equals—e.g., it might be incompatible with employers refusing to hire applicants on account of their race, gender, or sexuality—because these forms of discrimination violate the no-disrespect requirement, this is neither here nor there. Our exclusive focus is on indirect discrimination, where such objectionable mental states are absent (cf. Altman's definition in Section 1).¹¹ Undoubtedly, many actual forms of direct

¹¹ Moreover, whether or not they involve objectionable mental states many forms of direct discrimination might be compatible with standing in relations to one another as equals. Suppose the police spend more resources on screening and surveillance of

discrimination involve people not relating to one another as equals, e.g. old-style racial or sex discrimination. However, our question is whether indirect discrimination is compatible with people relating to one another as equals and whether the absence of indirect discrimination could even contribute to people not relating to one another as equals.

So return to my question about democratic equality and indirect discrimination. I shall assume that if indirect discrimination can co-exist with the joint satisfaction of all three requirements identified in the previous section, relational egalitarianism is compatible, at least in principle, with indirect discrimination. This leaves open that, as a matter of fact, many forms of indirect discrimination are not compatible with people relating to one another as equals, because they tend to lead to the violation of either one or more of the three requirements of democratic equality. However, this is analogous to how many forms of distributive inequality as a matter of fact are incompatible with egalitarian social relations—something which Anderson and Scheffler both agree but nevertheless do not think prevent them from thinking that they have a strong disagreement with proponents of the distributive view.

Consider first the no-disrespect requirement. While some forms of indirect discrimination might embody, express or promote disrespect, indirect discrimination need not do so. Suppose that university admissions are based on the score obtained by applicants in a certain test. Suppose that this practice disadvantages a certain racial group disproportionately, although it does not reflect any form of direct discrimination. In using the test a university neither must be acting from a principle that expresses contempt for people doing less well in the test, nor need leave anyone

young males in relation to sexual violence than on elderly women on the basis of perfectly reliable crime statistics. Presumably, this is direct discrimination against young men. Yet, it would not seem treating young males as not being equals with elderly women or anyone else for that matter.

very badly off (applicants not admitted might have reasonably good alternatives to the relevant study program), nor act from paternalistic motives etc.

Consider next the no-ranking requirement. Indirect discrimination is compatible with the satisfaction of this requirement as well. Suppose that a taxi company requires its drivers to work night- as well as day shifts. Women find it harder to meet this requirement since, for reasons the nature of which we can ignore, they find it harder than men do to reconcile the requirement with their vision of how family-life should be like. Suppose also that while it imposes this requirement in the pursuit of an acceptable aim—say, maximizing profits—it would organize things differently and either achieve its aim or almost do so such that the relevant practice can be considered indirectly discriminatory. Even so, what the taxi company does seems far from positing a ‘hierarchy of human beings’ or denying the ‘equal moral worth of persons’. Similarly, the taxi company need not deny that we each have an obligation to justify our actions by principles acceptable to others (cf. Anderson 1999, 313). More generally, we can display considerable blindness to the interests of others, or for that matter blindness to our own interests, without in any way coming close to denying the ‘equal moral worth of persons’ in the way that racists or believers in cast societies deny this ideal. For instance, I am aware that most of the money I spend would have satisfied much greater needs of others had I donated them to, say, Oxfam’s activities in Ethiopia instead and even if my not doing so is morally wrong, most would not suppose that my consumption pattern, or for that matter the relevantly similar consumption pattern of my Danish co-citizens, expresses my denial that Ethiopians and I have an equal moral status. For instance, unlike racists I would think no differently of rich Ethiopians, who in a hypothetical situation ignored the plight of impoverished Danes, myself included, and I would deem actively harming, as

opposed to not helping, Ethiopians morally identical to harming Danes, myself included. If so, might the taxi company not, on similar grounds, argue that its indirectly discriminating hiring scheme does not express a denial of the equal moral worth of persons? It seems that to answer this question negatively, we would have to adopt a very broad understanding of what it is to deny the equal moral worth of persons. The downside to this argumentative move is that it now becomes very controversial whether acting in such a way that one expresses a denial of the equal moral worth of persons is morally impermissible. Hence, appealing to this broad understanding of equal moral worth will cut little argumentative ice with many interlocutors.

One way to see this is to recall Anderson's positive description of what it means for persons to have equal moral worth. Surely, her otherwise forceful examples of a luck egalitarian state that abandons victims of very bad option luck or compensate victims of very bad brute luck in no way expresses a denial that all adults are moral agents.¹² Indeed, as regards the former case it is the very way in which victims of bad option luck exercised their moral agency that motivates their abandonment. As regards the latter case, one can exercise responsibility, cooperate, and hold and fulfill a conception of the good even if one is (labelled) a victim of bad brute luck. In fact, many forms of bad brute luck would not qualify as such, or qualify as such to a much lesser extent, if the victim did not have a conception of the good, e.g., if the 'ugly and socially awkward' did not see having a partner as part of his or her plan of life. I conclude that indirect discrimination *per se* does not violate the no-ranking requirement either.

¹² Strictly speaking, they are not, e.g., severely mentally handicapped persons are not moral agents (cf. Anderson 1999, 331n97).

Consider, finally, Anderson's sufficientarian requirement. According to Anderson once 'all citizens enjoy a decent set of freedoms, sufficient for functioning as an equal in society, income inequalities beyond that point do not seem so troubling in themselves' (Anderson 1999, 326).¹³ A similar point seems to apply to jobs or access to education. Here again it is clear that indirect discrimination can co-exist with the satisfaction of the sufficiency requirement. To take one of Anderson's own examples: 'Democratic equality does not object if not everyone knows a foreign language, and only few have a Ph.D.-level training in literature' (Anderson 1999, 318-319). Assuming this is right, would things be any different if the reason that differential knowledge of foreign languages or differential access to Ph.D.-level training in literature reflects indirect discrimination, e.g., that the particular foreign languages in which instruction is offered or the curricula used in Ph.D. literature training programs disproportionately favour some groups over others? I do not see how they could be. Surely, whether one enjoys a decent set of freedoms in the present sense depends on what this set of freedoms enables one to do and not on the way in which one came to enjoy this set of freedoms (and others came to enjoy their set of freedoms).

One might deny this claim by arguing that some sort of requirement of equality of opportunity is built into the notion of having a set of freedoms sufficient for functioning as an equal in society—recall Anderson's remark (second paragraph, Section 2) to the effect that certain distributions might be constitutive of egalitarian social relations—and that indirect discrimination necessarily is conducive to inequality of opportunity in which case the sufficiency requirement might after all be

¹³ Anderson's formulation suggests that these inequalities are *somewhat* objectionable. It is not clear however, that the source of this objectionableness lies in democratic equality.

incompatible with indirect discrimination. For instance, it might be argued that to have a sufficient set of freedoms to function as an equal in the political sphere, it is necessary that one's set of freedoms in terms of being able to influence political outcomes is no better, no worse, than the comparable sets of freedoms of others. An additional attractive feature of this move is that relational egalitarians claim that their ideal captures what real-life egalitarians care about and since real-life egalitarians do care about equality of opportunity—in fact, more or less everyone cares about equality of opportunity in some form or other—this particular claim becomes more credible.

Whatever the merits of this move are when considered in isolation, there are several reasons why, given the wider context, it is unattractive for relational egalitarians to endorse it. First, as we have seen relational egalitarians criticize luck egalitarians for their focus on distributions as opposed to social relations. However, if it turns out that the relevant kind of egalitarian social relations only obtain provided that a certain distributive requirement is met, to wit, that equality of opportunity is satisfied, then the satisfaction of certain distributive requirements is part and parcel of the ideal of relating to one another as equals and, accordingly, the distance to the distributive paradigm becomes much smaller.¹⁴

Second, it is implausible to claim that strict equality of opportunity is part of what it is for people to relate as equals given how relational egalitarians characterize this ideal. One important distinction that needs to be made here is between people actually having equal opportunities and people believing (truly or not) that they have equal opportunities. Suppose men and women believe that, overall, they have equal opportunities, however, as a matter of fact men have somewhat better opportunities

¹⁴ This distance is not reduced to zero, since relational egalitarians might still give a different account of why it is valuable that the distribution takes a certain form.

than women have. In this scenario, we can easily imagine that one's gender in no way carry any message about one's ranking in any hierarchy and that members of different sexes in no way relate to one another in disrespectful ways on the basis of their gender. Indeed, we can imagine situations where, as a matter of fact, members of one gender need to have better opportunities than members of another gender, if the two are to be generally believed to have equal opportunities and if one's gender is to have no hierarchical symbolic content, e.g., if the representation of members of one gender for some reason is more salient than the equal representation of members of the other gender.¹⁵ If in addition to that the sufficiency requirement is met, it is hard to see why such a society might not fully meet Anderson's standards of democratic equality.

Third, in any case indirect discrimination could exist together with global equality of opportunity. That is, it could be the case that, in relation to one set of jobs, women are disadvantaged by indirect discrimination. However, if that is perfectly counterbalanced by how men are disadvantaged by indirect discrimination in relation to another set of jobs, there need not be any inequality of opportunity overall between men and women. Admittedly, there might be local inequalities of opportunities, but I take it that, generally, it is global equality of opportunity that people care about (cf. Lippert-Rasmussen 2015a). I conclude that indirect discrimination *per se* can coexist with the satisfaction of the three Andersonian requirements. Hence, indirect discrimination is not unjust as such according to democratic equality.

So let us take a look at Scheffler's deliberative constraint and its relation to indirect discrimination. The crucial question is whether there could be forms of indirect discrimination among individuals all of whom comply with the deliberative constraint. This seems quite possible. To see why consider a situation in which there

¹⁵ Similarly, there might be cases where minorities need to enjoy indirect discrimination in their favour in order not be seen as invisible and inferior.

is a choice between two different hiring policies: one will result in a much greater percentage of men than women being hired, while the other policy will result in an equal distribution across gender, albeit, for some reason, fewer people will be hired such that on the second policy there will be hired fewer women than on the former policy. This would appear to be one of the cases where the pull towards equality exerted by Scheffler's deliberative constraint is resisted. That is, since there would be no relevant conflict between the individuals' interests, *ex ante* everyone's interests would be better promoted by the former hiring policy, individuals reasoning in compliance with Scheffler's constraint might well favour the former hiring policy.¹⁶ Yet, it would still seem to possibly amount to a form of indirect discrimination. Whether it does depends on whether the disadvantage to women of that policy is disproportionate. Assuming that the relevant disadvantage is comparative—i.e. it is a matter of how much women are underrepresented relative to men—it could be disproportionate in that the moral gain from achieved through hiring more people does not outweigh it, e.g., hiring an additional 10 workers might not outweigh the badness of having a workforce of which almost 60% is men instead of a workforce that is perfectly gender-balanced (cf. Lippert-Rasmussen 2015a). Hence, it seems that not only is indirect discrimination logically consistent with full compliance with Scheffler's deliberative constraint, there are possible situations in which agents, who comply with this constraint, favour a scheme which is indirectly discriminatory to a scheme which is not. The wider upshot of this section, thus, is that both Anderson's and Scheffler's ideal of social relations egalitarianism is compatible with indirect discrimination. Indeed, in some situations schemes that are indirectly discriminatory might be preferred to schemes that are not (cf. my example above).

¹⁶ Alternatively we can suppose that any person employed under the second policy would also be hired under the first policy.

4. Relational egalitarians on justified forms of affirmative action

Which forms of affirmative action, if any, are justified on either of the two relational egalitarian views laid out in Section 2? I start with Anderson's view.

One of the more persistent objections to many kinds of affirmative action is that they stigmatize the intended beneficiaries as inferior. Here is what Carl Cohen, a fierce opponent of affirmative action, claims: 'Preference puts distinguished minority achievement under a cloud. It imposes upon every member of the preferred minority the demeaning burden of presumed inferiority. Preference creates that burden; it *makes* a stigma of the race of those who are preferred by race. An ethnic group given special favor by the community is *marked* as needing special favor—and the mark is borne by every one of its members' (Cohen 2003, 110). It is difficult not to be struck by the parallels between Cohen's stigma objection to affirmative action and Anderson's objection to luck egalitarian compensation to those who suffer very bad brute luck, e.g., those who are very unattractive or very untalented. This is one *prima facie* reason for thinking that affirmative action, or at least some forms of it, are incompatible with Anderson's no-disrespect requirement.

Anderson also offers another criticism of luck egalitarianism, which seems to apply, *mutatis mutandis*, to some forms of affirmative action. She argues that the compensation for bad brute luck justified by luck egalitarianism, if implemented, give 'individuals an *incentive to deny personal responsibility for their problems*, and to represent their situation as one in which they were helpless before uncontrollable forces. Better social conditions for fostering the spread of a passive whining victim's

mentality could hardly be constructed' (Anderson 1999, 311).¹⁷ It is not entirely clear whether Anderson regards these claims as objections to luck egalitarianism, e.g., because she thinks that because acting on luck egalitarian principles creates incentives for representing oneself as inferior these principles do not express equal respect and concern for all citizens. Alternatively, she might regard them as observations about the loss in terms of other values resulting from acting on luck egalitarian principles that do not tell us anything about the validity of these principles themselves. In any case, it is difficult not to see the parallels to similar criticisms of affirmative action, i.e. that affirmative action creates incentives for individuals to deny personal responsibility for their problems and creates a similar diversion of 'self-seeking energies' away from 'productive work' into lobbying for affirmative action schemes benefiting one's group.

Anderson mentions discrimination among the relatively privileged and contends in this connection that 'egalitarians aim at enabling all citizens to stand as equals to one another in civil society, and this requires that careers be open to talents' (Anderson 1999, 317). There are different ways of understanding what it is for careers to be open to talents, but if it simply refers to the 'aspiration to establish a world where government posts go to the most qualified and economic opportunities may be seized by anyone independently of whether or not one's parents are of noble blood or cronies of the king' etc. (Arneson 2014), then again affirmative action that seeks to adjust requirements in the light of the fact that members of different groups had differential access to acquire the relevant qualifications appears incompatible with democratic equality as she understand the ideal.

¹⁷ For a related, though not entirely identical, point about the perverse incentives created by affirmative action, see (Loury 2002, 32-33).

However, Anderson is not opposed to affirmative action. In a recent book, she discusses four models of affirmative action.¹⁸ She favours two of the four models: the discrimination-blocking model and the integrative model. I will now consider them in turn. The discrimination-blocking model ‘focuses on the practical difficulties of stopping current discrimination in a world saturated with stigmatizing stereotypes of disadvantaged groups and structured by entrenched habits that favor advantaged groups. To remedy this problem, merely passing antidiscrimination laws is insufficient to stop discrimination. Affirmative action is needed’ (Anderson 2010, 144). Anderson does not tell us whether the relevant kind of discrimination that the discrimination-blocking model concerns is direct discrimination only, or includes indirect discrimination as well.¹⁹ If the latter, then it is surprising that she considers this model ‘indispensable’ (Anderson 2010, 148) on the assumption that indirect discrimination can co-exist with the satisfaction of the ideal of democratic equality. It is surprising because, presumably, the source of this indispensability is not democratic equality but some other moral ideal and, at least in the case of indirect discrimination, the relevant ideal is some form of distributive ideal, to wit, distributive equality across groups. To the extent that Anderson’s discrimination-blocking ideal pertains to direct discrimination only, it does not modify the previous *prima facie* affirmative action skeptical claims.

¹⁸ It is unclear what exactly the relevant models are models of. It seems clear, though, that it is at one and the same time an explanatory model of what causes or caused the relevant disparity, which affirmative action is a means to eliminate, and a model of what, as a matter of fact, justifies affirmative action (or what is the justification of affirmative action normally offered).

¹⁹ While most of the examples of discrimination she offers involve direct discrimination, possibly one of them does not, i.e., the advertising of ‘job openings through word-of-mouth to a racially homogeneous, segregated workforce’ (Anderson 2010, 145).

Turning now to the integrative model of racially-focused affirmative action, this model begins with the observation that '[d]e facto racial segregation unjustly impedes socioeconomic opportunities for disadvantaged groups, causes racial stigmatization and discrimination, and is inconsistent with a fully democratic society. To remedy these problems, we need to practice racial integration' (Anderson 2010, 148). Affirmative action for racial minorities should be seen 'as a means to racially integrate the main institutions of civil society' (Anderson 2010, 136). Before I explain how the integrative model justifies unusual forms of affirmative action let me first note the somewhat surprising 'and' in the previous Anderson quote. One would have thought that according to a champion of democratic equality the reason why impeding the socioeconomic opportunities for disadvantaged groups is objectionable is that this is incompatible with a fully democratic society. But the most natural reading of this passage is that Anderson sees this as a list of distinct problems and that the two first items on the list are problems independently of how they might contribute to the incomplete realization of democratic equality. In that case, she does have some non-derivative concern about distribution, to wit, the distribution of opportunities. Setting this possible inconsistency aside, I will now note some ways in which the integrative model justifies forms of affirmative action that are not exactly standard.

Consider first affirmative action for better off groups.²⁰ Suppose men are underrepresented in professions such as nurses, teachers, and social workers. Suppose that this feeds into social hierarchy in the sense that women are associated with providing care and providing care is generally undervalued in society with the effect

²⁰ Strictly speaking, many such schemes might not qualify as affirmative action on Fullinwider's characterization (cf. Section 1). I disregard this terminological point. The schemes I have in mind are similar to those aiming at increasing the representation of women and minorities, except for the fact that they aim at increasing the representation of men and the majority in less attractive positions in which, historically, they have been less well represented.

that women earn less than men and have fewer and worse career opportunities. Typically, affirmative action measures taken to address such disparities are measures seeking to encourage women to apply for better paid and more prestigious jobs. However, from the point of view of democratic equality, all other things being equal, it is just as good to make it more attractive for men to become nurses.²¹

Some would object that this would be doubly unjust. Not only are men already overrepresented within the most well paid jobs, they are also being given additional benefits if they apply for low paid jobs in the care sectors increasing overall distributive inequality between men and women. This objection, however, is not one that relational egalitarians can mount. If the two forms of affirmative actions involve equally effective ways of attacking gender stereotypes and hierarchy, we should, from the point of view of democratic equality, be indifferent between them. Indeed, if affirmative action for men is the more effective means, we should prefer it from that point of view. As Anderson puts it: the integrative model 'identifies the proper targets of affirmative action as those who can function as agents of integration and destigmatization' (Anderson 2010, 150). She (2010, 151) also acknowledges that nothing rules out benefiting better off individuals within disadvantaged groups. I am simply extrapolating this claim to better off groups, or worse off individuals within better off groups.

Consider next distributive inequalities the existence of which very few people are aware of and which do not directly affect how people relate to one another as equals. On the distributive paradigm, but not according to relational egalitarianism, there can still be good reason for affirmative action in this case. Suppose that, as a matter of fact, the expected life time differs across to ethnic groups, say, Swedes and

²¹ Suppose the sufficiency requirement is met.

Finns, are such that Swedes live on average 5 years longer than Finns. On a distributive paradigm this might well motivate some kind of affirmative action program in health care intended to increase the life span of Finns.²² However, on the ideal of democratic equality no such thing is desirable. Indeed, we can imagine that because of the fact that Swedes, on average, live longer, they are stigmatized as being ill. For some reason, it is impossible to do anything about the stigmatization of ill people, but we can through spending more health care resources on Swedes than on Finns eliminate this particular stigma, thus, enabling Swedes and Finns to relate to one another as equals and further increasing the gap between Swedes and Finns in terms of expected life span. From the point of view of democratic equality, there would seem to be no reason not to do so. I contend that few friends of affirmative action would be particularly favorably inclined towards such an affirmative action scheme, which, like the previous one, is affirmative action favoring already better off groups.

Consider next Scheffler's deliberative constraint and affirmative action. A set of people, who all comply with it, might reject standard forms of affirmative action and, in certain contexts, favour non-standard forms of the sort I described above. In defense of the former possibility, suppose that a certain group of people adhere to strong meritocratic values, which lead them to reject any measure of affirmative action—even affirmative action that benefits groups that have historically been excluded from certain areas. In doing so they might all act on their disposition to treat the 'strong interests'—where interests includes values—of those who would have benefited from affirmative action as 'playing just as significant a role' as their own

²² For a discussion of affirmative action in health, see Segall (2014, 193-206).

strong interests in ‘constraining’ any decision about whether to adopt or reject the relevant affirmative action schemes (Scheffler 2015, 25).

Similarly, a group of people might comply with the deliberative egalitarian constraint in endorsing affirmative action schemes for the privileged when doing so is a way of counteracting stigma and hierarchy and those who are stigmatized and at the bottom of the relevant hierarchies have a strong preference for not being so and affirmative action measures targeting the privileged is the best way of satisfying this preference.

Scheffler might offer three responses to these points. First, he might revise his claim that interests include people’s actual values and instead suggest that they include the values people would hold if they were better informed. He might add that merit, correctly understood, takes account of the fact that people do not face equally good opportunities for realizing talents (cf. Mason 2006, 39-67) and, accordingly, that, in my example of a community of people who reject affirmative action measures, these would not conflict with the view of merit that members of this community would hold if they were better informed.

In response, I contend that, whatever the overall merits of such a position are, it involves a view which is hard to reconcile with other parts of what Scheffler (and Anderson) has to say about what it is to treat one another as equals. Relational egalitarians condemn what they see as the paternalistic impulse underpinning certain luck egalitarian schemes of compensation—giving equal weight not to people’s actual values, but to the values (one believes) they would hold if they were better informed

is different from, but still very much akin to, paternalism in that it clashes with a requirement of (expressing) respect that both Scheffler (and Anderson) subscribe to.²³

Second, Scheffler might remind us that the deliberative constraint is just a central component of the ideal of relating to one another as equals. However, the ideal has other components and perhaps some of these imply a more standard view on affirmative action than the deliberative constraints does in itself. So, for instance, if there are two affirmative schemes both of which weaken a certain stigma attaching to one group and one does it by way of benefiting a worse off group and the other does it by benefiting a better off group, the latter might be preferable from the point of view of relating to one another as equals as such even if both schemes could be endorsed by a set of people complying with the deliberative constraint.

In response, I concede that this is a possibility. However, I suppose the burden of proof rests on proponents of relational egalitarianism to identify such components. Moreover, I conjecture any stronger contender would involve some sort of distributive concern along the lines of Anderson's suggestion that certain distributions might be partly constitutive of what it is for people to relate to one another as equals and I have already expressed reservations about this view.

Three, he might concede that, given certain assumptions, the ideal of relating to one another as equals does warrant non-standard forms of affirmative action and does not justify standard forms of affirmative action. However, this is not a problem, because, first, the way in which we have to imagine the world to be like for such

²³ I concede though that there seems to be a sense in which a set of agents who give exactly the same weight to the values they believe that others would hold if they were better informed as they do to the values that they believe they themselves would hold if they were better informed (probably the values that they actually hold) and accept that others do the same in relation to them are treating one another as equals. Hence, a focus on the values etc. that people would hold if they were better informed in itself is compatible with treating one another as equals.

implications to follow is quite different from what the world is actually like and if it were really like that the relevant implications would not be embarrassing. Second, the concerns of real life egalitarians, who relational egalitarians claim to be better in tune with than luck egalitarians are, reflect what the world is actually like.

There is some force to the first point—we should be open to non-standard forms of affirmative action being justified. However, as I noted in the introduction my concern in this paper is not to assess the plausibility of relational egalitarianism, but to explore its implications for affirmative action and, accordingly, the relevant Schefflerian reply is compatible with what I say in this paper. As regards the second point, it is well taken. However, given the dialectical context it is problematic for relational egalitarians to make it. If they can make it, so can distributive egalitarians. That is, distributive egalitarians can contend that their concerns might legitimately diverge from the concerns of real-life egalitarians, since, for good reason, their concerns are shaped by how the world actually works, whereas the concerns of the former is the ideal of equality and exploring an ideal requires exploring what this ideal would imply under counterfactual circumstances (Cohen 2008). If this view is admissible, then one of the main complaints relational egalitarians direct against luck egalitarians, e.g., how they are obsessed with the question of whether people with expensive tastes should receive compensation and similar questions alien to the agenda of real-life egalitarians, is not a complaint relational egalitarians are entitled to make.

5. Conclusion

In this paper, I have argued that the two main views of relational egalitarianism on offer have implications regarding the injustice of indirect discrimination and the

justifiability of affirmative action that are out of tune with those held by most real-life egalitarians, to wit, that indirect discrimination is unjust *per se* and that affirmative action favouring privileged people is unjustified at least when there are alternative affirmative action schemes that are equally effective in achieving the relevant desirable aims and favour worse off people. I have not argued that this implication amounts to an objection to relational egalitarianism as such. However, it amounts to an objection to how relational egalitarians conceive of themselves, i.e. as proponents of a theory that captures the concerns of real life egalitarians.

Could there be forms of relational egalitarianism other than Anderson's and Scheffler's that, in relation to indirect discrimination and affirmative action, are more in tune with the concerns of real life egalitarians? I have not argued that there could not be, but for what it is worth I suspect that such forms would have to incorporate some kind of distributive concern as being constitutive of egalitarian relations. Not only would such a move amount to a revisionistic account of what it is to treat one another as equals, but also it reduces the distance between distributive and relational egalitarians significantly. For instance, according to such a version of relational egalitarianism 'equality is an essentially distributive value' (Scheffler 2015, 21) and relational egalitarians should be much exercised by the question of what the proper 'currency' of egalitarian justice is—a question which, generally, they tend to think of as misconceived or peripheral (Scheffler 2015, 21).

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