

# Misrecognition, Media And... Discrimination?

---

KARLA PEREZ PORTILLA  
University College London

Civil society, the international community and a broad part of academia have identified ways in which the media makes a considerable contribution to discrimination via the production and reproduction of demeaning stereotypical depictions. Examples can be found in tabloid reports, images, widely available racist and sexist advertising and programming. This research suggests calling such a phenomenon 'discrimination through expressive means', DEM. The law has been hesitant to act on these issues. Very often this is because, in the light of other fundamental rights, including the freedom and pluralism of the media, it has been deemed inappropriate to address these questions. The main objectives of the paper are to: a) justify that DEM is a problem; b) locate DEM within a broader framework of discrimination; c) describe the way in which DEM as a problem has been dealt with and by whom; and d) determine what the role of anti-discrimination law could be in the redress of DEM.

The paper is a part of a PhD thesis that aims to find out what the weaknesses and potential of anti-discrimination law are in addressing discrimination through expressive means, DEM. This is to say, what could be the role of the law in challenging the printed and audiovisual production and reproduction of images and messages that use demeaning stereotypes, ridicule and denigrate people on the grounds of their membership to a disadvantaged group. One of the most important aspects of this research is that it seeks a dialogue with the various disciplines that have explored the causes and consequences of discrimination. Moreover, the research points out the need for an interdisciplinary methodology in order to understand discrimination as a systemic problem and to develop the necessary strategies for its redress.

I believe that discrimination is rooted in status subordination. This means a lack of power together with disrespect from others towards one's identity. Such status is nurtured and maintained by deep-seated values, cultural assumptions, stereotypes and so on, which manage to litter policies, legislation and everyday 'public' and 'private' interactions. That said, the media is a most powerful agency that maintains oppressive beliefs and manufactures status subordination; for example, by spreading the message that women are sexual objects who enjoy being molested (e.g. in advertising), the media contributes to women's subordination and condones further discriminatory practices. The *modus operandi*, products, resources and attractiveness of the mass media make it both immediately available and a powerful vehicle for discrimination especially in passive consumption societies.

Everyday, many people complain about demeaning cultural representation in the media. It is these people I have in mind when I try to bring issues of

misrecognition and discrimination in the media to the legal agenda. My work tries to articulate, contextualise and give political and philosophical meaning to their complaints, normatively reactivating the equality principle in order to present recurring experiences of degradation as the cause of group-specific disadvantage and discrimination.

Extreme forms of demeaning representation such as violent pornography, child pornography and the incitement to violence or racial hatred have been significantly challenged. However, my interest is in the everyday images and messages (e.g. in advertising, tabloids and entertainment television) which are widely available, perceived as 'normal', and whose criticism is so often trivialised.

The theoretical discussion that follows presents the philosophical and sociological underpinnings with which to consider discrimination through expressive means as a discriminatory practice. Thereafter, some of the legal problems with regard to its redress are discussed.

### **PHILOSOPHICAL ARGUMENTS**

Political theory and contemporary theories of justice understand and explore demeaning stereotypical representation in the media as a problem and as an issue of misrecognition. Examples of misrecognition include:

*"Cultural domination, being subjected to patterns of interpretation and communication that are associated with another culture and are alien and/or hostile to one's own; non-recognition, being rendered invisible via the authoritative representational, communicative, and interpretative practices of one's own culture; and disrespect, being routinely maligned or disparaged in stereotypic public cultural representations and/or in everyday life interactions."* (Fraser Nancy, 2003, p. 13).

The struggle for recognition targets cultural injustices, which are rooted in social patterns of representation, interpretation and communication. The remedy for injustice from the point of view of recognition would imply revaluing disrespected identities and the cultural products of maligned groups; recognising and positively valorising cultural diversity and transforming wholesale societal patterns of representation, interpretation and communication (Fraser Nancy, 2003, p. 13).

Misrecognition through ideas, images and behaviours is manufactured and reproduced in a variety of ways but a most powerful force is the media (printed and audiovisual materials). The power it has to transmit messages that can both demean and degrade targeted groups is what makes it necessary to challenge its practices and products.

## SOCIOLOGICAL ARGUMENTS

Various sociological analyses suggest that discrimination is possible and maintained at many levels all of which reinforce each other. These are structural, cultural, institutional and personal (see Figure 1).

STRUCTURAL	Physical, legal and political structures.
CULTURAL	Stereotypes, 'jokes', media products, 'common sense' arguments.
INSTITUTIONAL	Policies, selection procedures, 'normal' practices of the police, educational establishments, government agencies, workplace, etc.
PERSONAL	Behaviours, attitudes, harassment, bullying and in extreme cases hate crimes.

*Figure 1.* Sociological analysis of the levels at which discrimination operates.

Issues of misrecognition are located at the cultural level. The levels of discrimination suggested are not independent from one another. They are all part of a system that makes discrimination possible. Culture for example, plays a role in them all and conversely they all affect culture. For instance, the personal level of discrimination is possibly the most vivid example of the interdependence and indivisibility of all the levels of discrimination. Whatever psychological dimensions there may be in individual actions, personal aspects of the major forms of discrimination cannot be fully understood outside their structural, institutional and cultural settings (Johnson Andrew, 2005, p. 15). For example, violence against women, rape and harassment fit within patterns of behaviour of a culturally male-oriented society. In the same sense, but at the institutional level, the 'tradition' or 'common sense', often found in the police and even in courts, of blaming women for being raped or harassed, the confinement of women in less paid jobs and the sexualisation and objectification of women in the media are all both an aspect and a consequence of such a male dominated society; and at a structural level, it could be pointed out that legislation has not until relatively recent times begun to punish domestic violence and rape within marriage. To various degrees, these practices have been highly tolerated, 'culturally' justified and even promoted quite often through messages and images in the media.

Considering that misrecognition is both denounced by civil society and the focus of philosophical and sociological debate, the question is whether the law could do anything to redress it and which branch of the law would be the most appropriate. Arguably anti-discrimination law has both the responsibility and the tools to do so.

## LEGAL ARGUMENTS

Even though discrimination is visible in both: issues of misrecognition (status subordination) and redistribution (access to goods and services), anti-discrimination law provisions seem to be primarily focused on remedying injustice through distribution.

Distributive issues are crucial to a satisfactory conception of justice, however it is a mistake to reduce social justice to the distribution of wealth alone (Young Iris Marion, 1990, pp. 15 and 19). The causes of unequal distribution and the social relationships that set their context need also to be explored. Nevertheless, equality rights have been predominantly following distributive aims. They are focussed mainly on securing employment opportunities and in the access to and supply of goods and services while ignoring issues of recognition.

In contrast, in the international arena, the relationship between equality and recognition together with the acknowledgement that the media does contribute to discrimination has been continuously exposed. The following are examples of international instruments that have addressed this relationship and the role of the media:

- Convention on the Elimination of all Forms of Discrimination Against Women. CEDAW, 1979;
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, convention of Belém do Pará, 1994;
- Fourth Conference on Women, Beijing 1995. Platform for Action;
- Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons With Disabilities, 1999;
- Durban Conference Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2001;
- Recommendation of the European Parliament and of the Council on the Protection of Minors and Human Dignity in Audiovisual and Information Services, 2006; and
- General Assembly Resolution 62/154, Combating Defamation of Religions, 2007.

These international and regional instruments from the United Nations, the Inter-American and the European systems for the protection of human rights have called on governments, national and international media systems, non-governmental organisations and media professional associations as appropriate to:

- Create and improve media watch groups;
- Ensure a respectful and inclusive work environment in the media;

- Create best practices that will develop productions free from unlawful stereotypical images; and
- Review and modify textbooks and teaching methods in educational establishments.

As a consequence of both the international pressures and the complaints of the audience, media self-regulatory bodies around the world have introduced provisions within their codes that, even though not legally binding, would preclude discriminatory content. These media regulatory bodies often provide mechanisms to hear complaints. However these mechanisms have various flaws. A most significant one is in terms of legal rights.

For example, the various international instruments that have to some extent been the basis for the codes of practice that address the issue of discrimination through expressive means often require States - and consequently media self-regulatory bodies - to strike a balance between the protection of individual rights on the one hand and freedom of expression on the other.<sup>1</sup> The problem regarding discrimination through expressive means is that balance can only be struck if there are two clearly identified rights with equal value. Freedom of expression is a constitutionally/statutorily recognised right whereas it is not clear whether or not equality rights extend their protection against discriminatory cultural representation.

## CONCLUSION

It is appropriate to evaluate whether it is proportionate to give the targets of discriminatory speech a legal right to complain against such discriminatory practice, bearing in mind the possible harm this could inflict on free speech. In the same sense it is necessary to consider whose speech would in fact be harmed. In most of the cases it is the advertising industry and entertainment television that are profiting from discriminatory speech, speech that could hardly be said to contribute to democracy.

Considering the arguments expressed above, it is clear that, as a constitutionally/statutorily recognised right, courts protect free speech. However, in order to redress the misrecognition of certain identities through the media, the law needs to acknowledge a right to complain. This would mean that for the first time equality and freedom of expression will be assessed in an equal playing field. Such a right to complain needs to address both the 'who' and the 'what' of this kind of discrimination. The 'who' refers to the media industry that

---

<sup>1</sup> Council Recommendation 2006/952/EC of 20 December 2006 on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and on-line information services industry [2006] OJ L378/72, para. 5 '[The Community] should act with greater determination [in the area of audiovisual and information services] with the aim of adopting measures to protect consumers from incitement to discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation and of combating any such discrimination. Such action should strike a balance between the protection of individual rights on the one hand and freedom of expression on the other, in particular with respect to Member States' responsibility for defining the notion of incitement to hatred or discrimination in accordance with their national legislation and moral values.

profits from the production and reproduction of DEM. Here as well are issues of the allocation of responsibilities. DEM is a 'team practice'. It depends on producers and spaces available for their display. Likewise, the 'who' of misrecognition includes 'who tells the story?' This means the exclusion of certain identities from participating in the development of media products – that is to say, the lack of diverse perspectives and the silencing of some of them. The 'what' of discrimination refers to the media product in this context. This involves the evaluation and challenging of demeaning stereotypes, forms of ridicule and denigration. This needs to be done through an assessment of the disadvantage that the media products cause to already disadvantaged groups and the examination of whether or not the product is discriminatory. To do this, media regulatory bodies and equality commissions need to take into account both free speech and anti-discrimination law's doctrine and case law along with the arguments provided by the subjects involved in the dispute. This is to say that procedurally, a right to complain cannot only be dealt with by media self-regulatory bodies (as is mostly the case nowadays). It should be dealt with by both media regulatory bodies and the relevant equality commissions, taking into account the concerns and arguments of the targeted groups, civil society and other key, informed and interested parties.

This does not mean that a right not to be discriminated against through messages and images in the media will always triumph over the freedom of the media. However, it does mean that the balance that is often preached as being necessary between equality and free speech could actually be struck, by having two rights with equal value. To make this effective, anti-discrimination law needs to acknowledge that the production and dissemination of demeaning stereotypical depictions in the media are discriminatory practices that play a significant role in a bigger system of discrimination that operates at various interacting levels. Anti-discrimination law is supposed to protect and enhance human dignity, which encompasses feelings of self-esteem and self-respect. These 'feelings' are constructed socially and depend on how one is treated and portrayed by others. It is for this reason that the complaints of those who have identified themselves as being the target of demeaning stereotypical depictions based on their membership to a disadvantaged group need to be taken seriously.

The law cannot deal with these issues alone. Judges and lawmakers need to be in permanent dialogue with various disciplines such as anthropology, sociology, psychology and others that can contribute to determining the harm certain behaviours produce and also design the best way of challenging them. This is particularly necessary in order to expose and then tackle the causes and driving forces of discrimination at levels that the law has not yet explored.

## REFERENCES

- Barendt, E. (2005). *Freedom of Speech*, 2<sup>nd</sup> ed. Great Britain: Oxford University Press.
- Dworkin, R. (2000). *Sovereign Virtue. The Theory and Practice of Equality*. USA: Harvard University Press.
- Fredman, S. (2002). *Discrimination Law*. Great Britain: Oxford University Press.

- Fraser, N. & Honneth, A. (2003). *Redistribution or Recognition? A Political-Philosophical Exchange*. USA: Verso.
- Grant, E. (2000). 'Disadvantage and Discrimination: The emerging jurisprudence of the South African Constitutional Court', *Northern Ireland Legal Quarterly*, Vol. 61, No. 2.
- Hepple, B. Coussey, M. & Choudhury, T. (2000). *Equality: A New Framework*. Report of the Independent Review of the Enforcement of UK Anti-discrimination Legislation, The University of Cambridge, Centre for Public Law and Judge Institute of Management Studies: Hart Publishing.
- Johnson, A. (2005). *Social Justice in Professional Roles*. Strathclyde University, Faculty of Education.
- MacKinnon, C. (1993). *Only Words*. Harvard: Harvard University Press.
- Young, I. (1990). *Justice and the Politics of Difference*. New Jersey: Princeton University Press.

### **AUTHOR BIOGRAPHY**

Karla Perez Portilla is currently a PhD student at University College London. Her current research is anti-discrimination law and freedom of expression. Email [k.portilla@ucl.ac.uk](mailto:k.portilla@ucl.ac.uk)