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Dubious Types and Boundary Disputes: Contested Understandings of Concepts of Discrimination

John Wrench

European University Institute
Robert Schuman Centre for Advanced Studies
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Abstract

A prevailing notion of racial/ethnic discrimination is that it is rooted in racism and ethnic prejudice. In fact there are many 'types' of racial/ethnic discrimination, and direct racist discrimination is only one of them. However, whilst direct racist discrimination is perhaps the easiest type to understand, some of the other types are contested in their meaning and used inconsistently in the academic literature. The paper begins by listing the types of discrimination related to the area of employment that are most commonly found in the literature, and attempts a clarification of the conceptual content and boundaries of each type. The paper highlights areas where discrimination concepts have been used inconsistently, and where the same concept has been taken by different authors to mean widely different things. To assist in this exercise the paper draws on examples and cases of employment discrimination which have come to light in recent years, whether by research, by NGO activity or in legal cases. Finally, through the use of a typology and a process of cross-classification, the paper suggests ways of reducing the ambiguities surrounding the understanding and use of concepts relating to racial/ethnic discrimination.

Keywords

Racism, discrimination, employment, concepts, typology.

Introduction*

A number of concepts relating to racial/ethnic discrimination have been used inconsistently in academic literature. The terms for some types of discrimination - for example, structural discrimination, institutional discrimination - have been used interchangeably as synonyms by some scholars, whilst others have drawn distinctions between them. Inconsistently-used concepts with unclear boundaries are of dubious value in social science. This paper suggests ways of reducing the ambiguity surrounding the understanding and use of various concepts relating to racial/ethnic discrimination in employment.

Racial/ethnic discrimination in employment usually operates without the victims being aware of it. It is commonly indicated in statistical patterns, and then identified by targeted research. Before such investigations bring the problem to the surface, there can be a pervasive 'no problem here' attitude to racial discrimination on the part of employers, trade unionists, and other labour market actors (EUROFOUND 1996). The invisibility of its operation is not the only reason for a reluctance to acknowledge the possibility of discrimination. Another is an over-narrow assumption about the nature of racial/ethnic discrimination itself – that it must be something carried out by people with racist attitudes or ethnic prejudices, a deliberate denial of employment opportunities motivated by hostility and antipathy towards the group in which the victim is a member. Most reasonable employers will then assume "We are not like that, so there can be no discrimination here". As Craig (2007: 1) puts it, the prevailing notion of discrimination is framed by images of overt, intentional acts of prejudice. "It is easy to see the agents of these actions as bad apples and to view their actions as exceptional and isolated". Employers can assume that there is 'no problem here' because in the minds of employers, "the absence of a perpetrator is equivalent to the absence of discrimination" (Craig 2007: 135). Yet in reality, ethnic discrimination can occur without any racist motive or intent on the part of an identifiable perpetrator.

The starting point of this paper is that there are many 'types' of racial/ethnic discrimination, and that direct racist discrimination is only one of them. However, whilst direct and intentional racist discrimination is the "least misunderstood form of discrimination" (Williams 2000: 63), some of the other types are contested in their meaning. The paper begins by listing the types of discrimination that are most commonly found in academic literature, and attempts a clarification of the conceptual content and boundaries of each type. The paper highlights areas where discrimination concepts have been used inconsistently, and where the same concept has been interpreted by scholars in widely different ways. This is illustrated with cases of discrimination that have come to light in Europe in recent years, whether by research, by NGO activity or in legal proceedings. Finally, through the use of a process of cross-classification, the paper suggests a new typology of ethnic discrimination in employment which clarifies the content and boundaries of various types.

This paper has limitations in its area of focus, in that it considers only concepts and cases related to racial/ethnic discrimination in the area of work and the labour market. It might thus be useful to reflect on the degree to which this analysis is transferrable to (i) other areas of ethnic discrimination, such as housing, and (ii) other grounds of discrimination, such as gender.

* This paper stems from the inaugural lecture 'Raising questions about discrimination' given by the author in June 2014, at the Department of Culture and Global Studies, Aalborg University.
The author would like to thank Arnfinn Midtbøen for his helpful comments on an earlier draft of the paper.

Definition and list of concepts

Discrimination has been defined as “an unjustifiable difference in treatment or effect causally linked to a statutorily-prohibited ground” (Craig 2007: 2). The international convention whose object is to prevent racism and racial discrimination is the International Convention on the Elimination of All Forms of Racial Discrimination, (ICERD) which was adopted by the UN Assembly in 1965. The first part of it defines what is meant by racial discrimination:

The term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

The examples in this paper are taken from the European context. In many European countries the term 'racial discrimination' is less likely to be used than the term 'ethnic discrimination', so in this paper the terms will be used interchangeably, to cover discrimination against those who are perceived to be 'different' in terms of their phenotypical features, ethnic origin or culture. In the European context this generally means discrimination against immigrants and their descendants, and national minorities such as Roma.

Probably the concepts of discrimination most commonly referred to in academic literature are:

- direct and indirect discrimination
- statistical discrimination
- structural discrimination
- systemic discrimination
- institutional discrimination
- multiple discrimination
- objective and subjective discrimination

For the purposes of this paper the concept of 'institutional racism' will be added to this list, as in its usage by some scholars, the boundaries of this concept overlap with one or more of the above types of discrimination. As we will see, some of these concepts are relatively uncontested in their definitions - for example, statistical discrimination or multiple discrimination. Others are far more contested, such as structural discrimination, institutional discrimination and institutional racism. Whilst this paper attempts to clarify the content and usage of these concepts, it does not pretend to present a representative summary of the literature relating to each of them. It presents only selected examples of the use of these concepts, in order to clarify their conceptual boundaries, or to demonstrate examples of inconsistencies in their usage.

A typology

It is useful to start this exercise with a classification of types of discrimination suggested in 2000 by Melissa Williams, and rooted in the North American experience (Williams 2000: 63-67). She conceptualises four main types of discrimination:

1. direct or intentional discrimination,
2. statistical discrimination,
3. societal discrimination, and
4. structural or systemic discrimination,

with the final category sub-divided into three further types:

- 4.1 indirect discrimination,
- 4.2 past-in-present discrimination
- 4.3 side-effect discrimination.

These are explained by Williams as follows:

1. Direct or intentional discrimination

Direct or intentional discrimination consists of the exclusion of an individual from opportunities because of group-based characteristics to which the perpetrators attach stigmatic meaning. The agents of discrimination are usually quite conscious of it as they perpetrate it. This is the easiest type of discrimination to understand (Williams 2000: 63).

2. Statistical discrimination

This covers actions which are based not on personal racism or on prejudices about a particular social group held by the discriminator, but on perceptions of the group as having certain characteristics which will have negative consequences for the organisation. Williams gives an example of this in the case of gender. Women job candidates may be regarded sceptically by employers who fear they may become pregnant and take maternity leave. This is not motivated by any kind of disdain for women as a group, but by a calculation that this might impose costs on the employer (Williams 2000: 63).

(These first two types coincide with the classic distinction made by Becker (1957) when he distinguished between *taste-based* discrimination and *statistical* discrimination, where the first reflects a preference for persons of a particular origin rather than others, whereas the second could be seen in theory as a rational response to uncertainty.)

3. Societal discrimination

This covers actions based on the fact that although a person may be free of hostility or prejudice, he or she is aware that *other people* have negative attitudes towards members of a social group. If employers are aware that there is potential prejudice against an ethnic minority group amongst valued customers, they may avoid recruiting or promoting members of that group into a position where they will be in direct contact with these customers, such as sales representative (Williams 2000: 64).

4. Structural or systemic discrimination

Williams sees structural inequality or systemic discrimination as comprising those sources of group-patterned disadvantage and inequality that are neither the consequences of the voluntary choices of individual members of the disadvantaged group nor a product of a particular social agents' bias against the group. "... the category of structural discrimination includes sources of group bias in the social system that cannot easily be charged to the account of direct discrimination, statistical discrimination, or societal discrimination" (Williams 2000: 64).

Williams argues that it is possible to break down the concept of structural discrimination into further categories. These are:

- Indirect discrimination
- Past-in-present discrimination
- Side-effect discrimination

4.1 Indirect discrimination

This is where ‘neutral’ recruitment practices or work routines can inadvertently discriminate against members of an ethnic group. For example, if a company had a tradition of recruiting employees through their family connections to the (predominantly white) workforce, this practice would act as a barrier to the recruitment of minorities, even when no such discrimination was intended (Williams 2000: 65).

4.2 Past-in-present discrimination

This is where ‘neutral’ practices have greater negative impact on a minority group because of *historical*, rather than current, intentional discrimination. It is described as occurring where neutral practices in an institutional area have a negative impact on minorities because of earlier intentional discrimination in that same institutional area (Williams 2000: 65). Such previous discrimination can create patterns of inter-generational group-structured inequality which are not likely to disappear simply because discrimination practices have ceased.

4.3 Side-effect discrimination

This is when discrimination in one social sphere will generate inequality in another social sphere, even when there is no direct intentional discrimination in the second sphere. For example, a practice that confines a minority group to low-paying jobs will probably produce low levels of participation in the political sphere, given the well-established relationship between political participation and socio-economic status, even when minorities are not explicitly prevented from full participation (Williams 2000: 64).

A modification of Williams’ classification

First I would first like to suggest a minor re-organisation of Williams’ typology, including the re-naming of one type. She labels the first and most ‘classic’ type ‘direct or intentional discrimination’, which covers the intentional exclusion of an individual from opportunities because of group-based characteristics to which stigmatic meaning is attached. However, the problem with using the term ‘direct or intentional discrimination’ is that the second and third types in her list are also intentional. If an employer decides not to recruit from a particular social group on ground of perceived profitability (statistical discrimination), is this not an intentional form of exclusion? Similarly if an employer decides not to recruit someone because of fears that customers would not like it (societal discrimination), is this not also direct and intentional? Both these second and third types are intentional acts of exclusion, although in neither case are they necessarily carried out by a person who is racist or ethnically prejudiced. For this reason I prefer to differentiate the first type with a new name - ‘racist discrimination’ - and use the term ‘direct or intentional discrimination’ as an overall heading which covers all of the first three types. This then distinguishes these three from Williams’ next three types, which fall under the heading of ‘structural discrimination’, defined as forms of discrimination which cannot be reduced to any particular individual’s bias or actions.

Thus this revised classification of employment discrimination can be illustrated in a typology of six types. Unlike Williams’ original organisation of the types, these six types then fall under two main headings, ‘Direct or intentional discrimination’ and ‘Structural (or systemic) discrimination’.

Figure 1: A revised typology of discrimination

Direct or intentional discrimination	Structural (or systemic) discrimination
(1) Racist discrimination	(4) Indirect discrimination
(2) Statistical discrimination	(5) Past-in-present discrimination
(3) Societal discrimination	(6) Side-effect discrimination

Questioning the typology

The next stage is to consider the value of the typology as a starting point in this exercise to clarify discrimination concepts. Does it cover enough cases in the real world to make it meaningful? Probably few classifications in social science are 100 per cent watertight. But if there are acts or processes of discrimination that fall outside this typology, then its validity would be called into question.

It is necessary to explore further each of these six types of discrimination and then consider how well actual examples fit with the typology. This will then lead to another question – are there some kinds of discrimination that do not seem to fit this typology?

During this exercise the paper will draw on cases of discrimination that have come to notice in recent years either through academic research, or through the activities of NGOs, equality bodies or the EU Agency for Fundamental Rights (FRA). As well as examining how well these ‘real-world’ cases fit the typology, it is also interesting to ask a further question - how do we *know* if they fit the typology? Is it immediately evident? Or is it necessary to do further research in order to come to a judgement on what particular type of discrimination is at play in any one case?

Direct or intentional discrimination

(1) Racist discrimination

The first type covers actions by racist or prejudiced people who act on negative stereotypes about a social group. Those who perpetrate it do so consciously, and it occurs when markers of racial or ethnic identity are used as the reasons for differential treatment without any other justification. In terms of access to work, this could be expressed through the refusal to recruit members of a particular social group, and within the workplace, through the exclusion from access to opportunities such as training or promotion. It also covers verbal, psychological and physical abuse or harassment at the workplace. Most importantly, for those employers who state there is ‘there no discrimination around here,’ this is assumed to be the *only* form of discrimination, and falls under the heading of what might be called the ‘bad apple’ assumption (Craig 2007: 135). Many examples of this kind of discrimination come to light in formal complaints and legal proceedings.

RACIST DISCRIMINATION

In 2004 a Hungarian hotel manager told a receptionist, when faced by a Roma job applicant, "I do not hire Gypsies here, I hate them all" (EUMC 2005: 40).

In 2007 in Malta two African men were refused a job in a poultry-processing factory. The factory owner stated that "African people are not hygienic enough to handle poultry."¹

In 2008 in Portugal the president of a local authority referred to an employee who was a Portuguese woman born in Cap Verde as a "nigger" and forbade her to talk to her sister in her own language. He then gave her one month's suspension from work after she accused him of racism (FRA 2009: 35).

Another kind of racist discrimination that has figured heavily in reported cases is that of verbal or physical harassment and bullying, in some countries called 'mobbing'.

RACIST DISCRIMINATION - HARASSMENT

In 2005 in Austria, a Jordanian man was called "camel driver" and "stupid Arab" by his colleagues and finally was beaten up so badly he had to go to hospital. His employer denied all knowledge of and responsibility for the assault (EUMC 2005: 39).

In 2010 four Polish workers on an industrial site in Ireland were awarded compensation after suffering "deliberate blatant and unfettered" racist abuse at work. They were told not to speak to each other in Polish during lunch breaks, and told that Polish food and Polish people smelled. (FRA 2011a: 112)

In 2010 an employee of the French national railways (SNCF) brought a harassment case to the Criminal Court of Cambrai, complaining of six years of abuse and bullying by a manager because of his North African origin. The defendant was ordered to pay damages to the victim, plus legal costs (FRA 2012: 165).

(2) Statistical discrimination

This covers actions which are based not on personal racism or on prejudices about a particular social group held by the discriminator, but on perceptions of the group as having certain characteristics which will have negative consequences for the organisation. As Michael Banton puts it, statistical discrimination occurs "whenever an individual is judged on the average characteristics of a category in which he or she is presumed to belong, rather than upon his or her actual characteristics...". For example when faced with a hundred applicants for a job and wanting to avoid the costs of interviewing all of them, an employer might exclude all applicants born overseas on the grounds that they would be less likely to have relevant experience (Banton 1992: 80). When an employer eliminates from consideration a candidate from a group which is not perceived to be as 'profitable' as other groups, it is argued that this reflects rational economic behaviour and is not to be confused with racism.

By its very nature, cases of 'statistical discrimination' are not visible in the way that cases of 'racist discrimination' are. Evidence under this heading does not come easily from court cases and examples of the kind reported to authorities. Insights into the degree to which the recruitment decisions of employers are a function of rational 'risk aversion' or prejudice and stereotypes come instead from in-depth interviews with employers; for example, in the US (Wilson 1996) or in Europe (Midtbøen 2013).

¹ *The Times* (of Malta) 25.06.2007 p. 25

STATISTICAL DISCRIMINATION

In the UK, researchers interviewing the staff of a national public sector employment agency were told about an employer in the clothing industry who instructed the agency that she didn't want to be sent any Asians, because "If we trained Asians they would go off and start their own business".

This was a reflection of a statistical truth – in the UK, Asian groups have an above average tendency to be entrepreneurs, and are over-represented among those who start their own businesses (Runnymede Trust 2000: 202). This can be classified as an example of 'statistical discrimination': in this case, Asians as a group were seen as statistically likely to have certain characteristics which were perceived to have negative consequences for the employer (Wrench 1991: 194).

Of course, there may be a "fine line" between statistical discrimination and racist discrimination because employers' assumptions about statistical tendencies in a group are often incorrect (Williams 2000: 64). As Pager and Shepherd (2008: 8) note, much academic literature in this area attempts to distinguish whether statistical discrimination really is an indication of an instrumental adaptation to information shortages, or whether it is simply rooted in prejudice and racial hostility. For example, Midtbøen's findings in Norway (2013) question the dominance of a rational 'risk aversion' dynamic in recruitment decisions. In interviews with 42 Norwegian employers he found that stereotypes about immigrants from developing countries seemed to persist even when employers' own experiences should have indicated a revision of their existing stereotype. Furthermore, prejudices were transferred across generations even when evidence ran counter to these negative generalisations, so that well-qualified children of immigrants, speaking fluent Norwegian, still encountered the prejudices attached to their parents' generation (Midtbøen 2013: 14).

Nevertheless, statistical discrimination does constitute a *conceptually* different category of discrimination. For one thing, the characteristic associated with the group could in theory be a positive rather than a negative trait – as in the UK case above, an above-average tendency for entrepreneurship.

(3) Societal discrimination

This covers actions based on the fact that although the discriminators may be free of hostility or prejudice, they are aware that *other people* have negative attitudes towards members of a social group. It is not difficult to find examples to illustrate this category, as cases regularly come to light in legal proceedings.

SOCIETAL DISCRIMINATION

In 2004 the manager of a security firm in Hungary refused a job to a certificated Roma security guard, telling him that his clients would not accept Roma staff (EUMC 2005: 40).

In 2004 in Poland a Roma woman responding to a newspaper advertisement for a waitress was directly told that the employer did not hire "Gypsies" because they would "scare off clients" (EUMC 2005: 40).

In 2006 in Italy, a black Italian girl filed a complaint for racial discrimination against the owner of a restaurant who refused to employ her, saying that her skin colour could "disturb" some of his customers (FRA 2007: 53).

In 2006, in interviews with employers in Germany, some personnel managers explained that they would worry about problems with clients or German employees if they recruited a Turk (Gestring et al. 2006: 135-193).

Similarly, if employees of an employment agency know that immigrants would not be welcomed by a particular employer, they may avoid sending an immigrant to be interviewed for a vacant position. Employment agencies have been regular arenas for the operation of societal discrimination, where the actions of agency staff can be determined by the prejudices of another person, in this case the organisations' clients.

SOCIETAL DISCRIMINATION – EMPLOYMENT AGENCIES

Research on the staff of UK employment agencies reported how they were pressured to accede to the requests of employers not to be sent young people of ethnic minority origin for their vacancies. Some staff would anticipate the employers' rejection and deflect the aspirations of a young ethnic minority client away from that particular opportunity. In this way ethnic exclusion became routinised (Wrench 1991: 196-200).

In France temporary employment agencies used a system of coded messages relating to job offers, signifying that no "foreigners" were to be sent for certain jobs. In one case the code 'BBR' was used, standing for the colours of the flag of the Republic (bleu, blanc, rouge) to signify that a particular employer is looking for a white candidate of French stock (EUROFOUND 1996: 50).

A journalist from a Danish television programme pretending to be a private building contractor called 24 of the regional state-run employment offices requesting workers who were "Danish nationals", and in only one office did an employee refuse to cooperate with this request. Three months later, following a similar exercise, a Danish newspaper described how six out of eight private job agencies accepted a discriminatory instruction in relation to the hiring of replacement workers, guaranteeing that the worker would be a "native Dane" (EUMC 2005: 43).

It is clear, then, that these first three types of discrimination are conceptually distinct, and that illustrative examples of each can be found. One way of highlighting the differences between them might be simply to use the three following statements: for racist discrimination the argument might be 'I won't employ immigrants because I don't like them'; for statistical discrimination it might be 'I won't employ immigrants because they will go off and start their own businesses', and for societal discrimination it might be 'I won't employ immigrants because my customers won't like it'.

Structural or systemic discrimination

Williams described structural discrimination as something that is not one of the first three types of direct discrimination, and not a consequence of an individual's bias against the group. Other writers use the term systemic discrimination to mean the same thing as structural discrimination (Cunningham 2000: 48). With this kind of discrimination the disadvantage occurs because the prevailing system of opportunities and constraints favours the success of one group over another, through the operation of policies and practices that contribute to the systemic disadvantage of members of certain groups (Pager and Shepherd 2008: 11).

Williams suggested three types that fall under the heading of 'structural discrimination':

4. Indirect discrimination

This is where apparently 'neutral' recruitment practices or work routines discriminate against members of a particular ethnic group. It occurs where, in a formal sense, 'equal treatment' has, or potentially has, the effect of disadvantaging migrants and minorities, in a way that cannot be justified on other grounds.

INDIRECT DISCRIMINATION

In a British survey of apprentice recruitment, many firms were found to rely in significant part on the family members of existing employees. Employers talked of the benefits to the firm in terms of family loyalty and a parental link with young workers. Thus, in a largely white workforce, this excluded ethnic minorities. In addition, many firms did not advertise their vacancies, and relied on word-of-mouth recruitment, with the result that ethnic minorities would be less likely to hear of vacancies than white school leavers who had contacts within the firm (Wrench 1995: 628).

After a complaint from an Austrian citizen, a Greek equality body ruled that the requirement of “excellent command of the Greek language” as a precondition for the employment of doctors in public hospitals amounted to indirect discrimination on the grounds of ethnic or racial origin, on the basis that “good knowledge of Greek” should suffice (FRA 2007: 53).

In Slovenia in 2008, an employee of Muslim faith lodged a complaint with the Advocate of the Principle of Equality that an employer who provided meals for employees during work time refused a request for food without pork or lard, which the employee said discriminated against Jews and Muslims. The Advocate issued an opinion that the person in question had been subject to indirect discrimination on the basis of religion (FRA 2009: 40).

Indirect discrimination is most easily understood with regard to recruitment. However, as the third example above shows, indirect discrimination can also cover the passive adherence to company rules or traditions which do not allow for changed circumstances in the workforce. When discussing the prohibition of indirect discrimination by the EU equal treatment directives, Makkonen remarks “unreflective continuing of customary business practices, no matter how well-established they are, may lead to discrimination and would thus need to be discontinued” (Makkonen 2007: 16). Traditional practices such as inflexible dress codes, canteen menus or holiday rules are potential factors of indirect discrimination in the context of a new multi-ethnic workforce.

5. Past-in-present discrimination

This is where ‘neutral’ practices have greater negative impact on a minority group because of *historical* discrimination in the same institutional area, rather than current, intentional discrimination. Williams describes this as among the most pervasive and pernicious sources of structural inequality (Williams 2000: 65). However, this type of structural discrimination is not revealed in individual reported cases and concrete examples. The sorts of work that best portray processes of this kind of structural discrimination are historically-informed, theoretically-guided analyses which describe the interaction of a range of factors over a period of time, that result in present day exclusion.

It is possible that this type of historically-located structural discrimination might apply more strongly in the US than in Europe, because of the systematic racism and discrimination that black Americans have experienced over generations. This factor might apply less to migrants in the EU who are found only in their first or second generations in the labour market. On the other hand, it might apply strongly to the Roma, who as a group have suffered generations of systematic discrimination in Europe. For example, a major survey of the situation of Roma in 11 EU member states in 2014 found that about 90 per cent of those surveyed lived in households with an equivalised income below national poverty lines, with less than one in three Roma in paid employment. Factors such as living in segregated areas with limited or no access to public transport, poor infrastructure, and being faced by discrimination and racism, reduced the possibilities of finding work (FRA 2014a: 8, 11).

6. Side-effect discrimination

This is when discrimination in one social sphere will generate inequality in another social sphere, even when there is no discrimination in the second sphere. Perhaps this is more relevant to the European context today than the previous type. In EU countries there are regular examples reported of discrimination against migrants and minorities in the spheres of housing (see, for example, Harrison et al. 2006) and this kind of discrimination can have repercussions for inequality in the sphere of

employment. Again, it seems the Roma in Europe would constitute an example relevant to side-effect discrimination – for example, regarding education. The earlier-mentioned survey of Roma in 11 EU member states found that Roma populations faced “a high risk of segregated schooling compounded by prejudice and discrimination,” and were characterised by high drop-out rates before completing secondary education, and low rates of literacy (FRA 2014b: 11). Clearly such experiences have ‘side-effect’ implications for their lack of success in the labour market, as described in the same survey.

To sum up this first part of the exercise, we can recognise six conceptually distinct types of discrimination, as set out in Figure 1, which can in theory operate alone, or in various combinations of interaction. It is not difficult to find concrete examples of discrimination of types 1, 3 and 4 - racist, societal and indirect discrimination. But by their nature, types 2, 5 and 6 – statistical, past-in-present and side-effect discrimination - are not easily visible in concrete everyday examples, and to gain further insights into these we need to draw on the findings of research.

Additions to the typology?

The next question to ask is whether other types of discrimination could be added to the typology, starting with some of those listed at the beginning of this paper, namely ‘multiple discrimination’, and ‘objective’ and ‘subjective’ discrimination.

Multiple discrimination

The concept of multiple discrimination recognises that an individual can be discriminated against on more than one ground in any one situation. Multiple discrimination can be ‘additive’ where an individual can suffer discrimination on more than one grounds and the role of the different grounds can still be distinguished, and ‘intersectional’ when two or more grounds of discrimination operate in a way that cannot be separated. An example of the latter could be discrimination experienced by a Muslim woman that would not have affected a non-Muslim woman or a Muslim man (FRA 2011a: 99)

MULTIPLE DISCRIMINATION

In 2009 the Austrian Equal Treatment Commission reported on a case of multiple discrimination in Vienna.² A woman of Kurdish origin, and a Muslim, took a job as an assistant in a dentist’s surgery. The employer wanted people to eat together in the lunch break. She explained that her participation in this during the fasting month of Ramadan was not possible, but her employer saw this religious requirement to be irrelevant, and told her that she was obliged to do this. Furthermore, he instructed her to change her name to a European-sounding name, chose one for her, and began to use this name in front of the patients, which she found to be very degrading.

The Austrian Equal Treatment Commission considered this to be a case of multiple discrimination: it was (i) discrimination based on *ethnicity* by harassment because her employer told her to take a European-sounding name, (ii) discrimination based on *gender*-based harassment because the name chosen for her was associated with a female cartoon character and had derogatory overtones, and (iii) *religious* discrimination by harassment because during the month of Ramadan she was made to sit at the table with the others for lunch.

Objective and subjective discrimination

‘Objective discrimination’ is discrimination that is established using criteria that are unrelated to subjective experiences, such as less pay for comparable work, whereas ‘subjective discrimination’ is the experience of being discriminated against (Olli and Olsen 2005: 11). It may be that objective and subjective discrimination exist simultaneously; however, it is possible they may not, as in cases where a person suffers objective discrimination but without being subjectively aware of it. This is classically

² Austrian Equal Treatment Commission, Case of multiple discrimination GBK I/283/10-M

the case when someone has been turned down for a job. However, sometimes a process of ‘testing’ can be used in such cases, in order to make objective discrimination in recruitment subjectively clear to the victim. In recent years there have been increasing numbers of such tests, often carried out by NGOs.

OBJECTIVE DISCRIMINATION MADE SUBJECTIVE

In 2005 in the Czech Republic a Roma woman applied for a job in a store, but the manager told her that the job had already been filled. When a non-Roma employee of a human rights organisation later pretended to be interested in the same job, the manager proceeded to interview her for the position. A court in Prague ordered the manager to apologise to the woman and pay her compensation (FRA 2007: 57).

In 2006 a young, black French woman with a diploma in hairdressing twice contacted the manager of a salon, and each time was told that there was no vacancy. She then asked one of her white friends to apply for the job, and the vacancy was still there. After an investigation by the Employment Inspectorate, the manager declared that she ‘felt better’ with white employees. The manager was fined in court, and ordered to pay damages to the victim (FRA 2007: 53).

In 2006 in Hungary the Legal Defence Bureau for National and Ethnic Minorities (NEKI) was approached by a man who had applied for a vacancy by phone but had been refused when he revealed his Roma origin, even though he met the job requirements. NEKI carried out a testing in the case, and found out that an ‘applicant’ who used a Roma family name was not given any information about the job, whereas the other ‘applicant’ received a full job description. The company was ordered to pay a fine for violating the principle of equal treatment (FRA 2008: 50).

None of these three concepts of discrimination - multiple, objective or subjective - constitute a new ‘type’ which would need to be added to the six-fold typology. This is because they refer to ways in which one or other of the existing types may be experienced. For example, in the above case of multiple discrimination in Vienna, some of the employer’s actions are clearly covered by the term ‘racist discrimination’; it is just that in this case this form of harassment on ethnic/religious grounds occurs at the same time as discrimination based on gender. Similarly, objective and subjective discrimination are not new ‘types’, but simply describe how one of the existing types in the typology is experienced. Some of the types are perhaps more likely to be experienced as subjective discrimination than others. For example, in some cases of (objective) racist discrimination a victim will also be subjectively aware of the discrimination, whereas with the operation of statistical or indirect discrimination victims will be much less likely to be subjectively conscious of the discrimination that they have experienced.

However, there may be other types of discrimination that are not covered by the types listed in Figure 1, and that could be added to the typology. These are ‘implicit discrimination’, ‘legal discrimination’ and ‘opportunist discrimination’.

Implicit discrimination

‘Implicit discrimination’ occurs when discrimination is unintentional and outside of the discriminator’s awareness (Bertrand et al. 2005: 94). For some social psychologists, attitudes can occur in both implicit and explicit modes. What are normally seen as a person’s attitudes – their “explicit attitudes” - may or may not coincide with the same person’s “implicit attitudes”. Whilst some forms of racial discrimination are clearly the result of explicit attitudes, others may reflect implicit attitudes – for example, unconscious mental associations about what is positive or negative about social groups. In this way “people may be engaging in injurious behaviour without realising it” (Bertrand et al. 2005: 97).

Legal discrimination

The meaning of ‘legal discrimination’ can be illustrated by the example of a woman born in Italy to non-Italian parents, a graduate in social science, who worked in Rome municipality on a temporary contract for 18 months, and who did not get her contract renewed on the grounds that she did not have Italian citizenship. She was the only one of her intake whose contract was not renewed. This was a person born in Italy, who spoke Italian as a first language, and had received all her education in Italy.³

This example reflects a type of ‘non-prohibited’ discrimination, which might therefore be called ‘legal discrimination’, something not covered by the six types in Figure 1. It refers to unequal treatment in access to the labour market which is justified in law, such as denying the access of permanently-resident third country nationals⁴ to certain occupations, typically those in the public sector.

The EU’s Racial Equality Directive⁵ outlaws direct or indirect discrimination based on racial or ethnic origins in relation to nationals of third countries. However, the Directive makes it clear that it “does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third country nationals and their access to employment and occupation”. Laws and administrative restrictions governing the access of third country nationals to employment are in principle legitimate, unless it can be proven that discrimination has taken place on the grounds of ethnic/racial origin.

Although these kinds of restrictions are not unlawful, they are instruments which contribute to inequalities along the lines of social group membership, and are considered by some as a form of discrimination. In some EU countries even long-term immigrant residents can remain on a range of restrictive work and residence permits, which severely limit their freedom in comparison to majority workers. Italy has been mentioned regularly in this context. For example, because of the requirement for Italian citizenship for working in the (public sector) health sector, immigrant nurses cannot be directly employed, and so work with temporary contracts, often in separate agencies to which the health sector sub-contracts hospital services. They consequently work longer hours and for lower wages than their Italian counterparts, receiving on average 25 per cent less salary than those directly employed by the health service, for doing the same duties (FRA 2007: 63).

Many examples have been reported in the last 10 years or so which would fall under the heading of legal discrimination, involving restricted access to the public sector.

LEGAL DISCRIMINATION

For many years France restricted its public sector jobs to people with French nationality (FRA 2007: 63). In 2005 France opened up its civil service employment to EU citizens (FRA 2011b: 68), but non-EU nationals can still only be employed as contract or temporary employees in the public sector.

A 2006 report by Amnesty International criticised the law in Estonia that prevented non-citizens from working as state or municipal public officials. This had negative effects on the employment opportunities of the Russian-speaking minority. (FRA 2007: 64)

In Italy in 2009, five long-term legally-resident non-EU nurses were excluded from a selection process by a major hospital in Genoa, on the grounds that they did not possess Italian or EU citizenship. The head of personnel at the hospital insisted that nurses were public officials, and only Italian citizens could be appointed (FRA 2010: 55).

Of course, some people might argue that this is not really a problem of discrimination, or even an important social issue. It is quite acceptable for there to be legally-sanctioned inequality between

³ This was a case reported to the FRA by its Italian National Focal Point in the early 2000s.

⁴ A ‘third country national’ is a person who is not a national of an EU member state.

⁵ Council Directive 2000/43/EC

citizens and non-citizens in a nation state, and it is normal for nation states to operate migration controls which lay down rules of access to employment. However, there is another discourse, on integration and social cohesion, which might be in conflict with this:

“Arguing from the perspective of social cohesion, it is desirable for the society as a whole that the largest possible part of the resident population enjoys a secure legal status and is granted access to basic rights and resources.” (FRA 2011b: 65-66).

Those who are concerned with the integration of migrant populations and their descendants over time, (and with issues of social justice), perceive a problem here, particularly when the legal exclusion persists over a long period, and goes against what seems to be ‘reasonable’. These exclusions can apply to people who have made a country their long-term and only residence, or who may even have been born there (for example, the cases mentioned above of the Italian graduate in Rome, or Russians in Estonia). Therefore, according to this discourse, legal discrimination could constitute a further type in the typology of ethnic discrimination.

Opportunist discrimination

The gross exploitation of legally-insecure migrant workers in precarious employment sectors in Europe is well documented. Some migrant workers suffer poorly-paid work for extremely long hours, in violation of labour regulations, often in unhealthy conditions and subject to harassment and abuse. They might have their passports confiscated, can be confined to sub-standard accommodation without the freedom to leave, and can have the cost of their accommodation and food deducted from their wages. An EU-wide survey of severe forms of labour exploitation affecting workers moving within or into the EU showed that criminal labour exploitation is extensive in agriculture, forestry and fishing, construction, hotel and catering, domestic work and manufacturing (particularly food, textile and clothing) (FRA 2015: 46-49).

Is the gross exploitation of precarious migrant workers to be categorised as an extra type of ethnic discrimination? I have suggested previously that this might be called ‘opportunist discrimination’ (Wrench 2007: 120). This is discrimination which is not (necessarily) based on prejudice or racism, but on the knowledge that members of a group are in a relatively powerless position, and can safely be employed in inferior working conditions with lower wages. The powerlessness of the group might be a consequence of various factors - because the workers are undocumented, or because their flexibility to change employers or find new types of work is restricted because of migration laws - or it may be that a particular group has been historically neglected by trade unions. Unlike many other types of discrimination, this does not take the form of exclusion during the recruitment process, because some employers are only too willing to recruit such exploitable workers.

OPPORTUNIST DISCRIMINATION

In 2009 in the Netherlands the Public Prosecutor started a criminal investigation into the practices of an asparagus grower. The predominantly Romanian employees on contract were housed in appalling conditions and were underpaid. In addition, their employer had confiscated their passports. They were not allowed to leave the premises and sometimes even locked in their narrow attic rooms, of which several had no windows.⁶

In 2010 the following cases were reported in Spain: a new public hospital in Cataluña exploiting migrant labour with long hours and payment below the collective agreement;⁷ a Polish construction entrepreneur arrested for beatings and degrading working conditions imposed on his non-Spanish-speaking workforce;⁸ a man arrested in Galicia for forcing 30 irregular South Americans to work 14 hours a day for pay that did not materialise;⁹ a temporary employment agency in Valencia working migrant agricultural workers longer hours and for less pay than the collective agreement;¹⁰ and three people arrested in Murcia for exploiting 40 irregular agricultural workers with very low wages and with no contract.¹¹

Does this also count as a type of discrimination that should be added to the typology? Some may argue that the gross exploitation of vulnerable workers, however lamentable, is not the same thing as ethnic discrimination. For one thing, the treatment they experience is not because they are ethnic minorities per se, but because they are members of a group in a structurally weak position. However, the idea is not inconsistent with some previous writings on the subject of discrimination. For example, Michael Banton (1992) talks of three factors that lie behind acts of discrimination: 'taste', 'risk' and 'profit'. His explanations of these terms show that by 'taste' he means what is called in the typology 'racist discrimination', and by 'risk' he means 'statistical discrimination'. The third one, he calls "discrimination because of an opportunity for profit", and explains it thus: "if black employees were in a weaker bargaining position because they were not represented by so effective a trade union; an employer might then profit from employing more Blacks at a lower wage than for Whites" (Banton 1992: 80). This understanding of the motive of profit lying behind acts of discrimination against a group in a weak position puts it in the category of 'opportunist discrimination', and for Banton, this is clearly a 'type' of discrimination which can be envisaged alongside the other two. I would therefore like to argue that opportunist discrimination constitutes a third addition to the typology, alongside implicit and legal discrimination.

Conceptual conflation and terminological inconsistency

It is possible to find examples of when the same discrimination concept is used to mean different things, and when inconsistencies can be found in the use of concepts of discrimination.

Structural discrimination and its synonyms

It is not uncommon to find the terms 'structural discrimination' and 'systemic discrimination' being used interchangeably. This is implicit in Williams' initial typology when she labels her fourth type "structural or systemic" discrimination. Williams' understanding of structural discrimination is that it concerns group-based patterns of disadvantage and inequality and sources of group bias in the social system that are not the consequences of a particular individual's bias against the group (Williams 2000: 64). Others use the term 'systemic discrimination' to mean the same thing. For example, for

⁶ http://www.nrc.nl/binnenland/article2244478.ece/Slavernij_in_aspergestekerij_Someren

⁷ See El País, 15 February 2010.

⁸ See El País, 30 March 2010.

⁹ See El País, 30 March 2010.

¹⁰ See Las Provincias, 23 March 2010.

¹¹ See La Verdad de Murcia, 27 October 2010.

Cunningham (2000: 48) systemic discrimination occurs when an individual's exclusion depends on "broad social, legal, cultural or economic circumstances rather than on the individual prejudices of others".

The conflation of the concept of 'structural discrimination' with 'systemic discrimination' does not initially seem to be greatly problematic. However, the suggestion by some scholars that systemic/structural discrimination is also the same thing as 'institutional discrimination' and 'institutional racism' seems more questionable. The authors of two reports on structural/systemic discrimination both note that structural discrimination, institutional discrimination and institutional racism have all been used as synonyms for systemic discrimination (Lapellainen 2005: 91-92; Craig 2007: 92). An example of conflation going even further comes from Cunningham (2000) who remarks that synonyms for systemic discrimination not only include 'structural' and 'institutional' but also 'indirect' discrimination (Cunningham 2000: 48). We therefore have indications that structural discrimination has in effect been used to mean the same thing as four other concepts: 'systemic discrimination', 'institutional racism', 'institutional discrimination', and 'indirect discrimination'.

If these four concepts can be used interchangeably, this makes them of dubious value for social science. In fact, it does seem possible to make some conceptual distance between them. We can do this first with the concepts of structural and systemic discrimination.

Structural discrimination has been defined as the prevailing system of opportunities and constraints, policies and practices that favours the success of one group over another (Pager and Shepherd 2008), and that cannot easily be charged to the account of racist discrimination, statistical discrimination or societal discrimination (Williams 2000). However, according to some definitions, this is not precisely the same thing as systemic discrimination. Craig (2007) describes systemic discrimination in employment as "made up of individual acts of discrimination or 'neutral' rules with discriminatory effect, which form a pattern which reflects an organizational culture or administrative structure which condones or tolerates such acts – or permits such acts to go undetected and as a result to flourish." For Craig, systemic discrimination refers to a whole range of discriminatory processes and activities which take place *within work organisations*. It includes indirect discrimination; it can be unintended, embedded in non-conscious favouritism for ingroups rather than conscious antipathy for outgroups; it can be found in "group-based generalizations that save us the time and energy otherwise necessary for individual assessment"; and in the informal use of recruiting and selection methods, and unclear inconsistent selection criteria. But it also includes direct racist discrimination, cases of harassment and a "poisonous work environment" (Craig 2007: 3, 93, 123, 300, 301).

By this definition, systemic discrimination covers some elements that structural discrimination does not, namely acts of racist exclusion and harassment by prejudiced individuals. Structural discrimination, on the other hand, remains within the conventional social science meaning of 'structural', and thus does not include individual acts of overt racism. However, it does include some areas not covered by systemic discrimination, namely the operation of broader social institutions such as the law, whereas systemic discrimination restricts itself to processes within organisations.

Secondly, the assertion that structural discrimination, institutional discrimination and institutional racism are synonyms can be questioned. Is it logical that two concepts whose defining essence is *discrimination* – 'structural discrimination' and 'institutional discrimination' – should be categorised as the same as a concept whose essence is *racism* – institutional racism? Few academics would argue that 'racism' and 'discrimination' are the same thing. As we have seen in our six-fold typology in Figure 1, it is quite possible for racial discrimination to occur without the conscious component of racism or ethnic prejudice being involved. If there can be racial discrimination without there being a racist motive or ideology behind it, should we not also be able to conceive of *institutional discrimination* existing without any concept of institutional *racism* being involved? Logically, should not the concept of 'institutional racism' have more of a component of racist intention or ideology than that of institutional discrimination? It therefore seems a difficult argument simply to conflate them.

For some scholars, one solution to this problem is to abandon altogether the use of the term 'institutional racism'. As O'Grady et al. write, 'how can an institution be racist, as it is not capable of action/thought/belief in the way that people are?' (O'Grady et al. 2005). These authors argue that the way that racism and race ideas become regularised in routines of action does not illustrate 'institutional racism', but rather 'institutionalised racism'. However, before we consider whether to abandon the concept of 'institutional racism' altogether, on the grounds of its own internal inconsistency, it is useful to look at some examples of how it has been defined and employed.

Institutional racism

The term institutional racism was associated first with the civil rights movement in the USA in the 1960s (Carmichael and Hamilton 1967). It has been defined as "those established laws, customs and practices which systematically reflect and produce racial inequalities in American society", and the term is applied "whether or not the individuals maintaining those practices have racist intentions" (Jones 1972: 131). The British author Ann Dummett similarly describes an institutionally racist society as one which has "institutions which effectively maintain inequality between members of different groups in such a way that open doctrine is unnecessary, or even if operated partly by individuals who are not themselves racist in their beliefs, still has the effect of making and perpetuating inequalities" (Dummett 1973: 131). The core of this concept is thus twofold: it is something which operates at the broad societal level, and it does not necessarily include racist intentions by perpetrators. However, in subsequent usage of the term 'institutional racism', this particular understanding of the concept has not always been evident. In 1982 Britain experienced urban disturbances in multi-ethnic areas of some of its major cities. Lord Scarman was appointed to conduct an enquiry and in his report he rejected the role of institutional racism as a factor:

"It was alleged by some of those who made representations to me that Britain is an institutionally racist society. If by that it is meant that a society which knowingly, as a matter of policy, discriminates against black people, I reject the allegation" (quoted in Charles 1982: 5)

Here, Scarman is clearly operating from a much narrower definition of institutional racism than that used by civil rights activists. This part of Scarman's report received criticism from minority communities, who felt that they experienced institutional racism in the difficulties of their daily lives, and these critics were using the term in its broader sense.

"Racial discrimination is widespread and practised in the fields of housing, education, employment and police-community relations and yet there have been no concerted efforts to bring such practices to an end or to prosecute the offending persons in court. There is no better explanation of this state of affairs except to put it down to institutional racism" (Charles 1982: 5).

Charles rejects Scarman's narrow understanding of the concept: "We need to state clearly that institutional racism does not require the wilful, conscious and knowing connivance of individuals who become the agents of racist practices" (Charles 1982: 10).

In 1999 the term 'institutional racism' was again thrust into public gaze in Britain by the 'Macpherson Report', a report on the inadequate police response to the brutal murder of a black teenager in London. The report concluded that the police had been 'institutionally racist'. Macpherson defined this as "the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin", which can be seen or detected in "processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness, and racist stereotyping which disadvantages minority ethnic people" (Macpherson 1999: para 6.34). Here, unlike in the use of the term by Scarman, he is assuming that the term institutional racism can cover situations where there are no intentional racist acts or motives; there is an assumption that at least some the prejudice and discrimination can be "unwitting" rather than necessarily 'knowingly' and "as a matter of policy". However, unlike in its use by the US civil

rights movement, or the critics of Scarman, it is used by Macpherson to apply to the institution of the police force in its *organisational* sense, and not to the institutions of broader society.

A third use of the term ‘institutional racism’ appeared in a British report by the Runnymede Trust – “The Future of Multi-Ethnic Britain” - published in 2000. The report was produced by the Commission on the Future of Multi-Ethnic Britain, and in this report the term ‘institutional racism’ is interpreted also as applying at an *organisational* level, focusing both on the processes of an organisation and its output - “the benefits or penalties which customers, clients, service users and members of the public get from it, and the extent to which, as a result, it causes more inequality or less in its surrounding environment.” (Runnymede Trust 2000: 73). The report then goes on to list the “interacting components of institutional racism” which include indirect discrimination, employment practices, occupational culture, staffing structure, management and leadership, and other *organisational* characteristics. This particular understanding of institutional racism does not coincide with the understanding of the concept by Scarman, but neither does it coincide with the critics of Scarman. It uses an understanding of institutional racism which does not relate to the institutional workings of broader society, but assumes a much narrower understanding of the word ‘institution’ relating to what goes on within work organisations.

It is clear from just these few examples that the term institutional racism can be used in very different ways, often stemming from differences in understandings of each of the two words, i.e. in what is meant by ‘institutional’ and in what is meant by ‘racism’. For some, ‘institutional’ relates to the broader societal level, whereas for others it is interpreted much more narrowly, as interchangeable with the word ‘organisational’. For some, the ‘racism’ part of institutional racism is understood necessarily to imply direct intentional acts of racism, whereas others see it as covering broader processes of exclusion and discrimination which do not require the operation of overt racism or ethnic prejudice.

Institutional discrimination

As we saw earlier, some scholars make no distinction between ‘structural discrimination’ and ‘institutional discrimination’. However, others argue that ‘institutional discrimination’ is distinct enough to stand as a separate category. Samson (2008) defines institutional discrimination as rooted specifically in the rules and practices of an organisation, and commonly overlapping with indirect discrimination. These organisational practices may have discriminatory outcomes, but are not necessarily driven by conscious racist beliefs. By this meaning, the term ‘institutional discrimination’ is reserved specifically for practices at the organisational level. (This interpretation would imply that the organisational practices and characteristics described in the Runnymede Trust report should be categorised as institutional discrimination rather than institutional racism.)

However, there are other scholars with a broader understanding of the term institutional discrimination. For example, Cillo and Perocco (2015) describe new forms of work organisation in some Italian industrial sectors which are leading to the embedding of racial discrimination in the workplace. After a major restructuring, one shipbuilder outsourced ship assembly operations using subcontractors whose employees came mainly from Africa, eastern Europe and southern Italy. Working conditions in the subcontracting system are characterised by failure to respect workers’ rights and safety standards, excessive working hours, low pay, a ban on joining a union, and even violence (Cillo and Perocco 2015: 56). The work organisation has led to a kind of ‘racial segregation’: the permanent workers have been almost exclusively native-born workers, whereas the subcontracting sector consists largely of migrant workers. National migration policy in Italy worsens these workers’ conditions, as the link between residence permits and employment contracts leaves them insecure and vulnerable to ‘blackmail’ by their employers. Taken together, these forms of work organisation, working conditions, and rules of employment interacting with laws on migration at a national level, produce a system of extreme exploitation of migrant workers, categorised by the authors as

‘institutional discrimination’ (Cillo and Perocco 2015: 57). The term used in this sense makes it a much broader concept than simply discrimination which takes place within organisations.

Discussion

Several questions have now been raised by this paper:

1. How do the concepts ‘implicit discrimination’ ‘legal discrimination’ and ‘opportunistic discrimination’ relate to the typology of ethnic discrimination, as set out in Figure 1?
2. To what extent does ‘structural discrimination’ overlap with the terms ‘systemic discrimination’, ‘institutional discrimination’, ‘institutional racism’ and ‘indirect discrimination’?
3. How does the variously-interpreted term ‘institutional racism’ relate to the other types of ethnic discrimination?

Much of the terminological inconsistency described in this paper comes from different and sometimes unstated assumptions about what some of these discrimination-related concepts actually mean. There is a need to find a mechanism to assist in clarifying more precisely what constitutes the core dimensions and conceptual boundaries of the terms being considered, and how they relate to other concepts relevant to ethnic discrimination. One possible technique for assistance in this exercise could be the application of a process of cross-classification.

An explanation of the value of cross-classification can be found in the appendix ‘On Intellectual Craftsmanship’ in C. Wright Mills’ ‘The Sociological Imagination’. He argues that cross-classification as a tool can be indispensable in clarifying the dimensions of concepts and types, and their relationships with other concepts and types. It aids in the search for common denominators and differentiating factors within and between types, and can sometimes point to the development of wholly new types (Mills 1959: 234-235).

The key starting point in this exercise is the choice of dimensions to be used in the cross-classification process. I would like to suggest the use of two defining dimensions in types of ethnic discrimination: (i) whether the discrimination operates *directly* or *indirectly* regarding race or ethnicity, and (ii) whether the discrimination operates at the level of the *individual*, the *organisation*, or *broader society*. Having thus created a classification with six possible ‘boxes’, the next stage is to attempt to allocate the various types of discrimination to these boxes according to how they relate to the two dimensions. This gives us the cross-classification result as shown in Figure 2.

The application of cross-classification

It must first be established how well the six types of discrimination from Figure 1 fit into the cross-classification scheme in Figure 2.

In Row A, *racist* discrimination and *societal* discrimination fall in box A1 because they are both intentional discrimination carried out by individuals directly on grounds of race or ethnicity. However, *statistical* discrimination goes into box A2, because although it is also intentional discrimination and carried out directly by individuals, the discrimination occurs on grounds of perceived risk of unprofitability for the employer. Thus it operates only *indirectly* on grounds of race or ethnicity.

In contrast to Row A, Row B covers discrimination that is not a consequence of actions by identifiable individuals, but a result of practices at the organisational level. *Indirect* discrimination clearly goes into Box B2 because by definition it is an organisational policy which operates only indirectly on grounds of race or ethnicity.

Figure 2: Ethnic discrimination in employment – cross-classification of types of discrimination

		1 OPERATING <i>DIRECTLY</i> RE. RACE OR ETHNICITY	2 OPERATING <i>INDIRECTLY</i> RE. RACE OR ETHNICITY		
	<p>A</p> <p>INDIVIDUAL ACTIONS</p> <p>Discrimination as a consequence of motives/actions by identifiable individuals</p>	<p>A1</p> <p>Racist discrimination Acts by racist/prejudiced individuals</p> <p>Societal discrimination Awareness of prejudice by others</p> <p>Implicit discrimination Unintentional discrimination reflecting implicit attitudes</p>	<p>A2</p> <p>Statistical discrimination Perception of unprofitable group characteristics</p> <p>Opportunist discrimination Exploitation of the weak for profit</p>	INDIVIDUAL	SYSTEMIC DISCRIMINATION A1, A2, B1, B2
STRUCTURAL DISCRIMINATION B1, B2, C1, C2	<p>B</p> <p>ORGANISATIONAL POLICIES & ROUTINES, CULTURES</p> <p>Discrimination <i>not</i> as a direct consequence of motives/actions by <i>currently</i> identifiable individuals</p>	<p>B1</p> <p>(Past-in-present discrimination - historically) Historical <i>direct</i> discrimination leading to indirect discrimination in the same sphere</p> <p>(Side-effect discrimination - elsewhere) <i>Direct</i> discrimination in one sphere leading to indirect discrimination in another sphere</p>	<p>B2</p> <p>Indirect discrimination Organisational policies have negative effects <i>indirectly</i>, unintentionally</p> <p>Past-in-present discrimination Organisational policies have indirect negative effects due to historical direct discrimination</p> <p>Side-effect discrimination Organisational policies have indirect negative effects due to discrimination in another sphere</p> <p>Organisational discrimination Work practices & organisational culture disadvantaging minorities</p>	ORGANISATIONAL	
	<p>C</p> <p>BROADER SOCIETAL CONTEXT</p> <p>Laws and social institutions; discrimination not reduceable to individual motives or actions</p>	<p>C1</p> <p>Institutional racism National laws and regulations which discriminate directly on ethnic origin</p>	<p>C2</p> <p>Legal discrimination Laws restricting the access of third-country migrants to employment</p> <p>Institutional discrimination Exploitative forms of work organisation, sub-contracting etc. made possible by national laws.</p>	INSTITUTIONAL	

This just leaves ‘past-in-present discrimination’ and ‘side-effect discrimination’. These are not so straightforward to allocate. Clearly they go in Row B because they are practices at the organisational level. They can be located in Box B1 because the historical discrimination and discrimination in another sphere both operated *directly* on grounds of race or ethnicity. However, it might equally be argued that they should go into Box B2 because the current organisational policies which are having a negative effect are probably not doing this intentionally, and therefore might be said to be operating *indirectly*. For this reason the concepts are located across both boxes B1 and B2.

Having seen how the cross-classification scheme relates to the original six types, we can now see if it can help us to clarify answers to the three questions.

(1) “How do the concepts ‘implicit discrimination’ ‘legal discrimination’ and ‘opportunist discrimination’ relate to the typology of ethnic discrimination, as set out in Figure 1?”

Implicit discrimination is an uncontroversial addition to the typology. Although, unlike racist and societal discrimination, this type of discrimination is not intentional, it operates directly on grounds of race or ethnicity, and so goes alongside them in Box A1. The addition of the other two new types - legal discrimination and opportunist discrimination - might be more controversial. One argument against adding these to the list of conventional types of racial/ethnic discrimination might be that although they do disproportionately affect migrants and minorities, they do not discriminate *directly* on these grounds, and thus should not be seen as a type of ethnic discrimination, because this disproportionate effect is a ‘second order’ type of exclusion. However, other types of ethnic discrimination, which are not contested - statistical discrimination and indirect discrimination - also act only indirectly, as seen by their location in Column 2 in Figure 2. By the logic of the cross-classification figure, both legal and opportunist discrimination can be located in boxes in Column 2, along with these other types. Legal discrimination fits into Box C2. It falls into Row C because it does not operate either at the individual or organisational level – instead it is a result of laws at the national level. And it goes into Column 2 because it operates on the grounds of citizenship, and therefore only indirectly on grounds of race or ethnicity. Opportunist discrimination is rather similar to statistical discrimination. Like statistical discrimination it sits in Row A because it is intentional and carried out directly by individuals, and in Column 2 because it does not operate directly on grounds of race or ethnicity. In this case the action occurs on grounds of the structural weakness of the victims, not their perceived risk of unprofitability. Opportunist discrimination therefore sits alongside statistical discrimination in Box A2. Thus it is reasonable to add these types to the list of types of racial/ethnic discrimination. The cross-classification figure illustrates how these three additions lie in relation to the other concepts.

(2) “To what extent does ‘structural discrimination’ overlap with the terms ‘systemic discrimination’, ‘institutional discrimination’, ‘institutional racism’ and ‘indirect discrimination’?”

We have already noted a difference in the coverage of the concepts of *structural* and *systemic* discrimination. Systemic discrimination covers some elements that structural discrimination does not, and vice versa. We can use Figure 2 to illustrate the similarities and differences between these concepts. We have seen that systemic discrimination, by Craig’s (2007) definition, encompasses several of the types of discrimination already discussed, namely implicit, statistical, indirect and organisational, and including racist discrimination. Structural discrimination, on the other hand, is defined primarily by its characteristic of *not* encompassing individual prejudices or a social agent’s bias against a disadvantaged group (Williams 2000: 64; Cunningham 2000: 48). The differences can be seen clearly in Figure 2. Because both structural and systemic discrimination are broad concepts covering several different types, they do not fit inside individual boxes but encompass several boxes, so that structural discrimination covers B1, B2, C1, C2, whilst systemic discrimination covers B1, B2, A1, A2. Although structural and systematic discrimination do overlap (they have the concepts within

Row B in common), systemic discrimination also includes the individual actions found in Row A, whilst structural discrimination includes the institutional processes at a societal level found in Row C. Thus we can see that structural discrimination and systemic discrimination are not synonyms.

In addition, we can see from Figure 2 that *indirect discrimination* is not a synonym for structural discrimination. Indirect discrimination has a very particular meaning, clearly indicated by its location in Box 2, and is one of a number of types of discrimination coming *under* the broader concepts of structural discrimination and systemic discrimination. The Figure shows that indirect discrimination is not the only type of discrimination that operates indirectly. All of the types of discrimination in the right-hand column can be said to operate indirectly regarding race/ethnicity. However, 'indirect discrimination' refers specifically to a legally-defined term, as set out in the EU's Racial Equality Directive, namely where an apparently neutral provision, criterion or practice puts persons of a particular racial/ethnic origin at a disadvantage compared with other persons.

The Figure can also illustrate the differences between the concepts of structural discrimination and *institutional discrimination*. As we have seen, there are authors with differing understanding of the term institutional discrimination. Samson (2008) labelled the kinds of discrimination rooted specifically in the rules and practices of an organisation as institutional discrimination. For the sake of conceptual clarity, I would like to suggest that this should be renamed '*organisational* discrimination'. This constitutes all activities in Row B, and includes indirect discrimination as an important component, which fits in well with what Samson understood about what he called institutional discrimination. This concept of organisational discrimination, located in Box B2, thereby covers the organisational practices which had been labelled 'institutional racism' in the Runnymede Trust report, such as the elements of employment practices, management priorities and organisational culture that disadvantage migrants and minorities.

I would like to suggest that the term *institutional discrimination* should be differentiated from actions that fall in Row B, and instead be located in Row C, as something encompassing actions at the broader societal level. It should therefore lose the restriction of its meaning to 'organisational'. An appropriate example of institutional discrimination would be the system of exploitation of migrant workers in the Italian metalworking sectors through sub-contracting and ethnic segregation, facilitated by migration laws, as described by Cillo and Perocco (2015). It is a broader system of discrimination, facilitated by law at the national level, negatively affecting migrant workers, but not operating *directly* on grounds of race or ethnicity. Institutional discrimination is therefore not a synonym for structural discrimination. It is located in Box C2, alongside legal discrimination, and is one of a number of types of discrimination falling *under* the broad concept of structural discrimination.

In defining institutional discrimination in this way, we have already started to address the third question:

(3) "How does the variously-interpreted term 'institutional racism' relate to the other types of ethnic discrimination?"

We considered earlier that, logically, institutional discrimination should be different from institutional racism. Correspondingly, if institutional *discrimination* is located in Box C2, it seems consistent this should be matched by the insertion of institutional *racism* into Box C1, as the logic of the figure demands that this box should be filled by discrimination rooted in law at the societal level and operating *directly* on grounds of race or ethnicity.

The initial reaction to this implication is that it would be difficult to find such an example of institutional racism today, as it would be legally contentious and socially controversial for a state to implement laws which differentiate against people directly on the grounds of race or ethnicity. It is, however, easier to see examples of this historically. For example, in 1926 a law in South Africa prevented black mine workers from practising skilled trades; in 1935 the Nuremberg Laws in Nazi

Germany forbade Jewish people from working in the civil service or in government-regulated professions such as medicine and education. These examples would fit the definition of institutional racism in the area of employment according to the dimensions of the concept set out in Figure 2.

But it is also possible to find examples of institutional racism, so defined, closer to the present day. For example Czarina Wilpert (1993) used the term ‘institutional racism’ to describe the constitution and legislation of the Federal Republic of Germany prior to the new Nationality Act of 2000. These were based on the historical belief that modern Germany was legitimately founded on one culture, one ‘volk’ and a biological principle of descent. In practice this meant that new settlers who were ‘ethnic Germans’ had an automatic right to citizenship whereas a ‘non-ethnic German’, who might have had 35 years or more of residence, did not (Wilpert 1993: 73). For Wilpert, this kind of ‘ethnic nationalism’ ideology threatens to become ‘racist’ because it supplies “the logic for social institutions which set boundaries and systematically discriminate against others because of their unchangeable ethnic origins” (Wilpert 1993: 71). Furthermore, by linking access to citizenship to ethnicity, this had potentially restrictive implications for employment, as there are restrictions in the access to German civil service positions for people without German citizenship. By the criteria of Figure 2, this is an example of institutional racism, relevant to employment, which fits into Box C1.

This particular example of institutional racism no longer applies, since Germany changed its laws in 2000. Nevertheless, there have been cases reported in at least one EU country of the existence of regulations which might still be categorised as institutional racism. In Greece in 2005 a legal restriction was introduced by the government which required Greek or EU citizenship *or Greek ethnic origin* for certain occupations (EUMC 2006: 52) In 2009 a lawyer who had acquired Greek citizenship was rejected as a candidate for a public competition for positions in the Judicial Corps of the armed forces on the grounds that the law does not allow a *naturalised* Greek citizen to become a judge. The Ministry of National Defence argued that ‘public interest’ demanded that only “Greeks of Greek blood descent” may become military judges.¹² Such national regulations can be categorised as ‘institutional racism’ because they differentiate legally and directly on the grounds of ethnicity, and therefore belong in Box C1.

We saw earlier that some scholars have argued that the term ‘institutional racism’ should not in any case be used, because, logically, it is not possible for an institution to be racist (O’Grady et al. 2005). But this depends how the term institution is defined. If we use the term ‘institutional’ as applying to the broader institutions of society, including the law, as we have done in the cross-classification figure, then it clearly is possible for there to be institutional racism, as shown by the examples of laws and regulations that discriminate directly on grounds of ethnicity. However, if we replace some uses of the term ‘institutional’ with ‘organisational’, as suggested earlier, then the point made by O’Grady et al. still holds water – there probably is no such thing as ‘organisational racism’. If we could envisage examples of this, they would be located in Box B1.

Conclusions

The aim of this paper has been to clarify the meanings of various concepts of racial/ethnic discrimination, and suggest ways of resolving ambiguities and inconsistencies in their use. A process of cross-classification has been used as a device to assist in this exercise, and to clarify and illustrate the conceptual boundaries of various types of discrimination in relation to each other. In conclusion, we end up with a new typology of 12 types of ethnic discrimination set out in Figure 3, which is based on the cross-classification exercise illustrated in Figure 2, and reproduced in a simplified form.

¹² Ombudsman case no. 4806/2009

Figure 3: A new typology of ethnic discrimination in employment

	Discrimination operating directly re. race/ethnicity	Discrimination operating indirectly re. race/ethnicity	
	1. Racist discrimination 2. Societal discrimination 3. Implicit discrimination	4. Statistical discrimination 5. Opportunist discrimination	SYSTEMIC DISCRIMINATION
STRUCTURAL DISCRIMINATION	(Past-in-present discrimination) (Side-effect discrimination)	6. Indirect discrimination 7. Past-in-present discrimination 8. Side-effect discrimination 9. Organisational discrimination	
	10. Institutional racism	11. Legal discrimination 12. Institutional discrimination	

In the interests of conceptual clarity this exercise has suggested the renaming of some types of discrimination. For example, the term ‘direct or intentional discrimination’ has been renamed more precisely as ‘racist discrimination’; various activities and processes which had been labelled by some authors as ‘institutional racism’ or ‘institutional discrimination’ are now covered by new terms, such as ‘organisational discrimination’. In addition, new ‘types’ of discrimination have been added to the earlier list: implicit discrimination, legal discrimination and opportunist discrimination.

Figure 3 illustrates the answer to the question as to the degree of difference between the various terms of discrimination. Appropriate boundaries are drawn for the concepts of structural discrimination and systemic discrimination, showing them as overlapping but different (structural discrimination encompasses types 6-12 whilst systemic discrimination encompasses types 1-9). The cross-classification process has also indicated respective boundaries for the terms ‘institutional discrimination’, ‘institutional racism’ and ‘indirect discrimination’. In all cases, previous alleged synonyms are shown to be otherwise.

Institutional racism is a concept that has suffered probably more inconsistencies and contradictions in its usage than other concepts in this field. If we try to resolve this more consistently, by using the cross-classification scheme, we get an unexpected result. The dimensions of cross-classification direct us towards a narrow definition of institutional racism, similar to that adopted in the Scarman report, and which was so emphatically rejected by community activists. For the sake of conceptual

consistency we end up with a rather conservative definition of institutional racism in its constricted, literal meaning, and not in the broader political sense as used by civil rights activists in the US.

Finally, it should be emphasised that this paper has been simply an exercise in conceptual clarification. It is an entirely separate question as to whether a particular act of ethnic discrimination that occurs in reality is to be categorised using any one of these concepts rather than another. For example, if a practice of indirect discrimination is truly inadvertent it can be regarded as a kind of structural discrimination, being an organisational practice that is not a consequence of an individual's bias against a group. But in any one actual case, the practice being applied could be a disguised form of direct racist discrimination. Similarly an employer who is operating practices of societal, statistical or opportunist discrimination might also be in reality an ethnically-prejudiced person quietly carrying out acts of racist discrimination. These are questions for empirical investigation, not conceptual classification.

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Author contacts:

John Wrench

Centre for Diversity and Inclusion

NTNU Social Research

Norwegian University of Science and Technology

NO-7491 Trondheim

Norway

Email: john.wrench@samfunn.ntnu.no