

Selective condemnation of discrimination

Giovanni Birindelli

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*“if, on the one hand, it is quite common to feel outrage against the discrimination of individuals or groups which are different from the majority because of a neutral or a negative criterion, it is much less common to feel the same outrage against the discrimination of individuals or groups which are different from the majority because of a positive criterion. On the contrary, such form of discrimination is quite often given picturesque and attractive names such as “social justice” or “social solidarity” which, because of the fact that nobody could really know what they mean, serve as the “magic wand(s) which broke down all barriers to partial measures” (Hayek, F.A., 1982, *Law, Legislation, and Liberty*, (Routledge, London), Vol. 3, p. 103)”*

In “Milk”, a beautiful film by Gus Van Sant on the first openly gay elected official in the US, the main character claims that his political activity against the discrimination of homosexuals is motivated, not by the defence of the interests of a specific minority, but rather by a matter of *principle*. In fact, he claims that his battle is against the arbitrary discrimination of *every* minority, and he mentions the blacks, other ethnic minorities and the handicapped. Remarkably, he does not mention the rich, the lucky or the talented.

In fact, it seems that his claim is based on an implicit definition of minority which is not general but instead arbitrary: that is, it appears that he considers “minority”, not a group which is simply different from the majority, but rather a group which is different from the majority because of an arbitrarily chosen criterion. More specifically, the minorities listed by Harvey Milk are those which are different from the majority because of a negative criterion (the handicapped), or because of a neutral criterion (ethnicity, or sexual orientation). Those who are being discriminated against because they belong to a category which is different from the majority because of a positive criterion (e.g. luck or talent) for some reason do not seem to be considered minorities, or, if they are, discrimination against them does not seem to be relevant. It is clear that, in the first case, there would be an arbitrary definition of minority, and that, in the second case, a battle against discrimination would not be based on principle, for by definition principles are necessarily general, not particular. In both cases, therefore, in theory *any* discrimination could be justified.

Milk's list of minorities may have been accidental, but I believe that, in any case, and probably precisely because it was accidental, that list helps to illustrate an attitude towards discrimination which, having been successfully imposed by the governments, today is rather widespread. In fact, if, on the one hand, today, at least in the Western countries, it is rather common, though still not common enough, to feel discomfort for the discrimination of individuals or groups which are different from the majority because of a negative or neutral criterion (for simplicity, let us call this the first and second type of discrimination), it is much less common to feel the same discomfort for the discrimination of individuals or groups which are different from the majority because of a positive criterion (let us call this the third type of discrimination). On the contrary, such form of discrimination is enthusiastically supported, especially by the modern socialists and the egalitarians, and it is given picturesque and attractive names such as “social justice” or “social solidarity” which, because of the fact that nobody could really know what they mean, serve as the “magic wand(s) which broke down all barriers to partial measures” (Hayek, 1982, Vol. 3, p. 103).

Because lack of discomfort, or rather explicit support for this third type of discrimination is today so common (especially when other individuals are affected), one may be induced to believe that such support is based on principle. This, however, would be a mistake, for it is not the widespread acceptance of a particular measure that makes that measure compatible with a principle, especially when the meaning of the concepts on which that measure is supposed to be based have been arbitrarily changed by authority, for example in order to have more power on the people (e.g. Leoni, 1961 or Hayek, 1960, 1982). On the contrary, it is, on the one hand, the *spontaneity of the formation process* that makes a principle a principle, not the widespread consensus on a measure on a particular moment: in other words, a principle is an abstract rule or standard that emerged spontaneously as the result of a gradual process of 'natural selection' of uses and conventions, not the result of decision or majority opinion. On the other hand, another fundamental characteristic of a principle is its *abstractness*, that is its being valid at the most general level, not only in specific cases.

Now, leaving aside the particular case of poverty, which generally is not the only, nor even the main case for redistribution of resources (and the definition and discussion of which would be beyond the scope of this paper), this often enthusiastic support of the third type of discrimination may have more than one reason: one can be the plain and simple inability of reasoning in abstract terms: "the third type of discrimination is not a discrimination". Another common reason can be the defence of particular interests: "the ban of the first and second type of discrimination would not have a direct impact on my material interests; however, the ban of the third type of discrimination would, for, unlike the previous case, the services of which I directly benefit would be significantly less financed if progressive taxation was not imposed". Another reason can be plain envy. One very common reason is arbitrariness: "it is, admittedly, a discrimination (against others), but in this case (I decide that) it is justified because there are more important things at stake".

Now, the question is: who decides (again, leaving aside the case of absolute poverty) *that* the violation of a principle (for example that of [equality before the law](#) or that of the inviolability of private property) is, in some cases, less important than a particular allocation of resources? And who decides *which* particular allocation of resources is more important than the violation of a principle? The position of those who believe that in some cases there can be a "justified" discrimination of a minority is often based on a theory of value which is *objective*, in the sense that it depends on universal criteria, artificially established or designed by some authority (e.g. political or philosophical), to identify what, *outside the dimension of principles*, is "right". This objective theory of value is necessarily arbitrary, for it values centralized knowledge instead of peripheral knowledge. However it is more than this: it is inexistent. In fact it

presupposes a universal and absolute scale of priorities and of values which simply does not and cannot exist, but, where it is professed, is only the artificial product of indoctrination by authority: “Is there a scale of values on which reasonable people can be expected to agree, which would justify a new hierarchical order of society, and is likely to satisfy the demands for justice? ... it is not rational conviction but the acceptance of a creed which is required to justify a particular plan. And, indeed, socialists everywhere were the first to recognize that the task they had set themselves required the general acceptance of a ... definite set of values. It was in these efforts to produce a mass movement supported by such a single world view, that the socialists first created most of the instruments of indoctrination of which Nazis and Fascists have made such effective use” (Hayek, 1945, pp. 115-117).

Unlike an objective theory of value, an *individual* theory of value is based on the impossibility of violating abstract principles which developed spontaneously and which constitute the boundaries within which the individual should have the right to decide by himself, on the grounds of his peripheral and individual knowledge, what *for him* is important and what is not, and what is more important than something else.

In conclusion, those who feel discomfort for the first and second type of discrimination, while at the same time do not feel the same discomfort for the third type of discrimination, hold a position which is *not* based on principle, but on interest, and/or on envy, and/or on inability, and/or on an arbitrarily designed, non-existent, universal scale of values and priorities.

The principle of no-discrimination is such only if it is abstract, that is absolute and universal and therefore equally applicable to any kind of discrimination. When the prohibition of discrimination does not derive from an abstract principle but from an arbitrary, particular decision, there is no barrier against *any* kind of discrimination.

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