

May 15th, 9:00 AM - May 17th, 5:00 PM

Prejudice, prudence and fairness

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Title: Prudence, Prejudice, and Fairness

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Some of us are inclined from time to time to make judgments about people on the basis of a number of group defining characteristics among which may be included such characteristics as race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap¹. Following the Ontario Human Rights Code, from which I took this list, I'll call these the "prohibited" characteristics. Acting on the basis of such judgments in a political or business context where a specific individual's welfare might be negatively affected is not only frowned upon, but actually forbidden by law, hence the word "prohibited." Nonetheless, it can be argued that such actions are no more than prudent. Prudent or not, the word "prejudice" is commonly used to designate such judgments and it commonly carries a powerful negative connotation. Clearly, prejudice is considered defective in some way, and in this paper I am interested in determining precisely what kind of defect, if any, ought genuinely to be associated with it. I will do this by asking two questions: 1) is prejudice *rationally* defective? That is, is it an instance of fallacious inference, and 2) is prejudice *morally* defective? Two further philosophically interesting questions arise from the discussion: 3) Are there circumstances under which the use of certain kinds of evidence ought to be made illegal?, and 4) Is it possible that there exist inferences that are rationally *unobjectionable* but yet morally objectionable?

1

To begin, I am thinking of a very simple sense of prudence in which it amounts to being directed in practical matters by a consideration of comparative likelihoods. Thus, if we compare three groups A, B, and C of one hundred each, where A includes 25 bad apples and 75 good ones, B includes 50 bads and 50 goods, and C 75 bads, 25 goods, then in seeking a good apple it would be more prudent to select from the A group than the B, and more prudent to select from the B group than the C. Though not all prejudice is of this kind, it is only this kind that presents us with philosophical puzzles and I'll call this simply 'prudential prejudice'. Prudential prejudice, then, is a judgment of practical reason, one that leads to action directly or by way of a policy, that is based on probabilistic evidence using the prohibited characteristics.

The puzzles presented by prudential prejudice are these:

(1) It is unobjectionable when applied in non-human contexts, but objectionable in one human context. Why?

(2) It is unobjectionable even in the human context when *benefits* are being distributed or when neither benefits nor harms are being distributed, but objectionable only when possible harms are contemplated. Why?

(3) While neither circumstantial evidence nor probabilistic evidence logically entails a conclusion, the former is unobjectionable as evidence even when possible harms are being distributed, while the latter evidence is objectionable. Why?

Before addressing these puzzles directly, let me get two preliminary points out of the way. First, while I am focusing on the prohibited characteristics, the resistance to the use of the probabilistic evidence is not limited to them; we would also be reluctant to form conclusions about an individual from data compiled, for example, on his occupation. Where the probabilistic evidence is based, however, on the prohibited characteristics, that reluctance is given the force of law. Second, I indicated earlier that not all prejudice is prudential prejudice and let me here indicate what the other kind is. At least one thing that we would expect of a rational person is that their beliefs respond equally to contrary evidence as to positive evidence. There are clearly people, however, who are unresponsive to contrary evidence and in this respect are neither rational nor prudent, though they may well be prejudiced. For the sake of a term, I'll call this "irrational prejudice" and stipulate without further discussion that it is both rationally and morally objectionable.

What I am calling "prudential prejudice," then, is nothing more than an egoistic practical inference based on prohibited group information, an inference that has been forbidden by law. What could be the intuition that informs such a proscription? Is it simply that prejudice is bad reasoning? On the face of it, it would seem not. We can see the reason by considering the three puzzles I mentioned earlier. All other things being equal, it cannot be that an inference type is rationally unobjectionable in one context, but bad in another, and that is what seems to be the case with prudential prejudice. Consider puzzle One.

When human beings are not involved, the question of how good this sort of reasoning is does not arise; indeed, in some cases we have even less evidence and still use it in good conscience to make significant decisions. Thus, when a neighbor's Pit Bull bites even a single child, we tend to take into account not only the bite, but also the breed of the dog and very frequently we have the animal put down. We are more likely to do this with a Pit Bull because we believe, rightly or wrongly, that this breed of dog is frequently involved in dangerously aggressive behavior and thus a dog of this breed who has once bitten is likely to bite again. The key is that our decision respecting the dog is at least partially based on a generalization concerning dogs of his breed². Our intuition with respect to human beings seems to be different, however, and we see this intuition reflected very explicitly in law. Our law insists that we not discriminate against individuals on the basis of the groups to which they might belong, though our information about such groups might well be more extensive and more reliably collated than the information concerning the dog.

This is generally true, and not only where the prohibited characteristics are concerned. For example, that the fact that rapists tend to be recidivists should not affect our behavior towards a newly released rapist. The underlying principle seems to be this: where human beings are concerned, we ought never to harm them or form policy that might harm them on the basis of group information. Thus, we seem to allow a kind of reasoning with respect to non-human creatures that we do not allow for human. But perhaps the reason is still one having to do with the quality of the reasoning, not merely the fact that there are humans involved. This could be the case, for example, if such evidence was of inherently poor probative value, and while we might be willing to use such putatively poor evidence for the non-human, we refuse to risk human welfare on it. This would make the objection to prudential prejudice a moral one whose ground is that the use of prudential prejudice is unfair because of its essential probative weakness. Yet we may ask whether the prohibited information is necessarily probatively weak. This leads us to the next puzzle, that the use of prohibited information is allowable where benefits are concerned, but not where harms are concerned.

As it happens, prohibited information is not always sloppy or unreliable; in fact, it is frequently a demonstrably good predictor and is used with astonishing accuracy where it is allowed. We have, for example, seen the allocation of significant social benefits whose legislation was justified by appeal to statistics of the prohibited kind. The most dramatic example of this is affirmative action in which members of specific groups defined by one or more of the prohibited characteristics are given benefits because the members of those groups have been and are still, it is argued, being disadvantaged. On the other hand, the law would not countenance restrictive immigration policy being set by appeal to similar statistics. Prudential prejudice is also allowed in places where the conclusions drawn will have no direct practical effect of any kind on the lives of a prohibitively defined group. It is the stock in trade, for example, of pollsters to predict how the individuals who make up specific groups will vote. Thus, the pollsters tell us that the aged will vote one way, the black population another, white males one way, women another, homosexuals in such and such a way, and so forth. Insurance actuaries tell us which groups are most at risk with respect to this and that and set their premiums accordingly even when the characteristics involved are on the prohibited list. The only difference between what the pollsters and actuaries do routinely without public outrage, on the one hand, and prudential prejudice, on the other, seems to be that the results of the "prejudice" are thought to have potentially harmful effects for the individuals about whom the predictions are being made while the pollster predictions do not.

I must add, at the risk of being provocative, that while popular culture has made a rich theme of the evils of prudential prejudice, dramatizing cases in which such inferences fail, there is little attention given to the question of how *successful* prejudicial inference might be. This would seem to be an empirical question; we *do* know that there can be false inferences from prohibited information, but what we don't know is whether over a long run prudential-

prejudice-based inferences would reduce, improve, or not affect in any way our rate of making true predictions about people. Do we actually know on an empirical basis that expecting this or that behavior from As, Bs, or Cs on the basis of their records as As, Bs, and Cs is *less* prudentially successful than not? This does not seem to be a question that could be resolved *a priori*, but the success of insurance companies suggests that prudential prejudice is likely a very effective risk management strategy.

We know that if even if it were empirically confirmable that prejudice is *more* prudentially successful, there would still be the sense that there was something wrong with it. But what? It is difficult to see, but the objection always seem inevitably to involve a tacit upward adjustment of the probative standard bar. That is, even when the objection is initially couched in terms of fairness, the appeal is actually to the unfairness of using evidence that is *probatively too weak*. In what follows, I will suggest that the probative demands made on prejudice are far higher than those made on other non-deductive forms of evidence, thus we are being unfair to prejudice. The truth of the matter is that any form of reasoning short of valid deductive reasoning leaves room for the possibility that truth will not be preserved from grounds to conclusion; but unless we are willing to follow the Cartesian path of restricting ourselves to absolute certainty, this single feature of prudential prejudice would not seem to isolate it for proscription. In order to fairly proscribe prejudice on purely rational grounds, we should have to know something more than that it is not entailment, specifically that it is *not* the case that more often than not, it yields better than random results. Even this, however, would not explain the fact of *legal* proscription unless we were willing to make poorly based practical reasoning in general illegal. If we did this, then most of us, including perhaps all of our elected and appointed government officials would already be subject to penalties under that law.

This suggests most strongly that the operative consideration against prudential prejudice is not that it has some rational defect. It is not demonstrable that it is necessarily bad reasoning, but even if it were, that would still not suffice to have it prohibited by law.

2

What, then, is still objectionable about prudential prejudice? I think our first inclination is to say that acting on the basis of prohibited group information while perhaps not irrational is *unfair*, and that what we may have here is a moral, not a rational, objection to a kind of practical reasoning. Our first puzzle was that prudential prejudice is unobjectionable when applied in non-human contexts, but objectionable in one context of the human. This fact by itself should be sufficient to indicate that our objection to prudential prejudice is at the very least moral, though it might also yet be rational. The reason is that, for the most part, we think that "fairness" is something that only applies to human beings. Putting down the Pit Bull does not ordinarily open us up to a charge of unfairness simply because our decision was based on our group information

concerning this breed. We are certainly never charged with unfairness for killing a grub because we believe that members of its kind destroy the roots of grass. What remains to be teased out is the intuition that underlies the charge of unfairness here, and it is important to see that while the predictive reliability of the prohibited information involved might vary, the reluctance to base action on such prohibited group information persists even when the reliability is judged to be reasonably high. Why is this?

I suspect that the moral intuition supporting the resistance to prudential prejudice is that it is unfair for someone to be penalized for something that others have done. It is easy to show that this unfairness exists when we make punitive policy that is based on group information and implemented equally with respect to every member of that group. Thus, a teen-aged male might well protest the high cost of his automobile insurance on the ground that he, personally, is a responsible driver, though he acknowledges that the statistics on young male drivers are very bad. The obvious defect in such policy is that it rains equally on the just and the unjust, it does not distinguish, and thus, for the sake of a prudential benefit, innocents are harmed, which is unfair to the innocents. The perceived unfairness of punitive policy based on group information can easily be extended to cases in which an individual uses prudential prejudice in making a decision about another single individual. The reason is simply that such an individual is actually implementing a policy much as the insurance companies do. If the person who is disadvantaged by such a decision is actually innocent, then that person might well claim to have been unfairly treated. It seems wrong to be penalized for something that others have done.

While this is a powerful moral intuition, it is not without problems, but before addressing those, let us note that it may be this intuition that helps explain our third puzzle, namely that while neither circumstantial evidence nor probabilistic evidence entail conclusions, the former is morally acceptable, while the latter seems not. The reason may simply be that prudential prejudice is not in any way essentially tied to the identity of the person under consideration and is thus indifferent to the question of individual guilt. Group information only increases the likelihood that an individual of a certain *kind* is the one we seek or want to avoid but it fails to increase the probability that any specific individual within that group is the one we seek or want to avoid, it's narrowest focus is the group, while we are concerned about an individual. Good circumstantial evidence, on the other hand, immediately makes it more likely that Jones is our man because it is Jones specifically who best resolves the equation set by the circumstantial evidence. The fact that the identity of the individual is an essential ingredient in the circumstantial evidence diminishes, though it does not eliminate, the chance that some other individual might also fit the circumstances and be the real guilty party. Prudential prejudice, however, is based on considerations utterly blind to the specific details of personal identity and, in certain kinds of case, is guaranteed to penalize the innocent as well the guilty.

But is this really a sufficient reason for dispensing with prudential prejudice or making it illegal? After all, there is no reason why this kind of reasoning, so successful in non-human contexts, should not be used at least in conjunction with other forms of reasoning more tied to individual identity. Further, while it is true that such information does not help to isolate a specific individual, it can shrink the size of the group within which we are well advised to search. If As are very likely to do Q, but Bs are not, and I have to choose between Jones, who is an A, and Smith, who is a B, then it is more likely that it was Jones who did Q. And we have seen that even in the case of the human, in at least the special case of Affirmative Action, public policy is based on prudential prejudice, and we have seen that insurance pricing is based on prudential prejudice. Why should not individual businessmen, then, be allowed to apply the same kinds of reasoning to their own operations? We did note above that one strong intuition supporting the proscription of prudential prejudice is that it allows for the punishing of the just and unjust alike, and this is unfair to the just. But is the right to fairness unconditional? Everyone has an equal claim on fairness, the employer as well as the employee, the landlord as well as the tenant. The risk on the tenant side is that a perfectly good renter be refused an accommodation on the basis of a general prudential policy, but on the landlord side, the risk is that an honest landlord be trapped with a terrible tenant whom he would have avoided but for the prohibition on prudential prejudice. At best, this seems a stand-off in the unfairness competition. Why then prohibit prudential prejudice?

In fact, as the two above examples indicate, we *do* allow prudential prejudice, though when it is allowed, we don't call it "prejudice," although this is precisely what it is. Perhaps the thing to do is to examine two of the factors that seem to govern allowed non-beneficial uses of prohibited information. The two I have in mind are 1) gravity of risk, and 2) likelihood of risk. When deciding on whether to act on prudential prejudicial grounds, we tend to take the two factors into account in a subjective calculation which is far from representable as an algorithm. When a mother tells her little daughter to avoid older men in raincoats who approach her in the playground, she is coaching her child in both sexism and ageism, but she is yet correct both on rational and on moral grounds. The reason in this case is that while the likelihood of the risk is moderately low, the gravity of the risk is very high. The fact that being molested is such a terrible thing for a child makes a prudential prejudicial decision warranted. The implication of this is, of course, that some perfectly nice avuncular old man will be publicly spurned by a child, which is unfair to him, but this seems small price to pay for the safety of the child. All of this yields the commonplace truth that in the world of moral judgments, fairness is frequently a competitive matter in which not everyone wins. Prudence sometimes trumps fairness, but in general, the society has decided in favor of fairness. On the other hand, prudence and fairness are not the only possible conflicts. Once the state has inserted itself into the issue by actually proscribing a form of justification in the making of business decisions, the potential conflict becomes one between individual and state. The examination of prudential prejudice reveals the well-known and unhappy truth that what may be prudential as public

policy may not be prudential as personal policy: the interests of the state and of the citizen do not always coincide.

Our history has revealed some very horrifying instances of state-sanctioned irrational prejudice practice on huge scales, involving countless innocent victims. Modern Western Society has decided publicly that this kind of reasoning is to be prohibited because it has shown itself to be frighteningly abusable. Society seems now to have the same kind of aversion to prudential prejudice that we are now showing towards the gun, an instrument that is capable of a justifiable use, but one which more and more people distrust in the hands of their neighbors. As in the case of the gun, while it is perhaps the better public policy to prohibit the use of prudential prejudice, this prohibition might well earn an innocent individual harm for want of its protection. A more measured response to prudential prejudice might be more reasonable, one in which we acknowledge both the strengths and the limitations of this inference; it would seem imprudent to discard it out of hand, but not immoral to apply it judiciously with an appropriate respect for contrary information.

Endnotes

1[1981, c. 53, s.1; 1986, c.64, s.18(1).]

2Recent new television item on "Extra" (1/23/99) concerns new home owners' insurance regulations which do not extend coverage to families owning Pit Bulls or other aggressive dogs. This is not discrimination against the animals, nor would it could as discrimination against the families since the operative factor is not on the prohibited list. Notwithstanding, it does show that we are content to apply group information analogous to that of race in humans in a predictive way with a high level of confidence to mammals other than the human without being charged with unfairness.