

# IS 'EQUAL PAY FOR EQUAL WORK' MERELY A PRINCIPLE OF NONDISCRIMINATION?

JEFFREY MORIARTY\*

---

**Abstract:** Should people who perform equal work receive equal pay? Most would say 'yes', at least insofar as this question is understood to be asking whether employers should be permitted to discriminate against employees on the basis of race or sex. But suppose the employees belong to all of the same traditionally protected groups. Is (what I call) nondiscriminatory unequal pay for equal work wrong? Drawing an analogy with price discrimination, I argue that it is not intrinsically wrong, but it can be deceptive, in which case it is wrong.

**Keywords:** compensation, discrimination, equal pay for equal work, price discrimination

## 1. INTRODUCTION

Should people who perform equal work equally well receive equal pay? More precisely, should two people who perform equal work equally well for a particular employer, and who are otherwise equally valuable to that employer, receive equal pay from that employer? Most would say 'yes', at least insofar as this question is understood to be asking whether employers should be permitted to discriminate against their employees on the basis of characteristics such as race or sex. Most would agree that it is discriminatory, and therefore wrong, for a firm to pay its black employees less than its white employees for doing the same work equally well (Hellman 2008; Moreau 2010; Lippert-Rasmussen 2014).

\* Philosophy Department, Bentley University, 175 Forest St., AAC 109, Waltham, MA 02452, USA. Email: [jmoriarty@bentley.edu](mailto:jmoriarty@bentley.edu). URL: <https://faculty.bentley.edu/details.asp?uname=jmoriarty>

But suppose that a firm pays two employees who belong to all of the same traditionally protected groups different amounts of money for doing the same work equally well.<sup>1</sup> This is not typically understood to be a form of discrimination, or at least a form of wrongful discrimination (Hellman 2008; Scanlon 2008; Lippert-Rasmussen 2014). Let us call it *nondiscriminatory unequal pay for equal work*. This paper asks: Is it wrong for a firm to engage in this practice?

I do not approach this question from a legal perspective. That is, I do not ask whether the lower-paid employee has a legal case against his employer.<sup>2</sup> (In general, he does not.) I approach it from a moral perspective. I ask whether the firm's behaviour is morally wrong. I argue that it is not intrinsically wrong (i.e. wrong in itself), but it can be deceptive, in which case it is wrong.<sup>3</sup>

My paper proceeds as follows. First, against a simple economic model of the labour market that says that it is unlikely to occur, I explain how two people who do the same work equally well for a firm may come to be paid different amounts of money by it. Second, I consider and reject the suggestion that what I have called *nondiscriminatory unequal pay for equal work* is in fact a standard form of wrongful discrimination. Third, I

<sup>1</sup> Categories that are traditionally protected include race, sex, religion, age, disability status and national origin. To this list we might add others, such as sexual orientation. I take no stand on what categories ought to be protected. The question I am asking remains a live one provided that not every characteristic ought to be protected. The question, roughly, is whether equal pay for equal work should be understood to prohibit discrimination against workers who belong to *certain* groups, or whether we should understand it as a positive principle of compensation ethics, to be applied to *all* workers, no matter which groups they belong to.

<sup>2</sup> What if the pay of the lower-paid employee is *very* low? Thus we might imagine a case where two employees perform the same work equally well and one gets paid \$15 per hour and the other gets paid \$1 per hour. We might think that this is wrong. But we might think that it is wrong because we think the lower-paid employee is *exploited* by her employer (Wertheimer 1996). I am not interested in questions of exploitation here. To keep the focus on the *inequality* between the employees, let us suppose that neither is exploited, and that both are paid enough to live a decent life.

<sup>3</sup> It might be wondered why we should confine our attention to people who do equal work for a particular employer getting unequal pay *from that employer*. Shouldn't we be just as concerned if people who do equal work *for different employers* get unequal pay from them? I think not. An employer's paying two employees who do equal work unequally is *prima facie* worrisome in a way that two employees' receiving unequal pay from different employers is not. Similarly, a father's treating his two children differently (giving one a car, and the other a bus pass) is *prima facie* worrisome in a way that two children with different fathers receiving different treatment from their fathers (one gets a car from his father, while the other gets a bus pass from his father) is not. The reason is that, in the former cases, a single agent treats similar people differently, whereas in the latter cases, the unequal result is not due to unequal treatment. Nothing in my paper depends on my evaluation of these cases, however. I am restricting my attention to unequal pay for equal work from the same employer.

consider a popular view of compensation ethics: the 'contribution view'. I show that, while this view condemns nondiscriminatory unequal pay for equal work, it is implausible, and so its condemnation carries no weight. Fourth, I draw an analogy between nondiscriminatory unequal pay and price discrimination, and suggest that our views about the permissibility of the latter should inform our views about the permissibility of the former. I note that, while some cases of price discrimination seem wrong, many other cases seem acceptable. The difference, I suggest, has to do with what people *expect* from the firm, and hence whether they are *deceived* by it. I then apply this result to the case of nondiscriminatory unequal pay for equal work, arguing that it is not intrinsically wrong, but that it is wrong when it is deceptive. I conclude by highlighting the relevance of corporate culture to employees' expectations about their pay.

## 2. CAN NONDISCRIMINATORY UNEQUAL PAY FOR EQUAL WORK HAPPEN?

It might be argued that the problem I have described is merely academic. Neoclassical economic theory predicts that all factors of production, including labour, will receive their marginal revenue products in a free market. If two workers perform the same work equally well, then their marginal revenue products will be identical, and they will receive the same pay.

A first reply to this objection is that the prediction is that workers will receive their marginal revenue products *in perfectly competitive markets at equilibrium*. This is compatible with people not receiving their marginal revenue products in *actual* markets.

In response, it might be granted that unequal pay for equal work will sometimes happen. But when it does, it might be said, it is ephemeral, and so not much to worry about. Suppose that A and B perform equally valuable work for F, but A is paid \$14.00 per hour while B is paid \$15.00 per hour. If the labour of A and B is worth, on the broader market, \$15.00 per hour, then A will be able to bargain F up to \$15.00 per hour. If F does not meet A's demands, then A will leave for a job at another firm. If, by contrast, the labour of A and B is worth \$14.00 per hour, then F will be able to replace B with a worker who will accept \$14.00 per hour. If F does not, then it will bear a cost that its competitors do not. Either way, market forces will act to eliminate the disparity between A and B.

This response is unpersuasive. First, if paying unequal wages to people who perform equal work is problematic, then it is something to worry about whenever it happens, even if it only happens for a short time. Its ephemerality may lead us to think that it should not be addressed at the level of public policy, but we might still think that employers have a moral duty not to engage in this practice. Second, and more importantly,

it is possible that it can go on for a long time. This is because the prices at which firms buy labour from workers – unlike the prices at which they sell goods to consumers – are often kept secret (Danziger and Katz 1997; Card *et al.* 2012). The case of Lilly Ledbetter, while (allegedly) a case of *discriminatory* unequal pay for equal work, is instructive. Ledbetter, a female manager at Goodyear tyre plant, was paid significantly less than her male counterparts over a period of many years, despite the fact that they all performed substantially equal work. Ledbetter did not know that she was paid less than her male counterparts, however, because Goodyear told employees not to talk about their pay. (Upon discovering that she was underpaid, Ledbetter sued, but ultimately lost because the statute of limitations had expired.)<sup>4</sup>

As the Ledbetter case shows, one way differences in pay can occur among workers who do the same work equally well is through informational deficits. Employee A may know that he is performing the same work as B, but he may not know that he is getting paid less than B. If A knew, he might ask for a raise. But the informational deficit prevents A from finding out. Another kind of informational deficit is when workers do not know that they are performing the same work equally well. Employee A may know that he is getting paid less than B, but he may think that his work is not as valuable as B's, and so may not ask to be paid more.

Another way that differences in compensation can occur among workers who do the same work equally well is that workers may have different preferences. One reason A may accept, even knowingly, less money to work at F than B is that A likes the work more than B. Alternatively, A may like non-work features of her job, e.g. its location. She might have friends or family in the town in which F is located, or children in its schools. This might lead A to be less aggressive in seeking pay raises, or F to be more reluctant to offer them, provided that F knows about A's preferences (Wasserman 2006). Or A simply might find the experience of asking for a raise, or searching for a new job, more onerous than B.<sup>5</sup>

<sup>4</sup> The best way of showing that unequal pay for equal work *can* happen is by showing that it *does* happen. The Ledbetter case is a start (allegedly), but it would be useful to find proof of unequal pay for equal work on a larger scale. This information is hard to come by, however, given firms' reluctance to publicize their workers' compensation. There is a robust literature on wage dispersion (see, e.g. Mortensen 2003), but this literature focuses on differences in pay among workers who perform similar jobs in *different* firms, not on differences in pay among workers who perform similar jobs in the *same* firm.

<sup>5</sup> Some of the factors that cause an employee to accept less money than others for doing the same work equally well may overlap with traditionally protected categories. For example, if an employer pays less to people who aren't aggressive about asking for raises than to people who are aggressive about asking for raises, then the employer might end up paying less to women than to men, since women are on average less aggressive than men about

There may be other reasons that workers who perform the same work equally well receive unequal pay from their employer. I do not claim to have identified them all here. This section's point is simply that, contrary what is implied by simple models of the labour market, it is possible and even likely that nondiscriminatory unequal pay for equal work will occur.

### 3. WHY ISN'T 'NONDISCRIMINATORY' UNEQUAL PAY FOR EQUAL WORK A KIND OF DISCRIMINATION?

I claimed that cases in which two people who belong to all of the same traditionally protected categories receive unequal pay for equal work are not cases of discrimination in the standard sense. I have called them cases of *nondiscriminatory* unequal pay for equal work. This claim is worth defending, as some may question it, and doing so helps to define our inquiry.

Roughly, to discriminate against person A is to treat him less favourably than person B because A (but not B) is, or is perceived to be, a member of a certain group G (Lippert-Rasmussen 2014). In cases of nondiscriminatory unequal pay for equal work, one person is treated less favourably than another person because he is, or is perceived to be, a member of the group of people who will accept less money than others for doing the same work equally well. (This is better described as a set of groups, where groups are individuated according to their reasons for accepting less than others.) This might seem to imply that what I have called nondiscriminatory unequal work is in fact a form of discrimination, and so is wrong for the same reason that discrimination is.

This is not the case. The reason is that the group that we are interested in – those who will accept less money than others for doing the same work equally well – is not, according to most writers, the sort of group that can be discriminated against.

Some writers draw the boundaries around who can be discriminated against narrowly. According to them, only groups that are socially disadvantaged can be discriminated against. Thus Hellman says that the only groups that can be discriminated against are those with a 'history of mistreatment or current social disadvantage' (2008: 22–23). Similarly, Scanlon argues that actions can be described as 'discriminatory' only if they 'disadvantage members of a group that has been subject to widespread denigration and exclusion' (2008: 74). Groups such as blacks and women fit these descriptions, but groups such as the brown-haired

asking for raises (Babcock and Laschever 2003). But this would count as discrimination against the members of a traditionally protected group *through disparate impact*, and so is not the sort of case we are discussing here.

and the blue-eyed do not. The group we are interested in comprises those who will accept less than others for doing the same work equally well. This group does not have a history of mistreatment or current social disadvantage, and has not been subject to widespread denigration and exclusion. So its members cannot be discriminated against, on these accounts of discrimination.

A notable implication of the above views is that socially dominant groups cannot be discriminated against. This is questionable. It does not seem conceptually impossible for, say, white males in the USA to be discriminated against (Altman 2011). This implication is avoided on a second, wider account of the boundaries of discrimination. On this account, for a group to be capable of being discriminated against, it must be significant or 'salient' as a social group (Wasserstrom 1976–1977; Altman 2011; Lippert-Rasmussen 2014). A group is socially salient, according to Lippert-Rasmussen, just in case 'perceived membership in it is important to the structure of social interactions across a wide range of social contexts' (2014: 30). 'An individual's perceived sex, race, or religion', he says, is important to the structure of social interactions across a wide range of social contexts (2014: 31). On this account, then, blacks, women *and* white men can be discriminated against. But the blue-eyed and brown-haired still cannot be, because these groups lack social salience. And so does the group who will accept less money than others for doing the same work equally well. Membership in it is not 'important to the structure of social interactions across a wide range of social contexts'. Indeed, this group is socially invisible.

If these accounts are correct, then a firm does not engage in discrimination when it pays two employees who belong to all of the same protected groups different amounts of money for doing the same work equally well. For they pay them on the basis of a characteristic – e.g. preferring to live in the town in which the firm is located – that does not define a group that has been socially disadvantaged or is socially salient. We are correct to call these cases of *nondiscriminatory* unequal pay for equal work. This conclusion has an important normative implication, but does not decide the all-things-considered moral status of *nondiscriminatory* unequal pay for equal work.

The important normative implication is that many of the arguments that are typically given for why discrimination is wrong will not automatically apply to the case of *nondiscriminatory* unequal pay for equal work. This is because these arguments make crucial reference to the feature of the group that makes it capable of being subject to discrimination. Hellman, for example, says that discrimination is wrong because it is demeaning. Differential treatment is not necessarily demeaning, she says, but it can be when the group subject to worse

treatment has a history of social disadvantage. An admissions policy that excluded all blue-eyed applicants would not be demeaning, but one that excluded all black applicants would be. This is explained by 'how that characteristic [viz., being black] has been used to separate people in the past and the relative social status of the group defined by the characteristic today' (Hellman 2008: 28; see also Scanlon 2008). Lippert-Rasmussen says that discrimination is wrong because it is harmful, and 'stigma is a major type of harm involved in discrimination' (2014: 168). It is difficult, however, to stigmatize a person with brown hair *qua* member of the group of people with brown hair, for that group is not socially significant or salient. By contrast, one can stigmatize members of socially salient groups such as blacks or women.<sup>6</sup>

The conclusion that nondiscriminatory unequal pay for equal work is not in fact discriminatory does not settle the moral status of this practice, however. This is because there are other ways to treat people, even groups of people, unjustly or unfairly. A university's policy of refusing to accept applicants with blue eyes might not be discriminatory, since the blue-eyed are neither socially disadvantaged nor socially salient. Yet this policy would clearly be wrongful, and indeed would wrong all of the members of the group of blue-eyed people (Hellman 2008). The lesson is that nondiscriminatory unequal pay for equal work need not be a form of discrimination to be wrongful. To evaluate this practice, we must think more generally about how people can be treated unjustly or unfairly, and in particular, how people's *pay* can be unjust or unfair.

#### 4. THE CONTRIBUTION VIEW

A natural way to proceed is to examine theories of compensation ethics and see what they say about nondiscriminatory unequal pay for equal work.<sup>7</sup> There are few such theories extant, however. The one

<sup>6</sup> Some might argue that membership in a socially salient group is beside the point. A firm discriminates against a worker – and treats him wrongfully in doing so – if it treats him differently than other workers on the basis of irrelevant reasons (Cotter 2006). And this is exactly what a firm does, it might be said, when it pays one person less than another because he is willing to work for less, despite the fact that they perform equal work. There are two problems with this argument. First, a worker's willingness to accept less for doing certain work seems like a relevant reason, for a firm that operates in a competitive market, to pay that worker less. Second, even supposing that it is not a relevant reason, this argument assumes that firms act wrongfully when they act irrationally. But it is not clear that there is a general obligation to act rationally (Gardner 1998).

<sup>7</sup> It might be thought that a better way to proceed is to consider what theories of distributive justice, such as Rawls's (1999) justice as fairness or Nussbaum's (2000) capabilities approach, imply about how wages should be distributed. This would be a mistake. These theories are concerned with how well people fare *overall*. This depends in part on how

that seems to have attracted the most adherents is what I will call the 'contribution view'. Below I present this view and show that it condemns nondiscriminatory unequal pay for equal work. I then argue that the contribution view should be rejected, so its condemnation of nondiscriminatory unequal pay for equal work has no weight.

#### 4.1. For the contribution view

A number of writers have argued that workers should be paid according to the value of their contributions. Sternberg says that 'the ethical business rewards its employees in proportion to their contributions to the business goal' (2000: 146). Boatright says that 'a worker's just share of the ... revenues [generated by the firm] is the amount that he or she contributes to production' (2010: 172; see also Friedman 2002 [1962]). And Miller says that, in a firm, 'the relevant principle of justice is distribution according to desert ... Justice is done when [the employee] receives back by way of reward an equivalent to the contribution he makes' (1999: 28).

Two versions of the contribution view have been advanced. According to what we might call the 'absolute' version, employees should receive in pay an amount of money that is *exactly equal* to the value of their contributions. If A generates \$15.00 in revenue per hour for the firm, then she should receive \$15.00 in wages per hour. The passages from Boatright and Miller support this version of the contribution view. According to what we might call the 'comparative' version of this view, an employee's pay should be *proportional* to her contribution. The ratio between her pay and her contribution should be equal to the ratio between the pay and contribution of other employees. If A generates \$15.00 in revenue per hour and gets paid \$10.00 in wages per hour, then, if B generates \$30.00 in revenue per hour, B should get paid \$20.00 in wages per hour. The passage from Sternberg supports this version of the contribution view.

Both versions of the contribution view condemn nondiscriminatory unequal pay for equal work. If A and B do equal work equally well, and are otherwise equally valuable to F, then they make the same contribution to F. On either the absolute or comparative version of the contribution view, F should pay them the same amount.

Why should we accept the contribution view? Most supporters of the contribution view do not have much to say in its favour. Boatright says that 'each person has a right to the full value of whatever he or she produces' (2010: 173). But he does not go on to say what grounds this right. Sternberg says that paying workers according to their

much people are paid for their work, but also on how much they pay in taxes, and what sorts transfers they receive (e.g. from the state). It certainly matters how people fare overall. But it also matters how much they are paid by their firms. Political justice and organizational justice, while connected, are distinct.



products is required by 'distributive justice' (2000: 79). But she does not say why justice requires paying workers in accordance with their contributions, as opposed to, say, allowing workers and employers to strike whatever bargains they want. Friedman is admirably clear that no deeper justification of the contribution view is available. He says that '[s]ome key institutions must be accepted as "absolutes", not simply as instrumental. I believe that payment in accordance with product ... is one of these' (2002 [1962]: 167).<sup>8</sup> Miller's defence of the contribution view does not go much deeper than these other writers' defences, but he situates the view in a larger theory of justice, and he explains why no deeper justification can be given. For this reason his defence of the contribution view merits a more careful examination.

Miller says that there are various 'modes of human relationship', and what justice requires within these modes is determined by what distributive principles are 'fitting' or 'appropriate' for them (see also Walzer 1983). For example, Miller says, in the mode of human relationship *solidaristic community*, which is paradigmatically instantiated in a family, the fitting distributive principle is need. It would be just for a family to spend more money on medical care for a child with a serious disease than on one with a minor ailment. In the mode of relationship *citizenship*, paradigmatically instantiated in a political community, Miller says that the fitting distributive principle is equality. So when, for example, voting rights are being distributed, they should be distributed equally. According to Miller, the members of a firm instantiate the mode of relationship *instrumental association*. And the fitting distributive principle for this mode is 'distribution according to desert' (1999: 28), where desert is determined by contribution (cf. McLeod 1996).

Miller grants that the connections between certain types of associations and certain distributive principles 'are not entailments', and that 'those who deny them are not guilty of a logical error' (1999: 35). Instrumental associations, for example, are not 'compelled' to distribute resources according to contribution. Instead, their members 'might choose simply to bargain with one another over the allocation of the association's resources' (1999: 277). But, Miller goes on, if firms want to base their distributions of resources 'on a principle of distributive justice, then what fits the bill is a suitably tailored version of desert' (1999: 277), i.e. one based on contribution.<sup>9</sup> To the person who doesn't see why

<sup>8</sup> The attraction that the contribution view holds for some writers may be puzzling to others. We might question the moral significance of contribution, given that what a worker contributes – in terms of the revenue generated by her work – depends on many factors beyond her control. I do not pursue this criticism here, but for a partial defence of the contribution view against it, see Miller (1999).

<sup>9</sup> We might wonder what Miller means by this. One thing he might be saying is that justice is not the whole of ethics. That is, it is unjust for firms to distribute goods by bargaining,

contribution-based-desert 'fits the bill', or why what 'fits the bill' matters, Miller says, 'there is not much that can be said' (1999: 35).

#### 4.2. Against the contribution view

The contribution view is problematic, in both its absolute and comparative versions. One problem is the difficulty of measuring contribution. Proponents of the contribution view understand 'contribution' economically, in terms of the revenue generated for the firm by the employee. But many argue that it is difficult or even impossible to isolate the amount of revenue generated by each employee, especially when they work in teams (Anderson 1999; Rose 2002). If so, then the contribution view may be difficult or impossible to implement.

I do not wish to downplay the difficulty of measuring contribution. But it should not be overstated either (Moriarty 2003). Indeed, this paper assumes that it is possible to assess the value of employees' contributions, or more generally the value of their work, at least so as to determine whether different employees do work of *equal* value.

Employers often believe that they can measure employees' contributions. They decide, for example, which of two employees should be given a bonus, promoted, or terminated on the basis of their judgements about the relative value of those employees' work. And many firms pay their employees according to the results of comprehensive work evaluation schemes, such as the Hay Group's Guide Chart-Profile Method (Milkovich and Newman 2008). These schemes typically assess the value of work based on inputs, i.e. on the characteristics of the jobs people perform and the skills they bring to them. The compensable factors identified in these schemes are also found in law. In the USA, an employer may be judged to have violated the Equal Pay Act if it pays a woman less than a man for 'jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions', unless there is a reasonable explanation for the inequality, such as differences in observable merit or output.<sup>10</sup> Skill, effort, responsibility and working conditions are meant to serve as proxies for contribution.

To be sure, measurement problems make a full implementation of the contribution view challenging. But it is also possible that these problems can be overcome. So I will not rest my case against the contribution view

but it is nevertheless ethically permissible for them to do so. But I think it is more plausible to suppose that Miller is recognizing the fact that firms can – physically and even legally – distribute resources by bargaining, but suggesting that it is unjust for them to do so. In other words, firms can commit injustices, but they should not.

<sup>10</sup> The text of the U.S. Equal Pay Act of 1963 is available here: <http://www.eeoc.gov/laws/statutes/epa.cfm>

on them. The main reason we should reject this view, I now explain, derives from significant normative problems with it.

The first thing to note is that, if the contribution view is correct, then most firms' compensation systems are in fact unjust. For few firms pay workers in accordance with their contributions, at least as estimated by their marginal products (Frank 1984). They often have good business reasons for not doing so. There are reasons for some firms to choose relatively 'flat' compensation structures. Flatter compensation schemes can more efficient when teamwork is important, as they can dampen intra-organizational competition and promote cooperation (Cowherd and Levine 1992; Guthrie 2007). There are reasons for other firms to choose relatively 'steep' compensation structures. This is so when individual contribution is important, but is difficult to measure precisely. The choice of especially steep or 'tournament' structures is claimed by some to account, in part, for the large compensation packages CEOs receive (Lazear and Rosen 1981).

Of course, the fact that firms do not *in fact* pay their workers in accordance with their contributions does not prove that they *should not* do so. But thinking about how firms actually compensate their employees, and why, helps us to see that paying workers in this way is not unjust. Intuitively, it does not seem wrong for a firm to pay its workers more equal wages to promote cooperation. Indeed, some people may prefer to work for firms with egalitarian cultures, even if their doing so comes at a financial cost to them. It is difficult to see why employers and employees should not have this option. People are not required generally to maximize how much money they make in the job market. Nor does it seem wrong for a firm to pay its workers less equal wages to induce extra individual effort from them. Some people may prefer to work for firms with inegalitarian cultures. They may wish to take a job for below-contribution pay at a trading desk, for example, on the small chance that it could lead to a job for above-contribution pay in an executive suite. It is again difficult to see why this option should be foreclosed. People are not required generally to avoid gambles in their lives, even ones that are unlikely to pay off.

As seen, Miller anticipates this response. He says that firms are not 'compelled' to distribute resources according to contribution, and their members 'might choose simply to bargain with one another over the allocation of the association's resources' (1999: 277). But if they want allocations to be just, he continues, then the contribution view is fitting. People who resist this conclusion simply fail to grasp the 'grammar' of justice, and nothing more can be said to them.

So: Miller thinks his opponents just don't get it. His opponents would reply that Miller doesn't. It may seem that we are at an impasse. We can make progress, I suggest, by thinking about *why* the contribution view

seems attractive. I claim that it seems most attractive when we make a certain assumption about what a wage *is*, and in particular, when we assume that a wage is a *reward*. Miller does exactly this. He says that, in matters of compensation, '[j]ustice is done when [the employee] receives back *by way of reward* an equivalent to the contribution he makes' (1999: 28, emphasis added). But we need not think of wages this way. And when we free ourselves from this assumption, the contribution view becomes less attractive.

Consider punishment. Many believe that, when a person commits a crime, he should be punished. Many also believe that the severity of an offender's punishment should match the seriousness of his crime (Husak 1992). We might see the claim that punishments should fit crimes as normatively basic. Or we might understand it by reference to the purpose of punishment, which is in part to express society's censure of what the offender has done (Von Hirsch 1992). Since we disapprove of crimes in proportion to their seriousness, it seems correct that the severity of punishments should vary in proportion to their seriousness. Now suppose that everyone in a society agrees to a schedule of punishments that inflicts disproportionately severe punishments on offenders. On this schedule, jaywalkers receive five years in prison, thieves receive 20 years, and so on. Perhaps everyone agrees to this schedule because they think it will reduce crime. It may be claimed, with some plausibility, that this punishment schedule is unjust, despite the fact that everyone agrees to it. It is unjust simply because it leads to outcomes in which punishments are disproportionate to crimes.

If we think of wages as rewards for labour, then it may seem that, just as the value of offenders' punishments should fit the value of their crimes, so the value of people's wages should fit the value of their work. For reward seems to be, in some sense, the 'opposite' of punishment. Thus Feinberg says that 'the services and deprivations which we call "rewards" and "punishments" are conventional means of expressing gratitude and resentment, for these attitudes are prototypically those involved in the "urge to reward" and the "urge to punish"' (Feinberg 1999 [1963]: 76). Moreover, we might think that 'what the people want' is no more relevant in the case of wages than it is in the case of punishment. On this view, justice requires that wages in a firm be distributed according to contribution, even if everyone in the firm agrees to a different distribution.

The idea that pay is a reward is not implausible. Some workers will see their pay this way. But wages are more appropriately seen in a market economy, I suggest, as prices, in particular, as prices for people's labour. The price of a thing is the amount of money that a person must transfer to its owner in order to use or gain possession of it. This is what wages are. They are amounts of money that employers transfer to employees

in order to use their labour. In the same way, firms pay suppliers to get them to deliver goods to them. Suppliers would not deliver goods to firms unless they received compensation in return. Labour has a price in the same way that supplies have a price, and the main 'point' of paying workers is the same as the main 'point' of paying suppliers, viz., to get them to enter into an exchange. The amount a firm pays a worker may express its valuation of his labour, in the same way that the amount a firm pays a supplier may express its valuation of his goods. But the expressive function of wages seems secondary to its function as a price. Intuitively, punishment is different. To be sure, part of the 'point' of punishment is to reduce crime, and in this sense, the amount of punishment inflicted on an offender can be seen as the 'price' of his crime. But, unlike labour, this aspect of punishment seems secondary to its role as an expression of disapproval.

It might be objected that wages seem like a price and punishments seem like a societal expression of disapproval only because we have set up society this way. We have set up a *market* in wages, where individuals buy labour from each other at mutually agreeable rates. But we have not set up a market in crime. Instead, the state inflicts certain punishments on those who perform certain acts. We could, however, have set up society differently. We could have set up a market in crime, where victims (or their relatives) sue offenders for rights violations (Barnett 1977). And we could have created a state-run economic system that awards people a certain amount of money for performing certain tasks (White 2003). In reply: this might be true, but it supports rather than undermines my argument. This is because we have good reasons for setting society up this way. Markets in wages are superior, on efficiency grounds, to state-run economies, and state-run penal systems are preferable, on justice grounds, to markets in crime. If so, then we have good reason for thinking of wages as prices and punishments as societal expressions of disapproval.

Finally, if we think of wages as prices, then the claim that workers should be paid according to their contributions is less compelling. In general, we do not think that the prices for goods should reflect the contribution that they make to the buyer (e.g. to her welfare). We think, instead, that sellers should be free, within broad limits, to offer goods for sale at whatever prices they want, and that buyers should be free to pay those prices, or not, as they choose. The prices at which transactions occur may or may not reflect the value of those goods to particular consumers. Suppose that you like McDonald's cheeseburgers, but I love them. You would pay no more than \$1.00 for one, but I would pay up to \$2.00. It is implausible to claim that, because McDonald's cheeseburgers contribute more to my welfare than yours, I should pay more for them than you. If McDonald's offers cheeseburgers for sale at \$1.00, then we should both be permitted to pay that price.

This concludes my argument against the contribution view. I began by noting that this view faces significant practical problems of measurement, then advanced a normative criticism of it. First, I noted that many firms do not in fact pay workers in accordance with their contributions, and that, intuitively, this does not seem wrong. Second, I tried to undermine the plausibility of the contribution view by suggesting that it depends on conceiving of wages as rewards, and further suggesting that we do not have to conceive of wages this way, and that in fact there is reason to conceive of wages as prices. When we see wages as prices, then the intuition that wages should match, or fit, contributions seems less attractive. If I am right, then the contribution view, in both its absolute and comparative formulations, should be rejected. So while this view condemns nondiscriminatory unequal pay for equal work, this condemnation has no force.

## 5. PRICE DISCRIMINATION

The idea that wages are a kind of price suggests that we normatively evaluate them as we would prices. As noted, in a market economy, the prices of goods and services are determined largely by the voluntary choices of buyers and sellers. And for good reason. Allowing people to sell what they own for whatever price they want is a way of respecting them as autonomous agents. For a third party, C, to block an exchange between a willing buyer and a willing seller, A and B, on account of the price at which the exchange is supposed to occur, is for C to substitute her own judgement of what is best for A and B for A's and B's own judgements. In doing so, C implies that A's and B's choices are in some way defective. Allowing people to sell what they own for whatever price they want is also important for efficiency reasons. When prices are determined by third parties, this may have the effect of blocking exchanges between willing buyers and sellers. It may lead to shortages, in the case of price ceilings, and surpluses, in the case of price floors. Additionally, allowing prices to be determined by the market generates useful information about the current valuation of different goods and services, allowing people to direct their energies in profitable ways.<sup>11</sup>

But we do not think that *any* price is permissible. For example, we would not think it acceptable for a seller to charge blacks or women more for an item than whites or males (Hellman, 2008). And many see problems with price gouging (see and cf. Kahneman *et al.* 1986; Zwolinski

<sup>11</sup> This is not a comprehensive defence of the view that prices should be set largely in markets. But it will do for our purposes. Historically, some theorists have argued that prices should be set largely by a central authority, and some countries have tried this. But the outcomes have not been good, and as a result, this is not currently a position that many advocate.

2008; Snyder 2009). This suggests that considerations of autonomy and efficiency do not tell in favour of *total* freedom in pricing. We should say, rather, that there is a *presumption* of freedom in this sphere: buyers and sellers should be free to engage in transactions at any mutually agreeable price unless there are good reasons to prohibit them from doing so. The question in our case is whether there are good reasons to prohibit employers and employees from engaging in transactions that give rise to cases of nondiscriminatory unequal pay for equal work.

Below I draw an analogy between nondiscriminatory unequal pay for equal work and price discrimination. I argue that they are structurally similar, and so our views about the permissibility of the latter should guide our views about the permissibility of the former.

### 5.1. What it is and what to think about it

Firms engage in price discrimination, or differential pricing, when they sell the same products to different people at different prices.<sup>12</sup> Price discrimination is not discrimination in the standard sense. Instead, in price discrimination, firms sell products at higher prices to *people who are perceived to be willing to pay more*, and lower prices to *people who are perceived to be willing to pay less*. These groups are not socially disadvantaged or salient.

Price discrimination is useful to think about as we evaluate nondiscriminatory unequal pay for equal work, for these phenomena are structurally similar. Price discrimination is a form of discrimination in selling that trades on differences in people's perceived reservation prices. (A person's reservation price for a good is the amount below which he will not sell it, or above which he will not buy it.) A firm sells goods at different prices to people with different perceived reservation prices. In comparison, nondiscriminatory unequal pay for equal work is a form of discrimination in buying that trades on differences in people's perceived reservation prices. (Hereafter the qualifier 'perceived' will be assumed.) The firm buys labour for less money from people who are willing to sell it for less, and for more money from people who are willing to sell it (only) for more. Price discrimination and nondiscriminatory unequal pay for equal work can thus be seen as tokens of the same type of action: a firm's getting a better deal for itself in a transaction by exchanging at, or at least closer to, its partner's reservation price. Other things equal, then, our conclusions about nondiscriminatory unequal pay for equal work should mirror our conclusions about price discrimination.

<sup>12</sup> This is the standard textbook definition (Frank and Bernanke 2013), and will suffice for our purposes. For a more detailed analysis, including alternative definitions and distinctions among different kinds or degrees of price discrimination, see Stigler (1966).

What should we think about the morality of price discrimination? Some cases of price discrimination have sparked outrage. For example, in 2000 Amazon offered DVDs for sale at higher prices to those who they thought, based on geographical and historical factors, were likely to pay more. When this was discovered, there was an uproar. Amazon apologized and 'vowed it wouldn't happen again' (Turow 2005). In a commentary on this episode, Krugman (2000) said that what Amazon did was 'undeniably unfair: some people [paid] more because of who they are'. More recently, in 2012 the *Wall Street Journal* found that Staples, Inc. offered goods for sale on their website to different consumers at different prices, based on where the consumer was located (Valentino-Devries *et al.* 2012). When the *Journal* shared this information with Staples's customers, their moral judgements were unambiguous. 'I think it's very discriminatory', one said. 'How can they get away with that?' another asked.<sup>13</sup> In a survey conducted by the Annenberg Public Policy Center, 87% of respondents disagreed with the statement: 'it's OK if an online store I use charges people different prices for the same products during the same hour' (Turow *et al.* 2005: 4).

Focusing on sensational cases like these may tempt some to conclude that price discrimination is always morally wrong. But there are many more cases of price discrimination that are widely regarded as unproblematic (Frank and Bernanke 2013). Students and educators receive discounts on computers. Seniors receive discounts at movie theatres, at restaurants, and on public transport. Pharmaceutical companies sell drugs for higher prices in developed countries than in developing countries. Universities adjust their prices based on students' needs and talents. Buyers who clip coupons and mail in rebates pay less money for products than buyers who do not. And so on. These are all cases in which companies sell identical products for more to people who are willing to pay more and for less to people who are willing to pay less.

Economists commonly defend price discrimination on efficiency grounds. Relative to single pricing (the same price for all consumers), price discrimination is welfare-enhancing provided that it enables a firm to increase its output (Schmalensee 1981; Varian 1985). This can be seen in the case of pharmaceuticals, which typically have a high development cost but a low marginal cost of production. Drug companies can sell more drugs, and thus produce more welfare, if they can sell them for higher

<sup>13</sup> While the *Journal's* investigation focused on Staples, Inc., there is evidence that many other on-line retailers engage in price discrimination, including Amazon (Mikians *et al.* 2012; Hannak *et al.* 2014). New software allows firms to make ever more accurate estimations of consumers' reservation prices (Valentino-Devries *et al.* 2012), enabling them to sell goods at the highest prices consumers will pay. Perhaps unsurprisingly, very few retailers admit to engaging in price discrimination.



prices in developed countries and lower prices in developing countries than if they must sell them at the same price in all countries.

When price discrimination is criticized, it is typically criticized as unfair. This is Krugman's complaint against Amazon. But Marcoux (2006) challenges this claim. He begins by observing that different people get different amounts of satisfaction from their purchases. Economists measure this in terms of *consumer surplus*: the difference between the amount a person pays for a good and the amount she is willing to pay for it. With single pricing, Marcoux says, everyone pays the same amount, but people with different reservation prices capture different amounts of consumer surplus. Compare this to a scheme of perfect price discrimination, where all customers are charged their reservation prices. In this case, people pay different prices, but capture identical amounts of consumer surplus. According to Marcoux, it is at least as plausible, if not more so, that fairness requires equality in satisfaction gained than that it requires equality in price paid. If so, price discrimination is at least as fair, if not more fair, than single pricing.

I suggest that we conclude from the above considerations that price discrimination is not intrinsically wrong (Elegido 2011). As noted, there is a presumption of freedom in markets. In general, sellers should be free to offer their goods for sale at whatever prices they want, unless there are good reasons to constrain their options. And it is difficult to see the moral problem in most cases of price discrimination, such as senior discounts at movie theatres. Some might want to resist this conclusion because they want to resist the conclusion that Amazon's and Staples's behaviour is permissible. We *should* resist concluding that Amazon's and Staples's behaviour is permissible. But concluding that price discrimination is not intrinsically wrong does not commit us to it. We can explain the wrongness of Amazon's and Staples's behaviour in a different way.

## 5.2. What's different about the Amazon and Staples cases?

It might be thought that the difference between the Amazon and Staples cases and the other cases we considered has to do with their distributional effects. The discounts that movie theatres, computer manufacturers, and pharmaceutical companies (etc.) offer – to seniors, students and people in developing countries, respectively – are paid for either by the firms themselves (who sacrifice profits) or by consumers who do not receive the discounts (who pay higher prices). Both groups, it might be thought, have more money than the groups who receive the discounts. So we might see the price discrimination that movie theatres, computer manufacturers and pharmaceutical companies engage in as a transfer of resources from rich to poor. And we might take this fact alone to justify it, perhaps for reasons of equality or utility.

This does not work. First, the price discrimination that movie theatres, computer manufacturers, and pharmaceutical companies engage in does not necessarily transfer resources from rich to poor. It transfers resources from the firm to people with lower reservation prices (if the firm sacrifices profits), or from people with higher reservation prices to people with lower reservation prices (if the former pay higher prices to subsidize the latter's lower prices). To be sure, one reason a person may have a relatively low reservation price for an item is that they are relatively poor. But the person's reservation price may be low because his desire for the item is weak, or because he has good alternatives to it. Second, and more importantly, Amazon's (and Staples's – but hereafter for simplicity I focus on the Amazon case) price discrimination does the same thing. Amazon offers discounts on items to people with relatively low reservation prices, with these discounts being 'paid for' either by Amazon itself, or by consumers with higher reservation prices. So, if movie theatres, computer manufacturers and pharmaceutical companies are justified in engaging in price discrimination, then, by this logic, so is Amazon. I have said, however, that what Amazon did was wrong.

The problem with Amazon's price discrimination, I claim, is that it was deceptive. They engaged in price discrimination in a context in which it was unexpected. Shoppers in retail stores, including on-line stores, expect the posted price to be the price that all consumers pay. They do not expect it to be tailored to them as individuals (Turow *et al.* 2005). To be sure, as far as we know, Amazon did not lie to or mislead customers through explicit statements (e.g. to the effect that all consumers would be offered the same price for an item). Nor, as far as we know, did they try to block inquiring shoppers from discovering that they were engaging in price discrimination. But they failed to disclose that they were engaging in price discrimination in a context in which people reasonably expected – and in which Amazon knew, or ought to have known – that they were not doing so. This is a species of deception; as such, it is *pro tanto* wrong.

An analogy helps to illustrate the wrong. Suppose I run a restaurant in the USA and I decide that I will not make my servers rely on tips to earn decent incomes. I will pay them higher wages and charge more for food. Now you come into my restaurant and eat. I do not warn you about my policy, and in addition to paying for your food, you leave a substantial 20% tip. You do so because it is standard practice in the USA for diners to tip servers. Without tips servers would not earn decent incomes, and you want to do your part to make sure that your server earns a decent income. In this case, what I do is wrong. I know that you reasonably expect to have to tip your server to provide him with a decent income, and I do not warn you to the contrary. I engage in a form of deception by allowing you to believe a relevant falsehood.

Amazon's actions, like many instances of deception, are problematic in two ways. First, Amazon likely damaged some consumers' financial interests, by causing them to pay more for the items than they had to. If shoppers knew that Amazon was tailoring its prices to them as individuals – for example, by offering items for sale at higher prices to people shopping from wealthier zip codes – many would have shopped around. Some would have found a better deal. Amazon's failing to disclose its pricing policy, in a context in which that policy is unexpected, has the effect of blinding consumers to the value of shopping around. It is possible, of course, that some consumers would not have found a better deal even if they had shopped around. But this would not erase the wrongfulness of Amazon's conduct. The reason is that, in failing to disclose its pricing policy, Amazon *risked* damaging consumers' financial interests. In the same way, getting drunk and driving is wrong because it risks harming others, not just when it *actually* harms them.<sup>14</sup>

A second way that Amazon's deception wrongs others is that it disrespects them. In failing to disclose that it is engaging in price discrimination, Amazon manipulates its consumers into making decisions that they would not otherwise have made. That Amazon tailors its price to individual shoppers will be, for most shoppers, relevant to whether they want to make a purchase from Amazon, especially without shopping around. It is rational for a shopper who thinks he is being 'targeted' by a retailer to see if he can get a better deal elsewhere. Since shoppers do not reasonably expect that Amazon is engaging in price discrimination, they do not see a need to shop around. Thus, in failing to disclose its pricing policy, Amazon 'circumvent[s] or subvert[s] [the consumer's] rational decision-making processes' (Wood 2014: 35). In doing so, it shows a lack of respect for consumers as autonomous decision-makers (Strudler 2010).

I have claimed that Amazon's price discrimination is wrong because it is deceptive. The other cases of price discrimination mentioned above, such as senior discounts at movie theatres, student discounts on computers, and discounts for residents of developing nations on drugs, are not deceptive. People expect these types of firms to offer discounts to certain segments of the population;<sup>15</sup> moreover, these firms often

<sup>14</sup> It might be observed that, while Amazon charged higher prices to some customers, it charged lower prices to others. So, while some consumers were harmed by Amazon's price discrimination, others benefitted from it. In reply, the harm that Amazon does to some consumers is not erased by the benefit that it provides to others. Suppose I steal some money from you and give it to starving people in a developing nation. The harm I do to you is not erased by the benefit I provide to others, even if the benefit is greater than the harm.

<sup>15</sup> It might be argued that Amazon's price discrimination was wrong because it was an example of what economists call 'first degree' price discrimination: discrimination based on an *individual's* reservation price. The other examples of price discrimination I have

explicitly announce that they are doing so. An implication of my argument is that Amazon would have done nothing wrong if it had disclosed to shoppers that it was engaging in price discrimination. Nor would Amazon have done anything wrong if had engaged in price discrimination in a context in which this practice is the norm.

To be clear, my claim is not that prices can be criticized only if they are deceptive. My conclusion is compatible with the recognition of prohibitions on, for example, price gouging and discrimination in pricing on the basis of a person's membership in traditionally protected groups. Rather, I argued that the wrong in certain well-known cases of price discrimination is not that they are cases of price discrimination *per se*, but that they involve deception. Amazon and Staples engaged in price discrimination in a context in which this practice was not reasonably expected. In the next section, I apply these conclusions to nondiscriminatory unequal pay for equal work.

## 6. NONDISCRIMINATORY UNEQUAL PAY FOR EQUAL WORK

Price discrimination and nondiscriminatory unequal pay for equal work are structurally similar. In both cases, the firm uses information about its transaction partner's reservation price to get the best deal for itself that it can on the transaction. The difference is that, in price discrimination, this happens on the 'sell' side (i.e. when firms sell goods to consumers), while in nondiscriminatory unequal pay for equal work, it happens on the 'buy' side (i.e. when firms buy labour from workers). So I suggest that our conclusion about nondiscriminatory unequal pay for equal work should mirror our conclusion about price discrimination.

The main conclusion we should draw, then, is that there is nothing intrinsically wrong with nondiscriminatory unequal pay for equal work. We said in our discussion of price discrimination that there is a presumption of freedom in markets. In general, sellers of goods should be free to offer their goods for sale at whatever prices they want, unless there are good reasons to constrain their options in certain ways. And since we do not see a moral problem in firms giving discounts to selected people in market transactions (e.g. discounts for seniors at movie

cited are examples of what is called 'third degree' price discrimination, or discrimination based on a consumer *group's* (e.g. seniors or students) reservation price. (Second degree price discrimination is based on quantity purchased.) This is incorrect. In the first place, there does not seem to be anything morally significant about the distinctions economists make among kinds of price discrimination. Second, there are examples of first degree price discrimination that we do not consider wrongful, such as haggling over trinkets in flea markets and negotiating the prices of used cars. In these cases, sellers try to tailor their prices to individual buyers, and no one minds. The account offered above explains this: people *reasonably expect* these types of sellers to engage in this behaviour.

theatres), we should not see a moral problem in firms obtaining discounts from selected people in market transactions (e.g. discounts from people who have a strong preference to live in the town in which the firm is located).

This conclusion might seem hard to swallow. Nondiscriminatory unequal pay may seem worse, intuitively, than price discrimination, despite their structural similarity. But now I want to suggest we can account for some of the scepticism about this practice in the same way that we accounted for the wrongness of certain actual cases of price discrimination, viz., in terms of deception. In other words, my suggestion is that nondiscriminatory unequal pay for equal work can be deceptive, and when it is deceptive, it is wrong.

The first thing to note is that the reason that the price discrimination engaged in by movie theatres and computer manufacturers (etc.) does not seem morally wrong is that we *know* that they are engaging in it. And we know this because they *tell* us they are doing it. I am aware of no firms, however, that tell their workers that they are engaging in nondiscriminatory unequal pay for equal work, i.e. that they are using their employees' ignorance of other employees' compensation or atypical features of their preference sets to obtain discounts on their labour. As a result, it is at least possible that some employees will think that their firm is *not* engaging in nondiscriminatory unequal pay for equal work, and will be surprised if it turns out it is.

Just because a firm does not tell an employee that it *will* engage in nondiscriminatory unequal pay for equal work, however, doesn't mean that it is *reasonable* for an employee to believe that it will *not* do so. Much depends on what the background economic norms are. Car dealers typically do not announce that they are willing to haggle over prices, but this doesn't mean that it is reasonable for consumers to assume that they aren't willing to do so. Indeed, it is reasonable for consumer to assume that they *are* willing to haggle, because this is what usually happens.

So the question is what the norms are regarding compensation. Can employees reasonably expect, unless told otherwise, that they will be paid as much as others in their firm who perform equal work equally well? Or should employees expect instead that their ignorance of how much others in their firm are paid, or atypical features of their preference set, will be used by their employers to obtain discounts on their labour? I suggest the answer is: it depends. I do not think there is a general social norm requiring equal pay for equal work. But it is certainly possible, and even likely, that individual firms will create expectations among their workers that workers who do the same work equally well will receive equal pay. Of course, one way that workers may come reasonably to expect that they will receive equal pay for equal work is if their firm

*explicitly promises* or *tells* them that they will receive equal pay for equal work. If a firm promises or tells employees that it will X, and then fails to X, then it has deceived its employees. There is no mystery here. I do not believe that many employers deceive employees in this way, however. But employees can have reasonable expectations about how they will be paid – and more generally about how they will be treated – by their firms even if their firms do not explicitly promise or tell them that they will be treated in a certain way. This is because a firm's *culture* is also a source of reasonable expectations about its behaviour. And certain cultures are incompatible, I suggest, with nondiscriminatory unequal pay for equal work.

Organizational theorists argue that relationships between employers and employees exist on a continuum between the 'relational' and the 'transactional' (Macneil 1980; Rousseau 1995; Kalleberg and Rognes 2000). A firm with a relational culture is characterized by high levels of commitment, investment and trust. In investing in the firm, each party makes itself vulnerable to others, and trusts those others to invest as well. Firms with relational cultures may make use of 'team' or 'family' metaphors. In firms with transactional conditions, by contrast, commitment, investment, and trust are minimal. The employer–employee relationship is best seen as an 'arms-length ... exchange of a commodity ... for money' (Kalleberg and Rognes 2000: 317). Neither party expects the other to do more than what is explicitly required by the contract. In sum, while the relational employer seeks to establish a personal relationship with her employees, the transactional employer only buys what employees are selling, viz., their labour.

My suggestion is that, insofar as relationships between firms and employees fall on the 'relational' side of the relational–transactional spectrum, then it is reasonable for employees to expect that their firm will not engage in nondiscriminatory unequal pay for equal work. For this practice is incompatible with the level of care and concern that is constitutive of these relationships. In cases of nondiscriminatory unequal pay for equal work, the firm uses an employee's ignorance about what others are paid, or atypical features of his preference set, to obtain a discount on his labour. No one expects someone they trust to treat them in this way. To use the above metaphors: this is not how a team player, or a family member, would act. Suppose a dollar falls out of my pocket, unbeknownst to me, and you see this. I would not be surprised if you took the dollar, assuming you were a rival of mine, or a stranger. But I would be surprised if you took the dollar, assuming you were a friend or a family member. If this is right, then a relational firm that engages in nondiscriminatory unequal pay for equal work risks deceiving its employees. To avoid doing so, it should give employees fair warning

that they plan to engage in it. Of course, a likely consequence of a firm's giving such warning is that it changes the nature of its relationship with its employees. Announcing that it will take advantage of employees' ignorance, or atypical features of their preference set, to obtain discounts on their labour is likely to destroy the trust employees have in the firm, and reduce their levels of commitment and investment. This suggests that a relational firm, if it wants to stay relational, cannot engage in nondiscriminatory unequal pay for equal work at all.<sup>16</sup>

If, however, the firm falls on the transactional side of the relational–transactional spectrum, then it is not reasonable for employees to expect that they will receive equal pay for equal work. Relationships in these types of firms more closely resemble market relationships, which tend to be competitive or adversarial in nature. People in market relationships do not expect each other to have a high level of care or concern for each other; they expect each other to look out for their own self-interest. But not just that. As Heath puts it, one can expect one's transaction partners in markets to 'play hardball', i.e. to use various forms of 'hard bargaining' and 'nickel-and-diming' (2007: 372). In the case at hand, it is reasonable for employees in transactional relationships with their employers to expect that their employers *will* attempt to use their ignorance of how much other employees are paid, or atypical features of their preference sets, to obtain discounts on their labour. It is not, then, deceptive for transactional employers to engage in nondiscriminatory unequal pay for equal work without disclosing this information to their employees.<sup>17</sup>

In the previous section, I argued that price discrimination is not intrinsically wrong. I further argued that the wrongness of certain instances of price discrimination can be explained in terms of deception. This section drew out an implication of these conclusions for the

<sup>16</sup> An exception might be made for extraordinarily solidaristic firms. In a firm that is truly like a family, an employer might increase a certain employee's pay to, for example, help her pay her medical bills. And the employer might do this even if it means that the employee gets paid more than another employee who does the same work equally well. This is how a family behaves: it allocates resources to members based on need rather than desert. And it would be reasonable for employees to expect this in such a firm.

<sup>17</sup> It may seem that the view that I have articulated is not too different from Miller's. Recall that, according to him, certain distributive principles fit certain modes of human relationship, and the principle *contribution* fits the mode *instrumental association*. I have challenged Miller's claim that justice requires that workers in all firms be paid in accordance with their contributions. But it may now seem that I have accepted his claim that certain distributive principles fit certain modes of human relationship. In one sense, this diagnosis is right: certain distributive (i.e. compensation) practices fit certain types of firms. But, contra Miller, this is not simply because of *what firms in general are like*, i.e. what kinds of human relationships are instantiated in them. In the first place, not all firms are the same. Second, certain distributive practices are fitting, or appropriate, in certain firms because of what expectations employees reasonably have in them.

phenomenon of nondiscriminatory unequal pay for equal work. I claimed that nondiscriminatory unequal pay for equal work is not intrinsically wrong. The thought that it might be wrong can be explained, I then argued, in terms of deception. And nondiscriminatory unequal pay for equal work may be deceptive not only when a firm has explicitly promised or told employees that it will adopt this practice, but when the firm has created a culture that is incompatible with it. To the extent that one believes that nondiscriminatory unequal pay for equal work is problematic in many cases, a plausible explanation is that many firms have cultures that are incompatible with this practice.

## 7. CONCLUSION

Many support 'equal pay for equal work' understood as a condemnation of wage discrimination based on people's membership in a traditionally protected group, such as race or sex. We asked whether equal pay for equal work should also be understood to condemn wage disparities that are not based on membership in one of these categories. In other words, many think that unequal pay for equal work is wrong when it is discriminatory. We asked whether it is also wrong when it is nondiscriminatory. My answer is a qualified 'no'. It is not intrinsically wrong, though it is wrong when it is deceptive, and we have explained how easily it can be.

The practical lesson for firms is a familiar one: expectations must be managed. In the cases of price discrimination we discussed, there is no problem when it is expected, but there is a problem when it is unexpected. The same goes for price discrimination in compensation in the form of nondiscriminatory unequal pay for equal work. Employers should manage their employees' expectations about their compensation, being mindful not only of what they promise and tell employees, but of the kinds of organizational cultures they promote and sustain. If they do not, they risk wronging their employees by deceiving them.

## ACKNOWLEDGEMENTS

Versions of this paper were given at Georgetown University (McDonough School of Business), the New Orleans Invitation Seminar in Ethics (NOISE), Suffolk University, the University of British Columbia (Sauder School of Business), and the University of North Carolina, Greensboro. I thank members of those audiences for valuable feedback. Ann Dexter, Executive Director of Human Resources at Bentley University, gave me an HR professional's perspective on the issues discussed here, for which I am grateful. For detailed and perceptive comments on drafts of the paper, I thank Elizabeth Brake, Laura Hartman, Alan Strudler, Jeffrey Wilder,



and at *Economics and Philosophy*, two anonymous referees and Editor John Weymark.

## REFERENCES

- Altman, A. 2011. Discrimination. *Stanford Encyclopedia of Philosophy* (Spring 2011 Edition), E.N. Zalta, ed. URL: <<http://plato.stanford.edu/archives/spr2011/entries/discrimination/>>.
- Anderson, E. 1999. What is the point of equality? *Ethics* 109: 287–337.
- Babcock, L. and S. Laschever. 2003. *Women Don't Ask: Negotiation and the Gender Divide*. Princeton, NJ: Princeton University Press.
- Barnett, R. E. 1977. Restitution: a new paradigm of criminal justice. *Ethics* 87: 279–301.
- Boatright, J. R. 2010. Executive compensation: unjust or just right? In *Oxford Handbook of Business Ethics*, ed. G. G. Brenkert and T. L. Beauchamp, 161–201. New York, NY: Oxford University Press.
- Card, D., A. Mas, E. Moretti and E. Saez. 2012. Inequality at work: the effect of peer salaries on job satisfaction. *American Economic Review* 102: 2981–3003.
- Cotter, A.-M. M. 2006. *Race Matters: An International Legal Analysis of Race Discrimination*. Burlington, VT: Ashgate.
- Cowherd, D. M. and D. I. Levine. 1992. Product quality and pay equity between lower-level employees and top management: an investigation of distributive justice theory. *Administrative Science Quarterly* 37: 302–320.
- Danziger, L. and E. Katz. 1997. Wage secrecy as a social convention. *Economic Inquiry* 35: 59–69.
- Elegido, J. M. 2011. The ethics of price discrimination. *Business Ethics Quarterly* 21: 633–660.
- Feinberg, J. 1999 [1963]. Justice and personal desert. In *What Do We Deserve? A Reader on Justice and Desert*, ed. L. P. Pojman and O. McLeod, 70–83. New York, NY: Oxford University Press.
- Frank, R. H. 1984. Are workers paid their marginal products? *American Economic Review* 74: 549–571.
- Frank, R. H. and B. S. Bernanke. 2013. *Principles of Economics*, 5th edition. New York, NY: McGraw-Hill.
- Friedman, M. 2002 [1962]. *Capitalism and Freedom*, 40th anniversary edition. Chicago, IL: University of Chicago Press.
- Gardner, J. 1998. On the ground of her sex(uality). *Oxford Journal of Legal Studies* 18: 167–187.
- Guthrie, J. P. 2007. Remuneration: pay effects at work. In *Oxford Handbook of Human Resource Management*, ed. P. Boxall, J. Purcell and P. Wright, 344–363. New York, NY: Oxford University Press.
- Hannak, A., G. Soeller, D. Lazer, A. Mislove and C. Wilson. 2014. Measuring price discrimination and steering on e-commerce web sites. In *Proceedings of the 14th ACM/USENIX Internet Measurement Conference (IMC 2014)*, Vancouver, 305–318. New York, NY: Association for Computing Machinery.
- Heath, J. 2007. An adversarial ethic for business: or when Sun-Tzu met the stakeholder. *Journal of Business Ethics* 72: 359–374.
- Hellman, D. 2008. *When is Discrimination Wrong?* Cambridge, MA: Harvard University Press.
- Husak, D. N. 1992. Why punish the deserving? *Noûs* 26: 447–464.
- Kahneman, D., J. L. Knetsch and R. H. Thaler. 1986. Fairness and the assumptions of economics. *Journal of Business Ethics* 59: S285–S300.
- Kalleberg, A. L. and J. Rognes. 2000. Employment relations in Norway: some dimensions and correlates. *Journal of Organizational Behavior* 21: 315–335.

- Krugman, P. 2000. Reckonings; What price fairness? *New York Times*, 4 October 2008. URL: <<http://www.nytimes.com/2000/10/04/opinion/reckonings-what-price-fairness.html>>.
- Lazear, E. P. and S. Rosen. 1981. Rank-order tournaments as optimum labor contracts. *Journal of Political Economy* 89: 841–864.
- Lippert-Rasmussen, K. 2014. *Born Free and Equal? A Philosophical Inquiry into the Nature of Discrimination*. New York, NY: Oxford University Press.
- Macneil, I. R. 1980. *The New Social Contract: An Inquiry into Modern Contractual Relations*. New Haven, CT: Yale University Press.
- Marcoux, A. M. 2006. Much ado about price discrimination. *Journal of Private Enterprise* 21: 50–67.
- McLeod, O. 1996. Desert and wages. *Utilitas* 8: 205–221.
- Mikians, J., L. Gyarmati, V. Erramilli and N. Laoutaris. 2012. Detecting price and search discrimination on the internet. In *Proceedings of the 11th ACM Workshop on Hot Topics in Networks (HotNets-XI)*, Redman, WA, 79–84. New York, NY: Association for Computing Machinery.
- Milkovich, G. T. and J. M. Newman. 2008. *Compensation*, 9th edition. Boston, MA: McGraw-Hill/Irwin.
- Miller, D. 1999. *Principles of Social Justice*. Cambridge, MA: Harvard University Press.
- Moreau, S. 2010. What is discrimination? *Philosophy & Public Affairs* 38: 143–179.
- Moriarty, J. 2003. Against the asymmetry of desert. *Noûs* 37: 518–536.
- Mortensen, D. 2003. *Wage Dispersion: Why Are Similar Workers Paid Differently?* Cambridge, MA: MIT Press.
- Nussbaum, M. C. 2000. *Women and Human Development: The Capabilities Approach*. New York, NY: Cambridge University Press.
- Rawls, J. 1999. *A Theory of Justice*, Revised edition. Cambridge, MA: Harvard University Press.
- Rose, D. C. 2002. Marginal productivity and analysis in teams. *Journal of Economic Behavior and Organization* 48: 355–363.
- Rousseau, D. M. 1995. *Psychological Contracts in Organizations: Understanding Written and Unwritten Agreements*. Thousand Oaks, CA: Sage.
- Scanlon, T. M. 2008. *Moral Dimensions: Permissibility, Meaning, Blame*. Cambridge, MA: Harvard University Press.
- Schmalensee, R. 1981. Output and welfare implications of monopolistic third-degree price discrimination. *American Economic Review* 71: 242–247.
- Snyder, J. 2009. What's the matter with price gouging? *Business Ethics Quarterly* 19: 275–293.
- Sternberg, E. 2000. *Just Business: Business Ethics in Action*, 2nd edition. New York, NY: Oxford University Press.
- Stigler, G. J. 1966. *The Theory of Price*, 3rd edition. New York, NY: Macmillan.
- Strudler, A. 2010. The distinctive wrong in lying. *Ethical Theory and Moral Practice* 13: 171–179.
- Turow, J. 2005. Have they got a deal for you. *Washington Post*, 19 June 2005. Retrieved from <http://www.washingtonpost.com/wp-dyn/content/article/2005/06/18/AR2005061800070.html>.
- Turow, J., L. Feldman and K. Meltzer. 2005. Open to exploitation: America's shoppers online and offline. Departmental Paper, *Annenberg Public Policy Center, University of Pennsylvania*. URL: <[http://repository.upenn.edu/asc\\_papers/35](http://repository.upenn.edu/asc_papers/35)>.
- Valentino-Devries, J., J. Singer-Vine and A. Soltani. 2012. Websites vary prices, deals based on users' information. *The Wall Street Journal*, 24 December 2012. URL: <<http://online.wsj.com/news/articles/SB10001424127887323777204578189391813881534>>.
- Varian, H. R. 1985. Price discrimination and social welfare. *American Economic Review* 75: 870–875.
- Von Hirsch, A. 1992. Proportionality in the philosophy of punishment. *Ethics* 16: 55–98.

- Walzer, M. 1983. *Spheres of Justice: A Defense of Pluralism and Equality*. New York, NY: Basic Books.
- Wasserman, N. 2006. Stewards, agents, and the founder discount: executive compensation in new ventures. *Academy of Management Journal* 49: 960–976.
- Wasserstrom, R. 1976–1977. Racism, sexism, and preferential treatment: an approach to the topics. *UCLA Law Review* 24: 581–622.
- Wertheimer, A. 1996. *Exploitation*. Princeton, NJ: Princeton University Press.
- White, S. G. 2003. *The Civic Minimum*. New York: Oxford University Press.
- Wood, A. 2014. Coercion, manipulation, exploitation. In *Manipulation: Theory and Practice*, ed. C. L. Coons and M. Weber, 17–50. New York, NY: Oxford University Press.
- Zwolinski, M. 2008. The ethics of price gouging. *Business Ethics Quarterly* 18: 347–378.

#### BIOGRAPHICAL INFORMATION

**Jeffrey Moriarty** is Associate Professor and Chair of Philosophy at Bentley University. His research interests lie in political philosophy and business ethics, and at the intersection of these fields. He is especially interested in questions of just distribution in state and organizational contexts. Publications that feature his work include *Business Ethics Quarterly*, *Journal of Business Ethics*, *Noûs* and *Philosophical Studies*.