

## Chapter 5: Substantive Opportunity

Procedural Fairness concerns the process through which individuals are selected for positions of advantage. The requirement I have called Substantive Opportunity concerns the education and other conditions that are necessary to become a good candidate for selection through such a process. This requirement is fulfilled if no one has a valid complaint that they were not able to compete for positions of advantage because they did not have sufficient access to conditions of this kind. The questions I will be concerned with are how this requirement should be understood and how it is to be defended.

The frequently-heard claim that in America even a poor child who works hard can grow up to be rich would seem to indicate that an idea of equality of opportunity including at least some measure of substantive opportunity is widely endorsed, or at least given lip service, even by many on the right.<sup>1</sup> Relatively little is said, however, about the justification for this substantive requirement.

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<sup>1</sup> There, however, are some who reject substantive equality of opportunity. Hayek, for one, firmly rejects it, while accepting the weaker formal version of equality of opportunity, which he understands to mean the absence of discrimination and a policy of “careers open to talent.” He writes, for example, that there is no more reason to object to differences in children’s prospects that result from differences in family wealth than there is to object to differences that result from different genetic endowments, which children also inherit from their parents. (*The Constitution of Liberty*, p. 94.) His thought, perhaps, is that neither of these factors is under a person’s control, and therefore that a child deserves no more credit for the latter (talents) than for the former. I have explained above how the justification for allowing greater rewards for those with “talents” does not depend on an assumption that they deserve these rewards or can “claim credit” for their abilities. Robert Nozick also rejects equality of opportunity in this strong form. (*Anarchy, State and Utopia*, pp. 235-239.) This is unsurprising, given that in his view inequalities can be justified simply by the fact that they result from the choices of individuals exercising their property rights.

Such a justification would have to go beyond the justification for procedural fairness that I presented in the previous chapter. As long as there are a sufficient number of candidates who have the skills needed to make positions of advantage serve the purposes that justify them, the justification for these positions provides no reason to help more children develop the abilities to qualify for them. And even if the needs of an institution did provide reason to invest in developing a larger pool of qualified applicants, this would be a reason founded solely in the need for “human capital” rather than in a requirement of justice.<sup>2</sup>

A version of Substantive Opportunity as a requirement of justice is part of what Rawls calls “Fair Equality of Opportunity.” He states this as follows:

those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system<sup>3</sup>

Rawls introduces Fair Equality of Opportunity without much explicit argument, presenting it as his favored interpretation of the idea that inequalities must be “open to all.” James Buchanan endorses a requirement of substantive access to opportunity (although not *equality* of opportunity, which he believes is unrealizable) on similar grounds. When there is only “one game in town,” Buchanan says, everyone must be given “a fair chance of playing.”<sup>4</sup> Buchanan believes that differences in family

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<sup>2</sup> Milton Friedman offers such an argument for “vocational and professional schooling.” He sees expenditure on primary and secondary schooling as justified by the “neighborhood effects” of having an educated citizenry. See *Capitalism and Freedom*, Chapter VI. This is a good reason for funding public education, but not the only reason.

<sup>3</sup> *A Theory of Justice*, p. 73.

<sup>4</sup> “Rules for a Fair Game: Contractarian Notes on Distributive Justice.” Buchanan also writes, “Properly interpreted, ‘equality of opportunity,’ even as an ideal, must be defined

circumstances are the main obstacle to everyone's having such a fair chance. To counteract this unfairness, he believes that good public education for all and limits on the intergenerational transfer of wealth should be "constitutional requirements," even if this involves some sacrifice in individual liberty and in economic efficiency.

The openness that Buchanan has in mind seems clearly to apply not only to positions for which individuals are selected through some process such as university admissions and merit-based selection for employment but also to such things as success through starting one's own business. Limits on inheritance can prevent children from richer families from having an unfair advantage in achieving the latter kind of success. But giving everyone a fair chance of playing would seem to require also that poor children have at least some initial access to capital and credit. This could be achieved through minimum inheritance for all, as proposed in different forms by Anthony Atkinson, and by Bruce Ackerman and Anne Alstott<sup>5</sup>

It is an interesting question why Buchanan takes this strong position on substantive opportunity, in contrast to the views of other supporters of the free market such as Hayek and Milton Friedman. The answer, I believe, is that unlike them,<sup>6</sup>

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as some rough and possibly immeasurable absence of major differences in the ability to produce values in whatever 'game' is most appropriate for the particular situation for the person who participates." p. 132.

<sup>5</sup> See Atkinson, *Inequality: What can be Done?* pp. 169-172, and Ackerman and Alstott, *The Stakeholder Society*. Both credit the idea to Thomas Paine's *Agrarian Justice*. The case for such measures will be stronger the greater the importance attached to entrepreneurial success of this kind. John Tomasi argues that theorists such as Rawls attached too little importance to this kind of opportunity. See *Free Market Fairness*, pp. 66, 78, 183. But Tomasi's response takes the form of constitutional protection for economic liberties rather than measures to guarantee the ability to make use of these abilities.

<sup>6</sup> Hayek seems to have been mainly a consequentialist, and also defended free markets on consequentialist grounds (what he calls grounds of "expediency") although he indicates

Buchanan was a contractarian.<sup>7</sup> Like Rawls, Buchanan believed that institutions must be justifiable to everyone who is required to accept and participate in them.<sup>8</sup> He thought that that this requirement of justifiability is not met if desirable positions in the society are not “open” to all members, regardless of the family into which they are born. One cannot ask individuals to accept and abide by the rules of a “game” that they did not have a fair chance to play.

I will begin with a question about the rationale for this requirement of openness and the range of positions to which it applies. Rawls states this requirement as a condition

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that he also “takes the value of individual liberty as an indisputable ethical presupposition.” See *The Constitution of Liberty*, p. 6.

<sup>7</sup> The subtitle of his article was, “Contractarian Notes on Distributive Justice.” Also, in “A Hobbesian Interpretation of the Rawlsian Difference Principle,” Buchanan says that he and Rawls “share quasi-Kantian, contractarian presuppositions as opposed to a Benthamite utilitarian conception.” (p. 22.) And he remarks in his book with Richard Musgrave, *Public Finance and Public Choice*, that he and Musgrave are both “basically” contractarians, and that “I don’t like to acknowledge that I am a utilitarian at all.” For Buchanan’s long and respectful intellectual correspondence with Rawls, see Sandra J. Peart and David M. Levy, eds. *The Street Porter and the Philosopher: Conversations on Analytical Egalitarianism*, pp. 397-416.

<sup>8</sup> There are different views about the sense in which institutions need to be justified to those who are asked to accept them. In my view, principles of morality and justice are determined by the relative strengths of the reasons some have for objecting to the burdens it involves for them and the reasons others have for objecting to alternatives that would not involve these burdens. (See *What We Owe to Each Other*, Chapters 4, 5.) Buchanan’s view of justification may lack this explicitly comparative character, but it is based on the reasons individuals have because of the way their interests would be affected under various principles. (See the works by Buchanan cited in the previous footnote.) Gerald Gaus, by contrast, holds that an institution or policy is justifiable only if every citizen has sufficient reason to prefer it to no regulation at all of the aspect of life in question. The reasons he takes to be relevant are ones based on each citizen’s actual normative outlook, including his or her actual views about morality and justice, whatever these may be. Some citizens may hold minimal moral views about what they can be required to provide for others, and this leads to a correspondingly minimal conclusion about what the state must, or even may provide, since Gaus’s requirement of unanimity gives these citizens a veto over anything more demanding. (See *The Order of Public Reason*, Chapter VI, esp. pp. 363-366.)

that must be met in order for social and economic inequalities to be just. His initial statement of his second principles of justice holds that “social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage and (b) attached to offices and positions open to all.” (53) the further specification “under conditions of fair equality of opportunity” is added later (72) as Rawls’ favored interpretation of openness. This suggests that the requirement of openness is a condition that must be met in order for social and economic *inequalities* to be just. It would follow that the positions to which this requirement applies are just those to which unequal rewards or privileges are attached. Call this the “just inequality rationale” for the requirement of openness.

A broader and more demanding idea would be that it is a serious objection to a society if some people are barred, by discrimination or by not being born into sufficiently wealthy families, from pursuing careers for which they are qualified and which they have good reason to want to pursue, whether or not these careers are ones to which special rewards or privileges are attached. This would include, for example, such careers as being an artist or a musician, even if these are not better paid than many other careers in the society. This broader requirement has considerable plausibility as a requirement of substantive opportunity: it is an objection to a society if qualified individuals have no significant chance to qualify for desirable careers requiring higher education unless they are born into a wealthy family.<sup>9</sup> Let me call this the “self-realization rationale” for the

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<sup>9</sup> George Sher defends a broader requirement of this kind in his *Equality for Inegalitarians* (p. 157) he writes that “the state is obligated to render each citizen as able to live effectively as he can be” where living effectively means “embracing ends that we in fact have reason to pursue, conceiving and adopting plans to accomplish those ends, and executing the plans in ways that are efficient and flexible.” As stated, this is a non-

requirement of openness. I mention these two rationales because each has independent appeal, although the narrower “just inequality” rationale may be easier to defend.<sup>10</sup> I will be concerned most directly with this narrower requirement, although the difference between the two rationales will be relevant at some points.<sup>11</sup>

According to Rawls, openness requires that “those who are at the same level of talent and ability and have the same willingness to use them” should have “the same prospects of success.” To clarify this idea, more needs to be said about how talent, and the motivational requirement of “effort” or “willingness,” are to be understood. With these clarifications in hand, we can then turn to the question of how openness is related to equality and inequality.

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comparative requirement, and the resources it requires for different individuals will vary, depending on their ends and abilities. An element of equality enters by way of what I called in Chapter 2 the requirement of equal concern. As Sher puts it, “the sense in which we are moral equals is that our interests are of equal importance.” (p. 94)

<sup>10</sup> Norman Daniels seems to appeal to the broader notion. Equality of opportunity, he says, requires that in his argument health care is a requirement of fair equality of opportunity. The availability of treatment to rectify diseases is required, he says, because diseases “impair the opportunity available to an individual relative to the *normal opportunity range* for his society.” By “the normal opportunity range” he means “the array of ‘life plans’ reasonable persons are likely to construct for themselves” in that society, given “its stage of historical development, its level of material wealth and technological development, ...” (“Fair Equality of Opportunity and Decent Minimums,” p. 107).

<sup>11</sup> Rawls says some things that suggest the broader requirement. For example, he says that, “there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed. The expectations of those with the same abilities and aspirations should not be affected by their social class.” *A Theory of Justice*, p. 63. The difference between the two rationales might be closed if the recognition accorded to “culture and achievement” is counted among the “social indicia of self-respect” that is among Rawls’ primary social goods. But inequality in recognition of this kind would not have (or, I think, need) the kind of institutional justification that I am assuming is required for inequalities in other primary social goods such as income, wealth, and “powers and prerogatives of office.”

As I mentioned earlier, the notion of ability that is relevant to the requirement of procedural fairness is institution-dependent. To have the ability that is a relevant basis of selection for a position of advantage is just to have those characteristics that an individual in that position needs to have in order to produce the effects that justify having that position. Similarly, the ability that is relevant to selection of individuals for academic programs that prepare people for such positions consists of just those characteristics that are needed to do well in these programs, given their aims and the way they are organized.

Once the aims and organization of the positions and the educational programs are fixed, ability in this sense is well defined. A given individual, at a given time, either has these characteristics or does not, and some have these characteristics to a greater degree than others. But what counts as ability in this sense is can change if the jobs or the educational programs are changed, and such changes will entail changes in what substantive opportunity requires. If the educational programs leading to important positions of advantage presuppose certain language or computer skills, or scientific training, then according to Rawls' conception of openness these things need to be accessible for all. If only children from rich families can acquire these skills, then children from poor families are blocked from consideration for these positions. But this reason for making such training available to all would not apply if acquiring these language or computer skills were part of the relevant courses of university training, rather than being presupposed.

All this seems clear. What is not clear is whether this institution-dependent notion of ability is adequate for understanding the requirement of substantive equality of opportunity, especially in the form of Rawls' Fair Equality of Opportunity, which

requires that “those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system.”<sup>12</sup> This way of formulating equality of opportunity seems to use a notion of ability to set the standard for the kind of education and other conditions that must be available for all. Ability in the relevant sense therefore cannot be understood in a way that depends on some specified form of education and other developmental conditions.

Suppose, for example, that some people find abstract reasoning easy. As a result, they do particularly well in subjects such as mathematics and computer programming and therefore qualify for positions of advantage requiring these skills. This would seem to be compatible with Fair Equality of Opportunity, because those who fail to qualify for these positions do not have “the same level of ability” in these subjects as those who qualify. But this conclusion presupposes a particular form of education. Suppose we discover that there are methods of early intervention, whether in the form of special classes, drugs, or some other kind of therapy that would enable other children to develop this same level of facility in abstract reasoning. Could we still say that the educational process I first described met the requirements of fair equality of opportunity, because those children who succeed in it are “at a higher level of ability” in abstract reasoning than those who do not? This would not seem to be the case. If, for example, wealthy families provide their children with special classes or other forms of intervention that overcome their initial deficiencies in abstract reasoning, but children from poor families do not receive these

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<sup>12</sup> This problem is raised by Joseph Fishkin in *Bottlenecks*. See especially Chapter 2. I am much indebted to Fishkin’s discussion.

benefits, then the idea of equality of opportunity expressed in Rawls' formula would seem not to be fulfilled.

The conclusion is that insofar as the idea of ability is institution-dependent, any judgment that two people "are at the same level of ability" will presuppose some specified form of education and other conditions in which these abilities are exercised. The idea of giving those with equal talent equal prospects of success therefore cannot be used to specify the forms of education and other conditions that equality of opportunity requires. This problem might be avoided by employing a notion of ability that does not have this institution-dependent character. But it does not seem to me that there is such a notion that is relevant to the justification of economic institutions.<sup>13</sup>

An alternative way of understanding Rawls' idea would interpret it simply as demanding that children's possibilities of success not depend on their families' wealth and income. This way of viewing the matter would let the education that the rich can provide set the standard of education relative to which the idea of "equal level of ability" is determined. It would hold that two children are "at the same level of ability" if, given

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<sup>13</sup> Fishkin argues forcefully that there is not. See *Bottlenecks*, Chapter 2. The same point applies to the notion of *disability*. A characteristic is a disability in a morally significant sense if it makes those who have it less able to function in the ways they have reason to want in a society of the kind in which they live. There may be a notion of disability, such as "lack of functioning that is normal for the species," that is not institution-dependent and dependent in this way on the nature of a given society. But such a notion is not, I would argue, morally significant. The fact that a person lacks a characteristic that is typical of his or her species is morally significant only if it interferes in some way with something the person has reason to care about. It follows from the institution-dependent and socially dependent character of disability that it will in principle be possible to prevent the unequal opportunities arising from a disability either by changing society so that the relevant characteristic is not required for significant social roles or by making it possible for individuals to avoid having this characteristic.

sufficient motivation (a factor to which I will return), they would do equally well when provided with the best education and other developmental conditions currently available.

This sets a high standard, and I will return to the problem of achieving it in a society in which there is significant economic inequality. But providing sufficiently good conditions of development for all children is difficult not only because of poverty but also because of differences in family attitudes and values.<sup>14</sup> We can see this problem by considering the question of “willingness,” which I mentioned above and set aside.

There is an ambiguity on this point in Rawls’s formulation of the idea of Fair Equality of Opportunity. He first says that “those who are at the same level of talent and ability, *and have the same willingness to use them*, should have the same prospects of success regardless of their initial place in the social system...” (my emphasis.) But he goes on to state a stronger condition, that Fair Equality of Opportunity is not achieved if, due to unfortunate family circumstances, many people develop psychologically in such a way that they “fail to make an effort” and therefore fail to qualify for advantages for which they have the talent to qualify.<sup>15</sup> This latter, stronger claim seems clearly correct. Mere lack of “willingness,” or failure to try, does not settle the matter.

There is a danger here of slipping into a kind of moralism, which is one of the serious pitfalls of the idea of equality of opportunity.<sup>16</sup> The phrase “equal willingness” may suggest that the requirement of substantive opportunity is fulfilled whenever we can

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<sup>14</sup> Although differences in economic class and differences in attitudes transmitted to children are not independent. See Annette Lareau, *Unequal Childhoods: Class, Race and Family Life* on how strategies of child rearing in middle class families differ from those in working class or poor families in ways that transmit differential advantages to children.

<sup>15</sup> The passage in which Rawls remarks that “willingness to make an effort” depends on “happy family and social circumstances” is representative. See *A Theory of Justice*, p. 64.

<sup>16</sup> Samuel Scheffler makes this point in “Choice, Circumstance, and the Value of Equality,” pp. 220ff.

say (truly) to a disappointed claimant, “You could have had this benefit if you had tried harder. So it is your fault that you do not have this benefit.” This is moralistic because it holds that inequalities can be justified because they are due to moral failings on the part of those who have less. An idea of desert can also make illicit appearance at this point, in the form of the idea that those who have tried hard are properly rewarded for their effort, and that those who have not tried hard deserve to suffer for their sloth.

Inviting as they may be, moralism and appeals to desert of this kind are both mistaken.<sup>17</sup> In order to see why they are mistaken we need to look more carefully at the ways in which it can be morally significant that an outcome resulted from a person’s choice or is one that a person could have avoided by choosing appropriately. One way that this can be so is when what is at issue is the moral appraisal of the agent or of the way he or she acted. If a person did something “willingly” this indicates that, given her beliefs about the action and its consequences, she took it to be something worth doing. For example, if I have told you I would pick you up at the airport, but fail to do this because I want to see my favorite movie star on television, this indicates something about the relative importance I assign to this pleasure as compared with your convenience and the assurance I had given you. It is thus relevant to your assessment of me and of our relationship.

But, as I will argue in Chapter 8, unequal distribution of social benefits is not justified by differences in the moral character of the recipients. So the reason why an individual’s voluntary choices can make a difference to whether unequal outcomes are

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<sup>17</sup> I will argue against such appeals to desert in Chapter 8.

justified cannot be that such choices reveal the person's moral character. A different explanation is needed.

A better explanation runs as follows.<sup>18</sup> Individuals generally have good reason to want what happens to them to be affected by the choices they make under appropriate conditions. One reason is that their choices under good conditions (e.g. when they are well-informed about the alternatives and able to think clearly about them) are likely to reflect their values and preferences, so the outcomes they choose under those conditions will be more likely to be ones that they will like and approve of. A second reason is that outcomes that result from their choices have a different meaning than outcomes determined in some other way. Gifts, for example, derive an important aspect of their significance from the fact (when it is a fact) that they reflect the donor's feelings for the recipient, and the same is true of choices we make about our own lives, such as the choice of a career.

These reasons for wanting to have a choice about important aspects of our lives depend on the conditions under which these choices will be made. Having a choice can lack value when one is uninformed about the nature of the alternatives, or when conditions make it unlikely that one will consider certain valuable alternatives or take them seriously. So one thing that individuals have strong reason to want is to have what happens to them depend on how they react when given the choice under sufficiently good conditions for making such choices. This is particularly true in the case of important features of their lives, such as what careers they are able to pursue.

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<sup>18</sup> I explain this account more fully in "The Significance of Choice," and in Chapter 6 of *What We Owe to Each Other*.

When this has been done, an individual who fails to qualify for a benefit because he or she failed to choose appropriately “has no complaint” about not having that benefit. Such an individual has no complaint against these institutions simply because they have done enough to make the benefit available. But this is true only when the conditions under which the person made the choice were sufficiently good.

I believe that the idea behind Rawls reference to “willingness” should be understood in this way. When Rawls writes that “those who are at the same level of talent and ability, *and have the same willingness to use them*, should have the same prospects of success regardless of their initial place in the social system” this implies that, in some cases, the fact that some people were not “willing” to develop their talents means that they have no complaint about their lack of success in attaining desirable positions. But this is so only if (and because) the conditions under which they chose not to develop their talents were sufficiently good. So in such a case this (partial) justification for the fact that some have less than they would have liked is not a claim about their moral character—that they have not put forth the effort that would make them deserve reward.<sup>19</sup> It is rather a claim about what *others*, including basic social institutions, have done for these people: *because* others have done enough to put them in good conditions for making the choice they *therefore* have no complaint.<sup>20</sup>

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<sup>19</sup> Only a partial justification because it is also necessary that the institutions generating the inequality in question should be justified—that the first level of my three level justification should be fulfilled.

<sup>20</sup> Sher’s requirement that each citizen be given access to the means of living effectively incorporates a similar, perhaps even stronger, idea of willingness. He requires that citizens be placed in good conditions to decide what ends to adopt (*Equality for Inegalitarians*, p. 157) and also that “to avoid making it unreasonable for those at the bottom to try, the state must provide each with access to a package of resources and opportunities that affords him a reasonable chance of succeeding if he does try.” (p. 150)

What matters on this account is a person's *having* a choice, under sufficiently good conditions, rather than her consciously *making* a choice. It can be enough that a person was placed in (good enough) conditions under which she could have realized a certain outcome by choosing appropriately even if she failed to pay attention to the fact that she could do this, and so passes up the option without realizing that she is doing so.<sup>21</sup>

This view does not involve denying that individuals, particularly those growing up under poor conditions, are moral agents who are responsible for the choices they make.<sup>22</sup> This is so for two reasons. First, this view holds that individuals are not entitled to good outcomes: there are limits to the conditions we must provide, and after that it is up to them—their responsibility—to make their own way. Second, even if we have not done enough for people who grow up in poor family and social conditions they are still responsible agents who may be open to moral criticism for not trying harder. As I have argued above, the question of whether the choices they make reflect attitudes that are open to moral criticism is distinct from the question of whether social institutions that placed them in circumstances in which they are likely to develop such attitudes are themselves open to moral criticism, as unjust, because they do not meet the requirement of substantive opportunity. The failure to distinguish these two questions is what leads to moralism of the kind mentioned above.

The difficulty of providing sufficiently good conditions for children to choose to develop their talents is not due only to poverty and its consequences. It also arises in

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<sup>21</sup> For more discussion, see my "Responsibility and the Value of Choice." The role that choice plays in the account I am offering is thus different from its role in luck egalitarian views, according to which departures from equality are justifiable if they result from choices that individuals actually make. For criticism of luck egalitarian views see Sher, *Equality for Inegalitarians*, pp. 29-34.

<sup>22</sup> As charged, for example, by Nozick. See *Anarchy, State, and Utopia*, p. 214.

cases in which the factors at work are not economic, or not purely economic, but cultural. What people are likely to develop the “willingness to make an effort” to do depends on what they see as a real possibility for them, and on what they come to value, and these things will be different for people growing up in different communities. Children growing up in communities as different as the Old Order Amish and the Roma, for example, may typically develop a “willingness to make an effort” for some purposes, but not for accomplishments of the kind that society rewards most highly. This may be so because, due to the attitudes prevailing in the community in which they grow up, they do not see these accomplishments as valuable, or do not see these pursuits as real possibilities for them. And, to take a less extreme but all too familiar example, the requirements of substantive opportunity are not satisfied if young women fail to strive for positions for which they would be qualified because their families believe, and encourage them to believe, that these careers are not appropriate for women.

Attitudes prevalent in the larger society in which children live are relevant here as well as the values of their particular families. This is familiar as a negative consideration: one objection (not the only one) to racist and sexist attitudes in a society is that they undermine equality of opportunity by discouraging members of these groups from thinking of various worthwhile careers as appropriate for them. But societal attitudes can be significant in a more positive way. There may be little we can do, consistent with the rights of parents, to make it the case that every child’s home environment provides “good conditions” for forming ideas about what kind of life and career to pursue. But one thing that a society can provide is a larger environment in which various alternatives are

available for consideration, and presented as possible options for any child.<sup>23</sup> This may be the best one can do.

If procedural fairness and substantive opportunity as I have described them were fulfilled—if positions were “open to all” in the sense we have been discussing—then whether an individual achieved a position to which special advantages are attached would depend on that person’s ability, understood in the institution-dependent sense, and on whether he or she chose to strive for this position in the necessary way. One should not infer from this, however, that on my view (or, I believe, on Rawls’ view) talent, or ability, and willingness to develop one’s ability, are personal characteristics that it is just or appropriate to reward.<sup>24</sup> They are both factors that can affect the justice of a distribution. But they have this normative effect for very different reasons.

“Talent” derives its significance from the justification for having certain positions of advantage in the first place, and its role as the basis of procedural fairness follows from this. Insofar as motivation—a tendency to work hard at a given job—is one of the qualities needed for being productive, this characteristic is an institutionally justified ground for selection, like other forms of talent. Beyond this, as I have argued, “willingness” to develop one’s talents is not a positive characteristic of an individual that, in itself, merits reward. Its relevance lies rather in the fact that a *lack* of willingness—a failure to take advantage of opportunities one has to develop one’s talent—can undermine

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<sup>23</sup> Joseph Fishkin makes this point, emphasizing that one condition of equality of opportunity (what he calls “opportunity pluralism”) is a society in which a plurality of values is represented. See *Bottlenecks*, pp. 132-137. This might have seemed surprising: the desirability of a pluralistic society might seem quite separate from the idea of equality of opportunity. The interpretation just offered of Rawls’ “willingness” condition explains why there would be a connection between the two.

<sup>24</sup> Fishkin suggests something like this. See *Bottlenecks*, p. 31.

a person's objection to not having certain benefits.<sup>25</sup> But it has this undermining effect only in cases in which we have done enough for a person by placing him in sufficiently good conditions for attaining a greater reward by choosing appropriately.<sup>26</sup>

This completes my clarification of the idea of openness. A career is not open to a person in the required sense if he or she is not placed in good enough conditions to decide whether to pursue that career or if he or she does not have access to the education required to develop the abilities required for that career, should he or she have them (where "having an ability" is understood in the institution-dependent sense that I have discussed.) I now turn to the relation between openness and equality.

Does Substantive Opportunity, understood as a requirement of openness, require a kind of equality, or only the fulfillment of certain conditions to a sufficient degree? The latter may seem to be true insofar as what openness requires is just access to *sufficiently* good education for developing one's talents and *sufficiently* good conditions for choosing what talents to develop. Rawls' requirement that those with the same ability and the same willingness to develop it should have "the same chance" of attaining positions of advantage whatever part of society they are born into might be interpreted to mean that access to sufficiently good conditions for developing one's talents should not depend on one's social class.<sup>27</sup>

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<sup>25</sup> I discuss other ways in which effort may seem to justify greater reward in Chapter 8.

<sup>26</sup> This "value of choice" analysis of the significance of "willingness to try" also explains Fishkin's objections to "starting gate" systems and to what he calls a "big test society" in which children are sorted irrevocably into different education and career tracks based on their performance at an early age. Such a system does not place people in sufficiently good conditions to make these important life choices. See Fishkin, *Bottlenecks*, pp. 66-74.

<sup>27</sup> As he also writes, "there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed. The expectations of those with the same

But what conditions for developing one's talents are "sufficiently good?" Recall that we are dealing with ability in the institution-dependent sense, which is dependent on some specified forms of education and other conditions through which it is developed. This means that a young child from a poor family has the ability to succeed in a university program or in some career, just in case he or she would develop the characteristics required for such success if he or she were to have the best kind of schooling currently available, i.e., schooling as good (from the point of view of developing such characteristics) as the schooling that the rich can provide for their children. In respect to schooling, then, "sufficiently good" means "equally good."

Economic inequality thus can interfere with openness in either of two ways. Even if everyone has been provided with sufficiently good conditions to decide what careers to aspire to and given access to the best education, the economic status of a person's family might nonetheless make a difference to his or her chances of success because wealthier families can influence the process through which people are selected for positions of advantage, by means of bribes, connections, or other ways of rigging the system. This would mean that Procedural Fairness was being violated. I will return to this possibility.

The other way in which the economic status of families could make a difference is by making a difference in the degree to which the conditions of openness themselves are fulfilled. Openness requires two kinds of conditions. First, it requires that all children be provided with the conditions of early childhood required for them to develop the cognitive abilities, such as language skills, and motivational tendencies, such as discipline and ambition, that are required for success in school and in later life. This

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abilities and aspirations should not be affected by their social class." (*A Theory of Justice*, p. 63.)

requirement is difficult to meet, but as I have said earlier, the main obstacles to meeting it are poverty and the diversity of family values rather than inequality *per se*.

In regard to elementary and secondary education, however, inequality is a serious problem, if schools available to children of the well-to-do are far better than those available to children from poorer families, enabling these children to dominate the competition for places in higher education and subsequent careers. This means that openness is violated if there are poor children who would have been equally strong candidates for positions of advantage if they had had the kind of education available to the rich, but were not such candidates because they did not in fact have this education. (These children would have ability in the relevant institution-dependent sense.)

This requirement of openness could be met by improving public education. But that is difficult to do, given the cost and what may be the shortage of supply of qualified schools and teachers. Moreover, there is the risk of a kind of educational arms race, in which richer parents keep upping the level required by giving their children more advanced placement courses and other forms of educational experience that make them better candidates for places in higher education.

It therefore may seem that to ensure that desirable positions are open to children from poorer families in a significant sense the state must either continuously raise the level of education and conditions of early development for all children, in order to meet whatever the richest families provide for their children, or else place a limit on the kind

of educational advantages that rich parents can provide. This presents a dilemma, since the former seems very difficult, the latter unacceptable.<sup>28</sup>

It is worth considering, however, whether more of this difficulty than is commonly recognized may lie in achieving *procedural* fairness. As I have argued, the appropriate criteria of selection for jobs to which advantages are attached depend on the justifying aims of those positions and on what people in those jobs do to promote those aims. Suppose, for purposes of discussion, that these positions are justified, and that candidates are selected for these positions on grounds of (institution-dependent) ability to function well in these positions. Similarly, suppose that the appropriate criteria of selection for education that prepares people for such jobs depend on the way in which these educational programs are organized—on what skills they presuppose as opposed to those that they provide opportunities to acquire.

Given the aims of such a program, and the way it is organized, procedural fairness is violated if a selection process for the program depends in part on skills that are irrelevant to the promotion of these aims. This violation would be particularly objectionable if the skills in question were ones that only the rich have the opportunity to acquire, but it would be procedurally unfair even without this link with economic status.

If some skill, such as the ability to use a certain computer programming language, is relevant to an educational program, it might be feasible either to presuppose this skill, as something that qualified applicants should already have, or to include the training in this skill as part of the educational program itself. Suppose that this is so, and that such training is available as part of the program. Suppose also that, comparing candidates that

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<sup>28</sup> One of Hayek's objections to equality of opportunity is that it would call for such measures. See *The Constitution of Liberty*, pp. 91-93.

already have this training with those who do not, it is possible to judge which likely to do better in the program. That is, suppose it is possible to assess them on the basis of their institution-dependent abilities other than this particular computer programming skill. If this is so, then it would be a violation of procedural fairness to prefer the applicant who already had this skill over the one who did not already have it but could be predicted to do just as well in the program while acquiring the skill at the same time. This would be true especially, but not only, if the skill were one that applicants from well to do families were much more able to acquire.

Now suppose that an educational program that had been offering training in this skill as part of its regular curriculum were to decide to cut costs and “outsource” this part of its program by requiring applicants to have already acquired this skill. This would make it more difficult for applicants from poorer families to compete for entrance. It would therefore be open to objection on grounds of fairness, at least if the training could be offered “in house” without great loss of efficiency. And if this is correct, then the same would seem to be true in the opposite direction: an institution is open to objection if it disadvantages poorer applicants by presupposing a skill that it could provide training in without great sacrifice of efficiency. There is, of course, a question of how much cost of this kind an educational program must bear in order to avoid unfairly disadvantaging some potential applicants. This seems to me a question of the same kind as the question considered earlier of how much care an institution must take in reviewing applicants in order to give applicants due consideration.

Consider the particular case of the college admission process in the U.S. One thing that richer families can do to make their children stronger candidates for admission

to college is to provide such things as advance placement courses, travel abroad to learn languages, and summer programs in science and other subjects. The argument I have just made suggests that insofar as these enrichment programs provide skills that could just as well be acquired at college itself, an admissions process that treats them as positive factors is procedurally unfair.<sup>29</sup> Procedural unfairness of this kind could be eliminated, or at least reduced, by assessing applicants on the basis of their performance in some fixed array of more basic courses. If this were done, then one aspect of the dilemma mentioned above would be avoided: it would not be necessary either to provide precollege training of this kind for all students or to discourage wealthier parents from providing it. Indeed parents could be encouraged to do this since having these extra skills would benefit their children without skewing the admission process in their favor. But if procedural fairness is not achieved, then providing these benefits for one's children, however irresistible it may be, is a way of gaming the system.<sup>30</sup>

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<sup>29</sup> Examples of this unfairness in regard to employment include tests for abilities that are not actually required for a job and giving preference to applicants who have acquired experience through unpaid internships which only wealthier applicants can afford to take.

<sup>30</sup> This bears on a point made by Thomas Nagel In *Equality and Partiality*, Chapter 10. Nagel observed that parents' motivation to do as well as they can for their children can be a source of inequality in two ways. Within the family, parents advance their children's prospects to varying degrees by teaching, tutoring, and helping them to develop good habits. Outside the family, parents may also be motivated to help their children to do well in the processes of selection for positions of advantage, thorough "connections" and other ways of gaming the system. The latter threat to equality, he said, can be constrained by norms prohibiting parents from seeking advantages for their children in these ways. But society relies on what parents do for their children within the family. So it needs to encourage this, rather than discouraging or limiting it as a way of promoting equality.

The division of labor I am suggesting between procedural fairness and substantive opportunity provides a slightly different way of looking at the problem Nagel describes. If Procedural Fairness were achieved, then there would be no reason to discourage parents from doing as much as they can to promote their children's education and development. But if is not done, and the selection process is inappropriately sensitive to the extra training and polish that parents can provide, then providing these benefits for

One effect of admission policies of the kind just suggested might be to greatly increase the number of applicants who would have to be seen as equally well qualified. As I suggested earlier, procedural fairness might then require using a lottery to decide among these candidates.<sup>31</sup> The resulting reduction in the ability of well-to-do parents to ensure places for their children in elite institutions might also reduce the tendency, which I discussed in Chapter 3, to overvalue this particular kind of success, and the tendency to believe that such success should be rewarded with great economic advantages.

Providing high quality basic education for all, and achieving procedural fairness in the process of selection for education leading to positions of advantage, would be an enormous step toward equality of opportunity. But it would not realize this goal. It would leave the difficulty created by poor conditions for many children in early childhood, and the difficulty created by differences in family values and preferences. It would, however, reduce the competitive advantage that rich families can give their children by paying for extra education. The remaining problems would be caused more by poverty and culture than by inequality.

To summarize this moral anatomy of equality of opportunity: I have viewed the idea of equality of opportunity as part of a three level justification for inequalities:

1. *Institutional Justification*: It is justified to have an institution that generates inequalities of this kind.

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one's children would interfere with Procedural Fairness, and would need to be discouraged just as much as attempts to gain advantage for one's children through "connections." Both would interfere with Procedural Fairness.

<sup>31</sup> Jon Elster has pointed out that many societies make wider use of lotteries to allocate scarce goods of this kind. See *Local Justice: How Institutions Allocate Scarce Goods and Necessary Burden*.

2. *Procedural Fairness*: The process through which it came about that others received this advantage while the person who is complaining did not was procedurally fair.
3. *Substantive Opportunity*: There is no wrong involved in the fact that the complainant did not have the necessary qualifications or other means to do better in this process.

I argued in Chapter 4 that the requirement of Procedural Fairness—selection according to merit, or talent—can be seen as a corollary of the justification for inequalities based on the benefits that flow from having them. The relevant idea of talent is an institution-dependent notion. It consists in those qualities that the individuals filling these positions must have, *given* how those positions are organized, in order for those positions to yield the benefits that justify them. Many cases of procedural unfairness are also instances of wrongful discrimination, in one or another sense of that term. But the stigmatization and exclusion involved in race and gender based discrimination, for example, involve a distinct wrong, independent of procedural unfairness. Finally, I argued that the institutional account of procedural fairness that I have offered needs to be supplemented by a further idea of due consideration, owed to all.

In this chapter, I located the moral basis of the requirement of Substantive Opportunity in the idea that social institutions must be justifiable to all those to whom they apply. This justifiability requires that at least the positions to which special advantages are attached, and perhaps a wider range of careers individuals in that society has reason to value, must be open to all, where openness means not being excluded from

these careers on grounds other than their ability in the institution-dependent sense that I have described.

I also argued that individuals' choices have moral significance of the relevant kind only when made under sufficiently good conditions. These conditions are different from the conditions required for a person to be responsible for his or her choices in the sense of responsibility that is a precondition for moral appraisal. The failure to distinguish these two forms of responsibility leads to a mistakenly moralistic understanding of equality of opportunity.

Providing people with sufficiently good conditions to make meaningful and morally significant choices about what careers to pursue is made difficult by poverty and by the diversity of families' values rather than by inequality. Under present conditions, inequality does, however, threaten the goal of making outcomes depend on individuals' talents in the institution-dependent sense rather than on their social circumstances, because the rich can always provide more for their children than is available to others. It might seem that this unfair competition can be curbed only by eliminating inequality or by limiting what the rich can provide for their children. I suggested that this difficulty might be eased if procedural fairness were actually achieved, and the criteria of selection for positions of advantage did not include unnecessary factors that give an advantage to the rich. This would put an upper bound on the kind of public education needed to provide all with a fair chance of success. As things are, however, economic inequality is a severe threat to substantive opportunity, not only because the rich can provide more for

their children but also because their political influence blocks the provision of sufficiently good public education for all.<sup>32</sup>

I noted at the outset that equality of opportunity has something of a bad name, because it is seen as providing illicit support for inequality. Thinking about equality of opportunity is subject to a number of pitfalls, and I will conclude by remarking on some of these that have been identified in the preceding discussion. First, it is important to bear in mind that equality of opportunity, even if it achieved, is not a justification for unequal outcomes, but only a necessary condition for inequalities that are justified in other ways to in fact be just.

Second, it is important not to imagine that equality of opportunity has been achieved, when in fact it has not. As the preceding discussion has brought out, I hope, equality of opportunity is a very demanding requirement. Even procedural fairness is very difficult to achieve, and is less fully achieved than is often assumed. But equality of opportunity requires more than procedural fairness. It also demands substantive opportunity for all.

Finally, it is important to avoid moralism of the kind I have described. It is not moralistic to feel pleased and proud that one has worked hard, or even to feel moral approval toward oneself and others who work hard, and to disapprove of others who do not. Such feelings are quite reasonable. If one has worked hard in pursuit of rewards for hard work that are promised by the institutions of one's society, it is natural to feel entitled to those rewards, and such feelings are quite legitimate as long as those institutions themselves are independently justified. What is moralistic is to believe that

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<sup>32</sup> As I discussed in Chapter 2, and will again in Chapter 6.

these institutions are justified, and complaints against them by those who have less are unjustified, *simply because* those who have less are open to moral criticism for not striving harder. This is mistaken and moralistic because, by focusing on supposed, or even real, moral faults of those who have less, it ignores the crucial question of whether these people have been placed in good enough conditions to develop their talents and to decide whether or not to do so.

The appeal of this kind of moralism is psychologically powerful and therefore politically significant. People want very much to believe that they are morally entitled to what they have earned, and they want to keep as much of this as possible. The idea that the institutional process through which they have earned their income is unjust because others have not been provided with sufficiently good conditions to compete in it, and that they should pay higher taxes in order to rectify this injustice, threatens both of these interests. Moralism provides a way of escaping this conclusion, allowing people to maintain their belief in the legitimacy of their earnings without believing that they are called on to make any sacrifice. Pointing out the philosophical error involved in this line of thinking may not undermine its widespread appeal, but is worth doing nonetheless.