

## Equality of Opportunity Globalized?

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### I

The ideal of equality of opportunity is meant to mitigate inequalities that could otherwise be inherited due to inequalities of wealth and income among families. It requires equalizing opportunities among persons with approximately equal endowments of some specified sort. The ideal, as I understand it here, does not require merely that persons not be discriminated against in educational entrance review or competition for employment, but rather that persons with approximately equal endowments of a specified sort (for example, talents, abilities, and motivation) have a set of equal opportunities in their youth and in some cases throughout their life.<sup>1</sup>

The principle of equality of opportunity is minimally egalitarian. When applied to certain opportunities, such as for economic advancement, it presupposes a background condition of competition that has led some to criticize it.<sup>2</sup> It is also consistent with inequality with respect to outcomes. With respect to those who possess approximately equal endowments of the specified sort, equality of opportunity is merely a principle of starting-gate equality, consistent with differential outcomes. With respect to those who are unequal in the specified way, equality of opportunity does not equalize at all. So, it seems fair then to designate those who criticize equality of opportunity as anti-egalitarians, and those who criticize its global application in particular as anti-global-egalitarians. An anti-egalitarian may, of course, reject the non-instrumental value of equality, but still have moral worries about inequality insofar as it contributes causally to other injustices.

It might be thought inaccurate to classify all those who reject a global equality of opportunity principle as global anti-egalitarians. For one might reject the minimal starting-gate principle but affirm some more demanding version of equality of outcome. John Rawls briefly discusses a view that includes the principle that fundamental institutions ought to distribute goods such that inequalities are to the maximum benefit to the least advantaged, but that rejects the principle that positions of privilege with respect to possession of those goods should be open to all on the basis of equality of opportunity. He characterizes this view as "natural aristocracy."<sup>3</sup> The idea is that those who are naturally superior should set their talents to work for the naturally inferior out of a sense of *noblesse oblige*. If Rawls's characterization is correct, then intensionally this position is not an egalitarian one at all. Still, there

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1. John Rawls refers to this principle as fair equality of opportunity in contrast to formal equality of opportunity. See John Rawls, *A Theory of Justice*, rev. ed. (Cambridge: Harvard University Press, 1999) at 63-64 and 73-78.

2. John Baker, *Arguing for Equality* (London: Verso, 1987) at 43-52.

3. Rawls, *supra* note 1 at 57, 64-65.

need not be any contradiction in affirming a more robust egalitarian principle, while rejecting equality of opportunity. But it is unlikely that one would arrive at this position by way of a coherent underlying egalitarian theory since it would seem natural to apply those reasons that would limit unequal outcomes also to opportunities.

The principle of global equality of opportunity is, I believe, an important part of the commitment to global egalitarianism although I do not assume that it is the whole of that commitment. Global egalitarianism may rest on other, perhaps even more demanding, principles as well.<sup>4</sup> But whether or not it does shall not concern me here. Instead I shall focus on equality of opportunity, in particular to discuss how a principle of global equality of opportunity follows from a commitment to equal respect for the autonomy of all persons, and to see how this principle might be defended against some of the criticism that it has recently received.

## II

Respecting the autonomy of persons proscribes using them merely as a means for public ends. The prohibition against using persons merely as a means for public ends places a justificatory constraint on public policy and institutions, namely that they be subject in some manner to the consent of those persons who are affected by them.<sup>5</sup> A fundamental issue for an account of equal respect of persons is the manner of consent that respect requires. I shall consider three possibilities: actual consent, possible consent, and hypothetical consent.<sup>6</sup>

The requirement that a policy meet with the actual consent of those affected by it would be unable to rule out consensus or dissensus based upon morally irrelevant features of the situation.<sup>7</sup> For example, a person might withhold actual consent on grounds that the policy fails to privilege her preferences over those of others. Alternatively, a person may offer consent to a policy because she has internalized oppressive norms that tell her that she does not deserve better.<sup>8</sup> The requirement of actual consent then would reject a policy on morally irrelevant grounds.

The requirement of possible consent is sometimes thought to be Kant's requirement in the second formulation of the categorical imperative.<sup>9</sup> According to this

4. Several writers defend a globalized difference principle. See for example Charles Beitz, *Political Theory and International Relations* (Princeton, NJ: Princeton University Press, 1979); Darrel Moellendorf, *Cosmopolitan Justice* (Boulder, CO: Westview Press, 2002); Thomas Pogge, *Realizing Rawls* (Ithaca, NY: Cornell University Press, 1989); R.G. Peffer, *Marxism, Morality and Social Justice* (Princeton, NJ: Princeton University Press, 1990).

5. See also my "Equal Respect and Global Egalitarianism," *Soc. Theory & Practice* [forthcoming in 2006] and Charles Beitz, "Cosmopolitanism and Global Justice" (2005) 9:1-2 *J. Ethics* 11 at 17.

6. G.A. Cohen raises a fourth possibility, namely normatively possible consent, but I am unclear what precisely this means. See his "Self-ownership: Assessing the Thesis" in his *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995) at 229-44.

7. See also Michael J. Sandel, *Liberism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982) at 114.

8. Martha C. Nussbaum discusses this in great detail (albeit within the limited framework of mounting a critique of welfarism) in *Women and Human Development: the Capabilities Approach* (Cambridge: Cambridge University Press, 2000) at ch. 2.

9. Onora O'Neill, "Between Consenting Adults" in *Constructions of Reason: Explorations of Kant's Practical Philosophy* (Cambridge: Cambridge University Press, 1989) at 112-17.

view, a policy based upon deception violates respect for persons because such a policy cannot possibly gain the consent of those who are to be deceived. Although this conception of consent rules out important cases of deception and coercion, it does not rule out all policy that intuitively we think of as violating a norm of equal respect, such as public policy that simply privileges one person's, or a group's, way of life over others for no reason other than that it is the way of life belongs to that group. Persons could consent to such a policy, and in fact may even do so if they have been taught and have come to believe that they do not deserve to be treated as equals.

The requirement of hypothetical consent involves employing an appropriate model of the conditions under which consent would be rational, and asking whether persons would consent under such conditions. If so, then persons are said to have hypothetically consented. The central question for the strategy of justification by hypothetical consent concerns the conditions under which consent is morally relevant. Rawls's original position argument for the two principles of justice can be seen as an attempt to address this question.<sup>10</sup> As Rawls famously notes,

The idea here is simply to make vivid to ourselves the restrictions that it seems reasonable to impose on arguments for principles of justice, and therefore on these principles themselves. Thus it seems reasonable and generally acceptable that no one should be advantaged or disadvantaged by natural fortune or social circumstances in the choice of principles. It also seems widely agreed that it should be impossible to tailor the principles to the circumstances of one's own case. We should insure further that particular inclinations and aspirations, and persons' conceptions of their good do not affect the principles adopted.<sup>11</sup>

The original position involves a set of constraints on justification that arguably is required by the demands of equal respect.

One criticism of the requirement of hypothetical consent is that it can sanction principles or policies that people in fact reject.<sup>12</sup> But this criticism fails to understand that barring the impossible, namely complete agreement about the rules and perfect compliance, any system of government necessarily involves coercive practices. A standard that prohibits "overriding what others do in fact choose" is inconsistent with the present and foreseeable conditions under which systems of government arise. Moreover, the requirement of hypothetical consent can insulate against the morally irrelevant conditions that infect actual choice while providing greater scope for justification than possible consent.

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**10.** Rawls, *supra* note 1 at 15-19, 102-05. See also Ronald Dworkin, "The Original Position" in Norman Daniels, ed., *Reading Rawls* (Stanford, CA: Stanford University Press, 1989) at 16-53 and Michael Blake, "Distributive Justice, State Coercion, and Autonomy" (2001) 30:3 Phil.& Pub. Affairs at 282-85. Although I disagree with Blake that duties of egalitarian justice exist only if a legal structure of coercion exists, his reading of the original position as a device for hypothetical consent seems to me correct.

**11.** Rawls, *supra* note 1 at 16-17.

**12.** See O'Neill, *supra* note 9 at 109. One can detect traces of this criticism also in Nozick's rejection of the hypothetical constraints of the original position that requires ignorance of persons' talents, abilities, character, and social starting position. See Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974) at ch. 7, sec. II.

As I see it the justificatory constraints of equal respect are related to equality of opportunity in the following way. The claim that opportunities for enjoying those goods, distributed or affected by a given association, which are instrumental to realizing persons' highest order moral interests, should be unequally distributed cannot be hypothetically consented to by members of the association. Of course, this claim depends controversially on the precise conditions of the model of hypothetical consent. Cosmopolitans who pursue a Rawlsian original position model of hypothetical consent require the parties to be ignorant of their citizenship and nationality.<sup>13</sup> This yields a *pro tanto* justification of a principle of equality of opportunity across borders because parties to the original position who are ignorant of their citizenship or nationality, but are mutually indifferent and concerned to maximize their—or their constituents'—rational advantage, will not agree to principles that grant citizens of some states, or members of some nations, more opportunities to enjoy those goods distributed or affected by the global economic association, which goods are instrumental to realizing persons' highest order moral interests.

### III

A central claim in the cosmopolitan original position argument for equality of opportunity is that respect for persons requires a justificatory procedure that rules out decisions regarding principles of distribution in light of knowledge of one's citizenship or nationality. The claim is, in other words, that citizenship and nationality are for original position purposes morally analogous to natural talents and abilities, social starting points, and characters, and Rawls seeks to prevent knowledge of these in the original position on the grounds that these properties of persons cannot reasonably claim to be deserved and therefore may not be the basis of advantages conferred by a social order.<sup>14</sup> This view seems plausible because place of birth is not a matter over which a person exercises control. Assuming that one can claim to deserve an aspect of one's person only if one has intentionally brought it about, then one cannot claim to deserve any advantages that one might enjoy in virtue of one's original citizenship (at least) and nationality. Original citizenship and nationality are arbitrary from the moral point of view.

The claim that certain properties of persons are arbitrary from the moral point view has often been attacked by anti-egalitarians. Recall Robert Nozick's view that the invocation of arbitrariness is in tension with a political philosophy founded on respect for persons:

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13. There is a long line of cosmopolitan criticism of Rawls including (but not limited to) the following: Charles Beitz, *Political Theory* (Princeton NJ: Princeton University Press, 1979); Andrew Kuper, "Rawlsian Global Justice: Beyond the Law of Peoples to a Cosmopolitan Law of Persons" (2000) 28:5 *Pol. Theory* at 640; Darrel Moellendorf, "Constructing the Law of Peoples" (1996) 77 *Pac. Phil. Q.* 132, and his *Cosmopolitan Justice*, *supra* note 4; Peffer, *Marxism*, *supra* note 4; Pogge, *Realizing Rawls*, *supra* note 4; T.M. Scanlon, "Rawls' Theory of Justice" in Norman Daniels, ed., *supra* note 10 at 202; and Kok-Chor Tan, *Toleration, Diversity, and Global Justice* (University Park: Pennsylvania State University, 2000).

14. See, for example, Rawls, *supra* note 1 at 89.

This [egalitarian] line of argument can succeed in blocking the introduction of a person's autonomous choices and actions (and their results) only by attributing *everything* noteworthy about the person completely to certain sorts of 'external' factors. So denigrating a person's autonomy and prime responsibility for his actions is a risky line to take for a theory that otherwise wishes to buttress the dignity and self-respect of autonomous beings...<sup>15</sup>

His, of course, is a general suspicion against setting off any properties of persons as arbitrary, not a specific attack on the arbitrariness of citizenship or residential status. But any defense of the arbitrariness of citizenship or resident status should be able to withstand his general criticism. Nozick believes that all positive arguments in defense of the arbitrariness of certain properties of persons fail because either (i) they invoke a concept of moral desert that egalitarians reject, or (ii) they involve the false assumption that all natural assets cannot be correlated with non-arbitrary properties of persons, or (iii) they require a commitment to the view that arbitrary properties of persons cannot affect a distribution, which view is inconsistent with the difference principle, or (iv) they employ an inappropriate presumption for equality, which presumption all differences in treatment must be defeat.<sup>16</sup>

Ruling out consideration of one's citizenship or residential status when considering the merits of a principle to distribute opportunities is an instance of the following general principle: (A) A distribution should not substantially disadvantage a person, where the disadvantage is measured by comparison to a baseline of equality for all, on the basis of properties of her that are the result natural or social fortune. Principle (A) is noncommittal with respect to which goods presumptively require an equal distribution. With Nozick's criticisms in mind, notice that principle (A) neither (i) invokes moral desert, nor (ii) relies on the assumption that no natural assets can be correlated with non-arbitrary properties of persons, nor (iii) is inconsistent with the difference principle since the difference principle requires all to improve against a baseline of equality. It does, however, (iv) employ a presumption in favor of equality. Principle (A) fits into a constraint on justification required by equal respect in the following way. Equal respect requires that differential treatment of persons be justified. It therefore supposes a baseline of equal treatment; deviations from this baseline require justification. A certain class of reasons is to be ruled out, namely those reasons that appeal to properties of persons that are the result of natural and social fortune.

One criticism that David Miller makes of the principle of global equality of opportunity is similar to Nozick's.<sup>17</sup> Miller contends that the egalitarian position requires a commitment to the following principle: (A') If two people are differentiated only by features for which they are not morally responsible, then it is wrong that they should be treated differently.<sup>18</sup> He rejects this principle because it fails to allow the handicapped, or those with greater needs generally, to be given greater resources. While this seems correct, the principle that Miller believes to be a part

15. Nozick, *supra* note 12 at 214.

16. *Ibid.* at 216-24.

17. David Miller, "Against Global Egalitarianism" (2005) 9:1-2 J. Ethics 55.

18. *Ibid.* at 68.

of the egalitarian rejection of moral arbitrariness is unlikely to find wide appeal among egalitarians in any case since it would, for example, prohibit rewarding talent and effort differentially if it served to improve the condition of the least advantaged.

In any case, principle (A) is neither equivalent to, nor does it entail, principle (A'). For (A) incorporates the baseline of equality of goods against which to measure disadvantage, while (A') does not. So, for example, although (A') would not allow additional resources to persons on the basis of greater needs, (A) could permit this, if in the absence of receiving additional resources these person would be rendered worse off in comparison to their condition under equality. A complete discussion of these matters probably requires an account of what equality is a measure of, the *distribuand* of egalitarian justice. I have sought to avoid this by stating (A) in a manner that is noncommittal with respect to goods that are to be distributed. An adequate account the *distribuand* of egalitarian justice far exceeds what can be done within the confines of the focus of this paper. So, I shall not pursue these matters further. I do, however hope to have shown that the Nozick-Miller argument against the claim that certain properties of persons are morally arbitrary does not succeed against the claim that a person's citizenship or residential status is morally arbitrary.

#### IV

In *Cosmopolitan Justice* I used the example of the opportunities available to the child of a Swiss banker in comparison to those available to a child in rural Mozambique to illustrate the demands of the principle of global equality of opportunity. I asserted that equality of opportunity would require that "a child growing up in rural Mozambique would be statistically as likely as the child of a senior executive at a Swiss bank to reach the position of the latter's parent."<sup>19</sup> This statement of the requirements now strikes me as imprecise and insufficiently sensitive to the different equal endowments that different forms of equality of opportunity assume.

Part of the imprecision derives from the phrase "the position of the latter's parent," which is vague. Narrowly construed it could mean the very position of the latter's parent, namely the position of senior executive at a Swiss bank; or more broadly it could mean the social position of a wealthy and powerful member of the global financial system. As an ideal, the narrow construal is certainly implausible. The opportunities of the two children could not be equal with respect to such a specific position, or small set of positions, without virtually identical educations. This would require strict global standards with respect not only to the quality of education, but also the content. Such standards would tend to inhibit positive curricular and pedagogical innovations as well as prohibit education that addresses local or regional concerns. Moreover, it would be consistent only with an implausibly specific and static view of the capacities that primary and secondary education should develop. School education that is directed towards ensuring that students of similar aptitudes are able to assume approximately identical specific jobs and offices would

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19. Moellendorf, *supra* note 4 at 49.

be stunting and myopic. Finally, it seems intuitively implausible to maintain that persons with opportunity sets that differ in the details regarding job responsibilities and location, but that are similar in the degree of responsibility, power, status, and income have opportunity sets that are unequal in a morally relevant sense.

Moreover, different forms of equality of opportunity assume different equal endowments, for which social arrangements are to equalize opportunities. For example, equality of opportunity for economic advancement assumes persons of approximately equal talents, abilities, and motivations. Or at least, such an assumption seems reasonable within the context of economies containing labor markets, whereas equality of opportunity for a statistically normal life span assumes persons of equal states of health. The point is to equalize opportunities with respect to what seem to be morally relevant endowments so as to prevent opportunities from being a function of factors that are morally arbitrary. Although we do not want a principle of equality of opportunity to live a statistically normal life span to allow that a person's talents, abilities and motivation are relevant, we may want a principle of equality of opportunity for economic advancement to allow that these are relevant.

I have argued in other places that justice is best understood as an associative duty.<sup>20</sup> Assuming that conclusion, we may specify the content of the ideal of equality of opportunity with reference to the kind of association that generates the duties of justice and the goods of that association that are a concern of justice. For example, the fundamental category of participation and status in a state, or political community, is citizenship. Equality of opportunity for citizenship is a complex ideal involving several different components, including, for example, education, liberty, and basic welfare. Alternatively, there are several important goods produced and affected by an economic association. Income, wealth, meaningful productive activity, positions of power and status, and leisure time are obvious goods that are distributed by economic association. The enjoyment of these goods is in part a function of certain others, such as health, security, housing, and education. And the ability to select among the available goods in pursuit of one's life goals requires education and basic liberties. Equality of opportunity in the global economic association, then, is directed towards ensuring that differences in initial wealth do not affect the opportunities of persons (of the morally relevant equal endowments) across a range of goods, including income, wealth, meaningful productive activity, leisure time, health, security, housing, education, and basic liberties.

The opportunities associated with these goods are currently very unequally distributed. Let's look at health and longevity, for example. The opportunities for persons of approximately equal health to live equally healthy and long lives are very much a function of the person's wealth, income, and geographic location. Global health care spending observes the rule of inverse care: Health care is most available where it is least needed. According to the United Nations Development Programme, per capita health care spending the OCED states averages \$3000 per year; in the

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20. See my *Cosmopolitan Justice*, *supra* note 4 at 30-36; and "Persons' Interests, States' Duties, and Global Governance" in Harry Brighouse & Gillian Brock, eds., *The Political Philosophy of Cosmopolitanism* (Cambridge: Cambridge University Press, 2005) at 148-63; and "Justice and Associations," *Philosophiques* [forthcoming in 2006].

low-income countries it averages \$78.<sup>21</sup> One fully predictable result of this unequal spending is a difference in childhood death rates. The childhood death rate in sub-Saharan Africa is twenty-nine times greater than in wealthy countries.<sup>22</sup> Ten million children die each year before age five. Two out three of these deaths would be prevented by the provision of basic medical services.<sup>23</sup> For example, two to three million childhood deaths are due to vaccine-preventable illness, such as measles, diphtheria, and tetanus.<sup>24</sup> Often these deaths are due weakened immune systems caused by severe poverty.

## V

In the previous section I discussed the content of the ideal of global equality of opportunity. An important line of criticism of the ideal charges that its content cannot be adequately specified because of the pluralism of values globally. The basic idea is that value pluralism makes it impossible to determine whether opportunity sets for persons of different cultures are equal. If we cannot determine when equality of opportunity exists, then we ought not to pursue it. The force of such challenges rests on the appearance of a violation of the ought-implies-can principle, or its contrapositive. In this section and the next I examine two recent versions of this challenge.

Gillian Brock puts the challenge to a global equality of opportunity principle in the form of a dilemma:

Either we must try to articulate a version of equality of opportunity that mentions particular social positions that are favored, and opportunities to achieve these are equalized, or we allow much cultural variance on what counts as a favored social position, and the standards of living or levels of well-being that they enable to be equalized. If we go with the first option, we are vulnerable to charges of being insufficiently attuned to cultural difference. If we go with the second and try to equalize standards of living, we may end up with a very weak account of equality of opportunity which permits many cases which do not look much like a robust account of blocking disadvantage and discrimination on morally arbitrary grounds.<sup>25</sup>

To be sure, Brock has correctly identified hazards of two different types that must be avoided for a satisfactory account of a principle of global equality of opportunity. Taking the principle of equality of opportunity to be satisfied if persons in culture A have the same opportunities as persons in culture B to achieve positions of privilege as understood exclusively within the context of culture B may beg the question of why that culture's ideals are the proper standard of equality. Alternatively, an

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21. United Nations Development Programme, *Human Development Report 2005* at 26. Available at [http://hdr.undp.org/reports/global/2005/pdf/HDR05\\_chapter\\_1.pdf](http://hdr.undp.org/reports/global/2005/pdf/HDR05_chapter_1.pdf). Accessed 28 October 2005.

22. *Ibid.* at 28.

23. *Ibid.* at 27, 33.

24. *Ibid.* at 24.

25. Gillian Brock, "Egalitarian Ideals, and Cosmopolitan Justice" (2005) 36:1 Phil. Forum at 18-19. See also her "What Does Cosmopolitanism Demand of Us" (2004) 104 *Theoria* at esp. 180-84.

account that includes values recognized by all cultures, but does not capture forms of inequality of opportunity that intuitively we recognize as important—say between men and women—would be inadequate to the task at hand.<sup>26</sup>

Brock contends that my example of the children of growing up in Switzerland and Mozambique commits the first error.<sup>27</sup> Although, as I have already argued, I now see the example as clumsy, I do not think that it commits the error of offering an ideal that can be understood only within the context of the culture of the child in Switzerland. For presumably there are persons in Mozambique, even rural Mozambique, who aspire to be bankers. Such an aspiration is not incomprehensible within the cultural traditions of Mozambique.

I am also not convinced that the hazards that Brock identifies amount to a genuine dilemma. As I discussed in the previous section, an account of the content of the ideal of equality of opportunity cannot require a narrow set of positions that must be open to all persons over whom opportunities are to be equalized. Brock's challenge would be met if there were an account of the goods—for which opportunities should be equalized—that is both free-standing, that does not derive simply from the cultural understandings of a particular culture,<sup>28</sup> and sufficiently sensitive to empirical matters as to capture real differences of opportunity.

The account that I offered in the previous section seems to satisfy these two requirements. The goods identified in that section are among those that are distributed by an economic association. It is not the case, for example, that income, health, and education are valuable only within some particular cultural framework. They are not culturally bound goods in anything but the broadest sense of *culture*, in which all social phenomena would be cultural. Nor is it the case that these goods cannot capture real inequalities of opportunity. For example, the primary school completion rates provided by the 2005 United Nations Development Programme Report provide *prima facie* evidence of inequality of educational opportunities between boys and girls in most of the developing world. About 75% percent of girls complete primary school, in comparison to 85% of boys. And this disparity is greater at the secondary and tertiary levels.<sup>29</sup> This demographic evidence does not help us to understand the mechanisms of inequality of opportunity, nor does it even foreclose the existence of some possible explanation that would serve to make the disparity consistent with equality of opportunity, but because it ranges

**26.** Brock argues that Simon Caney commits this error. See “Egalitarian Ideals,” *supra* note 25 at 16–19. But although Caney argues that global equality of opportunity should focus on the general ideal equalizing opportunities “to positions of a commensurate standard of living.” He unpacks “standard of living” so that it includes a list of specific goods that may have more purchase in various cultures than Brock admits. See his “Cosmopolitan Justice and Equalizing Opportunities” (2001) 32:1–2 *Metaphilosophy* at 120–21.

**27.** Brock, “Egalitarian Ideals,” *supra* note 25 at 16.

**28.** The term “free-standing” in this context is analogous to Rawls’s requirement for domestic justice. “Political Liberalism, then, aims for a political conception of justice as a freestanding view. It offers no specific metaphysical or epistemological doctrine beyond what is implied by the political conception itself. As an account of political values, a freestanding political conception does not deny there being other values that apply, say, to the personal, the familial, and the associational; nor does it say that political values are separate from, or discontinuous with, other values.” John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993) at 10.

**29.** UNDP, *Human Development Report 2005* at 25.

across several countries, it does provide a fairly strong reason to believe that there must be some social processes at work that serve to discourage young girls from completing school. The employment of the good of education, then, would seem to be sufficiently sensitive to the facts at hand to provide a measure of inequality of opportunity.

## VI

Miller's criticisms present another possible problem for equality of opportunity. This criticism is associated with the metric against which opportunities, for example education, are to be measured so as to assess whether they are equal or unequal. We might assert that opportunity sets between persons are equal if and only if they are identical; or we might assert that mere equivalence is required. Taking my example discussed earlier, the identical opportunity sets interpretation would require that, "a child growing up in rural Mozambique would be statistically as likely as the child of a senior executive at a Swiss bank to reach the position of the latter's parent," where "position of the latter's parent" is understood to mean the very office that the parent occupies.<sup>30</sup> Miller takes this as implausible, and I agree for the reasons adumbrated in section IV.

Although I share Miller's rejection of the identity of opportunity sets interpretation, I do not find his reasons particularly convincing. He rejects the interpretation on grounds that it would require unlimited rights of migration and unrestricted admission to citizenship or a global *lingua franca*, or perhaps both.<sup>31</sup> If the implications of the identical opportunity sets are unrealistic or undesirable, then by *modus tollens* so is the view that opportunities are equally just because they are identical. I agree that neither of these policies is realistic in the sense that they are about to be on the political agenda, but they do not strike me as obviously undesirable. The argument could equally well be a *prima facie* one via *modus ponens* for open borders or instruction in a common global language or both. But since I agree with Miller's point, if not his reasoning, there is no need to pursue this matter here.

Miller contends that the alternative of taking equality of opportunity to require persons to have equivalent opportunity sets also fails because an uncontroversial international metric of equivalence is unavailable. In defense of this view he invokes a distinction between finer and broader grained metrics. As I understand this distinction, metric A is finer grained than metric B if and only if at least two of the distinct categories according to which A groups opportunities are not distinguished in metric B. So, for example, one metric is finer than another because the first distinguishes opportunities to learn sculpting from opportunities to learn painting, whereas the other categorizes both opportunities under opportunities to learn art. According to the first metric, two groups of students would have unequal opportunity sets if the one had opportunities to learn sculpting and not painting and the other had opportunities to learn painting and not sculpting. According to the second

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30. The example is drawn from Moellendorf, *supra* note 4 at 49.

31. Miller, *supra* note 17 at 59-60.

metric, their opportunities would be equal because the opportunities in each case are taken as equivalent insofar as both are instances of the opportunity to learn art.

According to Miller, a principle of equality of opportunity is unsatisfactory if the metric that it employs is too fine grained because it will make too many morally insignificant distinctions. But it is also unsatisfactory if its metric is too broad grained, for then its employment will result in controversy about how different components of the metric should be evaluated relative to one another.<sup>32</sup> Now, Miller maintains that nation states have the political resources to solve the metric problem because they contain national cultural understandings about the kinds of opportunities that are approximately equivalent.<sup>33</sup> But globally there is no “common set of cultural understandings to tell us which metric or metrics it is appropriate to use when attempting to draw cross-national opportunity comparisons.”<sup>34</sup>

It is worth pausing to query whether national understandings of the metrics of opportunity sets are supposed to be justified insofar as they are national or insofar as they are uncontroversial. Surely, it would be utopian to expect complete consensus, even based upon national understandings, about a metric of equivalence for opportunity categories. Any real policy of equality of opportunity will be more or less widely supported in comparison to other possible ones even within states. Consider debates about the extent to which religious groups may control the education of children in the United States.<sup>35</sup> If national consensus seems utopian, it also seems unnecessary as a condition of a justified metric. Take the example of a state that contains a minority culture that believes that equality of opportunity in the education of boys and girls can be achieved if boys are educated to pursue employment and civic participation and girls are trained in domestic work because both boys and girls are provided opportunities for appropriate adult activity. This minority culture will not accept the view that equality of educational opportunity requires further distinguishing the category of “appropriate adult activity.” The state, on the other hand, employs a metric of opportunity sets that provides the basis for a judgment that the opportunities that the minority culture makes available to girls are unequal to those that it makes available to boys. This metric will be controversial. The controversy, if severe enough, could hamper legitimately applying the state’s metric, but it is not obvious that the metric is therefore unjustified. Lack of controversy is a desideratum of a legitimate policy, but not—it seems—a requirement of justified principles.

Perhaps then, a metric of opportunity sets that a state employs is supposed to be justified, even though controversial among some religious or ethnic minorities, just insofar as it employs or incorporates a national understanding of equality.<sup>36</sup> Then, a principle employing a metric of equality of opportunity would be justified

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32. *Ibid.* at 60-61.

33. *Ibid.* at 62.

34. *Ibid.*

35. See James G. Dwyer, *Religious Schools v. Children's Rights* (Ithaca, NY: Cornell University Press, 1998).

36. Miller distinguishes nations from ethnic groups in *On Nationality* (Oxford: Oxford University Press, 1995) at 15-21.

if based upon national cultural understandings, even if it were controversial with respect to religious and ethnic identities. If only national cultural understandings provide the basis for justified the metrics of opportunities, and if globally there are different national cultural understandings about the equivalences of various opportunities, then no global principle of equality of opportunity would be possible.

In this case, however, the metrics of equality of opportunity based upon nationally derived understandings of equality of opportunity are not superior to a global metric on grounds of lack of controversy. Metrics based upon national understanding may also be controversial internally. Moreover, religious and ethnic identities may have the resources to reduce controversy regarding equality of opportunity with respect to their own groups. Rather, an independent reason for preferring the national cultural understandings of equality to other understandings is required. It might be that we have duties of justice based upon national identities, but not based upon religious and ethnic identities.<sup>37</sup> So, the national cultural understanding will trump the understandings of the other cultural groups for reasons that have nothing to do with the content of the former's definition of equality of opportunity. In the example above, the religious understanding of equality of opportunity is not inferior simply because it is sexist since presumably a national cultural understanding could be sexist and a religious minority's understanding be non-sexist; still the national understanding would trump. Notice, however, the paucity of this account of equality of opportunity. It can in principle incorporate all manner of prejudice just so long as it is a national cultural understanding. This is an account that would be disqualified by Brock's sensible requirement that an account of equality of opportunity must reject clear cases of inequality.

A more plausible basis of a metric for equality of opportunity within states is, I suspect, the political ideal of equal citizenship. To use one of Miller's examples, the reason why a metric that employs the opportunity category of access to enlightenment—a category that takes opportunities for education to be equivalent to opportunities for religious worship—is unsatisfactory is because of our political understanding of the role of secular education in democratic citizenship. One might respond that there is some deeper level where even this political understanding is cultural. That, however, is beside the point. For what is doing the work is the content of the political ideal, not its alleged status as a cultural artifact.

In short, Miller's rejection of the principle of global equality of opportunity in favor of a national one fails because it seems implausible that lack of controversy will accompany any policy of equality of opportunity, even one based on national cultural understandings of equality, and because a principle employing metrics based upon a national understanding of equality cannot plausibly trump others, regardless of content, just because it is national. Controversy is a fact of life with respect to any egalitarian policy. Controversy might be generated either by the egalitarian idea that different groups of people should have approximately equal opportunities or by what counts as an equal opportunity. We should not expect very much precision with respect to the latter issue prior to actual political debates. Moreover,

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37. Miller seems to have this view in *On Nationality*, *ibid.* at 15-31, 49-80.

any established policy will be based upon roughly hewn metrics, the kind of measurements that Adam Smith describes as “that sort of rough equality which, though not exact, is sufficient for carrying on the business of common life.”<sup>38</sup>

Egalitarian political practice requires involvement in the political controversies that egalitarian principles generate. The hope is that broader agreement about what counts as morally salient aspects of equality and inequality will result. We cannot prejudge the case of how far that agreement will extend without extensive public debate. There may be moral resources available for generating agreement that are not apparent in the absence of considerable local knowledge. But in the next section I shall try to give some more general reasons to hope for the possibility of agreement.

## VII

There are reasons for believing that significant steps toward cross-national consensus about the broad bases and benchmarks of equality of opportunity are not utopian. Consider an account of equality of opportunity that relies on a set of primary goods appealed to in an original position argument. The list that I mentioned in section IV, namely income, wealth, meaningful productive activity, positions of power and status, leisure time, health, security, housing, education, and basic liberties may require further refinement, but these seem to me to be approximately what we would want in a list of those goods that should be distributed according to the outcome of deliberations within a cosmopolitan original position applied to the global economic association.

This approach might be criticized as relying excessively on a justificatory process that is tied too closely to the liberal democratic tradition, especially in light of Rawls’s account of primary goods as developed in *Political Liberalism*.<sup>39</sup> There Rawls claims that the primary goods are to be explained in terms of “the higher-order interests we have in developing and exercising our two moral powers and in securing the conditions under which we can further our determinate conception of the good, whatever it is.”<sup>40</sup> The first person plural pronoun refers to those of us who are citizens of states, which have a tradition of commitment to liberal democratic values and institutions. Perhaps then a list of primary goods, such the one I have offered, that resembles Rawls’s own list contains goods only for persons whose identities as citizens have been shaped by the liberal democratic tradition since the interests in exercising the two moral powers exist only for persons in those societies.

Indeed, *Political Liberalism* is a response to a concern about the stability of societies committed to Rawls’s two principles of justice.<sup>41</sup> Stability is of serious concern

38. Adam Smith, *An Inquiry Into the Nature and Cause of the Wealth of Nations* (New York: The Modern Library, 1937) at 31.

39. The list of primary goods that I employ is more extensive than Rawls, but more or less Rawlsian. I cannot defend this list here.

40. *Political Liberalism*, *supra* note 28 at 106.

41. *Ibid.* at xvii-xviii.

because the political and social institutions that embody the two principles of justice will give rise to a citizenry committed to multiple and incompatible reasonable comprehensive conceptions of the good.<sup>42</sup> Yet the principles of justice upon which the social and political institutions are founded will have to win the uncoerced allegiance of the citizenry in order for the order to be legitimate.<sup>43</sup> Rawls's response is, in significant part, *ad hominem*. It seeks to show how the two principles of justice can be the subject of an overlapping consensus of a plurality of reasonable conceptions of the good, by arguing that the principles follow from conceptions of persons and society that are drawn from the liberal democratic tradition, which conceptions citizens of states with those traditions will have reasons to accept. The result is "a political conception of justice congenial to our most firmly held convictions."<sup>44</sup> Now, of course, many states have either no, or only very short, liberal democratic traditions. Hence, it might be urged that the employment of primary goods to provide a metric of equality of opportunity is parochial and insufficiently sensitive to the conceptions of persons that non-liberal national cultures endorse.<sup>45</sup>

There are, as far as I can tell, two strategies for responding to this line of criticism. The most ambitious is to argue that although the conception of persons employed in *Political Liberalism*, and used there to support the list of primary goods, matches conceptions of citizens in the liberal democratic tradition, there are good reasons to think that the truth of these conceptions is not relative to that tradition. I have tried to defend that position elsewhere.<sup>46</sup> Here I focus on two different versions of the second strategy, which involves an *ad hominem* response. One such response is that insofar as there is a commitment to fundamental human rights, there is a commitment to approximately the same conceptions of persons that Rawls employs. Another is that taking the goods of the global market as goods involves a commitment to approximately the same set of primary goods that I have relied upon.

A fundamental value of several widely signed and ratified human rights documents is the value of dignity. Consider the preamble to Universal Declaration of Human Rights: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."<sup>47</sup> The Declaration was adopted as resolution 217 A (III) of 10 December 1948 by a vote of 48 states in favor, 8 abstaining, and 2 not voting.<sup>48</sup> Also noteworthy is Article 5 of The African Charter on Human and

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42. *Ibid.* at xvi.

43. *Ibid.* at 136-37.

44. *Ibid.* at 8.

45. This line of criticism is probably not one that Miller would endorse since he advocates a non-authoritarian conception of national identity, which requires a procedural commitment to liberal freedoms to facilitate the open ended discussion of what constitutes the national identity. Cf. Miller, *supra* note 17 at 127-28.

46. See *Cosmopolitan Justice*, *supra* note 4 at 20-23.

47. Universal Declaration of Human Rights. United Nations Office of the High Commissioner for Human Rights, <http://www.unhchr.ch/udhr/lang/eng.htm>. Accessed 18 Feb. 2005. Also <http://193.194.138.190/udhr/lang/eng.htm>

48. United Nations Office of the High Commissioner for Human Rights, <http://www.unhchr.ch/udhr/misinfo/carta.htm>. Accessed 18 Feb. 2005.

Peoples' Rights (adopted on 27 June 1981 by the Organization for African Unity): "Every individual shall have the right to the respect of the dignity inherent in a human being and the recognition of his legal status."<sup>49</sup> References to inherent human dignity within human rights documents are not surprising since the justified claim that a person has a right is usually taken as support for a policy of directing state resources her way, either as protection or provision, even if it is contrary to the will of the majority.<sup>50</sup> The special status of persons as the basis for this anti-majoritarian position is well captured by the notion of dignity. Possessors of dignity are entitled to respect even if the majority thinks otherwise.

The value of inherent dignity is widely recognized by a variety of national political cultures at least for purposes of diplomacy, if not consistently for internal policy. Where it is not consistently recognized for internally policy, this is invariably contested in some fashion within the state and is sometimes a source of international censure. Hence, the value of dignity is useful for *ad hominem* purposes because of its international popularity.

Appealing to dignity is compatible with appealing to the Rawlsian conception of persons. Dignity certainly coheres with the Rawlsian political conception of freedom, especially insofar as being a self-authenticating source of valid claims is an aspect of freedom. This aspect, for example, involves the entitlement to make claims on institutions so as to advance a reasonable conception of the good.<sup>51</sup> And this would appear to be central to the claim that persons possess inherent dignity. The important point, then, is that an appeal to a set of basically Rawlsian primary goods as a metric for equality of opportunity can be thought of as compatible with the basic political values of a great many national political cultures. Hence, it seems an exaggeration to claim the impossibility of a global ideal that might serve as the basis for a principle of equality of opportunity.

Those who participate in the global economic association also have reason to value the primary goods I have listed. Consider the important interests affected by the association. The global economy obviously affects persons' economic interests. This provides one important category of equal opportunity, namely for economic advancement. Realizing the goods of economic association requires basic liberties, among them the freedoms of contract, movement, and unionization. Education and the freedoms of conscience and thought are required in order to exercise one's own judgments about how to evaluate the fruits of the economic association. Moreover, although the association may be economic, the interests that it affects are not only economic. One advantage of a labor market is that it can permit significant choice as to work or vocation, contributing to the ability of a person to live a life that is in important ways chosen. These various interests are accounted

49. "The African Charter on Human and Peoples' Rights" in Ian Brownlie, ed., *Basic Documents on Human Rights*, 3rd ed. (Oxford: Clarendon Press, 1992) at 553.

50. There are various formulations of this idea. See, for example, John Stuart Mill, *Utilitarianism* at ch. v in John Stuart Mill & Jeremy Bentham, *Utilitarianism and Other Essays* (Harmondsworth: Penguin Books, 1987) at 327, and cf. H.L.A. Hart, "Are There any Natural Rights?" (1955) LXIV: 2 Phil. Rev. 175.

51. John Rawls, *Justice as Fairness* (Cambridge, MA: Harvard University Press, 2001) at 23.

for by taking health, longevity, security, access to meaningful productive activity, leisure, wealth, and positions of power and status, as well as the political context in which individual liberties and freedoms can be secured as primary goods. Once again, we have reason to believe that a common basis of equality of opportunity is not in principle out of reach.

I have not been arguing that globally everyone already agrees to some list of primary goods, any more than Rawls thought that citizens of liberal democratic societies already possessed his conception of persons. Rather, I mean to be defending the view that there is reason to think that over time significant agreement will be within the reach of reasonable and rational persons. The legal and economic changes associated with globalization are producing some tendencies towards normative convergence. It may be possible to find common normative bases even when on the surface these appear doubtful. I do mean to be arguing that a justified principle of equality of opportunity will therefore be the basis of a non-controversial policy. I have no such illusions. I have no doubt that equality is a controversial moral ideal, particularly in the presence of traditional inequalitarian norms.

### VIII

Miller argues that policies that would serve global equality of opportunity run afoul of the ideal of national self-determination. Nationality remains, despite globalizing economic tendencies, a powerful source of identity for many people and the state remains the most significant source of political decisions. “To show that all of this is morally irrelevant when assessing the opportunity sets enjoyed by people belonging to different national communities would require a great deal of argument.”<sup>52</sup>

I think that it is best to separate the claims about national identity and the legislative powers of the state. Miller seems to believe that moral duties to co-nationals exist if persons have a strong national identity.<sup>53</sup> But it is unclear why an attitude of belonging should always entail a moral duty. It would seem strange, for example, to assert that a person who believes that she has special duties to privilege members of her race does in fact have those duties simply in virtue of her beliefs.

On the other hand, if a just global economic association requires global equality of opportunity, this is not incompatible with the claim that state political associations require other principles of distributive justice, principles that ensure fair democratic elections and legislation for example.<sup>54</sup> One need not be committed to the irrelevance of state government with respect to matters of distributive justice in order to endorse global equality of opportunity. However, it does seem to be the case that just as the existence of the family makes equality of opportunity within states an ideal that can never fully be realized, so the existence of states makes perfect global

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52. Miller, *supra* note 17 at 70.

53. Miller, *supra* note 36 at 49-80.

54. Cf. Moellendorf, *supra* note 4 at 39-50, and Moellendorf, “Persons’ Interests, States’ Duties, and Global Governance”, *supra* note 20.

equality of opportunity impossible.<sup>55</sup> So, if we assume that there is a moral case for states—and I do not dispute this—the value of equality of opportunity will have to be weighed against the value of self-determination.<sup>56</sup> That neither can be fully realized, if both are recognized, is not a reason to reject either.

Miller, however, argues that the pursuit of equality of opportunity would necessarily destroy self-determination.

To preserve equality we would have continually to transfer resources from nations that become relatively better-off to those who become worse-off, undermining political responsibility, and in a sense undermining self-determination too, insofar as this involves choosing between alternative futures and receiving the costs and benefits that result from such choices.<sup>57</sup>

Once again, Miller's anti-egalitarianism bears a striking resemblance to Nozick's, which holds that “no end-state principle or distributional patterned principle of justice can be continuously realized without continuous interference with people's lives.”<sup>58</sup> The latter's worry, of course, is directed to violations of individual liberty, not national self-determination, but in form the concern is the same. In each case egalitarianism is criticized because it violates a liberty of a certain sort, an individual's liberty for Nozick and a nation's for Miller.

The egalitarian response to Miller, similar to the response to Nozick, has two parts. One is to challenge the moral entitlement of the state to act in ways that are contrary to the demands of justice. The conception of state sovereignty that allows the state to establish an unjust basic structure and maintain a moral entitlement to non-intervention, or self-determination, is one that is too permissive of injustice to be morally tenable.<sup>59</sup> National-self determination should be constrained by considerations of justice. The second response is to clarify the object of principles of justice: Principles of justice are directed towards the basic structure of (in this case) global society. They require fundamental institutions that will constrain and shape policy formation and decision-making. Such institutions need not constantly intervene in decision-making or take back the results of political deliberation because they establish the constraints in which politics occurs. Principles of justice affect politics only indirectly through the influence that they have on fundamental institutions. Although equality of opportunity may constrain the scope of state deliberation in comparison to the scope that presently exists, once the constraints are institutionally secured, deliberation will normally take place without hindrance.

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**55.** The tensions between equal educational opportunity and the family are thoroughly explored in Harry Brighouse's *School Choice and Social Justice* (Oxford: Oxford University Press, 2000), see esp. at 151-61.

**56.** This is not the place to discuss the moral reasons for the state. But a variety of non-nationalist reasons have been adduced. See, for example, Andreas Follesdal, “Federal Inequality Among Equals: A Contractualist Defense” (2001) 32:1-2 *Metaphilosophy* 236, Robert E. Goodin, “What Is So Special About Our Fellow Countrymen” (1988) 98:4 *Ethics* 663, and Moellendorf, “Persons' Interests, States' Duties, and Global Governance”, *supra* note 20.

**57.** Miller, *supra* note 17 at 71.

**58.** Nozick, *supra* note 12 at 163.

**59.** See also my *Cosmopolitan Justice*, *supra* note 4 at 102-27, and “Is the War in Afghanistan Just” (2002) 6 Imprints, available on line at <http://eis.bris.ac.uk/~plcdib/imprints/moellendorf.html>.

So, this is not to deny that global egalitarianism would constrain national self-determination in comparison to a norm of nearly complete license in internal affairs, but it is to deny that egalitarianism would require constant interference with the decisions taken by states.

## IX

I have sought to defend a principle of global equality of opportunity against challenges that invoke cultural pluralism. In particular I have sought to locate the justificatory grounds for equality of opportunity in the norm of equal respect for the autonomy of persons rather than in some culturally derived understanding of equality. Any account of equality of opportunity that places heavy emphasis on cultural understandings of equality will be disarmed when it faces inegalitarian cultural practices. Such an account can in principle view the opportunities of men and women as equal despite the fact of inferior education, job prospects, and public roles for women. Unless one is already in the grips of a theory that requires equality to be measured only by cultural standards, I trust that it will be obvious that this sort of equality of opportunity is equality in name only.