

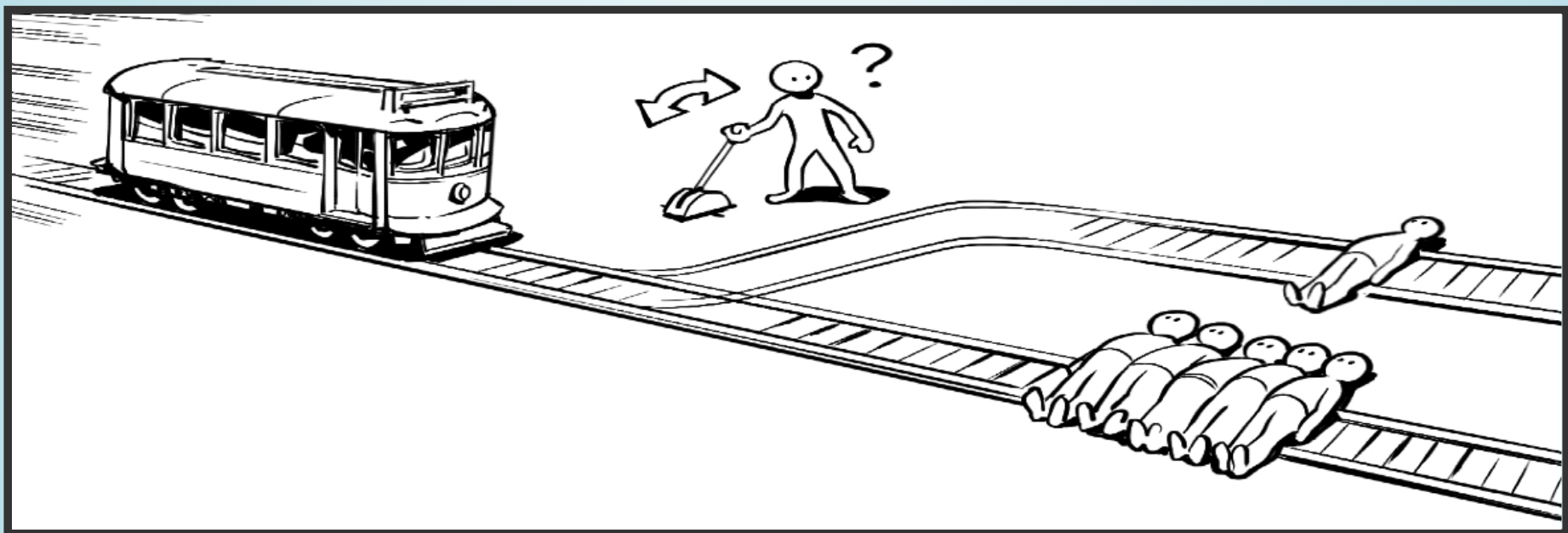
# On Discrimination

## Consequentialist view

- What we *can* or *should* do depends on the consequences
- What makes an act *morally* correct depends on the states of affairs it brings about

## Deontological view

- What we *can* or *should* do depends on more than just the consequences
- What makes an act *morally* correct depends on more than just the states of affairs it brings about



# Discrimination

deontological or consequentialist?

# Apartheid



# Unfair job market



But, clearly not all discrimination is wrong

# Applicant for truck driver job





Some help where it's due



So what makes discrimination wrong?

That is, when discrimination *is* wrong, why is it so?

# Link to generalisations

Useful to connect talk of discrimination to talk of generalisations

- 'Indians are ...'
- 'Poor people are ...'
- 'Those from the other side of the tracks are ...'

## What we want:

- To explain what makes discrimination wrong (when it is)
- Use this to explain how the use of algorithms can go awry

# The Menu

1. Some initial accounts
2. On treating as an individual
3. Algorithmic discrimination?

Some initial accounts

- Protected class account
  - Discrimination is wrong only when it discriminates against a protected class (e.g., ethnicity, gender, and nationality)

So, discrimination against

- Women
- Black people
- Indians

are all wrong because they concern a  
protected class



It's all in the family



- Protected class account



- Discrimination is wrong only when it discriminates against a protected class (e.g., ethnicity, gender, and nationality)

- Epistemic account

- Discrimination is wrong only when it is based on a false belief

So,

- Denying a woman a job because 'women are dumb', or
- denying a black person's application for a flat because 'black people are poor', or
- not talking to Indians because 'Indians are rude'...

are all examples of wrongful discrimination because they  
are based on false beliefs

But

If a restaurant denies service to a Sudanese person because  
'Sudanese people are some of the poorest in the world' is  
wrongful discrimination...

even if it is true that Sudanese people are some of the  
poorest in the world

- Protected class account



- Discrimination is wrong only when it discriminates against a protected class (e.g., ethnicity, gender, and nationality)

- Epistemic account



- Discrimination is wrong only when it is based on a false belief

- Resources account

- Discrimination is wrong only when it leads to unfair allocation of resources

So,

- Denying a woman a job because 'women are dumb', or
- denying a black person's application for a flat because 'black people are poor', or
- not talking to Indians because 'Indians are rude'...

are all examples of wrongful discrimination because they lead to unfair allocation of resources (job opportunities, living opportunities, friendship)

But



# The inactive racist



Discrimination, even if no resources are allocated

- Protected class account



- Discrimination is wrong only when it discriminates against a protected class (e.g., ethnicity, gender, and nationality)

- Epistemic account



- Discrimination is wrong only when it is based on a false belief

- Resources account



- Discrimination is wrong only when it leads to unfair allocation of resources

- Humiliation and Stigmatisation account

- Discrimination is wrong only when it humiliates or stigmatises

So,

- Denying a woman a job because 'women are dumb', or
- denying a black person's application for a flat because 'black people are poor', or
- not talking to Indians because 'Indians are rude'...

are all examples of wrongful discrimination because they  
humiliate or stigmatise

But

# Discounted performance

Despite Sally's poor audition,  
Kevin evaluates that Sally,  
who is of East Asian descent,  
must be a skilled musician

But he wouldn't have thought  
as much if Sally were Dutch



# Imputed Preference

Although Mark's resume states that he was in a wine tasting club, Jane does not bring up the company's wine tasting club but only the basketball team

She would have brought up the wine tasting club if Mark weren't black



## Discounted performance

- Sally could sensibly say that she was mistreated
- But there's no humiliation or stigmatisation
  - Indeed, maybe the opposite can be said
- Instead, Kevin fails to treat Sally as an individual

## Imputed preference

- Mark could sensibly say that he was mistreated
- But there's no humiliation or stigmatisation
  - Indeed, maybe the opposite can be said
- Instead, Jane fails to treat Mark as an individual



- Protected class account



- Discrimination is wrong only when it discriminates against a protected class (e.g., ethnicity, gender, and nationality)

- Epistemic account



- Discrimination is wrong only when it is based on a false belief

- Resources account



- Discrimination is wrong only when it leads to unfair allocation of resources

- Humiliation and Stigmatisation account



- Discrimination is wrong only when it humiliates or stigmatises



# The 'failure to treat as individuals' account

Discrimination is wrong when it fails to treat a person as an individual

So,

- Discounted performance: Sally is not treated as an individual, but simply as *East Asian*
- Imputed preference: Mark is not treated as an individual, but simply as a *black man*

And,

- denying a woman a job because 'women are dumb', or
- denying a black person's application for a flat because 'black people are poor', or
- not talking to Indians because 'Indians are rude'...

are all examples of wrongful discrimination because they fail to treat these people as individuals, but only as a woman, a black person, or an Indian

So, the 'failure to treat as individuals' account has an edge  
But what does it mean, exactly, to fail to 'treat a person as an  
individual'?

# Taking Stock

- Deontological vs Consequentialist ethics
- Discrimination and *wrongful* discrimination
- Some attempts to capture *wrongful* discrimination
- Settling on the 'Treating as individuals' account

# The Menu

1. Some initial accounts
2. On treating as an individual
3. Algorithmic discrimination?

# On Treating as an individual

# Discounted performance

Despite Sally's poor audition,  
Kevin evaluates that Sally,  
who is of East Asian descent,  
must be a skilled musician

But he wouldn't have thought  
as much if Sally were Dutch





# Imputed Preference

Although Mark's resume states that he was in a wine tasting club, Jane does not bring up the company's wine tasting club but only the basketball team

She would have brought up the wine tasting club if Mark weren't black



## Discounted performance

- Sally could sensibly say that she was mistreated
- But there's no humiliation or stigmatisation
  - Indeed, maybe the opposite can be said
- Instead, Kevin fails to treat Sally as an individual

## Imputed preference

- Mark could sensibly say that he was mistreated
- But there's no humiliation or stigmatisation
  - Indeed, maybe the opposite can be said
- Instead, Jane fails to treat Mark as an individual

But what does that mean?

*A first attempt*

## The simple view

To treat someone as an individual is to **not** rely on any generalisations to draw conclusions about them

So,

- Kevin doesn't treat Sally as an individual because he evaluates her abilities on the basis of the generalisation 'East Asians are skillful musicians'; and
- Jane doesn't treat Mark as an individual because she evaluates what his interests are on the basis of the generalisation 'black men are interested in basketball'

The correct thing to do is then to rely only on evidence about the individual her/himself

# But...

1. In some cases, relying on generalisations doesn't preclude treating people as individuals; and



# Doctor, doctor, where's a doctor?



You use a generalisation, but that doesn't mean you fail to treat the doctor as an individual

# But...

1. In some cases, relying on generalisations doesn't preclude treating people as individuals; and
2. It is hard to completely get rid of generalisations in our lives



## Case A

"I see that this applicant is a 25 year old woman"

- 'Young employees are biologically wired to want a family'
- This applicant will likely take maternity leave sometime soon

## Case B

"I see that this applicant is pregnant"

- This applicant is likely to take maternity leave soon

Essentially relies on the generalisation 'women with that anatomy are pregnant'

## The simple view



To treat someone as an individual is to **not** rely on any generalisations to draw conclusions about them

Let's look at some other views...

Eidelson's view

# The driving thought

- What is relevant to characterise people as individuals is not that they're singletons
  - Mosquitoes, cars, and tables are singletons...
- Instead, people are individuals because they are autonomous
  - They are the owners or authors of their respective choices and actions

## Realized autonomy

- The accumulation of all of a person's choices which define *his/her* life
- It is the end-result
- What a person becomes as a result of those choices

## Agency for autonomy

- What it takes for a person's choices to really be *his/her* choices
- A capacity for agency
- The capacity to deliberately reflect and act on one's volitions, desires and plans

# The autonomy view

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.

# Ray's misfortune

- Ray is applying for a job
- Ray has a history of putting her professional life before her personal life
  - Indeed, she writes a column in a newspaper about the joys of a professional life over those of family life
- Molly, the employer, reads all this information ...
- But she thinks that Ray's biological impulse will soon take over and she will want to be a mother

## Character

Molly may even consider Ray's character, because she considers facts about how Ray has led her life until now

## Agency

But Molly fails to consider Ray's agency, because she sees Ray as simply being driven by maternal instincts (and so, as lacking agency)



# The autonomy view

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.

# Mark

- Mark is a black man
- He has a law degree from a great university and an excellent track record at his job
- Bob (the CEO) is deciding who to promote to the position of his assistant
- He acknowledges Mark's great performance; but he thinks:
  - "I can't trust a black man to advise me. Black men tend to be violent and untrustworthy."

## Character

Bob may even consider Mark's character, because he considers facts about how Mark has led his life until now

## Agency

But Bob fails to consider Mark's agency, because he sees Mark as being driven by forces beyond his own control (and so, as lacking agency)

# The autonomy view

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.

# Taking Stock

- The simple view of treating people as individuals
- Eidelson's autonomy view

# The Menu

1. Some initial accounts
2. On treating as an individual
3. **Algorithmic discrimination?**

# On Individuals and Discrimination

# The 'failure to treat as individuals' account

~~X is wrongfully discriminating against Y if, and only if, S fails to~~

1. give reasonable weight to evidence of the ways <sup>individual</sup> 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
2. if X's judgments concern Y's choices, these judgments disparage Y's capacity to make those choices as an autonomous agent



Is this a good account of discrimination?

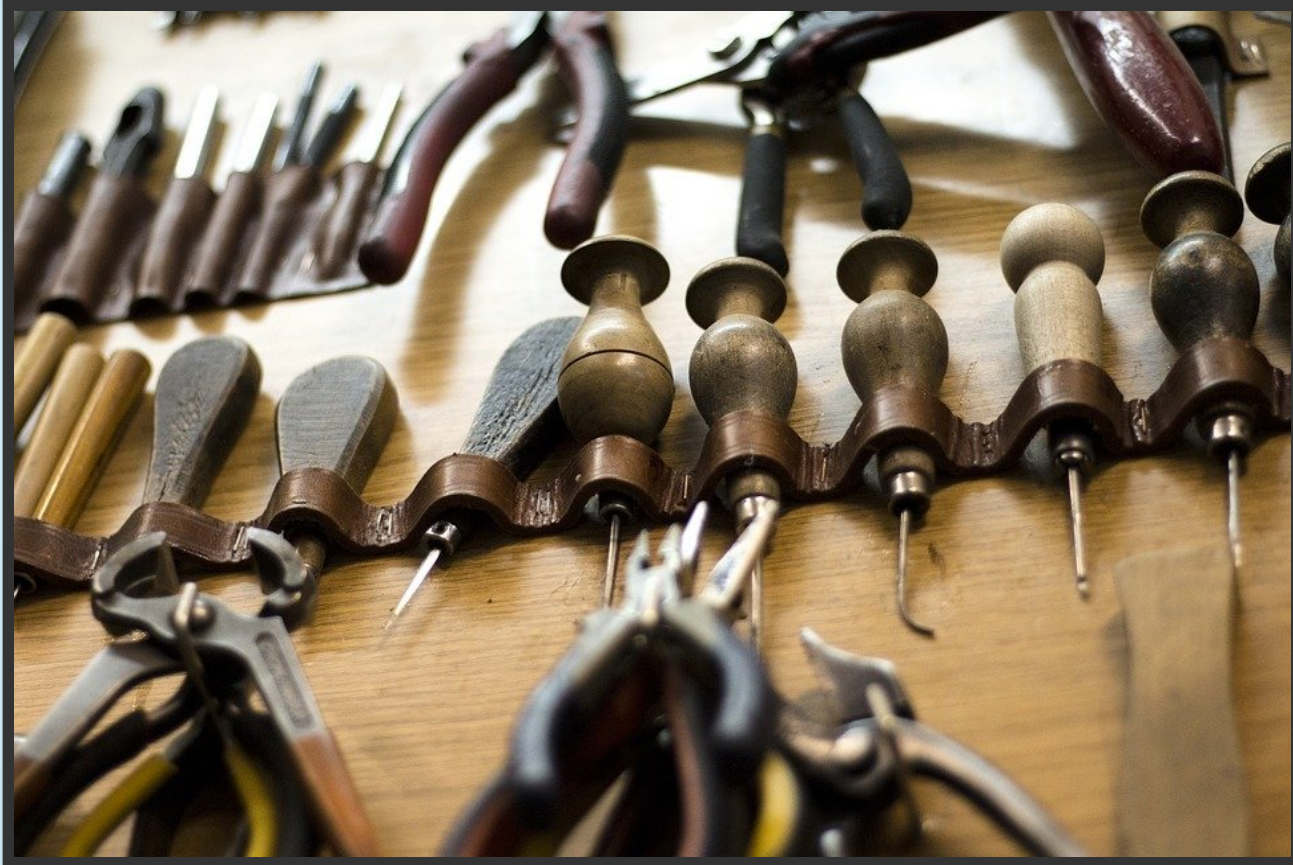
# Algorithmic Discrimination

# Story of Sade Jones and Brisha Borden





# Story of Vernon Prater



## Jones and Borden

- Stole a bicycle and a scooter
  - valued at \$80
- Both Jones and Borden were arrested and charged for burglary

## Prater

- Stole tools from a hardware store
  - valued at \$86
- Prater was arrested and charged for burglary

# COMPAS algorithm

- The COMPAS algorithm measures the likelihood that a given criminal will reoffend
- It first determines the defendant's profile and uses a large dataset to map that profile to rates of recidivism
- This is now being used in courts within the US to issue sentences to criminals
- Indeed, COMPAS was used to issue sentences for Jones, Borden, and Prater

## Jones and Borden

- Jones was a first-time offender and Borden had previous misdemeanors committed as a juvenile
- Jones was classified as medium risk by COMPAS
- Borden was classified as high risk by COMPAS

Neither Jones nor Borden have since reoffended

Jones and Borden are black

## Prater

- Prater was a seasoned criminal, having been arrested and charged many times before
- Prater was classified as low risk

Prater has been charged with 30 more felony counts

Prater is white

Jones and Borden were obviously wronged when they were identified as medium and high risk, respectively

Indeed, when we compare it with Prater's classification, it seems like there is some wrongful discrimination at play

Specifically, it seems that COMPAS wrongfully discriminates against black people

- Black people are more likely to re-offend

But, what makes this discrimination wrong?



- Protected class account



- Discrimination is wrong only when it discriminates against a protected class (e.g., ethnicity, gender, and nationality)

- Epistemic account



- Discrimination is wrong only when it is based on a false belief

- Resources account



- Discrimination is wrong only when it leads to unfair allocation of resources

- Humiliation and Stigmatisation account



- Discrimination is wrong only when it humiliates or stigmatises

Instead, it seems that discrimination is wrong  
when it *fails to treat people as individuals*

Algorithms and treating people  
as individuals

# The 'failure to treat as individuals' account

X wrongfully discriminates against Y if, and only if, S fails to

1. give 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
2. if X's judgments concern Y's choices, these judgments disparage Y's capacity to make those choices as an autonomous agent

# COMPAS and Jones

COMPAS failed to treat Jones as an individual because

- Character condition failure: COMPAS does not adequately consider the fact that Jones had *never* committed any crimes before (that's how she had led her life until then)
- Agency condition failure: COMPAS does not adequately consider Jones' agency, as her race seems to weigh heavily on COMPAS' decision

That explains why COMPAS wrongfully discriminates  
against Jones

# COMPAS and Borden

COMPAS failed to treat Borden as an individual because

- Character condition failure: COMPAS does not adequately consider the fact that Borden had committed only misdemeanours before
- Agency condition failure: COMPAS does not adequately consider Borden's agency, as her race seems to weigh heavily on COMPAS' decision

That explains why COMPAS wrongfully discriminates  
against Borden

So it seems like the 'failure to treat as individuals' view gets it right!

But...



# COMPAS and Prater

COMPAS failed to treat Prater as an individual as well!

- Character condition failure: COMPAS does not adequately consider the fact that Prater had committed *many* crimes before (e.g., armed robbery)
- Agency condition failure: COMPAS does not adequately consider Prater's agency, as his race seems to weigh heavily on COMPAS' decision

# Problem

- COMPAS does fail to treat Jones and Borden as individuals
- And if failure to treat as an individual is what makes discrimination wrong, then that seems to explain the wrongful discrimination at play
- But, on this view, COMPAS would also wrongly discriminate against Prater
- And so, the discrimination against Jones and Borden would be on a par with the discrimination against Prater

# The 'failure to treat as individuals' account



X wrongfully discriminates against Y if, and only if, S fails to

1. give 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
2. if X's judgments concern Y's choices, these judgments disparage Y's capacity to make those choices as an autonomous agent

# Implications

Our best accounts of what makes wrongful discrimination cannot seem to explain algorithmic discrimination

So, we need to develop new accounts that can capture such discrimination

End