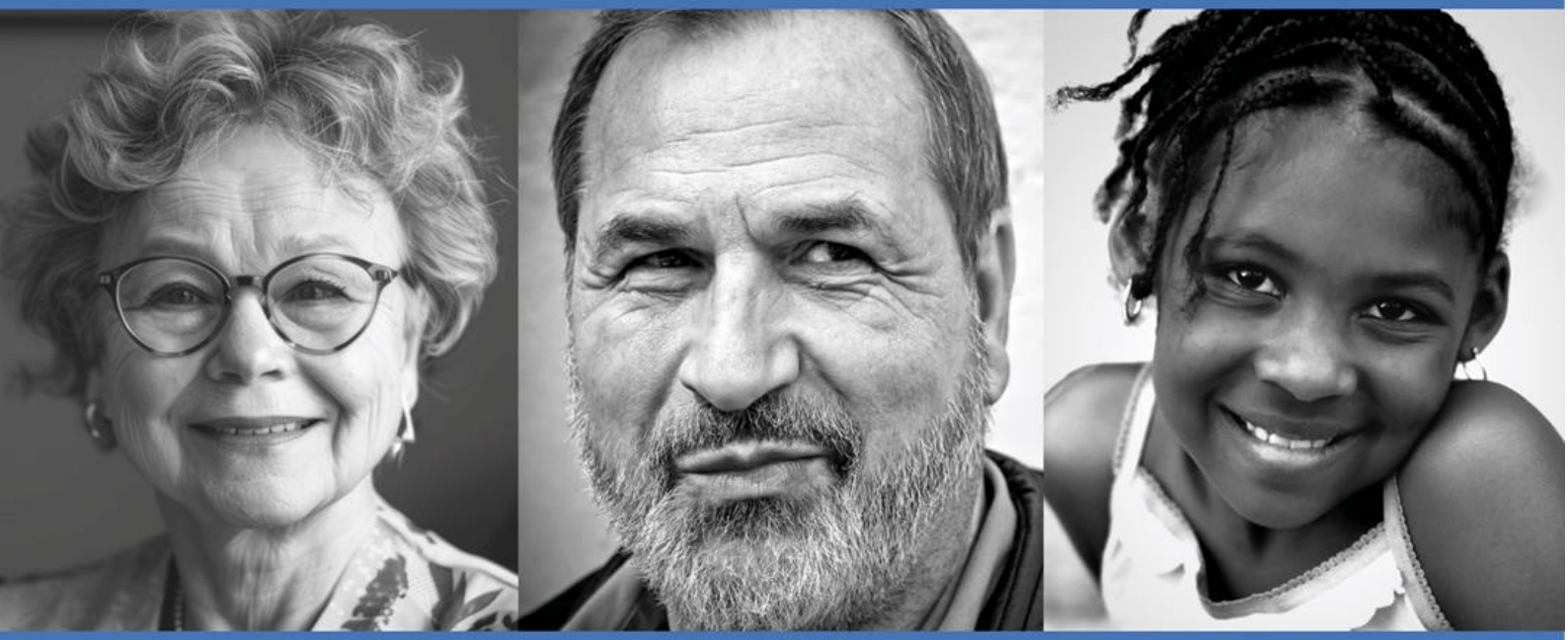
ANTI DISCRIMINAZIONE

Teorie e Pratiche

Why a journal on anti-discrimination law

Editorial Board



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Why a journal on anti-discrimination law

Why a journal on anti-discrimination law? The first, and likely most obvious, answer comes from David Oppenheimer, co-director of the Berkeley Centre on Comparative Equality and Anti-Discrimination Law, of which some of us are members, whose contribution we publish in the opening pages of this first issue. Equality, as a value and a guiding principle of public policies and private relations, is under attack in many places and from many quarters. In particular, it is under attack as substantive equality, recognising and protecting the differences that constitute individuals and combating those differences which can limit freedom and opportunities in life. Bizarrely, such attack is brought in the name of freedom and universalism.

To discuss the current 'war' against equality, which we hear about overseas and which affects us more than we realise, Oppenheimer begins with 19th-century English liberal thinker, John Stuart Mill. He recalls Mill's fight against slavery, for universal suffrage and women's rights, and for Irish self-determination. Mill also campaigned against the repression of black workers' protests and for the legalisation of trade unions and cooperatives.

Curiously, Oppenheimer is inspired by a man who lost all his political endeavours, including his Parliamentary seat to a wealthy, conservative bookseller. However, while few of us have heard of his rival, the same cannot be said of Stuart Mill, who, as he approached the end of his life, triumphed in the battle for the admission of Catholic and Jewish students to Oxford and Cambridge - a battle fought in the name of diversity and the richness that comes from seeing the world through other people's eyes.

This prompts a few considerations. Firstly, we must always clarify the meanings of the words we use and, if necessary, transform them. We must also carefully distinguish the models that inspire public discourse. While today's libertarian theories consider any attempt to increase social and economic equality to be a form of coercion, the idea upheld by the author of *On Liberty* is one of the ideal foundations of anti-discrimination protection. This makes

discrimination primarily a question of violated freedom, and more specifically, the freedom of the individual to self-determine and self-define, escaping the categorisations imposed by those with the power to label people. Similarly, Olympe de Gouges's idea of universalism, advocated in the previous century, is an inclusive universalism, rather than a falsely neutral universalism designed on a scale that includes only one gender and one race. Including women in the Declaration of Rights meant including everyone, regardless of sex, race or social status.

Nevertheless, invoking principles that date back to the Age of Reason and the initial Bills of Rights would not suffice to explain the other social and class inequalities referenced in Article 3, paragraph 2 of the Italian Constitution — a 'mythical' provision that encapsulates the socialist tradition's contribution to the concept of equality. This is an idea of active and transformative equality, or perhaps, as a renowned constitutionalist believed, a sincere one. In the pages of this Journal, therefore, we would like to discuss the 'exceptionalism' of our Constitution compared to most post-war ones. We would also like to discuss how we have had to realise over time that modern constitutionalism did not sufficiently consider what Iris Young called the 'grammar of bodies', which tells us how bodies are classified, evaluated and hierarchised. Nor did it sufficiently consider how important subjective differences are, and how their valorisation promotes a more equitable and democratic society.

David Oppenheimer's account also reminds us that the battle for equality is never won or lost once and for all, and that we must therefore continue to talk about it. As scholars of equality, now is not the time to remain silent or ignore the reasons why equality is under attack. In this issue, we discuss some of these reasons, which refer to a complex set of social, economic, ideological, and even anthropological factors that we hope to explore with our readers. Interestingly, some of these reasons also refer to the positive outcomes of anti-discrimination policies and legislation. While there have been numerous and obvious failures — the clearest sign of which is the persistence of racial, gender, and class segregation — there have also been numerous and obvious achievements. The paradox is only apparent. Even if justified, the battles won (inside and outside the courtrooms) give rise to feelings of revenge that should not be ignored because they often cause deep social hatred.

From a strictly legal perspective, the Italian Equality Network (IEN) website, which initiated this project and will host the journal while continuing to collect and analyse data on discrimination, has extensively covered the

accomplishments and shortcomings of anti-discrimination law through the perspectives of judges, solicitors, barristers and legal scholars. We will continue to do so in *A\D*, beginning with this first issue. We will analyse the complex yet fundamental technical tools of the anti-discrimination system, starting with equality bodies — both current and future — if and when recent European directives on the subject are going to be implemented. We will also discuss the theoretical and practical issues that arise in multi-level legal systems when religious freedom is addressed, as well as rulings in favour of the rights of non-traditional families. We will also discuss the basic assumptions of these strategies for fighting for rights: namely, the clear 'anti-majoritarian' choice of 'being on the wrong side' when remaining silent would otherwise be the norm — a characteristic of anti-discrimination law.

We named the journal *Anti\Discriminazione* because our recording efforts and theoretical works are primarily based on the experiences of people who have suffered injustice and discrimination, and the practical and moral dilemmas that arise from the underlying distributive and cultural conflicts. This does not mean that we will ignore the richness created by diversity, beginning with gender differences. This richness is sometimes reflected in the law, particularly when it is open to the perspectives of those affected.

For all these reasons, at the start of this new undertaking, we would like it to be motivated by the words of another exceptional individual whom we like to look to in times such as the ones we are living. Like Rosa Luxemburg, we aspire to a world where people are socially equal, humanly different and totally free'.