

Why an Action That Materially Benefits a Person Can Still Discriminate against Her

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In this article, I propose an analytical framework for a legal interpretation of discrimination. My first claim is that discrimination can be any harmful treatment – and not necessarily a harmful distribution of goods – on the basis of group affiliation. My second argument is that materially benefiting others can still constitute prohibited discrimination because, in some cases, it can harm the dignity of the beneficiaries. My third claim is that materially benefiting others might be considered to be prohibited discrimination also because it can cause profound social harm to equality, to the extent that it reflects or establishes a problematic stereotype about different abilities or desires that the beneficiaries have as compared to others.

The answer to the question whether the same offensive treatment in a specific case constitutes (and not merely can constitute) discrimination is derived from the purpose of the relevant legislation governing the act, and should take into account, inter alia, the extent of the injury, its scope, the possibility of taking alternative measures that are less harmful, possible justifications for the harm, and other factors that are relevant to the correct legal interpretation of any piece of legislation.

In *Meirav v. IDI Insurance Co.*, despite the material benefit of free roadside service to women, there was also a nonmonetary harm to women's dignity stemming from the insurance company's policy's hidden message that women cannot or do not want to change a flat tire, as well as a general social injury to equality stemming from the stereotyped message about gender roles in society. And because no substantive justification for these harms has been provided, this practice constitutes prohibited discrimination.