

## Discrimination and equality at work: A review of the concepts

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**F**ormal condemnation of discrimination in employment and occupation is universal and firm. Yet discrimination is an enduring feature of labour markets everywhere in the world. The prevalence of particular forms of discrimination – based on race, sex or religion – or their manifestations may vary across countries, and within countries, over time. But even in societies where equal opportunity practices have been part of working life for some time, members of discriminated groups are far from enjoying equal status with members of dominant groups.

To eliminate discrimination and achieve equality at work, it is important to understand what it is that needs to be eliminated and how it can be done. This presupposes, *inter alia*, answering Amartya Sen's classic questions: *equality of what?* and *equality for whom?* (Sen, 1992). The answers to these questions differ depending on one's views of the causes and consequences of inequalities between, say, men and women or between people of different races or religions. This article reviews a variety of understandings of what constitutes discrimination at work, of what "equality at work" denotes and of how to achieve it. A consideration of the notions of "discrimination" and "equality" is indeed relevant to policy-making, as different notions have different policy implications.

### Discrimination in employment and occupation: Delimiting the problem

The ILO's Discrimination (Employment and Occupation) Convention, 1958 (No. 111), defines discrimination as "any distinction, exclusion or preference made on the basis of race, colour, sex, religion,

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political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation". Discrimination at work thus refers to a difference in treatment based on the personal characteristics of an individual, such as race or sex, irrespective of whether that individual's profile matches the requirements of a particular job. This difference in treatment puts him or her at a disadvantage or limits his or her access to benefits and opportunities available to other members of society. The inclusion in Convention No. 111 of both "employment" and "occupation" is intended to ensure that everyone not only has access to employment, but also enjoys the free choice of an occupation. Furthermore, the Convention provides protection against discrimination with regard to the treatment and opportunities offered not only to those who already have a job, but also to those who are seeking a job. Equal access to vocational training is also provided for: without it there cannot be any real equality in admission to employment or any given occupation.

### *Direct and indirect discrimination*

The emphasis that Convention No. 111 places on outcomes – i.e. deprivation or limitation arising from a difference in treatment – means that the presence of intent is not necessary to identify a situation as discriminatory.<sup>1</sup> Discrimination can indeed be direct or indirect. It is direct when rules and practices explicitly exclude or give preference to certain individuals solely on the basis of their membership of a particular group. Job vacancy announcements that overtly discourage applications from married workers or from people above a certain age or with a certain colour/complexion are examples of direct discrimination. The same goes for the restrictions that customary norms impose on female entrepreneurs in some African countries with regard to leasing or owning premises in their own right, even when they have the resources to do so, which explains why female entrepreneurs often operate from inappropriate premises.<sup>2</sup> These forms of discrimination are rooted in prejudices and biased perceptions of the abilities or work ethics of indi-

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<sup>1</sup> The ILO Committee of Experts on the Application of Conventions and Recommendations has observed that, although certain definitions of discrimination refer to the intentional nature of discrimination either directly or indirectly, Convention No. 111: "covers all discrimination without referring to the intention of an author of a discriminatory act or even without there needing to be an identifiable author, as in the case of indirect discrimination or occupational segregation based on sex" (ILO, 1988, p. 22, para. 26).

<sup>2</sup> The lack of appropriate or affordable premises is particularly "taxing" in the case of businesses devoted to food processing and food preparation, where women predominate. Since business regulations require compliance with hygiene standards, inability to operate in suitable premises due to gender-biased customs makes it more difficult for women than men to "formalize" their business, thus exposing them to harassment by public authorities (see Richardson, Howarth and Finnegan, 2003, p. 23).

viduals belonging to certain groups, irrespective of their actual skills and work experience. Such stereotyping is discriminatory because it implicitly requires that individuals from a disadvantaged group reproduce the characteristics commonly ascribed to individuals from society's dominant group (Sheppard, 1989).

Direct discrimination is much easier to detect than indirect discrimination. This refers to norms, procedures and practices that appear to be neutral, but whose application disproportionately affects members of certain groups. In some countries, for example, height requirements for filling certain positions have the effect of excluding altogether members of ethnic minorities whose average height tends to be below the overall national average. The arbitrary nature of this requirement is evident when height is not necessary to perform the jobs in question. Indirect discrimination may also occur when distinct categories of workers are treated differently. For example, in many countries domestic workers are excluded *de jure* or *de facto* from the protection that the law grants to other employees. As domestic workers tend to comprise mainly women or members of ethnic minorities or migrant workers, their exclusion from the scope of labour law constitutes a form of indirect discrimination based on sex, race, ethnic origin or nationality.

Proving the existence of indirect discrimination may be difficult, especially where it results in a disproportionate, but not total, exclusion of members of certain groups from the workplace. In Canada, for instance, cases of indirect discrimination against members of religious minorities or people with disabilities have been much easier to prove than cases involving gender-based or racial discrimination that generated disparities, but did not result in absolute exclusion of either women or members of racial minorities from work (Sheppard, 2002).

The notion of indirect discrimination has three significant implications for policy-making. The first is to show that treating different people in the same way, without due consideration for the specific circumstances or context of the disadvantaged, may, in some instances, perpetuate or even deepen existing inequalities instead of reducing them. This implies that, in some cases, giving effect to equality means treating different people differently (Minow, 1988). The question then becomes whether such unequal treatment can be justified and, if so, which reasons are acceptable for allowing a certain degree of inequality. These issues are examined below in the discussion of the social group justice model of equality.

A complex issue related to the foregoing centres on the evaluation of "difference" between people, as assignment of "difference" and "sameness" may produce inequitable outcomes. Difficulties may arise when "difference" is regarded as *innate* or *intrinsic* to a particular individual or group – as opposed to being *relational* – in the sense that it

arises by reference to a comparator. Defining “difference” as inhering in an individual or group implies that there exists a “normal” or “standard” person or group, which is the comparator. Members of disadvantaged groups are then treated as exceptions from the dominant pattern, and special rights are accorded to them to accommodate their specific needs because of their difference (Ben Israel, 1998). Understanding “difference” as created through a relationship means that “difference” no longer belongs to the one individual who “deviates” from the “norm”, but that the two individuals under comparison are simply different from each other. According to this approach, “difference” arises through the relationship – i.e. it is the relationship itself which constructs difference so as to justify the exclusion or subordination of a particular group or individual. Feminist critics of the sameness/difference paradigm argue that a relational approach to “difference” helps explain that it is not “nature”, but social and legal institutions which produce and maintain women’s subordination.<sup>3</sup> From this perspective, the exclusion that a person in a wheelchair may experience is not ascribed to her difference/disability but, say, to the failure of the workplace to provide adequate access ramps. This means that the perceived cause of discrimination is shifted from the person who is “different”, “deviant” or “exceptional” to the workplace or society. The issue therefore is no longer about “accommodating difference”, but rather about “transforming” the workplace and work organization so that there is no longer any single “normal” or “standard” model.

The second policy implication of the concept of indirect discrimination is that it allows for a critical assessment and revision of established institutional practices and workplace cultures with the aim of detecting and eliminating rules and procedures that have harmful effects on members of particular groups. According to this view, discrimination is not the isolated act of an employer or a worker: it is deeply engrained in the way workplaces function. These have been structured and organized in ways that exclude or penalize members of groups who “deviate” from the “standard employee” model. This may well be a married white male whose spouse takes care of the children and domestic chores or a person without physical or sensorial impediments.

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<sup>3</sup> In this context, the “difference” approach emerged in response to the initial stance of liberal feminism that minimized gender differences so that women could assimilate the mainstream norms imposed by a male standard. According to this view, being equal meant being the same. The “difference” approach, by contrast, seeks recognition rather than suppression of sex and gender differences, as it advocates special treatment and accommodation of women because of their reproductive function and related socially ascribed roles. The flaw of the difference approach, however, is that it continues to regard men as the reference and women as “the other” (see MacKinnon, 1987). Further shortcomings of the sameness/difference paradigm stem from the fact that it presupposes the existence of both a neutral observer, who determines what is to be considered different, and a norm by which to measure sameness and difference (Minow, 1987).

The third implication of the notion of indirect discrimination is the use of statistics to determine whether an apparently neutral criterion has the effect of excluding or disadvantaging people in one group compared to those in another.<sup>4</sup> The use of statistics for this purpose is not without difficulties, though. Statistical research is indeed based on the observation of differences between groups that translate into labour market outcomes felt to be unjust. This already presupposes a bias. If used correctly, however, statistics can shed light on new cases of indirect discrimination that were not previously considered suspect.<sup>5</sup> They also provide a useful tool for monitoring and measuring progress or regression in the elimination of discrimination.

### *What does not constitute discrimination*

Not all distinctions based on personal characteristics are considered discriminatory. Differential treatment motivated by the inherent requirements of a job is accepted as fair and efficient. For example, being male or being female is often considered a legitimate qualification for jobs entailing physical intimacy or for the performing arts. Political opinion or religious belief may also, in some limited circumstances, constitute a bona fide criterion for certain positions. For example, political affiliation may be a key factor in the filling of senior posts that entail special responsibilities for the development of government policy. Similarly, practicing a particular faith is often viewed as an essential requirement to teach in religious educational establishments. In all cases, however, such exceptions from the general rule must be applied within limits, on the basis of unquestionable evidence that the special treatment is essential to the work involved; and they must not become the basis for systematic screening. Other distinctions that do not amount to discrimination involve measures relating to state security.

Special measures to assist or protect certain categories of persons with a view to ensuring equality of treatment and opportunity in practice are generally not considered discriminatory either. Examples of such measures include the provision of language classes at the workplace for recently immigrated workers and the use of workplace changing rooms by workers from minority religious groups to facilitate the fulfilment of their religious obligations. Laws prohibiting women from engaging in underground work or night work have traditionally been

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<sup>4</sup> The underlying assumption is that in a non-discriminatory environment the workforce should show a representative distribution of women and men and of members of different races and religions. The under-representation of one group is taken as prima facie evidence that a discriminatory practice is probably in place. But if no exclusionary criterion can be found or the latter is justified by the requirements of the job, the presumption of discrimination is ruled out.

<sup>5</sup> For an excellent discussion of the challenges of establishing a prima facie case of indirect discrimination, see Sjerps (1999).

seen as special protective measures, although the tendency today is to pursue the protection of women workers within the broader framework of improving working conditions and promoting equal opportunity for *all* workers, irrespective of their sex.<sup>6</sup> Maternity protection, however, transcends the sphere of protective legislation and is seen as the premise of the principle of equality rather than an exception to it. Preferential treatment based on sex, race or disability, as envisaged in affirmative action, is also accepted as a justified distinction.

### *Merit: A social construct*

Except for the situations outlined above, the only solid and unquestionable basis for differential treatment is merit. The notion of merit refers to a relationship between a person's qualifications and those required for performance in a particular position. The definition of what constitutes merit, however, is highly contested, and different understandings of this notion point in different, and sometimes incompatible, policy directions.<sup>7</sup> Merit is neither an absolute nor a static concept, but rather a dynamic and relative one. The notion of and the value attached to certain competencies or attitudes are indeed socially constructed. The behaviours, skills and competencies that are deemed desirable and crucial to success correspond to those displayed by the people who occupy positions of power (MacKinnon, 1987). Companies' values and ideas about preferred ways of doing things and about appropriate jobholders, career paths and organizational rewards are commonly presented as expressing a general and shared interest and orientation, while in fact they are constructed on human and power re-

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<sup>6</sup> The ILO's 2001 General Survey on *Night work of women in industry* recognizes that there is a general trend to move away from an outright ban on night work by women in industry, including in countries with conservative social norms and stereotyped views about women's economic role. Whilst welcoming this trend, the report warns against the harmful effects – for both women and men – that a revision of special protective measures could have without due consideration of the need to provide some institutional protection instead. Furthermore, the report stresses the need for a periodic review of protective legislation with the aim of removing all discriminatory constraints, whilst acknowledging the importance of reaching flexible and consensual solutions (see ILO, 2001).

<sup>7</sup> For an excellent analysis of the complexity of the meaning of “merit” and its relationship to the broader debate over the advantages and disadvantages of affirmative action, see McCrudden (1998). McCrudden identifies five different notions or models of merit, namely (1) merit as the absence of intentional discrimination, cronyism or political favouritism; (2) merit as “general common sense”, whereby the possession of the qualities considered as generally valuable in society is reasonably likely to be also relevant to the performance of a certain job; (3) merit as strict job-relatedness, according to which a job should be awarded to the person who possesses the qualifications required by the job; (4) merit as the capacity to produce particular job-related results, according to which it is not possession of the necessary qualifications which is most relevant to doing the job better, but rather the possession of features that are key in assisting in the performance of the job; (5) merit as the capacity to produce beneficial results for the organization, according to which merit coincides with the attributes that enable a person to serve the organization most effectively, rather than do the job narrowly conceived.

relationships. They reflect arrangements in work organization that result from a series of bargains and compromises between various parties – processes in which women and other groups discriminated against have not played a significant or influential part.

Back in 1944, Everett Hughes observed that decisions on recruitment and promotions were made on the basis of two sets of characteristics. The first includes the “official” and legitimate requirements for performing a particular job, while the second consists of characteristics perceived by the company as conducive to the establishment of a relationship of mutual recognition and trust. Trust is indeed deemed essential to ensuring a certain degree of predictability in the behaviour of new recruits and thereby ensuring the smooth running of the enterprise. Dealing with socially homogenous peers – i.e. men in male-dominated organizations – was perceived to be less uncertain than dealing with different and “unpredictable” people, like women (see Hughes, 1944, cited in Burton, 1991).

This shows how organizational and occupational structures shape the opportunities, or lack thereof, for certain individuals. These structures also inform people’s perceptions of what particular individuals are good or not good at, irrespective of their actual worth and aspirations. The challenge therefore lies in devising ways of measuring and comparing the value of different life trajectories and work experiences on the basis of criteria free from sexual, racial or ability biases, in order not to deprive people of equal opportunities because of their (involuntary) membership of a particular group.

### *Intersection: The interplay of multiple grounds of discrimination*

Over time, a number of personal characteristics have been recognized, internationally and nationally, as causing discrimination at work. In addition to the seven grounds for discrimination explicitly mentioned in the ILO’s Convention No. 111, others include disability, age, sexual orientation, state of health and trade union membership. The personal features giving rise to discriminatory practices vary, inter alia, in terms of their nature, the relative ease with which they can be detected, and their mutability over time. For example, sex and race are typically visible from a person’s appearance and are generally regarded as fixed or unchangeable features. By contrast, people’s religious beliefs, political opinions and sexual orientations are not always immediately detectable and may be considered more changeable over time. Discrimination on these grounds implies that individuals convey information or display behaviour or an appearance that may lead others to associate them with certain religious creeds, political orientations or sexual preferences identified with negative stereotypes. It is thus not

only the actual religion that an individual professes but, often, *presumptions* about her/his religious affiliation – based on skin colour or other signs or perceived nationality or national extraction – that may cause an employer to dismiss or not to hire that individual.

Nevertheless, the characteristics that produce disadvantage are more imprecise than might first appear, as are the boundaries between different characteristics. “Race”, for instance, may be used to refer to distinctions based on skin colour or ethnic origin; or it may be equated with a combination of religion and culture (Modood, 1992). “Colour” is another hazy concept, as it is largely a matter of perception. Brazil’s demographic composition illustrates the tremendous difficulty of establishing clear-cut boundaries between different shades of “colour”, as “colour” identification is ambiguous. There appears, nonetheless, to exist a correlation between the general perception of an individual’s colour and her/his socio-economic status. Typically, the higher a person’s social position, the lighter the perceived colour of her/his skin. This has led some analysts to conclude that, in Brazil, “money whitens, whilst poverty darkens”. This suggests that colour and class together permeate the process of job access and subsequent moves in and out of the labour market, although class seems to prevail over colour as a source of disadvantage (Silva, 2002).

Disability is a broad and fluid category. People can move into a state of disability at any stage of their life, prior to or after labour market entry, due to different causes and through different processes. Disabilities can indeed be acquired in diverse ways; they may take different forms, physical and mental, and require different responses and accommodation measures.

In sum, there is thus little reason to assume any similarity across different social groups either in the way they experience disadvantage or with regard to their needs and requirements. Moreover, the circumstances and experiences of discrimination *within* supposedly homogeneous groups are equally diverse. For example, the situation of women with disabilities raises particular concern, especially in societies in which the primary, if not exclusive, role of women is that of wife or mother. Being “unworthy of marriage”, they are perceived as a burden on the family and, as such, are exposed to all sorts of abuse. Not only are they deprived of education or vocational training, which are often unsuited to their specific needs, but they are also denied health services and assistance (Feika, 1999).

There is no single expression of oppression that is common to all members of a disadvantaged group. Women, for instance, face different forms of discrimination and suffer from different deprivations and to varying degrees, depending, *inter alia*, on their class, sexual orientation and skin colour. The disadvantages that women experience because of their sex cannot be separated from the disadvantages stemming from



other personal attributes or identities, and the interplay of identities often results in experiences of exclusion and disadvantage that are unique to particular combinations of identities.<sup>8</sup> For example, women of an ethnic minority group may suffer discrimination in situations where neither ethnic minority men nor women from the dominant group do. Sexual harassment cases in Canada provide an interesting example of the cumulative effects of sexism and racism.<sup>9</sup>

Recognition that the traditional understanding of discrimination based on specific grounds (e.g. sex, race, age, disability) does not include experiences that are particular to specific sub-groups (e.g. women of a given race and age) has led to the emergence of “intersectional analysis”. As Kimberlé Crenshaw points out in her path-breaking article, “intersectionality” shows that the discrimination a woman of colour may confront because of her sex and “colour” is not the simple addition of sexism and racism, but rather a combination of the two. It is this synergy that makes the discrimination faced by non-white women a qualitatively rather than quantitatively different experience (Crenshaw, 1991). This analytical approach is particularly useful in revealing new forms of discrimination that have so far remained hidden, and in directing attention to the most disadvantaged (Makkonen, 2002). It has also helped to expose the limitations and challenges of a human rights protection system constructed on group-based categories and grounds for discrimination. This approach may indeed fail to recognize the specificity of intersectional discrimination grounded in individuals’ multiple identities and to provide them with adequate protection (Sheppard, 2001).

## Equality of treatment and opportunity: A multi-faceted notion

It is obvious that discrimination at work – because of its pervasiveness, institutional dimensions and cultural and political underpinnings – will not vanish by itself. Nor can the mere removal of barriers or unfavorable actions against certain individuals or groups suffice to eliminate discrimination at work and achieve, in practice, equality in treatment and opportunities for all. Deliberate, consistent and prolonged efforts, involving the State, businesses, workers’ organizations

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<sup>8</sup> North-American black feminists played a key role in uncovering the biased nature of the conceptual underpinnings of the women’s liberation movement in the late 1970s. The main assumption then was that all women, irrespective of age, class or other characteristics, confronted the same barriers and prejudices as those faced by middle-class white women (Byrnes, 1994).

<sup>9</sup> The stereotypes of sexuality attributed to white women differ from those associated with aboriginal or Asian women. It is therefore reasonable to expect differences between situations in which a white man sexually harasses a white woman and situations in which the victim is either an Asian or an aboriginal woman (see Duclos, 1993).

and discriminated groups themselves, are essential to combatting discrimination in employment and occupation and promoting equality (ILO, 2003). In order to determine how best to achieve this goal, however, it is also essential to clarify the meaning of the expression “equality at work”.

Equality at work is an elusive and evolving concept whose content and scope vary internationally and over time, most notably under the influence of economic, social and cultural circumstances.<sup>10</sup> The variety of meanings of “equality of opportunity” reveals an equally wide variety of understandings of what amounts to discrimination, what and who produces discrimination and ensuing labour market inequalities and disadvantages, and how to redress them. Understanding the different meanings attached to the concept of equality is therefore important for policy-making.

Based on McCrudden’s (2002) typology, three meanings or models of equality can be distinguished: the procedural or individual justice model, the group justice model, and equality as recognition of diversity.<sup>11</sup>

### *Equality as procedural or individual justice*

The procedural or individual justice model aims to reduce discrimination by eliminating considerations based on personal characteristics that are irrelevant to the job, but which have negative effects on individuals with those characteristics. It has a distinctly individualistic orientation and reflects respect for efficiency, “merit” and achievement. The main goal is to ensure that the rules of competition are non-discriminatory and are enforced fairly on all – blacks or whites, men or women, members of minority or majority ethnic groups. Borrowing Fredman’s metaphor of competitors in a race, the goal pursued by procedural justice is to equalize the competitors’ starting points (Fredman, 1999). The practical implication of this approach is homogeneity of treatment across the board on the assumption of people’s “sameness”. From this perspective equality equates with consistency of treatment

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<sup>10</sup> The notion of equality of treatment and opportunity at work has elicited considerable debate. For a review of the different notions of equality, see Wentholt (1999), and Barnard and Hepple (2000).

<sup>11</sup> McCrudden actually identifies four meanings or models of equality which, although identified on the basis of the European Union’s experience, bear relevance for other regions and countries as well, namely: the individual justice model, the group justice model, equality as recognition of diversity, and equality as participation. This latter model is based on the belief that the empowerment of the victims of discrimination is essential to their emancipation from unfair and unjust treatment. To this end, the reasoning goes, it is essential that they participate, on an equal footing with other groups, in decision-making processes affecting their opportunities at work as well as in society at large. While people who suffer from discrimination clearly do need to participate in the design, implementation and monitoring of equality policies, there appears to be an overlap between equality as participation and equality as recognition of diversity, hence the decision to drop the former in the presentation given here.

(Hepple, 2001). The elimination of barriers to fair competition is intended to permit all individuals, irrespective of race, religion or age, to be rewarded according to personal merit, talents and abilities. This model, however, does not recognize that different groups are unequally endowed with human and social capital as a consequence of pre-market discrimination. Nor is this model concerned with achieving a more balanced participation and/or distribution of groups across sectors and occupations. As observed by Hepple (2001), a claim to equal treatment in this sense can be satisfied by depriving two individuals of a particular benefit as well as by conferring the benefit on both. Furthermore, as mentioned earlier, consistent treatment of different people may produce unequal results. The legal expression of this model targets direct discrimination; remedial action is individual-based and typically concentrates on the perpetrator's intention to discriminate. Affirmative action or special accommodation measures can also be envisaged in this model, but as a derogation from the principle of equality (McCrudden, 2002).

The procedural justice model has been criticized for failing to recognize the individual and institutional nature of discrimination, for dismissing the existence of discrimination within and outside the labour market, and for emphasizing intention rather than effect (McCrudden, 1999). These limitations have led to attempts to develop the concept of substantive equality, which is broader than that of formal equality: it reflects a concern about achieving, in practice, improvements in the status and participation of disadvantaged groups in society. The following models can be considered variations of the notion of substantive equality.

### *Equality as social justice*

The group justice model is concerned more with the *results* of decisions on hiring, recruitment or dismissal than with the decision-making process itself. The starting point of the underlying logic is the realization that there are imbalances in labour market outcomes as between particular social groups and that certain people confront a situation of disadvantage at work by virtue of their membership of a given group. This model tends to focus on the relative positions of distinct groups, rather than individuals.

The main goal of this model of equality is to reduce and gradually eliminate inequalities between dominant and discriminated or subordinate groups. Since the focus is on the effects of discrimination, the removal of the determinants of disadvantage is deemed necessary, irrespective of who has caused the problem. The purpose of equalizing labour market outcomes may be to redress the consequences of past discrimination or to promote distributive justice at present. Emphasis is placed on expressions such as "equality of outcomes" and disadvantage,

rather than discrimination. The legal expression of this model targets indirect or adverse discrimination. It relies heavily, though not exclusively, on statistics to trace evidence of discrimination.

This model of equality seeks to ensure the fair participation of members of disadvantaged groups in the workforce, their fair access to education and training and their fair participation in the distribution of benefits. This may involve the adoption of special measures to overcome disadvantage, including affirmative action. Though this concept still lacks a generally accepted legal definition (United Nations, 2002), it can be broadly defined as: "treating a sub-class or a group of people differently in order to improve their chances of obtaining a particular good or to ensure that they obtain a proportion of certain goods" (Faundez, 1994, p. 3). Affirmative action encompasses a range of measures and programmes targeting members of groups that are disadvantaged because of current discrimination or as a consequence of past discrimination. Such measures may consist of systematic and proactive efforts to locate qualified individuals from the designated groups in order to give them some advantage, where there is a very narrow margin of difference between job applicants; alternatively, they may consist in granting members of disadvantaged groups substantial preference over members of dominant groups (Blanpain, 1990). Preferential treatment can be associated with the achievement of numerical targets for increasing the representation of designated groups, as established within the framework of employment equity plans. It can also be linked to quota systems that allocate a proportion of certain positions to group members.

Preferential treatment reflects the belief that imposing the presence of people from disadvantaged groups is the most effective way of defying entrenched prejudices about the lack of abilities or attitudes of members of those groups, by showing that they can perform as well as others do in positions previously denied to them. It also reflects the view that a critical mass of employees from designated groups is an unequivocal sign of genuine commitment to equality at the workplace. Moreover, it mirrors the belief that discriminatory labour market institutions and practices can be truly challenged only if the workforce reflects the composition of society by sex, race, religion, etc.

Affirmative action, however, has come under considerable attack in recent years. The most common charge against it is that it constitutes a form of reverse discrimination, since it entails preferential treatment for certain people on the basis of characteristics – such as sex or race – that are considered to be irrelevant from the perspective of formal equality. Another criticism is that affirmative action tends to favour (a few) members from target groups who are already in a position of relative advantage (Edwards, 1987). Yet another centres on the alleged efficiency losses associated with the lowering of standards that affirma-

tive action measures sometimes entail. Preferential treatment, the argument goes, acts as a disincentive for members of beneficiary groups to improve their skills; this, in turn, erodes their perceived competence in the eyes of society, as their recruitment and promotion are then felt to reflect privilege, not actual merit (Loury, 1999). Such perceptions generate resistance and opposition from members of mainstream social groups, who feel unjustly penalized, thus reinforcing social fragmentation (Calvés, 1999).

In his recent analysis of affirmative action in South Africa, Dupper (forthcoming) cogently argues that the current debate on this matter would be more fruitful if affirmative action were justified as a means of promoting “highly desirable forms of social change”, rather than as a compensation for a historical wrong. Instead of the backward-looking strategy inherent in the compensation arguments, Dupper advocates a forward-looking rationale for affirmative action. A focus on the future would indeed help overcome some of the difficulties of establishing a causal link between past wrongs and the present position of particular individuals and create a different society where all people are treated as equals.

The group-based social justice model of equality not only addresses demand-side constraints through anti-discrimination law and affirmative action measures aimed at changing the behaviour and attitudes of employers and so-called gatekeepers,<sup>12</sup> it also seeks to address supply-side constraints, either by enhancing the skills of members of disadvantaged groups or by expanding job opportunities through the creation of new jobs. This means recognizing that an anti-discrimination law must be complemented with other policy measures that do not necessarily have an anti-discrimination focus. For instance, some scholars argue that a minimum wage policy may well serve the objective of reducing pay inequalities at the bottom of the pay hierarchy, without resorting to equal pay laws (Rubery, 2002).

### *Equality as diversity*

The model which sees equality as recognition of diversity or identity is based on acknowledgment of the existence and equal value of people's different identities in terms of race, colour, sex or sexual preference. Failure to admit the importance of such differing identities amounts to oppression and discrimination. This model has emerged as a result of the social mobilization of women's movements, indigenous

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<sup>12</sup> The term “gatekeepers” refers to a wide spectrum of actors both outside and within organizations, ranging from private recruitment agencies to private or public counselling and vocational guidance institutions, private contractors operating within the framework of government-sponsored training programmes, and line managers.

and tribal organizations and lesbian and gay movements, among others, since the late 1970s or early 1980s. Their demands include recognition of their right to be different and political acceptance of their diversity in all spheres of society. The objective is not to equalize behaviour between women and men or people of different races or religions, but rather to introduce work patterns that take into account and reward the different talents, needs and aspirations of different groups on an equal basis.<sup>13</sup> In other words, the aim is not to suppress difference, through the assimilation of the “diverse” into majority cultures and behaviours, but to acknowledge diversity as an individual and societal asset and ensure inclusion without assimilation.

Legal expressions of this model are found in the expansion of the grounds on which discrimination is forbidden by law in several countries or in the enactment of laws focusing on recognition of specific social groups. In Latin America, for example, the recognition of specific cultural, economic and political rights for indigenous peoples – in addition to the rights granted to the general population – is seen as a means of remedying past injustices, reducing inequalities, achieving social equity and social cohesion (Plant, 1998). It is worth noting that the diversity approach has exerted considerable appeal on advocates of the business case for equality. “Diversity management” contends that individual differences and collective diversity enhance labour productivity, innovation and efficiency, fostering an organizational culture that encourages workforce heterogeneity. This approach, however, focuses on the individual and his or her unique strengths and does not address relations and dynamics between different groups. It helps to challenge the image of a white man as the “standard” employee, but does not by itself break structural discrimination (Crow, 1999).

Critics of the diversity/identity model of equality contend that an emphasis on diversity may, in certain circumstances, entail a departure from distributional concerns with harmful effects on economically disadvantaged groups. In the United States, for instance, the diversity discourse appears to be generating tensions among African Americans because the extension of affirmative action measures to Americans of Asian origin may reduce redistribution in favour of the former (McCrudden, 2002). Another criticism of the diversity model is that its emphasis on group identities ends up diffusing the variety of identities within the same groups (e.g. members of an ethnic group differ by age, marital status, gender, etc.), forcing people into artificially fixed boundaries and denying changes in their aspirations and demands over

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<sup>13</sup> The benchmark for ascertaining the degree of equality at work achieved by a society can be highly discriminatory in nature if the length of the working day, the balance between productive and reproductive life and the forms of employment that are conventionally taken as the yardstick by anti-discrimination interventions conform to a male work pattern, e.g. that of a full-time, permanent, paid worker.

time. This would tend to reinforce the very stereotypes that the anti-discrimination law was meant to combat. Some analysts have also argued that recognition of minority group rights clashes with the pursuit of gender equality because minority cultures and norms are gendered and display substantial differences in power and advantage between women and men (Okin, 1999).

A variant of the diversity model, that takes it to its logical conclusion, is the so-called transformative agenda. The objective of this approach is to achieve equality between women and men, different races, ethnic groups, etc., in respect of economic rewards and power, not in terms of homogenous labour market outcomes (Rubery et al., 1998). To this end, work patterns and work culture must truly reflect and equally value the aspirations, talents and professional paths of a composite and varied workforce. This is clearly a goal that cannot be achieved overnight: the empowerment of disadvantaged individuals and groups is crucial to progress in that direction. Only through stronger bargaining power will they be able to challenge and influence the reshaping of occupational structures and work culture and practices so as to make them socially inclusive. Accordingly, a two-stage equality agenda is suggested. It envisages an initial phase in which labour institutions and practices are asked to accommodate the specific needs of disadvantaged groups and improve their representation across sectors, occupational hierarchies and representative organizations. A second stage follows in which the workplace and work culture are transformed, as a result of more and better participation of all social groups (Bercusson and Dickens, 1996).

## Concluding remarks

The elimination of discrimination in employment and occupation requires the promotion of equality of treatment and opportunities. But, even where the principle of equality is generally endorsed, the understanding of what discrimination is may be hazy, and controversy may arise about the meaning and policy implications of equality. This article has explored the notion of discrimination and examined its various dimensions. It has stressed the value of intersectional analysis, which has exposed hitherto hidden forms of discrimination and captured the full complexity of the discrimination experienced by the most disadvantaged. To shed light on the notion of equality at work, the article has reviewed three broad models of equality, namely, a procedural or individual justice model; a social justice equality model; and equality as recognition of diversity. The ideological underpinnings and policy implications of these models were briefly examined as well. The practical pursuit of equality does not conform strictly to any of these models. Rather, it often tends to display a combination of policies that

are consistent with the different models. This shows the elusiveness and dynamism of the notion of equality: all three models are needed to grasp its various dimensions.

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