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The Issues

I. Discrimination and Equality

It is a hot summer’s day, ice-cream weather, sunbathing-in-the-park weather. A woman walks down the street, bare-breasted. Asked to cover herself, she refuses. As she sees it, indeed as she explains it to the police officer, if a man is entitled to appear in public naked to the waist, as he certainly is, she is entitled to do the same. It would be discriminatory, she insists, for the law to deny this and so treat her behaviour as indecent. Is she right? Does a woman’s nakedness mean the same thing as a man’s? If not, should it? What is gained by understanding discrimination in this way? What is lost?

The complexity and significance of the problem become clearer when it is looked at from the opposite perspective. Suppose it is true that a woman, like a man, is entitled to appear in public naked to the waist, in hot weather at least (as in fact the courts decided). What makes this so? The answer has large implications for our understanding of both sexual difference and the nature of value. Whatever may have been claimed by the topless pedestrian in question, it cannot be the case that there are meaningful differences between the sexes, yet that women are entitled to do whatever men are entitled to do (and vice versa), without regard to those differences. That would be to suggest that sexual difference is at once, in the same settings and for the same purposes, both meaningful and not meaningful, relevant and irrelevant. If men and women are to enjoy the same entitlements, despite the apparent differences between them, either our understanding of sexual difference or our understanding of value must give way. It is not possible for us, as individuals or as a society, to maintain a commitment both to the idea that people are not to be distinguished and to recognizing the characteristics and values that distinguish them.

If a woman is as free as a man to go topless in hot weather, it must be because, contrary to what has been conventionally assumed, there is no difference

between the sexes that could affect their entitlement to appear in public naked to the waist. There are a number of reasons why this might be so.2 It might be because, as a general matter, the differences that genuinely distinguish the sexes, whatever they may be, should not be allowed to make a difference to men’s and women’s options in life, that is, to men’s and women’s access to the valuable pursuits that make it possible to flourish in life. Neither women nor men should suffer comparative disadvantage in the project of their lives on account of their sex. If that is true, however, then a policy of nondiscrimination is unfortunately bound to follow one of two paths, which require us to treat either our sexual identity3 or the values that make our lives worth living as entirely plastic and insubstantial. Either we must reshape men and women, to ensure that they are equal in the face of human values, by eliminating any difference between the sexes that is relevant to the assessment of value (the path of androgyny), or we must reshape human values, to ensure that men and women are never distinguished by them (the path of value relativism). If men’s success in any field of endeavour is greater than women’s (or vice versa), we must either change the distribution of the qualities that lead to success (fantastic as that may seem), diminishing their presence in the more successful sex, increasing it in the less successful, or alter our sense of what constitutes a successful endeavour, by eliminating from consideration those criteria of success that one sex is able to meet more (or less) readily than the other.

The first of these explanations (or courses of action) dissolves our respect for, indeed the very existence of, sexual difference; the second does the same for value to the extent that value is engaged by sexual difference. Neither seems terribly plausible. Quite apart from the fact (as I take it to be) that neither sexual identity nor human value as we know it is entirely plastic and so susceptible to our will (a fact that might, after all, be merely a moral misfortune), it is hard to believe that eliminating sex discrimination requires us to eliminate either sexual difference or all that makes that difference matter. Indeed the suggestion that it does so comes close to a contradiction. It is in principle possible to eliminate

2 For further reasons, see the next two sections.
3 In what follows, I use the term “sexual identity” to refer to the concept that is sometimes called sex and sometimes called gender. I have tried to avoid speaking of sex or gender, where possible, to avoid suggesting that I am taking a position in the familiar nature/nurture debate, which I regard as misguided, for reasons set out below. Yet because the term “sexual identity” is potentially confusing, it might be helpful at the outset to make three things clear about the way I have used it. First, in using the word “sexual”, as part of the term “sexual identity”, I am referring to the distinction between the sexes, rather than the idea of sexuality. It is women and men that I have in mind, rather than the many ways in which men and women express themselves sexually. Second, in using the term “identity”, as part of the term “sexual identity”, I am referring to the set of qualities and characteristics that is definitive of the distinction between women and men, rather than to the qualities that men and women identify with, which might include the qualities of the opposite sex. Finally, in using the term “sexual identity” in relation to a particular sex, I have in mind both the qualities that men and women share and the qualities that distinguish them, unless stated otherwise.
the practice of sex discrimination by eliminating either sexual difference or the capacity to distinguish value in terms of that difference, just as it is possible to eliminate any form of wrongdoing by eliminating the occasion for it, for example, eliminating theft by eliminating property. Clearly, women could not be discriminated against if women did not exist or, more precisely and fairly, if women could not be distinguished as women in any way that mattered. The question is what would justify us in bringing about such a state of affairs, if bring it about we could.

Eliminating a distinction and its significance is only consistent with the recognition of value and the human qualities and achievements that value responds to where, and to the extent that, the distinction in question is in fact either not real or not relevant to the consideration of value. This is a possible claim about property, perhaps, but a highly implausible claim about sexual difference as a whole. It is not really credible to suggest that men and women, properly understood, are indistinguishable from one another in any way that is relevant to value. Yet to eliminate a distinction that is admittedly relevant to value simply because it is often, even typically, invoked improperly is to misunderstand the nature of wrongdoing, which consists not in (wrongly) including among human options, such as the option to engage in the sorts of activities that make sexual difference relevant to the evaluation and pursuit of a successful life, options that can be exercised wrongly, but in exercising wrongly options that should be exercised rightly.

Given that sexual difference is not entirely fictional (although some supposed aspects of it certainly are), and that the values that register sexual difference are not entirely bogus, it must be the case that sex discrimination arises not because sexual difference does not exist or does not matter, but because sexual difference does exist and does matter, although not in the ways that we have taken it to. Is it possible, then, to build upon this thought so as to arrive at an account of sex discrimination that respects both sexual identity and human value, while allowing for mistakes in our perception of each?

I begin by giving, in the next two sections of this chapter, an overview of the nature of the problem and what I take to be its proper solution. These two sections are not intended as a précis of the argument in the balance of the book, or even as a necessary premise to that argument. They can be read now or returned to later. Their purpose is to sketch for the reader certain issues that the book pursues in depth. The four subsequent sections similarly seek to expand upon, without fully defending, certain aspects of the solution I propose that may strike a reader as unfamiliar and even puzzling: rejection of the idea that discrimination depends upon comparison, a consequent reinterpretation of the significance of sexual equality, and reliance upon ideas of what it means to lead a successful life and what it means to be a woman. The final section seeks to say something brief about my choice of which arguments for equality and difference to respond to. As a whole, the chapter approaches the question of sex discrimination from the
positive perspective of its remedy, rather than from the negative perspective of the disadvantage women now experience. It asks what might make women’s lives go well rather than what has made them go badly. It thus offers a different, briefer way of thinking about the ideas developed and explored in the chapters that follow. That said, however, I should warn that because these issues are complex, their compressed treatment in the rest of this chapter is likely to become fully intelligible only in light of the argument of the book as a whole.

II. Discrimination and Difference

I have developed the narrative so far by referring to the pursuit of equality in the face of physical difference, and it might be reasonably objected that the conclusions I have drawn from this example are not applicable to the pursuit of equality in the face of intellectual or emotional differences between the sexes, or are not applicable to the recognition of sexual difference rather than the pursuit of sexual equality. The short answer is that the only distinction between physical and other forms of sexual difference that could be thought to have a bearing on the argument is that physical differences between the sexes may be less amenable to alteration than intellectual or emotional differences. Yet the possibility of alteration is a question that I deliberately bracketed in the previous discussion in order to focus on the prior question of its desirability. It does not matter whether sexual difference can be changed or not, and so does not matter, for example, whether that difference is the product of nurture (and so allegedly amenable to change) or of nature (and so allegedly not amenable to change) if there is no reason, or at least no reason founded on a commitment to ending discrimination, to make that change.

4 I take it that objects that are equal are the same in some respects (the respects in which they are equal), and different in others (the respects in which they are unequal). In what follows, I treat equality as meaning sameness in this sense. In fact, I do not know of any claim to equality that is not a claim to sameness in the relevant respect. Equal pay, for example, means either the same pay or pay that bears the same relation to the value of the work done as does the pay of the comparator. Equality is often said to be compatible with the recognition of difference, and this is plainly true, provided that the difference to be recognized exists in a respect other than that in which equality is sought. For illuminating considerations of the idea of equality, see Peter Westen, Speaking of Equality (Princeton, N.J., 1990), and Derek Parfit, “Equality and Priority”, in Ideas of Equality, ed. Andrew Miller (Oxford, 1998). For a full consideration of the relation between equality and sex discrimination, see sections V and VI below and the next chapter.

5 In fact, as Joseph Raz once reminded me, the evidence seems to be that we are capable of changing nature, usually for the worse, and relatively incapable of changing society. I suggested in the text that there might be no reason to change the present character of sexual difference. Strictly speaking, there is always reason to make a change to anything that is good, that reason being the good that lies in the outcome of the change, such as the distinctive good that can be achieved through the condition of being a man. The suggestion in the text remains valid, however, for two reasons. First, the reason to belong to a particular sex cuts both ways, for there is as good reason to be a woman as to be a man. In itself, therefore, it is no reason to change the qualities of one sex to those of the other. Second, if the reason to be a man is thought to be
The latter objection to the narrative so far deserves a fuller response, for it raises considerably more difficult issues. An approach to understanding and remedying sex discrimination that focuses on sexual difference rather than sexual equality by definition places no pressure on sexual identity. It takes sexual identity as a given and uses it to place pressure on human value. Presumably, that is part of its appeal, for the approach seems to permit reconciliation of sexual justice with respect for and pride in sexual identity. It insists that we should not include among the values to which our society responds those that are insensitive to what women (or men) have to offer, or that are more sensitive to what men have to offer than to what women have to offer (or vice versa). And yet, in spite of its attempt to show respect for sexual identity, concerns about this approach remain, which, like those expressed in the previous section, stem from its comparative character.

It will be clear from the sketch just offered that there are two possible readings of this difference-based approach to understanding and remedying sex discrimination. The first treats the approach as no more than a distinctively framed form of the sexual egalitarianism considered above, one that places its egalitarian pressure on human values rather than on sexual identity. An egalitarian condition is to be achieved not by eliminating the difference between the sexes but by eliminating the human values that register that difference. This reading, then, like its egalitarian sibling considered above, insists that genuine differences between the sexes should not be allowed to make a difference to men’s and women’s options in life, that is, to men’s and women’s access to the valuable pursuits that make it possible to flourish in life. It achieves its ends, however, not by changing men and women, but by denying recognition to all values that are more sensitive to the qualities and achievements of one sex than those of the other.

In doing so, unfortunately, it denies recognition in the pantheon of our values to all the aspects of sexual identity that make it meaningful and rewarding to belong to a particular sex, that is, to be a woman or a man. A world in which one cannot be disvalued on the ground of one’s sex is a world in which one cannot be so valued either, in which nothing either bad or good could flow from being a woman or a man. If realizable, such a world would diminish, perhaps to a critical degree, the prospects of the women and men who require access to their sexual identity, and thus to the valuable options that it makes possible, in order to flourish in life. In that sense and to that extent, the approach would be self-defeating. More generally and more profoundly, in asking society to eliminate all values that register sexual difference, the approach assumes not merely that strengthened by the fact that the qualities of men are culturally preeminent in most societies today and so are more easy to realize value from than the qualities of women, it must be remembered that any change, even if possible and desirable, carries the cost of change, here both short-term trauma and long-term rootlessness and alienation. This means that to make such a change, there must be not only reason but strong reason. The arguments in the text deny that there is any such strong reason.
value is amenable to social decision, but that value is answerable to some feature of society for its very condition as value, which in this context means being answerable to the feature of sexual identity. Values would be genuinely valuable only if they failed to register sexual identity. Unlike the project of eliminating sexual difference considered above, the implausibility here is that of regarding human value as being relative to sexual identity. This implausibility is perhaps brought out more directly and fully in the second reading of the difference-based approach to understanding and ending the practice of sex discrimination, which is concerned to register sexual identity rather than fail to register it.

This reading is one that asks society to tailor its understanding of human value to the character of women, to ensure not that women are equal to men, but that women’s known qualities are honoured and respected; or in some versions, to ensure that women’s heretofore suppressed qualities are recovered and given voice. Whether by endorsing as good women’s qualities as they are presently understood, or by endorsing as women’s and as good those human qualities that are said to have been neglected or suppressed in our society’s present picture of human existence, the approach asks no questions about what it means to be a woman (or a man). Just as in the earlier reading, it takes sexual identity as a given and uses that identity to place pressure upon human value. Women are either just as we have always known them to be (but have failed to value) or are everything that we have refused to imagine (and so have refused to recognize in our account of value). In both cases, value is said to be relative to sexual identity, although different theories offer different ideas of what sexual identity is.

Assume first the more difficult and less common proposition that value is to be related to sexual identity as a whole, in order to ensure the valuing of women’s qualities as well as those of men. As I have suggested, this proposition is a particular form of value relativism, the doctrine that value is a function of some other feature of the world.6 Relativists have different views of what it is that value is properly related to. Cultural relativists believe that value is a function of particular cultures, and so regard as valuable (for particular cultures) whatever is treated as valuable by those cultures. Subjectivists believe that value is a function of personal attitudes, and so regard as valuable (for particular people) whatever is treated as valuable by those people. The particular relativists that I have in mind believe that value is a function of sexual identity, and so regard as valuable (for men and for women) whatever is a reflection of that identity.7

6 Relativists typically believe that value is relative to such features because it is a product of them, so that for relativists value becomes the name of a cultural attitude, or a personal attitude, or the male or female outlook: see the discussion in Section VI. Thus, to believe that value is relative to sexual identity is (typically) to believe that value is the product of whatever attitude or outlook defines men and women as sexual beings. This, however, raises the problem of differences in sexual outlook, with the ramifications for value discussed in the text.

7 So some feminists claim that women are subject to a special, female form of rationality, not because rationality has dimensions we have historically neglected or dismissed that women are
By treating men and women, and the qualities that define them, as valuable just as they are, without criticism or qualification, these relativists hope never to reach the conclusion that it is better to be one than the other, better to be a man than a woman, or a woman than a man, in any setting, for any purpose.

It is not possible to make a general case against relativism and for the objectivity of value in the space of this chapter. It is possible to point out, however, that even if value relativism were a coherent doctrine (as I believe it is not), value could not plausibly be regarded as relative to sexual identity, given the particular conceptual structure of sexual identity. One of the consequences of relativism, of the claim that value is a function of some feature of the world as it is, is that all valuable things become compatible with one another, for otherwise they could not coexist in features of the world as it is. That being the case, relativism implies that we need never be forced, for reasons of incompatibility, to prefer one value to another, in our beliefs or actions. This may explain in part the appeal of relativism, at least for those who are troubled by conflicts of values. It removes the possibility of any confrontation between incompatible values, for values that coexist in the world are necessarily compatible with one another. It certainly explains the attraction of relativism to those who seek a world in which it never would be preferable to belong to one sex rather than the other. Yet the very compatibility of values that makes relativism attractive sets a limit to the kinds of things to which value can be related.

This gives rise to fundamental difficulties for those who would relate value to sexual identity as a whole. On the one hand, to treat value as a function of sexual identity as that identity is understood and valued in a particular culture would only end sex discrimination if the culture in question had no practice of sex discrimination. Otherwise the reference would simply have the effect of affirming that culture’s particular form of sex discrimination. Since no culture is free from sex discrimination, it would be a recipe for maintaining rather than ending existing forms of sex discrimination to treat value as a function of sexual identity as it is understood and valued in any existing culture.

On the other hand, given the conceptual structure of sexual identity, to treat value as a function of sexual identity as it is understood (but not valued) in any particular culture, in an attempt to ensure that the existing qualities of both sexes are regarded as valuable, does nothing to free that culture from the burden of deciding whether it is better, in any given setting, to think or act like a woman or like a man. Sexual identity depends for its existence on a contrast between the qualities that define a woman as a woman and those that define a man as a man.
If it is true that women are caring, for example, then it is true that men are not caring, or at least are less so, or less often so; otherwise the sexes could not be distinguished by their capacity for concern. This contrast makes it impossible to give effect to both aspects of sexual identity at once, so as not to prefer in any given setting the thoughts or actions of a man to those of a woman, or vice versa. It is impossible, for example, to be simultaneously concerned and unconcerned in one’s thoughts or actions, or to put it another way, to implement the value of each, in the same setting and for the same purpose. One quality, be it concern or lack of concern, and the sex that exhibits or tends to exhibit that quality, must be preferred to the other. This makes it impossible to regard value as relative to sexual identity as a whole, so as never to prefer one sex to the other. The qualities that define and distinguish the sexes must each have their place, a place that is determined by an account of value that is not relative to sexual identity. That being the case, a relativist who seeks to relate value to sexual identity would have to regard value as residing, in any particular setting, in one aspect or the other of that identity (in which case value would no longer be relative to sexual identity, strictly speaking, but to maleness or femaleness, as the case might be) or in neither.\(^\text{10}\)

In fact, few, if any, critics of the present social order maintain that value is relative to sexual identity in just the way I have described, though that may be a necessary implication of their arguments. Rather, they emphasize the need to relate value to the qualities of women, so as to ensure that those qualities are at last recognized as good, as the qualities of men presumably already are and long have been. This contention, however, to the extent that it differs from the contention that value is relative to sexual identity as a whole, only exposes a more familiar weakness in value relativism, namely, its inability to criticize the particular social order, or particular feature of that social order, to which value is related. If value were relative to the qualities of one sex, here to the qualities of women, so that the qualities of women were recognized as good by definition, then the qualities of men, if not also said to be valuable in the manner considered above, would have to be correspondingly bad. Setting to one side the inherent implausibility of a suggestion that the present practice of sex discrimination could be brought to an end by simply inverting it, so as to change the identity of its victims from women to men, the attempt to treat women’s qualities as good by definition rather than by virtue of their objective

\(^{10}\) This is not to say that value cannot embody a contradiction, for clearly it can. Many features of the world are understood in terms of a contrast that makes it impossible to realize both aspects of them at once, yet they are no less valuable for that reason. Femaleness and maleness are both capable of being valued despite the fact that the different values they may give rise to are incompatible. However, while both ways of being are valuable, it is not possible to realize them both at once. In any setting where both forms of value are realizable, a choice must be made as to which value to realize. In some settings and for some purposes, it is better to be a woman, in others, a man. Practice does not guide value, as not only objectivists but any critic of the present social order must agree.
II. Discrimination and Difference

value is no recipe for a valuable life for women, or for true respect for and pride in one’s identity as a woman.

To take sexual identity, as we now understand it,\footnote{The account could be premised on sexual identity as it really is rather than as we now understand it. This would not be easy, however, for such an account would typically incorporate an account of what is valuable, so as to distinguish what is material from what is immaterial in the potentially vast description of what anything is. An account of what we are that makes no reference to value risks lapsing into incoherence, counting the number of hairs on our heads, or freckles on our forearms. Even if this problem could be overcome, an account of value that took the qualities of women as they really are as the premise of value would still suffer from the implausibility of defining men as bad and from the more general objections to relativism sketched in note 19.} as the premise of value is to place that identity beyond the capacity of value to criticize. And yet, as many have pointed out, such criticism is surely crucial to the ending of sex discrimination. It is possible, of course, to believe that the present social practice of sex discrimination is in no way reflected in the present social understanding of sexual identity, but it is not terribly plausible to do so. On the contrary, it seems almost certain that the present practice of sex discrimination is broadly reflected in the present understanding of sexual identity, so that the picture we as a society now have of what it means to be a woman both includes qualities that women do not possess and neglects qualities that women do possess, in each case to women’s disadvantage. If that is so, then to take women’s present identity as the premise for understanding value, and hence for understanding discrimination, is to honour as women’s and as valuable qualities that are not women’s and may not be valuable, and correspondingly, to fail to honour qualities that are women’s and are valuable, or that are capable of being used valuably. In other words, and in its own terms, to treat value as relative to women’s present identity as women is to make it impossible to regard that identity as anything but good. If that is implausible, then it is implausible, even if intelligible, to regard human value as relative to sexual identity.

These are points about the nature of value, but as my last comments make clear, they also place in question the status of the present understanding of sexual identity, of what it means to be a woman or a man. Value relativism aside, whether the qualities that we take to describe and define sexual difference are real or mythical is a crucial question for any account of sex discrimination. Whatever human value is or is taken to be, it can be engaged in only by those who genuinely possess the qualities, and the corresponding achievements, that human value registers and responds to. To put it another way, even value relativists can only know what values they should endorse by knowing, and knowing accurately, the context to which those values are to be related. To relate value to a difference that is wholly or partially mythical would be to succumb to the very error that value relativists themselves seek to remedy, here the (supposed) error of failing to relate value to sexual difference as it actually is, that is, to what it genuinely means to be a woman or a man. If that is so, it is doubly
implausible to treat sexual identity, as we now understand it, as the premise for value.

The question remains, then, as it stood at the end of the previous section: whether it is possible to arrive at an account of sex discrimination that respects both sexual identity and human value while allowing for mistakes in our perception of each. The approaches considered so far have all been comparative in character, in that they have attempted to frame sexual identity and human value by reference to equality and difference. Yet it must be possible to understand women other than in terms of the ways in which they are and are not different from men, just as it is possible to understand men without reference to women. At some point comparisons between the sexes must end, and we must simply ask, and then answer, what it means to be a woman or a man. Whatever answer we arrive at must then be related to value. As I have said, it is not only possible but necessary to understand value other than in terms of a comparison between women and men. This suggests that a proper understanding of the disadvantage that flows from sex discrimination, a disadvantage that involves a denial to women, as they really are, of the ingredients necessary to a genuinely valuable life, must proceed other than by a comparison to the lives of men.

III. Discrimination Without Comparison

To return to the story with which I began, an alternative explanation of a woman’s entitlement to appear in public naked to the waist (in hot weather at least) is that the conventional understanding of a woman’s nakedness, and in particular of the significance of bare breasts on a public street, is profoundly mistaken. Indeed, it is only one instance of the manifold errors that we as a society have made, and continue to make, about what it means to be a woman, errors that have prevented women from leading successful lives. On that explanation, nondiscrimination would be a matter of removing the prevailing misconceptions of what it means to be a woman and of the valuable activities to which a woman’s life might be directed, in any case where the effect of those misconceptions is to disadvantage women, by impairing their prospect of leading a successful life.

It is a familiar fact, one not confined to this explanation of sex discrimination, that discrimination typically proceeds from a misconception (to put it gently) of what it means to be a woman. Time and again women are said to lack abilities that they in fact possess, or to possess disabilities that they in fact do not. The options available to them are then tailored accordingly, so as to deny women, on one

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12 In referring to what it means to be a woman, as I do throughout this section, I mean simply to refer to what it is to be a woman, whatever that may be. For a discussion of the many issues surrounding that idea, see section VII, below. I believe that it is impossible to know which values to pursue, or the extent to which one has been denied access to those values, and so has been discriminated against, without an adequate degree of self-understanding, which, in the case of women, means an adequate understanding of what it means to be a woman.