

PREFERENCE AND PREJUDICE: THE ARGUMENT AGAINST ANTI-DISCRIMINATION LEGISLATION

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Introduction

By 2006, the UK will be brought into line with the European Directive on age discrimination.¹ By and large, the move has gone without comment in the press so I would like to take the opportunity to look at whether anti-discrimination laws in general work and whether they are compatible with the ideals of a free society.

Those in favour of the directive are more than likely to use the line of argument that because ethnic minorities, women and the disabled already enjoy specific protection under the law then the next logical step must be to extend this protection to those who may be discriminated against on the basis of their age.

However, several questions arise from this line of argument. Firstly, is it right to grant specific legal protection? Secondly, are such laws effective in practice? Finally, and perhaps most importantly, is the broader philosophical question of whether such laws are an infringement of liberty: in short is there any such thing as a right to discriminate?

Specific Legal Protection versus Equality before the Law

As mentioned above, the argument likely to be used when legislation on age discrimination is introduced will be that of the unquestionable logic of extending specific protection to those discriminated against because of their age. However, is such added protection logical or indeed consistent with the ideals of a free society?

Conferring specific legal protection upon certain minority groups undermines the general protection of equality before the law afforded to all individuals in a free society. It is all too common a trait of those wishing to proclaim the equality of all and sundry to forget this most basic right. The plain fact is that there can be no other meaningful or tangible equality as individuals are born unequal in ability. However, anti-discrimination laws mean

that being less able no longer poses a problem to the unscrupulous individual. Belonging to a minority group can be used as an excuse to prosecute employers whenever the individual fails to get a job, whilst the mere possibility of criminal proceedings against an employer can afford extra job security to those minorities already employed.

Subsequently, employers become less and less confident that they can make staffing decisions based on merit alone. Resentment builds up amongst the majority of workers at the presence of members of minority groups in their midst. This resentment is corrosive firstly because of the belief that a minority individual has been recruited as a token and not because of their ability to do the job and secondly because it is perceived that once in post, members of minorities have more protection from redundancy than others. In this case, anti-discrimination legislation increases prejudice, surely the very thing it hopes to eliminate? The only way to negate suggestions of tokenism and eliminate resentment is to trust employers to make employment decisions based on merit alone. It is in their economic self-interest as having the best person for the job gives them a competitive advantage.

Ineffective

Thus one arrives at the second question. Are anti-discrimination laws effective in practice? As the above demonstrates, it is fair to say they are not. The only beneficiaries of anti-discrimination laws are lawyers. With a new set of victims to defend it is possible for them to create a whole industry of publicly funded watchdogs and commissions to protect minority rights and identify possible litigants. A culture of suspicion is fostered as employers and individuals have to be increasingly wary that their actions won't be perceived by some third party as discriminatory. Political correctness takes hold as speech has to be couched in terms that cannot be found offensive. The synonymity between the terms free society and free economy is clearly demonstrated by this case: regulating the freedom of employers to hire and fire as they wish

leads to a diminution of the freedom of speech and opinion.

What Is 'Discrimination' Anyway?

And so, on the topic of the free society, one arrives at the final question of whether anti-discrimination laws can ever be justified in the aforementioned free society. However, before one can answer the primary question on justification, it is necessary to define the very thing that the government seeks to legislate against, and then once defined, test the assumption that that thing is inherently bad. I have deliberately left the definition until now in order to test the prejudice of the reader against the word itself: the term discrimination is almost always used in a sense that is automatically negative, with this negative connotation rarely being scrutinised.

So what is discrimination? To discriminate is to divide, to differentiate; put simply it is to observe a difference. Why then has discrimination been given such a negative meaning? Perhaps it is because those behind anti-discrimination activity are also the intellectual foot soldiers for egalitarianism?

The main stumbling block for proponents of egalitarianism is that it runs contrary to human nature: go down any high street and you will be confronted by a sea of individuality. Whether it be something small like a novelty pair of cufflinks or a racy tie or something more substantial such as a tattoo, such highly visible displays are proof of the fact that individuals take comfort in the fact that there is something about them that is different. Whether it is through entering pub quizzes or taking part in amateur sports, individuals like to demonstrate they are smarter, faster or just generally better at certain things than others. Even when belonging to a group or identifying themselves with a cause, individuals take pride in displaying such affiliations via car stickers, lapel badges or funny hand shakes. One of the defining aspects of western culture is a respect for the individual, a respect that implicitly involves observing these differences.

The Prohibition of Preference

Therefore, to promote equality one must simultaneously denigrate individuality and by inference the differences between individuals. This has re-

sulted in a concerted effort to manipulate the English language. The treatment of discrimination as a word is a case in point: to observe a difference undermines the idea that everyone is equal. By giving the word a negative implication then the very process of observing difference becomes negative. The result is that it becomes taboo to even suggest differences between individuals.

Like Orwellian Newspeak, the theory behind such actions is that denying the masses the language to define certain concepts leads to those same concepts ceasing to exist. However, does this work in practice? Surely those without the vocabulary to express themselves verbally are likely to become frustrated and resort to other (perhaps violent) ways of demonstrating their concerns: are we not seeing the result of this with the recent violence towards asylum seekers? Furthermore, even if removing the ability to express discriminatory thoughts did succeed in reducing discrimination (which, as I have shown above it does not), could such thought control be considered as justified? In other words, is discriminating actually a bad thing?

The short answer is no. Discriminating relates to individuality and therefore derives from human nature itself: it is about personal preferences. When choosing seats at a theatre it is normal to discriminate against those at the back because of the lousy view that they afford. When looking for a home it is normal to discriminate in favour of certain characteristics such as location or architectural style. So what differentiates these forms of discrimination from discriminating on the basis of race, gender or age?

Some may argue that it is a question of rationality and that discriminating against someone on the basis of their race, gender or age is irrational. However, the rationality of discrimination is irrelevant. My favourite colour is blue which means that I discriminate against magenta (for example). There is no rational explanation as to why I prefer blue, but prefer it I do and conversely it is my right not to like magenta. Denying an individual the right to discriminate denies that individual the right to preferences. Without preferences it is impossible to make the most basic of choices and those incapable of making their own minds up must have their decisions made for them by others. There is no need to point out the dangers of such a development.

State Interference in the Relationships of Individuals

Interwoven with the question of whether there is a right to discriminate is the question of whether governments can claim any moral legitimacy when involving themselves in the interactions of private individuals. If someone wants to open a women only sports facility then there should be no problem. Similarly if a private members club decides that its doors should be open only to men then that is their business alone. Unfortunately, this is one of the many areas where hypocrisy abounds; the first proposition is more than acceptable but the second is seen as being almost heretical (just look at Iain Duncan Smith's boycott of the 'sexist' Carlton club). Furthermore, if a company decides not to employ someone simply because of their age or the colour of their skin then it is not the place of government to march in and force that company to act differently: quite simply it is none of their business.

The quick-fix answer increasingly seems to be that where a government doesn't like something it criminalises it. The added benefit of this course of action is that it stifles further debate: any questioning of the need for such legislation can be branded as the rhetoric of prejudice. However quick-fix legislation is invariably bad legislation, and reduces our liberty by increments.

The main fallacy upon which the argument for anti-discrimination legislation stands is that by legislating against something it ceases to exist. To demonstrate the absurdity of this take the following example: In America it is customary for shop assistants to say 'have a nice day.' A government might like such a sentiment and legislate to such an effect that it is compulsory for its people to say 'have a nice day' to one another. Aside from the problems of enforcing such a law, one has to question whether anyone, now that they are forced to say such a thing, actually means it. In short, how many people actually want you to have a nice day?

The point here is that one can certainly make people be nice to women, the disabled, the aged and ethnic minorities, etc. but are they sincere? If such sentiments are disingenuous is there any point in them at all or do they simply patronise those they are aimed at? Crucially, what right does a government have to interfere with the right of the indi-

vidual to not only observe differences but to have preferences and make decisions based upon them?

Anti-Discrimination Legislation: Dealing with the Symptom and Not the Cause

The world probably would be a nicer place if everyone treated each other with the respect they deserved: this could certainly be described as the moral way of behaving. However, this respect must be genuine and not be based upon the sham of compulsion. Eliminating discrimination in the 'negative' sense to which I alluded earlier is impossible: individuals will always harbour irrational preferences. However, it can be reduced by allowing individuals to think for themselves. Genuine respect can only be gained where individuals are allowed to decide for themselves someone else's worthiness of it.

Individual freedom is inseparable from individual morality. Given the many different possible interactions between individuals in a free society deciding whether a particular action at a particular time is moral or not requires individuals thinking for themselves, not referring to authority for guidance. It is unsurprising that the increasing propensity of governments to tell individuals how to conduct themselves has a damaging effect on individual morality as a whole. Admittedly, when it comes to leaving decisions to individuals ignorance and irrationality are major obstacles, particularly in situations involving minority groups. However, ignorance is the result of a lack of education and to make the outcome of such ignorance illegal via anti-discrimination legislation will not reduce discrimination as it deals the symptoms and not the cause. The dictum of 'treat others as you wish to be treated yourself' may be how we wish everyone in society to act, but wishing and compelling are two different things entirely. Ultimately, if individuals wish to be ignorant or irrational in their treatment of others then they are perfectly within their rights to do so.

Notes

(1) BBC News, 'Age Discrimination to be Outlawed', URL (consulted 20th August 2003): <http://news.bbc.co.uk/1/hi/business/3039222.stm>, 2nd July 2003.