

**Review of Pursuing Equal Opportunities: The Theory and Practice of Egalitarian Justice.**  
Lesley A. Jacobs. Cambridge University Press (2004). 294 pages.

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Lesley Jacobs' aim is to advance a three-dimensional model of equal opportunities for the regulation of the competitions that distribute social goods as the core of egalitarian justice. His book divides into a theoretical part (chapters 2 and 3) in which he develops this model, and three parts in which the model is applied to the analysis of various questions in social policy having to do with race-, class- and gender-based inequalities in Canada and the US (chapters 4 to 9).

### 1. Theory

The three dimensions of equal opportunity correspond to three aspects of fairness in competitions for social goods. *Procedural fairness* reflects a concern with the basic rules of procedure that govern a competition. *Background fairness* reflects a concern that there be a level playing field for all competitors. *Stakes fairness* focuses on the rewards to winners and losers in the competition.

To see how these dimensions pick out familiar aspects of contemporary debates on equal opportunity, consider Bernard Williams's (1962) well-known hypothetical society with a privileged warrior class. A condition of membership in this class is the demonstration of great physical strength. At first, recruitment is restricted to those born into the wealthiest families, but this restriction is dropped in response to the demands of equal opportunity. However, after the change, members of the warrior class are still invariably drawn from the wealthiest families, since the children of other sections of society are so malnourished that they fail to develop the requisite strength.

One can infer from this case a standard objection to a form of equal opportunity. Conceived of as only procedural fairness—part of which is the removal of formal restrictions on entry into competition for a particular good, thus barring 'irrelevant factors', like class membership, race, gender, etc. from directly influencing the distribution of the good—equal opportunity can leave unwelcome inequalities intact. For individuals' possession of the 'relevant characteristics'—in Williams' example, strength—on the basis of which the good is legitimately differentially distributed may be unfairly influenced by these and other irrelevant factors.

This leads to a call for the expansion of the concept of equal opportunity to include the demands of background fairness: individuals should have access to the relevant grounds for differential distribution of social goods under fair conditions. For many, like John Rawls, this meant that family background and social circumstances should make no difference to individual development.

An objection to this understanding of procedural and background fairness is easily found, however. In Williams' hypothetical society, it would entail that children who due to their genetic makeup or simple luck could never develop the requisite physical capacities could never be warriors. If no other positions of comparable value were open to them, this version of equal opportunity would seem to be no less unfair to them than it was to the malnourished children of the poor. There have been, roughly, two principal responses to this problem. The first, by Rawls, is to regulate inequalities of at least some important social goods, like income so that they are maximally beneficial to those whose natural capacities and other luck give them access to only the least desirable social positions. The second, proposed by Richard Arneson (1989) and G.A. Cohen (1989), is to posit that no factors beyond individuals' control should lead to inequalities.

Equal opportunity, in this sense, means that everyone can achieve outcomes of equal value through his or her choices.

In Jacobs' terms, Rawls's response could be characterized as adding a principle of stakes fairness. The Arneson/Cohen response could be characterized as a move to a more demanding version of background fairness. The range of outcomes achievable through choice will then be a question of stakes fairness.

As this sketch is meant to intimate, Jacobs' three dimensions strike me as highlighting important aspects of positions in the contemporary debate. They also seem a good guide to the types of questions that have to be asked before a form of equal opportunity can be applied to issues of social distribution. However, Jacobs oversells the model when he claims to be introducing an important innovation through the concept of stakes fairness. As he recognizes, the idea is present in Rawls's theory in the form of the difference principle. Furthermore, much of the recent discussion of the Arneson/Cohen type of equal opportunity has focused on the outcomes that should follow from different choices, or, in Jacobs' terms, on stakes fairness for this form of equal opportunity (see Fleurbaey 1995, 2001).

Offering a framework for thinking is one thing; proposing particular principles of fairness is another. Rawls, Arneson and Cohen develop general principles of fair distribution for abstractly defined goods (like 'positions', 'resources', or 'welfare'). By contrast, Jacobs follows Michael Walzer in stressing the diversity of social goods, and in arguing that different principles of justice apply to different goods. He also joins Walzer in holding that we don't need an overarching principle regulating how individuals fare on an overall measure of their access to these goods (22-23; 28; 43).

This avenue has not been much explored in the recent literature on equal opportunity, and I anticipated it could yield novel insights. However, I must confess to being disappointed. It is perhaps to be expected that it leads Jacobs to write little in general terms about the various forms of fairness. We learn that stakes fairness is inconsistent with a 'winner take all' system (15), and that it limits the effects of the results of one competition on another (43). We also learn that background fairness is a matter of status equality. By this, Jacobs does not mean that competitors' material condition or social status should be equal prior to the competition, or anything specific about their natural abilities and the conditions under which these were developed; rather, he sees it as a matter of their moral status (31). Jacobs indicates that status equality requires that at the start of the competition, competitors should be recognized as possessing the highest possible equal worth (31-2), and that in the design of the competition, everyone's interests should be taken into account, with special attention being paid to the interests of vulnerable minorities (74-8; 95-7).

Jacobs' coyness about the general content of the three forms of fairness might not be objectionable if he was more forthcoming with arguments for specific principles of fairness in particular applications. Unfortunately, he isn't. For example, in an analysis of the labour market, we are told that without redistributionary policies, differences in wages and job-related benefits between occupations are unfair. It is a matter of stakes fairness, Jacobs writes, that this be redressed by government provision of workfare (162-4). But this unfairness of unregulated labour markets is simply taken for granted, and the 'fair' level of financing for social programs is left unspecified.

Jacobs also inherits two well-known difficulties from Walzer. The first is that the separate principles of fairness for each social good might not generate a pattern of distribution that is egalitarian overall. Jacobs writes that "[t]here is nothing in [my] model that requires aggregating an individual's opportunities across competitions in civil society or indeed across his or her life span" (28). But if there is no overall perspective from which we can judge an individual's situation, then we have no way of recognizing individuals who lose out in many competitions. Of course, if the principles of stakes fairness applied to every social good were outcome-egalitarian,

then this would not be an issue. But given Jacobs' lack of precision about these principles, we have no way of knowing.

The second difficulty is that we need some principle to decide how many resources to devote to particular social goods. Education may be governed by specific principles of fairness, but we also need to know how much to devote to education versus other social goods. Jacobs' model offers no guidance here.

Chapter 3 discusses of the idea of natural inequalities, by which Jacobs understands the idea that inequalities in social goods are linked to differences in people's 'natural endowment' by immutable laws of economics and sociology. Jacobs argues that there are no such natural inequalities; there are only natural differences between people, which malleable social institutions translate into unequal access to goods. His argument draws on familiar examples of the following kind: in one social environment, the ability to throw a ball accurately through a hoop will be a great asset, in another it will not.

Jacobs' aim is to undercut the objection we encountered above: that versions of equal opportunity that allow natural differences to translate into unequal access to social goods are unfair. He appears to think that the source of this objection is the thought that such versions of equal opportunity build on and magnify natural inequalities. Since he believes there are no natural inequalities, he concludes there is nothing to worry about here.

Jacobs' argument is puzzling. For though Rawls does sometimes speak of 'inequalities in natural endowments' where he should arguably simply speak of differences, what worries the likes of Rawls, Arneson and Cohen is not the question whether there are natural inequalities, but just whether natural differences give people unequal access to certain goods. Jacobs' argument does nothing to assuage this worry.

## *2. Practice*

The bulk of the book is taken up by a discussion of social issues. Part II focuses on race. Chapter 4 offers an interpretation of civil rights in the US as aiming to ensure background fairness, and argues that this prohibits heavy reliance on standardized tests for determining access to higher education. Chapter 5 presents affirmative action for blacks as a requirement of stakes fairness.

Part III focuses on class. Chapter 6 turns to the Canadian experience to defend workfare as a way of securing stakes fairness in the labour market. Chapter 7, on health care, is used to illustrate the limits of a normative principle of equal opportunity. Since Jacobs believes competition is not an appropriate model for the allocation of health care, and equal opportunity is concerned only with the regulation of competitions, different principles apply to its regulation.

Part IV focuses on gender. Again drawing on the Canadian experience, Jacobs argues in chapter 8 for affirmative action as a way of ensuring background fairness between men and women, while pay equity—the requirement that wages in female-dominated occupations be in line with comparable male-dominated professions—emerges as an issue of stakes fairness. He argues in chapter 9 that divorce settlements should promote equality in post-divorce opportunities between the parties.

Jacobs' discussions display an enviable knowledge of both the philosophical and legal issues involved. His accounts of the Canadian experience will be particularly informative for those readers who, like me, know little about it. Though it is easy to find points of disagreement on practical matters, I found many arguments novel and interesting. An example is chapter 4, where Jacobs argues that a heavy reliance on standardized test scores for access to competitive higher education in the US violates status equality, because their adoption against the background of a black-white test score gap was in part possible because African Americans were not regarded as having equal standing. If proper attention had been paid to their interests, Jacobs writes, a method of testing and a policy that so disadvantaged them would never have been adopted. Jacobs also proposes a reading of the civil rights legislation as not aiming at racial equality but

rather as ensuring status equality. This means that, at least in some cases, there is a reason to see the reliance on test scores as violating African Americans' civil rights.

Nonetheless, I was bothered by the way in specific cases, Jacobs views on what fairness requires are simply stated, instead of argued for. I was also confused by the way Jacobs assigns aspects of practical policy to his three dimensions of fairness. For example, Jacobs classifies "labour and workplace safety standards, workers' compensation plans, minimum wages, [and] statutory overtime requirements" as issues of procedural fairness in the labour market (162). I would have thought they were matters of stakes fairness, relating as they do to the risks and rewards of work. I was also puzzled why pay equity counted as a matter of stakes fairness, when in Jacobs' own words, "pay equity (...) is designed to neutralize the effects of women's 'second shift' (...) the principle problem with relying solely on the market to determine wages in female-segregated occupations is that those wages invariably reflect the unequal starting positions experienced by women in the workplace" (217). If the key problem is one of unequal starting positions, isn't the issue at least partly one of background fairness?

### 3. Conclusion

In conclusion, Jacobs' three-dimensional model highlights importantly distinct aspects of fairness in distribution. His discussions of social policy are well-informed and stimulating. They will be especially informative for readers unfamiliar with the Canadian context. However, the application of the model is sometimes confusing, and the concrete principles of fairness he applies to specific social goods are insufficiently motivated.

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