

DEMOCRATIC EQUALITY AND PUBLIC EDUCATION

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INTRODUCTION

This project seeks to address the way in which democratic citizens are equal, and the kind of equality of opportunity that follows from this notion of equality. I will then apply this theoretical discussion to public education, a fundamental component of any notion of equality of opportunity.

I am asserting principles that may inform question of equality in any democracy, but I am giving specific content to the way these ideals have been articulated in one particular democracy. Because I ultimately want to make sense of the best realization of these ideals in the American educational system, I will explore these with reference to American political morality.

American democratic values take for granted the equality of all citizens. According to the Declaration of Independence, it is a “self-evident” truth “that all men are created equal”¹ and the Gettysburg Address maintains that America is “dedicated to the proposition that all men are created equal.”² But in respect of what can citizens be said to be equal? Surely, citizens are not equal in every respect. As Bernard Williams indicates, “To say that all men are equal in all those characteristics in respect of which it makes sense to say that men are equal or unequal, is a patent falsehood.”³ All people do not have equal talents, equal abilities, equal physical characteristics, equal values, or equal aspirations. Elizabeth Anderson articulates the same notion when she states that “No two people are really equal,” and appeals to “the diversity of individuals in their talents, aims, social identities, and circumstances.”⁴ Given all the differences that exist between people, it is indisputable that people are unequal in many significant ways.

¹ *United States Declaration of Independence.*

² Lincoln, Abraham. "The Gettysburg Address." Dedication of the Cemetery at Gettysburg. Gettysburg, Pennsylvania. 19 Nov. 1863. Speech.

³ Williams, Bernard A. O. "The Idea of Equality." 1962. *Equality: Selected Readings*. Ed. Louis P. Pojman and Robert Westmoreland. Oxford: Oxford UP, 1997: 91.

⁴ Anderson, Elizabeth. "What Is the Point of Equality?" *Ethics* 109, No. 2 (January 1999): 290.

We can start by distinguishing between two distinct types of inequalities: those that are facts about people as people, and those that are facts about people within their societal context. The former, which I shall call *personal variances*, refer to differences between people that are intimately connected to a person's natural endowments and identity. These include intellect and ability, personality traits, skin color, sexual orientation, values, opinions, and beliefs. Government must respect these features of people's identities, yet simultaneously acknowledge "the equality of human beings despite their differences."⁵ In my first chapter, I will argue that despite personal variances, citizens of American democracy are all equal citizens as citizens, democratic government must demonstrate an equal concern and respect for all.

The second type of inequality, which I shall call *social inequalities*, are socially constructed. In contrast to personal variances, social inequalities are all relational qualities about the way people compare to others in a society. Social inequalities refer to citizens' share of those goods which are both constructed and distributed by society. These goods, which we will call *social goods*, include income and wealth, social standing, and positions of influence, power, and responsibility. Outside of a societal structure, there are no social inequalities: social inequalities are distributed by societal institutions. And as the government governs societal institutions, it can be said that social goods are distributed by governing principles. The content of these governing principles, which is the subject of my second chapter, must be fair to all citizens. Because all citizens are equal as citizens, all citizens must be equal in regards to the rights and duties of citizens, and all citizens must have the equal opportunity to attain social goods.

In the third chapter, I will discuss the relevant notion of equality of opportunity, which I take to be uniquely connected to the function of public education in the United States today. I will assert that one's current allotment of social goods is not a relevant reasons for differentiation

⁵ Williams 101.

in the determination of future distributions of social goods. I will next consider the implications of this claim on the funding of public education.

In the fourth chapter, I will make a case for substantive equality of opportunity, whereby citizens from all sections of a society have an equal chance of actually attaining social goods. I will then discuss the kind of equality of public education that should follow from this conception of equal opportunity.

CHAPTER ONE: THE EQUALITY OF AMERICAN DEMOCRATIC CITIZENS

In this chapter, I seek to interpret the terms in which citizens in a democracy are equal. To do this, I will look to social contract theory and celebrated American texts that I take to be expressive of important democratic and fundamentally American ideals. I propose that American democratic citizens are equal in three significant respects. By way of detailing these respects, I call upon President Abraham Lincoln's description of American democracy as "government of the people, by the people, for the people"⁶ in his Gettysburg Address. I propose that the relevant notions of equality are those that apply to each of these three clauses: American democratic government is government equally of the people, equally by the people, and equally for the people.

In a democracy thus conceived, government must show an equal concern and respect for all citizens. The criterion of equal concern is met when the government does not regard the well-being of any citizens as more or less important than the well-being of any other citizen. No citizen has more or less of a right to the advancement of his or her own welfare than any other citizen. Additionally, democratic government must show equal respect for all citizens. The criterion of equal respect requires that the government recognize each citizen not merely as a means, but as an end. Government must recognize as worthy everyone's conceptions of his or her own good, however it is conceived, so long as it does not interfere with others' pursuits of their good. And each citizen's pursuit of his or her own good is independently valuable, such that no person's good may be sacrificed for the good of others. Democratic government must pass what Anderson calls "the most fundamental test any egalitarian theory must meet: that its

⁶ Lincoln.

principles express equal respect and concern for all its citizens.”⁷ A democracy of the people, by the people, for the people, requires equal concern and respect for the people.

Part A: Government of the People

*“I would have wanted to be born in a country where the sovereign and the people could have but one and the same interest, so that all the movements of the machine always tended only to the common happiness. Since this could not have taken place unless the people and the sovereign were one and the same person, it follows that I would have wished to be born under a democratic government, wisely tempered.”*⁸

A democratic government is that form of government in which the people and the sovereign are one and the same. For if the people are sovereign, the government can be understood as a government of the people. Understanding sovereignty as legitimate authority, a democratic government of any state derives all of its legitimate authority from the people who are members of that state. Just as the Constitution holds that American government is established by “we the people,”⁹ in the United States, the people are sovereign. To understand the implications of this statement, I will seek to answer two questions in this section. First, what is the nature of sovereignty, and second, who is included in the notion of “the people”? I offer that legitimate sovereignty arises from free and voluntary consent of the people, and that “the people” are all members of the state equally.

The nature of sovereignty is a crucial first question for all inquiries into political philosophy. For in all debates about what a government should do, it must first be asked on what basis a government has the authority to do anything at all. I follow Jean-Jacques Rousseau in maintaining that legitimate authority must be such that it could have come from a voluntary agreement. In reality, it is infeasible that all people may only be governed by some authority to

⁷ Anderson 289.

⁸ Rousseau, Jean-Jacques. "Letter to the Republic of Geneva." *Jean-Jacques Rousseau: The Basic Political Writings*. Trans. Donald A. Cress. 2nd ed. Indianapolis: Hackett, 2011: 31-32.

⁹ *United States Constitution*, Preamble.

which they themselves have consented. People exist in societies from birth, and are governed by the laws of that society before they can even understand the meaning of consent. Accordingly, the relevant notion of sovereignty becomes not those principles to which all have consented, but rather those principles to which it would be rational for all people to have consented. While the nature of these principles will be discussed at length later, the important point here is that only those governments may be said to be legitimate which are founded on principles to which the people may rationally consent.

All people are born free, as masters of their own wills. All are born with a right to their own bodies, their own minds, and their own faculties. No one is born with the right to the body, mind, or faculties of anyone else. “Since no man has a natural authority over his fellowman, [...] agreements alone therefore remain as the basis of all legitimate authority among men.”¹⁰ Since no person has any *prima facie* authority over any other person, legitimate authority over some person may only be established if that person may reasonably consent to it. It follows that a legitimate authority may only be established over a group of people if every individual member of that group may reasonably consent to it. Sovereignty must be granted by the people. As the Declaration of Independence proclaims, governments “derive their just powers from the consent of the governed.”¹¹ Governments have authority over the governed because the governed consent that it may be so.

This notion that legitimate governmental authority arises from the consent of the people finds its basis in the social contract, the most robust expression of which may be found in Rousseau’s *On the Social Contract*. The social contract is conceived as that agreement between members of a society to consent to the authority of some governing body. It is not a contract

¹⁰ Rousseau, Jean-Jacques. "On the Social Contract." *Jean-Jacques Rousseau: The Basic Political Writings*. Trans. Donald A. Cress. 2nd ed. Indianapolis: Hackett, 2011: 159.

¹¹ *United States Declaration of Independence*.

between those who govern and those who are governed, but rather a contract between every member of the society and every other member. Because the authority is only legitimate when all of the people may reasonably consent to it, then the consent or rejection of any one member carries equal weight as that of any other member. In this way, the social contract arises from a level playing field, whereby people come to an agreement from the standpoint of equals. As a consequence, governmental authority derives from all of the people equally, and no one person can have more or less a share of sovereignty than any other. “It is absurd and contradictory for the sovereign to acquire a superior.”¹² For if a government is of the people, the people are superior. And if the people are superior, there are no inferiors. Thus, an act of sovereignty “is not an agreement between a superior and an inferior, but an agreement of the body with each of its members.”¹³ In democracy, the people are all equally sovereign.

The notion of “the people” encompasses all members of the political community, or all of the governed. Admittedly, this is a different conception of the people from that of the time of the Constitution. But regardless of what it meant in 1787, “the people” today refers to all Americans, regardless of skin color, gender, ethnicity, sexual orientation, socio-economic status, or any other factor. With the ratification of the Fourteenth Amendment, “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.”¹⁴ All members of the state who are under the jurisdiction, or authority, of the state, are included in the notion of the people who are one and the same as the sovereign. Regardless of personal variances or social inequalities, all members of the state are citizens.¹⁵

¹² Rousseau, “On the Social Contract” 221.

¹³ Rousseau, “On the Social Contract” 175.

¹⁴ *United States Constitution*, Fourteenth Amendment.

¹⁵ This discussion does not take into account exceptional cases such as immigrants, emigrants, and convicts, whose status as citizens may be in question, according to the specific laws governing immigration, emigration, and the criminal reentry and rehabilitation. However, these are different matters, and I will not be addressing them here.

As a member of the state, governed by the laws of the state, a citizen is a full member of the state. And no member of the state can be any more of a member of the state than any other member. As Michael Walzer writes, “there is no privileged access to citizenship, no way of getting more of it, or getting it faster.”¹⁶ Even though he is referring in this passage to education as a means to citizenship—an important point to which we shall return in depth—the truth of this statement withstands all contexts. There is nothing that any citizens can do or be or have, to be more or less of a citizen than anyone else. All members of the state are citizens, and all members of the state are equally citizens.

Thus, despite personal variances and social inequalities, when people come together to form a government based in mutual agreement, they do so as equals. In what he offers as “a remark that should serve as a basis for every social system,” Rousseau proclaims:

[I]nstead of destroying natural equality, the fundamental compact, on the contrary, substitutes a moral and legitimate equality to whatever physical inequality nature may have been able to impose upon men, and that, however unequal in force or intelligence they may be, men become equal by agreement and by right.¹⁷

All people are equally members of “the people” from which a democratic government derives its legitimacy. When a governing body emerges because all of the people consent, as free and equal citizens, to mutually agreeable terms, then the resulting government may be said to be of the people, and equally of the people.

Part B: Government by the People

A government is by the people if the people as a whole are the governing agents. In contrast to government of the people, which is concerned with establishing principles to which all people may freely consent, government by the people is concerned with the people’s role in actively shaping both these principles and the implementation of these principles¹⁸. In a

¹⁶ Walzer, Michael. *Spheres of Justice: A Defense of Pluralism and Equality*. New York: Basic, 1983: 203.

¹⁷ Rousseau, “On the Social Contract” 170.

¹⁸ The difference between principles and the implementation of principles will be delineated in Chapter 2.

government by the people, not only is the structure of government determined by the people, but also, all governmental policy must be determined by the people.

What is more, a government by the people means a government controlled by all the people equally. In a government by the people, the government cannot be more by some people and less by others. In a tyranny or monarchy, a single person governs. In an oligarchy or aristocracy, a select group of people governs. The distinguishing feature of a democracy is that a distinction cannot be made between those who govern and those who are governed, because all people both govern and are governed. The government is equally by the people, and in this regard, all both govern and are governed. This notion of a government by the people may be contrasted with Thomas Jefferson's description of the government of Europe. In a 1787 letter, Jefferson states that monarchies and most republics are, "government[s] of wolves over sheep."¹⁹ In a democratic governmental structure, citizens cannot be divided into a law-making class and a law-taking class, a ruling class and a ruled class, wolves and sheep. Rather, all citizens make the laws and all follow the laws, all are both rulers and ruled, all are autonomous and equal people.

As an extreme example of a government by the people, Rousseau calls for government by a direct democracy, in which each citizen would be fully active in debating public policy and implementing law accordingly. In the contemporary United States, Joshua Cohen rightly calls this extremely high bar of political participation by all "obviously implausible."²⁰ But the basic idea of the influence of all citizens in shaping public policy endures. Popular elections of political representatives ensure that the ultimate determinants of all principles are the citizens. And as John Stuart Mill explains,

¹⁹ Jefferson, Thomas. "To James Madison." *The Papers of Thomas Jefferson*. Ed. Julian P. Boyd. Vol. 11. Princeton, NJ: Princeton UP, 1955: 92.

²⁰ Cohen, Joshua. *Rousseau: A Free Community of Equals*. Oxford: Oxford UP, 2010: 3.

There is a radical distinction between controlling the business of government, and actually doing it. The same person or body may be able to control everything, but may not possibly do everything; and in many cases, its control over everything will be more perfect, the less it personally attempts to do.²¹

Even though citizens in a representative democracy do not perform every function of government, they may nonetheless be said to control all of the functions of government. And what is more, by allowing specific representatives to work out intricate and practical problems, the citizens at large may be freer to influence the most important policy issues. Hence, although some citizens in a representative democracy have more political influence than others, this influence is granted by the people, and it can be taken away by the people. What is more, this influence may be granted to anyone. For, no one has more of a claim to political influence than any other person. The people grant this influence, and the people can take away this influence.

It has been objected that the government should perhaps not be by all of the people equally, as some may know better than others what are the best principles. Even if all consent to some principles, these principles may just be bad. Alternatively, even if the principles are good, the people may not know how to establish and implement government policy that best reflects these principles. Under this view, it is necessary that some smarter or wiser leader, in the tradition of Plato's philosopher-king, has disproportionate influence so that he can ensure that the people are not mistaken, and that governing principles are truly the best. Such a view, however, is entirely incompatible with a democracy, conceived as a government of and by the people.

To illustrate this incompatibility, consider as an example a group of children playing a game. Let us imagine that this group of children made up the game together, and made up all the rules governing the game together. They are all happily playing their game, happy with the rules they created, when an older kid comes along and observes their game. This older kid tells them that their game is silly. He may like the general idea of it, but he insists that the rules are all

²¹ Mill, John Stuart. *Considerations on Representative Government*. South Bend: Gateway Editions, 1861: 95.

wrong. There is a better way to design them, perhaps less redundant, that would better serve the purposes of the game. Assuming that the older kid is right, the advocate of the paternalist government in the preceding paragraph would say that the playing children should change their game to reflect the counsel of the older child. For clearly, he knows best. But perhaps the point of the game is not to do it “the right way,” or even “the best way.” If all the children in the game are happy with the rules they created, are not the rules fulfilling their function perfectly?

Democratic government should be perceived in this way. If all of the members of the state are content with the principles they created, the principles are good. Returning to our example, the possibility of course remains that the older child convinces the playing children of the wisdom of his advice. The children, convinced of their blunders, may be persuaded to change their own rules. But unless they are thus persuaded, it is undemocratic that the older child should impose his rules onto them, even if they are in some way wiser. The virtue of democracy is that government and governing principles are by the people. There is no type of quality control to ensure that the people always make the best choices, but that is a defining rule of the game.

Of course, it is a very high standard that all members of the state may be content with all governing principles. But, as was the case regarding sovereignty, the principles are legitimate when they express notions to which it would be rational for all people to consent. When all citizens cannot agree to some principles, the mechanism for settling disagreements must likewise be such that it would be reasonable for all people to consent to them. Only then can a government be said to be by the people.

Because all people play a role in governing, in a democracy, the equal political rights of all citizens are taken as settled. Democratic government guarantees all citizens an equal right to participate in the exercise of political power, for if some had more political rights than others,

then the government would not truly be by the people. This participation can take the form of membership of a body invested with political authority, or of the election of the members of such a body.²² The fundamental equal right of all citizens to participate in the policies that govern the lives of citizens is crucial to a government by the people.

Part C: Government for the People

Let us accept, in the tradition of Rousseau, Hobbes, Locke, and countless other theorists, that people are concerned with and motivated by their own self-interests. If we accept that rational people are concerned with furthering their own interests, then a rational person would never agree to some terms that may reasonably be expected to harm their interests²³. Thus, the social contract must articulate such terms that all rational people would perceive not to be a threat to their interests. But what is more, the social contract must articulate such terms that all rational people would perceive as beneficial to their interests. For unless it would benefit them in some way, a rational person would not consent to impose restrictions on their autonomy. Democratic governments must therefore further the interests of all citizens. By this, I do not mean to imply that all government actions must advance the interests of all citizens, but rather, that the principles that inform government action must display an equal concern with the interests of all citizens.²⁴

Because all citizens consent to the social contract from the standpoint of equals, the social contract must be concerned with the interests of all citizens, not most citizens. It must articulate such terms that may be reasonably expected to benefit all members of society, or else

²² Marshall, T. H. *Citizenship and Social Class*. London: Pluto, 1987: 8-13.

²³ A person's interest does not have to be strictly confined to that which benefits a person as a selfish individual. For example, it is not difficult to imagine a selfless mother, who wants nothing for herself and only the best for her children. In this case, the interests of the mother may be understood as the well-being of her children. The point is that all people have some interests they seek to pursue, but this interest is not necessarily their own well-being.

²⁴ The distinction between government action and principles that inform government action will be expounded in the next chapter.

all members of society would not agree to it. For the same reason, Rawls denies that rational people would freely accept the terms of a contract that acknowledges the principle of utility in its administration of justice.²⁵ For no rational person would freely accept the possibility of worsening his or her own life prospects.

At this point, it is imperative to differentiate between the notion of democratic government advancing the good of most members, and the notion of democratic government advancing the good of all members. For only the latter conception is legitimate. On the first interpretation, the good advanced by the government is viewed as a kind of aggregate of the private goods of individuals. Under such a conception, a government is good if the majority of citizens may successfully pursue their private good. But such a conception is thoroughly undemocratic. If a government advances the good of some citizens and not others, then that government expresses a concern with the welfare of some citizens, and not others. In other words, the government would consider the welfare of some citizens to be more important than the welfare of others. This would mean that groups of citizens whose welfare is considered less important would constitute a subordinate class of citizens. Accordingly, society could be divided into classes of citizens, whereby those in the favored class receive preferential treatment. Fundamentally, a class system is incompatible with equal citizenship. “The equality implicit in the concept of citizenship, even though limited in content, undermined the inequality of the class system, which was in principle a total inequality.”²⁶ A class system may be a feature of other governments, such as a monarchy or aristocracy, but it cannot be a feature of a democracy. For democracy requires equality of citizenship, and this is incompatible with a government that divides citizens into different classes. Democracy must therefore regard the welfare of all

²⁵ Rawls, John. *A Theory of Justice*. Rev. Ed. Cambridge, MA: Harvard UP, 1999: 13.

²⁶ Marshall 19.

citizens to be equally important, or alternatively, we may say that democracy must show *equal concern* for all citizens.

This *ideal of equal concern* requires an equal concern that all citizens achieve their own good, however they may conceive of it. If people have different notions of what kind of life they would like to live, a democratic government cannot possibly pass judgment on what notions of the good are worthy and acceptable and what notions are not. In the same way that in a government of the people, no one has any *prima facie* authority over anyone else, no one has the authority to judge other people's conceptions of the good. Because people agree to the government from a position of equality, it is imperative that "the content of the conception of the common good that lies at the basis of the laws reflects an equal concern with the well-being of each citizen."²⁷ The well-being of any one citizen is equally significant as the well-being of any other citizen. In a government of and by the people, as people come together to form a government in relations as equals, their notions of the good must likewise be considered equal. As a result, democratic governing policies must recognize the equal worth in all people's pursuits of the good, and must be equally concerned with the advancement of all. By conforming to these two conditions, democratic policy express a respect for people and for their ends. It is a requirement of democratic government that all citizens are showed *equal respect*.

Part D: Democratic Equality as Equality of Respect

By examining the meaning of a government equally of the people, equally by the people, and equally for the people, we have arrived at a robust notion of democratic equality. In a government of the people, the sovereign rests in all of the people equally. The people are equal as rational, autonomous agents, and government of the people demonstrates a respect for the autonomy of all people by grounding its authority in the consent of the governed. No one has

²⁷ Cohen 15.

more influence than anyone else in determining governing policies unless he has been freely given this influence by others. Having established that government is legitimate insofar all members of the society may rationally consent to it, government by the people relies on the proposition that people are capable of establishing principles to which all people may rationally consent.

Further, in a government for the people, all people's pursuit of the good must be regarded as equally valuable, and democratic government must show an equal concern that all people attain their conception of the good. Thus, democratic government must assign equal worth to all people's conceptions of the good and all people's pursuits in this way. If governing policies conform to these two conditions, they may be said to demonstrate respect for all citizens.

To respect people in this way requires viewing them in terms of what they conceive as their end. Respect therefore requires that people are in some sense abstracted from their social standing or their possession of social goods. As Williams explains:

There is certainly a distinction, for instance, between regarding a man's life, actions of character, from an aesthetic or technical point of view, and regarding them from a point of view which is concern primarily with what it is *for him* to live that life and do those actions in that character.²⁸

The former point of view, which sees a person merely in terms of their achievements and their social roles, is concerned entirely with how a person's life appears to others. It assigns no value to that person's own perspective, nor to his or her own capacity to have thoughts and values and desires.

Respect requires that people are not regarded in terms of how they appear to others, but that they are recognized for their own personal perspective, beliefs, and desires. This notion of respect requires the recognition that all people share:

²⁸ Williams 95.

[...] the capacity to feel pain, both from immediate physical causes and from various situations represented in perception and thought; and the capacity to feel affection for others, and the consequences of this, connected with the frustration of this affection, loss of its objects, etc.²⁹

If all people have the capacity to feel certain emotions, such as pain, affection, and the consequences of, these, which include the desire to not be in pain and the desire to attain that for which one has affection, then all people have the equal capacity to feel. This is not meant to be an empirical claim about the scientific or neurological way in which people experience emotional or physical pain or pleasure, but rather a normative claim about the value of subjective experience of feeling, and the equal value of these subjective experiences. In short, in virtue of our equal humanity, my personal, subjective experience of any and all feelings has neither more nor less worth than your personal, subjective experience of any and all feelings. Under this formulation, it is inconceivable that either the happiness or despair of any person is more significant than the happiness or despair of any other person, or that any person's pursuit of their good is more significant than that of any other individual.

Regarding people in this way finds its most robust expression in Immanuel Kant's notion of the Kingdom of Ends, which describes a state of society in which "all rational beings stand under the *law* that each of them is to treat itself and all others *never merely as a means*, but always at the same time as an end in itself."³⁰ To treat a person as a means is to be concerned with how that person's life influences or relates to the lives of others, while to treat a person as an end is to be concerned with how that person views his or her own life.

To respect people requires viewing them as ends in themselves. To speak of ends in this context is to speak "of rational beings as ends in themselves, as well as the ends of its own that

²⁹ Williams 92.

³⁰ Kant, Immanuel. *Groundwork of the Metaphysics of Morals*. Ed. Mary Gregor. Cambridge: Cambridge UP, 2012: 45.

each of them may set for itself.”³¹ A person who views all others as a means will have no conception of the value of any beliefs other than his own. Such a person will have no regard for other people’s well-being so long as it is unrelated to his own, and will respect no one. Thus, to respect people is to understand that they have feelings and opinions and values of their own, and to assign worth to these values. People must therefore *not* be regarded as simply a collection of what they have or what they have done in relation to what other have or have done. Rather, respecting people requires that they be regarded “with consideration of their own views and purposes.” To regard people as such requires that we in some sense look beyond social inequalities, because respect

enjoins us not to let our fundamental attitudes to men be dictated by the criteria of technical success or social position, and not to take them as the value carried by these titles and by the structures in which these titles place them.³²

To respect people regarding them for the worth of their values and the attainment of their values, not for their distribution of social goods. This means “that each man is owed the effort of understanding, and that in achieving it, each man is to be (as it were) abstracted from certain conspicuous structures of inequality in which we find him.”³³ Citizens are all equally worthy of respect, and this equality is independent of social inequalities. Thus, to respect a person involves in some sense abstracting them from their distribution of social goods.

That such principles must follow from the way citizens are equal in a democracy is clear. In a democracy, when speaking of government of the people, by the people, for the people, all people are equal in their status as sovereign, as authorizer and author of laws, and the resulting principles must be to the benefit of all equally. Therefore, it is necessary to consider what kinds of things people would rationally agree to, and what kinds of things people different people want

³¹ Kant 45.

³² Williams 95.

³³ Williams 95.

and seek to pursue. Without regard to such things, it is impossible to conceive of governing principles to which all would rationally consent. Accordingly, democratic government must conform to the *ideal of equal respect*.

Together, the ideals of equal concern and respect require that democratic government facilitates all citizens in the pursuits of their ends. If a state is formed to assist people in their pursuits of the good, it must assist them in their pursuit of whatever they understand to be good.³⁴ It is imperative that a government respects all people's pursuits equally, and strives to advance all on terms that are fair to all. Respect in this sense requires that no single citizen is ever treated as if his or her pursuit of the good does not matter. Democracy demands that all citizens are respected. This means that governing policies must recognize the value of all people's conceptions of the good, and what is more, they must be equally concerned with all people's pursuits of the good.

However governing principles advance the good of citizens, it must not permit the denial of just treatment to anyone, even if such just treatment would benefit numerous others. In Rawlsian terms, "Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot."³⁵ Harm to a single individual cannot be justified, even if it advances the good of countless others. For each member is an equal member of the state, and thus, has an equal claim to the benefits of the state. This does not mean that the well-being of one may be reasonably sacrificed in order to advance the well-beings of several. Rather, it means that the well-being of none can be sacrificed.

³⁴ The only permissible exception regards those ends which may obstruct or impede other people's pursuits of other goods. Invoking Mill's Harm Principle, it is permissible for the state to check certain pursuits if they are incompatible with the pursuits of others. I assume, however, that the vast majority of rational people's conceptions of the good life involve neither causing harm to others nor interfering with the goals of others.

³⁵ Rawls, *A Theory of Justice* 3.

CHAPTER TWO: FAIR GOVERNING PRINCIPLES

Thus far, we determined that a democracy is government equally of the people, equally by the people, and equally for the people. These features of democracy led us to the ideals of equal concern and respect, which hold that democratic government must demonstrate an equal concern and respect for all citizens. These ideals are a crucial element of democratic political morality, but on their own, they effectively do very little. As a next step, it is necessary to consider what kinds of governing principles follow from these ideals. Governing principles may be viewed as an intermediary between ideals and the practical policies that are to reflect these ideals. Ideals are the most abstract expressions of values that we hope to be embodied by all government action; law and policy, which determine how government practically influences the lives of citizens, are the least abstract.³⁶

In the United States, Constitutional amendments can be thought of as governing principles. They are principles that seek to articulate our founding democratic ideals, and they inform policy and laws that govern the practical lives of citizens. Conceived this way, respect for the liberties established by the first amendment, due process, certain criminal rights, prohibition of cruel and unusual punishment, are all governing principles. In addition to these, notions of equal opportunity and equality under the law are governing principles that follow from a more abstract articulation of democratic ideals. It is important to note that these governing principles are to some degree removed from specific implementations of government action, yet they express principles that should inform the implementation of government policy.

³⁶ This discussion is informed by Chapter IV, "Equal Liberty," Rawls, John. *A Theory of Justice*, Rev. Ed. Cambridge, MA: Harvard UP, 1999, p. 171-227. In Section 31, "The Four-Stage Sequence," Rawls holds that "a theory of justice has to deal with at least three types of questions, and this indicates that it may be useful to think of the principles as applied in a several stage sequence" (172). The first sequence, involves the principles of justice, the second involves a Constitutional convention, the third is the legislative stage, and the fourth is the application of rules to particular cases.

My objective in this chapter is to advocate for certain governing principles, with a specific focus on those governing principles concerning the distribution of social goods, that I hold follow from the basic democratic ideals of equal concern and respect for all citizens. In chapters three and four, I will discuss how these established governing principles may inform specific policy in the realm of public education.

Before making a case for certain governing principles, it is necessary to define the function of governing principles. Most simply, governing principles govern the public cooperative ventures formed when citizens come together to form society on mutually agreeable terms. I refer specifically to public organizations in order to differentiate something like the system of public education from, say, a private book club. The former are regulated by the government, informed by governing principles, while the latter are not necessarily. Public organizations compose what Rawls calls “the basic structure of society.” The subject of governing principles are these “basic structures of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation.”³⁷ As Rawls states here, social institutions collectively serve three distinct and significant roles. First, they assign rights; second, they determine duties; and third, they determine the division of advantages that arise from social cooperation. These advantages that arise from social cooperation are what we have called social goods. As I argue for certain governing principles concerning the distribution of social goods, I will consider the nature of these three roles one at a time.

Part A: Primary Goods

In the last chapter, I held that democratic government must show an equal concern for the interests of all citizens. To complicate matters, however, it is likely that rational beings may have

³⁷ Rawls, *A Theory of Justice* 6.

countless different notions of what constitute their own interests. For surely, all people do not value the same things, and accordingly, different people will have different conceptions of what benefits and harms them, and of what kind of life is worth pursuing. If people have different notions of what would benefit them, how can a government for the people be for all the people? If people have different conceptions of their own interests, what kind of governing principles would show equal concern for the interests of all?

Concern for the interests of all citizens requires considerations of mutual advantage. Explaining why people come together to voluntarily form government, Rousseau writes, “You will find no other motive than that of securing goods, life, and liberty, of each member through the protection of all.”³⁸ In other words, governments are formed because people seek the protection of all as they strive to secure goods, life, and liberty for themselves. The notion of the protection of all is an important element of the social contract. People come together to form the contract because they seek some type of benefit for themselves, but in exchange for this benefit, they agree to provide the same benefit to others. This notion of reciprocal advantage is an important component of democratic government, and we will return to it later.

But what can all citizens be said to want? Rousseau, and in his footsteps, Rawls, both provide an account of how the recognition of one’s own aims may lead to an account of rights that may advance the aims of all. “For if the opposition of private interests made necessary the establishment of societies, it is the accord of these same interests that made it possible.”³⁹ In a nearly identical move, Rawls writes, “If men’s inclination to self-interest makes their vigilance against one another necessary, their shared public sense of justice makes secure association

³⁸ Rousseau, Jean-Jacques. "Discourse on Political Equality." *Jean-Jacques Rousseau: The Basic Political Writings*. Trans. Donald A. Cress. 2nd ed. Indianapolis: Hackett, 2011: 128.

³⁹ Rousseau, "On the Social Contract" 170.

together possible.”⁴⁰ These ideas are strikingly similar. First of all, they both claim that it is the private self-interests of men that made them first seek some kind of established oversight. This is reminiscent of the Hobbesian notion that relations between people will be unstable unless they can be checked by some authority that secures their personhood.

But instead of ending the story there, as Hobbes does, Rousseau and Rawls take the story a step further. According to them, if people can recognize this mutual interest in securing their own person and livelihood, then they can recognize that they have mutual interests in that they all desire some primary goods. And if people have mutual interests, it would be rational for them to come together to agree to protect these mutual interests. Governments are thus able to form because people can recognize that themselves and others can have shared interests. These shared interests are things that all people may be said to want, regardless of their conceptions of the good life. Referring to all members of a society, Rawls holds that

their particular conceptions of the good, however distinct their final ends and loyalties, require for their advancement roughly the same primary goods, for example the same rights, liberties, and opportunities, as well as certain all-purpose means such as income and wealth.⁴¹

In this vein, let us call *primary goods* those goods to which all people may want access, regardless of their conception of the good that they pursue.

In the American tradition, the Declaration of Independence and the Constitution both offer a list of primary goods in the Rawlsian sense. Regardless of their conceptions of the good, all American may be said to want, as the Declaration of Independence says, “Life, Liberty and the pursuit of Happiness.”⁴² The Constitution expands on these ideals by stating that American government was established “to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the

⁴⁰ Rawls, *A Theory of Justice* 4-5.

⁴¹ Rawls, John. “Social Unity and Primary Goods.” *Collected Papers*. Ed. Samuel Richard Freeman. Cambridge, MA: Harvard UP, 1999: 361.

⁴² *United States Declaration of Independence*.

Blessings of Liberty to ourselves and our Posterity.”⁴³ All people seek safety, and governments accordingly provide for defense and tranquility. Further, people all have a natural right to basic claims over their own person, and governments thus seek to protect these basic liberties. Lastly, and of central importance to our purposes, governments ought to secure everyone’s pursuit of happiness, and promote the general welfare. Thus informed by the Declaration of Independence and the Constitution, I propose the following list of primary goods that all people may be said to want, regardless of their values and ambitions: protection from physical assault or attack; peace; expansive basic liberties, both civil and political; and the means to pursue one’s own conception of happiness, whatever that may be.

Part B: Democratic Rights

The rights of democratic citizens are a subcategory of primary goods, because they are of such a nature that all citizens may be said to want them, regardless of their conception of the good. Rights are a kind of entitlement, by which all who have a right to some good *x* have a just and irrevocable claim to *x*. If a person has a right to vote, for example, that person has a claim to exercise his or her vote that cannot be overridden or taken away for any purpose. If a citizen has a right to some good in virtue of being a citizen, then all citizens, as equal citizens, must have an equal right to that good. Only an equal distribution of rights guaranteed by democratic government is fair to all citizens by demonstrating equal concern and respect for all.

These rights of citizens include comprehensive rights and liberties.⁴⁴ That all citizens have an equal right to expansive political participation has already been established. Here, I will address what other rights and liberties must be guaranteed to all citizens. Recalling the imperative that all citizens’ pursuit of the good life are recognized as equally worthy, all citizen’s

⁴³ *United States Constitution*, Preamble.

⁴⁴ For an expanded discussion of this, see Rawls, “Social Unity and Primary Goods” 362-63.

conceptions of the good life must be equally worthy. In recognition of this imperative, citizens must all have expansive liberties to define for themselves their own conceptions of their good, and perform actions in line with these conceptions.

Rawls provides a comprehensive list of such basic liberties that are to be preserved. In addition to political liberties, which have already been addressed, the list includes:

freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person, which includes freedom from psychological oppression and physical assault and dismemberment (integrity of the person); the right to hold personal property and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law.⁴⁵

In respect of the autonomy of all rational beings, democratic citizens are to retain substantial liberty, such that no religion, belief, values, choice, or ways of life may be construed as more or less worthy than any other. These individual liberties should therefore be as extensive as possible, as the “only reason for circumscribing basic liberties and making them less extensive is that otherwise they would interfere with one another.”⁴⁶ If people come together to secure their own basic liberties by agreeing to protect the basic liberties of all people, then the only limit on the extent of these liberties should be a restriction of that which harms others, of that which cannot be extended to everyone simultaneously. Democratic citizens should have expansive liberties, and the only compelling reason to curb these liberties is if they are harmful to others.

These expansive rights and liberties may be desired by all people, regardless of their conceptions of the good and their personal variances. Put simply, they are a mutual interest of all people. To secure this mutual interest for all would be for the common good of all. Thus, government for the people would secure these expansive rights and liberties for all citizens, to the extent that they do not threaten the rights and liberties of any other citizens. Let us add to this list the right to legal justice, because it represents a citizen’s rights “to defend and assert all one’s

⁴⁵ Rawls, *A Theory of Justice* 53.

⁴⁶ Rawls, *A Theory of Justice* 56.

rights on terms of equality with others and by due process of law.”⁴⁷ Thus, in addition to securing these rights and liberties, democratic government must secure for all citizens the right to defend and assert one’s rights and liberties. Furthermore, because all must have an equal right to defend and assert their rights and liberties, all citizens must be equal under the law.

In this way, from the basic ideals of equal concern and respect, we can arrive at the governing principles of respect for expansive individual rights and liberties and equality under the law. Democratic government must distribute all of these primary goods equally to all citizens. Because citizens in a democracy all have a right to these goods, let us call these primary goods the rights of citizens.

Part C: Duty to the Common Good

Other primary goods, however, cannot be distributed equally to all. Of these, there are two kinds. Goods of the first kind, “such as health and vigor, intelligence and imagination are natural goods: although their possession is influenced by the basic structure [of society], they are not so directly under its control.”⁴⁸ In contrast, goods of the second kind are those primary goods directly under the control of the basic structure of society. Because these goods, the goods of social inequalities, are those goods distributed by society, let us call them *social goods*. This list includes positions of influence, power, and responsibility, and income and wealth. Positions of influence, power, and responsibility, as well as income and wealth, are unavoidable features of free, organized society: all social institutions are structured in ways that require some degree of inequality among citizens.

Equality literally understood is an idea ripe for betrayal. Committed men and women betray it, or seem to do so, as soon as they organize a movement for equality and distribute power, positions, and influence among themselves.⁴⁹

⁴⁷ Marshall 8.

⁴⁸ Rawls, *A Theory of Justice* 54.

⁴⁹ Walzer, Michael. *Spheres of Justice: A Defense of Pluralism and Equality*. New York: Basic, 1983: xi.

All social organizations place some people in positions of power over others, and through these institutions, other goods, such as income and wealth, are also distributed unequally.

Despite this unequal distribution of social goods, the government must advance the interests of all citizens. This is a difficult notion. If goods are allocated unequally, some citizens will receive more than others, and some citizens will receive less than others. In other words, when there is an unequal distribution of primary goods, some will win and some will lose. How can governing principles that produce losers be said to advance the interests of all citizens? In this section, I argue that governing principles advance the interests of all citizens, winner and losers alike, so long as they are fair to all citizens.

In a democracy, governing principles must be fair to all. For in a government for the people, it is the duty of the sovereign to establish principles that benefit all. This is a challenging notion, because the sovereign is made up of individuals seeking to pursue their own self-interests. This conception of democracy establishes a kind of dual role for citizens, both as sovereign and as subject. In a government that is both by the people and for the people, the people are both the lawgivers, and the beneficiaries of the laws they have given. Consequently, a citizen “finds himself under a twofold commitment, namely, as a member of the sovereign towards private individuals, and as a member of the state towards the sovereign.”⁵⁰ Put another way, citizenship contains two distinct components: rights given *to* the citizen by virtue of his citizenship, and obligations owed *by* the citizen in virtue of this citizenship. In these respects also must citizens be equal. As sociologist T. H. Marshall puts it, “Citizenship is a status bestowed on those who are full members of a community. All who possess the status are equal with respect to the rights and duties with which the status is endowed.”⁵¹ In a government for the people, all

⁵⁰ Rousseau, “On the Social Contract” 165.

⁵¹ Marshall 15.

members of society have a right to be individually benefited by government policy. Yet in a government by the people, all have a duty to endorse governing policies that benefit all.

Governing principles must display an equal concern and respect for all citizens, yet governing principles are made by citizens motivated by advancing their own individual interests. As Rawls explains, people's concern with their private interests creates a kind of conflict in the establishment of unbiased principles:

Then, although a society is a cooperative venture for mutual advantage, it is typically marked by a conflict as well as by an identity of interests. There is an identity of interests since social cooperation makes possible a better life for all than any would have if each were to live solely by his or her own efforts. There is a conflict of interests since persons are not indifferent as to how the greater benefits produced by their collaboration are distributed, for in order to pursue their ends, they each prefer a larger or lesser share.⁵²

Although people can recognize their mutual interests with others, people are likely biased towards that which would favor them. It is for this reason that theorists such as Schumpeter deny that people are able to identify what is in the public interest.⁵³ In some cases, however, it is clear that people cannot only recognize what is fair for all people, but can also desire such policy over policy that unfairly favors them.

Fairness, I will argue, advances the interests of all citizens in a way that transcends the immediate self-interest of individual citizens. This sense of a transcending public good finds its best articulation in Rousseau's conception of the general will. The general will represents the interest of citizens to advance the good of all citizens. "[W]hat makes the will general is not so much the number of votes as the common interest that unites them."⁵⁴ Rousseau's notion of the general will is a very complex idea, and with it comes several difficult questions. For example, in many cases, it is unclear how citizens are to first, identify the general will, and second, agree upon principles that advance the general will. It is not my purpose to resolve these questions

⁵² Rawls, *A Theory of Justice* 4.

⁵³ See Chapter XX, "The Setting of the Problem", Schumpeter, J. *Capitalism, Socialism and Democracy*, New York: Harper and Row, 1956.

⁵⁴ Rousseau, "On the Social Contract" 175.

here. For our purposes, it is enough that there exists some notion of that which may be good for all people, and which is primarily concerned not with the advancement of the immediate self-interests of citizens, but with the advancement of fair principles that all citizens can agree to be in the best interest of all members of the state.

Founded on the general will, democratic government represents a contract that free and equal people may all rationally accept. “This agreement is legitimate, because it has the social contract as a basis; equitable, because it is common to all; useful, because it can have only the general good for its object; and solid, because it has the public force and the supreme power as a guarantee.”⁵⁵ The established government is legitimate because it is formed by terms to which all rational people can agree to submit themselves. It recognizes the ways in which people are equal by applying to all equally and seeking the good of all. Put simply, principles of the general will are those principles which comply with the equality of democratic citizens. Because they display an equal respect and concern for all citizens, we shall call these principles, principles of the general will, fair.

Consider as an example the distribution of ten piece of candy among ten children. If a children seeks all ten pieces of candy, then a policy that gives all ten pieces to that child would advance that child’s self-interest. At the same time, he may recognize the greater value of all ten pieces being distributed equally, so that each child receives one piece. Though such a division may not be the best way to advance the self-interest of that child, the child may nonetheless desire such a division, because it is rational to desire a policy that treats everyone fairly, for two reasons. First, if there is no relevant reason why the child should receive all ten pieces, though he may desire them, then the selfish advantage that he seeks is arbitrary. If he is given all ten pieces on this occasion, for no relevant reason, who is to say he may receive zero pieces on subsequent

⁵⁵ Rousseau, “On the Social Contract” 175.

occasions, for no relevant reason? If on the other hand, there is a fair division, in which the candy is not unfairly distributed for irrelevant reasons, we can count on fair treatment in the future. People who want to advance their own conceptions of the good want to live in a society that allows for their pursuit of the good, and that also allows for everyone else's pursuit of the good. As Rousseau explains, "Apart from this private good, he wants the general good in his own interest, just as strongly as anyone else."⁵⁶

Secondly, the self-interested child may rationally desire a fair division of the candy because he can understand the inherent value in fair treatment. As Rawls puts it,

Thus in formulating a conception of justice for the basic structure of society, we start by viewing each person as a moral person moved by two highest-order interests, namely, the powers to realize and to exercise (sic) the two powers of moral personality. These two powers are the capacity for a sense of right and justice (the capacity to honor fair terms of cooperation), and the capacity to decide upon, to revise, and rationally to pursue a conception of the good. [...] so that moral persons are said to have both the capacity and the desire to cooperate on fair terms with others for reciprocal advantage.⁵⁷

We understand that citizens have their own distinct interests, and they seek that government should advance these private interests. But at the same time, people may recognize what is fair and just for all members of society, and they may rationally desire what is fair and just for all members of society. Grounded in a recognition of the ways the people are equal, the child can rationally understand that he has no more of a claim to additional advantages than the other children. In other words, a self-interested child may think, "I want all ten pieces." But a rational being can separate that claim from the different claim, "I should have all pieces." The ability of rational being to distinguish between the first type of claim and the second, between that which they can rationally want and that which is fair and just, marks the difference between private interest, and Rousseau's notion of a public good that transcends private interest.

⁵⁶ Rousseau, "On the Social Contract" 225.

⁵⁷ Rawls, "Social Unity and Primary Goods" 365.

This sense of fairness that both transcends the private goods of individuals and advances the private good of all individuals is essential to the workings of democratic government, because it allows for the government to advance the interests of all at the same time. It is essential that democratic government advances the good of all, for if it does not, those who are disadvantaged would not consent to them.

But just institutions and the political virtues expected of citizens would serve no purpose—would have no point—unless those institutions not only permitted but also sustained ways of life that citizens can affirm as worthy of their full allegiance.⁵⁸

In order for rational, self-interest people to consent to some government, it must advance principles that people can affirm as worthy of their allegiance. This is possible because citizens may rationally desire to cooperate on fair terms with others for reciprocal advantage.

Part D: Distribution for the Common Good

This conception of fairness may not advance the immediate self-interests of all citizens equally. By advancing notions of fairness, which are in the greater interest all citizens, the immediate self-interests of some citizens may be disadvantaged. The selfish child may not be given all ten pieces of candy, but in exchange, he gets something greater: he gets to be governed by principles that are fair. In this sense, distributive principles may permissibly disadvantage some members of society if they do so on terms that are fair to all members of society. In other words, if some people are disadvantaged by a distribution, there must be a rational explanation for their disadvantage that recognizes the value of their well-being and in this way express respect for them and their ends.⁵⁹

The unequal distribution of some primary goods does not mean that this distribution is immune from the principle of equal distribution. Rather, the principle of equal distribution

⁵⁸ Rawls, John. "The Priority of Right and Ideas of the Good." *Collected Papers*. Ed. Samuel Richard Freeman. Cambridge, MA: Harvard UP, 1999: 449.

⁵⁹ See Section 29, "Some Main Grounds for the Two Principles of Justice," Rawls, John. *A Theory of Justice*, Rev. Ed. Cambridge, MA: Harvard UP, 1999, p. 153-60.

applies to the opportunity to attain the good which is distributed unequally. For primary goods are distributed unequally,

it is appropriate to speak [...] not only of the distribution of the good, but also of the opportunity of achieving the good. But this, unlike the good itself, can be said to be distributed equally to everybody, and so one does encounter a notion of a *general* equality, much vaunted in our society today, the notion of equality of opportunity.⁶⁰

The opportunity of achieving some good may be distributed equally to all, and ergo, it must be distributed equally to all. All citizens must therefore have equality of opportunity, which Williams defines as “the notion that a limited good shall in fact be allocated on grounds which do not *a priori* exclude any section of those that desire it.”⁶¹ That is to say, those principles which regulate the distribution of goods begin with the notion that all people are to be considered as potential beneficiaries of the distribution.

Connecting the attainment of certain social goods to the pursuit of one’s conception of a good life, Brighouse holds that

for society to restrict someone’s access to a rewarding life is to confer less value on her life than on that of those whose access is assisted. Conferring unequal value on two people’s lives is an instance of granting unequal respect.⁶²

The ideals of equal respect and concern require that all citizens’ conceptions of the good and pursuits of these conceptions are regarded as equally worthy, and accordingly, they must all be taken equally seriously. For the government is established to advance the good of all, and a person would not consent to principles that do not even allow them the opportunity to be considered for certain goods. Thus, all democratic citizens must have the equal opportunity to attain primary goods that are distributed unequally. What is meant by equality of opportunity is the subject of the next two chapters.

⁶⁰ Williams 97.

⁶¹ Williams 99.

⁶² Brighouse, Harry. "Why Should States Fund Schools?" *British Journal of Educational Studies*, Vol. 46, No. 2. June (1998): 146.

CHAPTER THREE: EDUCATION AND EQUALITY OF OPPORTUNITY

In the previous chapters, I have asserted that in order to remain true to democracy as a government equally of, equally by, and equally for the people, democratic governing principles must display an equal concern for all people's pursuit of their good, however conceived, and an equal respect for individuals as autonomous, rational beings with a worthy conception of the good and a valuable stake in attaining this good. These principles regulate the rights and duties of citizens, as well as the distribution of social goods. The distribution of social goods is fair when all citizens have an equal opportunity to attain these goods.

In the United States today, opportunities to attain social goods are strongly dependent on education. Among philosophers, political and legal theorists, and social scientists today, the precise relationship between public education and equality of opportunity is a heavily contested. As Debra Satz explains in the beginning of "Equality, Adequacy, and Education for Citizenship,"⁶³ the debate regarding educational opportunities came to the forefront of American educational policy in 1973, when the United States Supreme Court upheld a state system of financing public education based in part on revenue from local property taxes, which, as discussed at length below, has the effect of maintaining large discrepancies in the amount of money spent on the education of a student in a wealthy district than that spent on the education of a student in a less-wealthy district. Since this case, *San Antonio Independent School District v. Rodriguez*, notions of educational equality became less central, and a rhetoric of adequacy took its place. Propelled by the Court's recognition of the importance that all students receive an "adequate" education, this notion holds that it is less important that all educational opportunities are equal to each other in quality, and more important that the quality of all education surpasses

⁶³ Satz, Debra. "Equality, Adequacy, and Education for Citizenship." *Ethics*, Vol. 117, No. 4, Symposium on Education and Equality (July 2007): 623-648.

some discernable floor. If a government is concerned with establishing public education as an engine for equality, should it seek to establish an adequate education for all students, or an equal education for all students? Today, the debate between adequacy standards and equality standards dominates the literature on school finance reform. Most every law review article on the issue can be simplified as a case for one or the other.

In this chapter, I will explore the relationship between financial resources, educational quality, and equal opportunity. I will reject financing schemes that allow educational quality to vary according to the wealth of the community into which a citizen resides, and I will end by calling for both an adequate and an equal education for all citizens.

Part A: Education and Equality of Opportunity

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. [...] Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.⁶⁴

I concluded the previous chapter by asserting that all citizens must have an equal opportunity to attain those primary goods that are distributed unequally. In the United States today, the opportunity to attain such goods is strongly linked to education. It is for this reason that the above passage, from the 1954 decision of the United States Supreme Court in *Brown v. Board of Education*, makes the point that education is a necessary condition for a successful life. That this follows from what has been asserted in the past two chapters is clear. It has been asserted that governments must advance all citizens' conceptions of the good equally. Though citizens may have quite dissimilar conceptions of what is the goods life, there are certain primary goods that all citizens may be said to want, whatever their conceptions. "In these days," to

⁶⁴ *Brown v. Board of Education*, 347 US 483 - Supreme Court 1954

pursue pretty much anything at all requires engagement with social institutions. For even a person who follows Thoreau and moves to Walden, is still a member of the state, accountable to the laws of the state, and will be imprisoned for civil disobedience. However one conceives of success, it inevitably requires some degree of engagement with the political structure, and with social and economic institutions. It even seems reasonable to maintain that income and wealth are essential to any notion of success, though not necessarily in excess.

Education is essential to all of this. An adult's standings as citizen is tremendously formed by childhood experiences. Surely, a citizen's capacity to participate in political proceedings, potential success in the economic sector, and relationship with the cultural and historical heritage of the society largely follow from childhood experiences and opportunities, and in particular, from his or her primary and secondary education. Thus a citizen's educational opportunities as a child strongly impact his or her distribution of social goods as an adult. "Educational opportunities provide [...] competitive advantages in economies which distribute benefits and burdens unequally." For example, "more educational opportunities of a certain kind enhance your prospective lifetime income and job satisfaction."⁶⁵ As Supreme Court of California held in 1971, "[u]nequal education, then, leads to unequal job opportunities, disparate income, and handicapped ability to participate in the social, cultural, and political activity of our society."⁶⁶ An adult citizen's right to exercise his or her full rights as a citizen demands that he receive an education. "Fundamentally it should be regarded, not as the right of the child to go to school, but as the right of the adult citizen to have been educated."⁶⁷ Public education is a fundamental step to ensure that all members of society have an opportunity to attain social goods.

⁶⁵ Brighthouse 145.

⁶⁶ *San Francisco Unified School Dist. v. Johnson*, supra, 3 Cal.3d 937 (Cal. Super. Ct. 1971)

⁶⁷ Marshall 16.

Education is essential to the opportunity to engage with the political structure, to the opportunity to take part in social institutions, and to the opportunity to achieve whatever level of economic affluence one desires. Accordingly, education is in some way fundamentally connected to equality of opportunity.

Equality of opportunity, as many social scientists have shown and as countless politicians have proclaimed, is central to the American Dream. [...] But perhaps the most important and uncontroversial vehicle, indeed one might say the central engine, for realizing equal opportunity is the school house.⁶⁸

In this chapter and the next, I will discuss the appropriate structure of public education if it is to comply with democratic equality of opportunity. In order to do this, it is necessary to form a conception of democratic equality of opportunity.

Part B: Relevant Reasons for Differentiation in the Distribution of Social Goods

Even if everyone has the equal opportunity to attain some good, there is still a need to define principles that will determine its distribution. Such a distribution must demonstrate an equal respect and concern for the well-being of all citizens. But what would this fair distribution look like? By way of answering this question, Williams begins with the claim, “Men should be treated alike in similar circumstances.”⁶⁹ That this follows from the ways in which people are equal is undeniable. If two people are in similar circumstances, then to treat them differently is to either be more concerned with the fortune or misfortune of one over the other, or it is to respect one over the other. It follows that if two people are to be treated differently, the different treatment must follow from some difference in their circumstances. “For every difference in the way men are treated, some general reason or principle of differentiation must be given.”⁷⁰ Considering the ways that people are equal, if people are to be treated unequally, it must be on account of some way in which they are different. Further, the reason provided must be relevant:

⁶⁸ Koski, William S., and Rob Reich. When “Adequate” Isn’t: The Retreat from Equity in Educational Law and Policy and Why It Matters. *Emory Law Journal*, Vol. 56, No. 3, 545-618 (2006): pp. 607.

⁶⁹ Williams 91.

⁷⁰ Williams 91.

not any reason will do. A relevant reason for differentiation must be one that connects some fact about the person to a fact about the good that is to be distributed.

But the facts about a person that are to be considered relevant for purpose of distribution must follow from the way democratic citizens are equal. “In other words, the inequality of the social class system may be acceptable provided the equality of citizenship is recognised (sic).”⁷¹ As demonstrated in the previous chapter, the equality of democratic citizens demands that governing principles display an equal concern and respect for all. The principles that define what are considered relevant reasons for differentiation must therefore display equal concern and respect for all. As stated previously, respecting a person requires regarding them not in terms of their distribution of social goods, but in terms of their own values and personal variances. In other words, to respect a person requires defining them by factors other than those that result from social inequalities. To demonstrate how this is so, let us consider the notion of respect from the perspective of the citizen. Self-respect has to do with a “person’s sense of his own value, his secure conviction that his conception of his good, his plan of life, is worth carrying out.”⁷² This component of self-respect is satisfied if the government demonstrates an understanding of the value of every citizen’s conception of the good. We have already discussed the importance of this principle.

One’s share of social goods may not properly be called a feature of a person. The veracity of this claim is most clear in considerations of inherited socio-economic standing. Some people are born into wealthy families, some are born into poor families. Some people are born to parents with influential and high-power careers, and some are born to parents who are unemployed. But to allow the circumstances of one’s birth to influence one’s opportunities is not fair. People do

⁷¹ Marshall 6.

⁷² Rawls, *A Theory of Justice* 386.

not choose the family into which they are born, and no one can be said to “deserve [...] their] initial starting place in society.”⁷³ Anderson articulates the same idea when she speaks of “the obviously correct claim that no one deserves their [...] accidents of birth, such as who their parents are or where they were born.”⁷⁴ ⁷⁵ The circumstances of one’s birth are outside of one’s control, and they are not facts about a person as a person, but rather facts about a person’s environment. As Harry Brighouse writes,

If the benefits and burdens of the economy are distributed unequally, there is a prima facie burden to ensure that the inequalities are, in some sense, deserved. No-one can deserve the educational disadvantages they suffer simply because they have their particular parents. If those inequalities confer unequal opportunity for economic goods, then success in economic competition cannot be said to be deserved.⁷⁶

As argued in the previous chapter, to respect a person requires that they are regarded as a person, and not as simply an occupant of some position within society. To allow the socio-economic standing of one’s parents to influence one’s opportunities to attain social goods “permits distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view.”⁷⁷ The socio-economic class into which one is born provides an arbitrary and impermissible reason for differentiation in the distribution of social goods.

A distribution of social goods accordingly conforms to the way that citizens in a democracy are equal when it is in accord with the following principles: *Distributive policies must differentiate possible recipients of some social good for relevant reasons only, wherein current distributions of social goods are not considered relevant reasons.* Relevant reasons for differentiating between who should receive some social good and who may not must therefore be

⁷³ Rawls, *A Theory of Justice* 89.

⁷⁴ Anderson 290.

⁷⁵ Anderson and Rawls both roughly divide accidents of birth into two categories: natural endowments and the socio-economic position of one’s parents. In this quote, and in other quotes in this chapter, I omit references to natural endowments as an undeserved accident of birth. As stated previously, I suggest that merit may be related to one’s natural endowments, but it is not my project to define merit here. Rather, my project is to reject socio-economic standing as a relevant reason to differentiation, and accordingly, when discussing undeserved accidents of birth, I will focus exclusively on this factor.

⁷⁶ Brighouse 145.

⁷⁷ Rawls, *A Theory of Justice* 63..

unrelated to people's social inequalities. Relevant reasons for differentiation must come from features of a person, such as values, beliefs, personal variances such as natural abilities, and conceptions of the good, for example. Whatever combination of these things may justify a person's receiving some social good, let us call *merit*. The nature of merit is complicated, and may vary depending on the good in question. But the exact nature of merit does not concern us here. For our purposes, it is enough that merit, or that which justifies some person's receipt of some social good, must be unrelated to one's current distribution of social goods. Any principle that allows citizens to receive more or less of some primary good on account of their current distribution of social goods is repugnant to democratic equality.

Part C: Funding of Public Education

In the United States today, more or fewer resources are allocated to citizens' education on account of their current distribution of social goods. These financing principles are repugnant to democratic equality.

Every state in the nation except Hawaii finances its system of public education in part through local district property taxes.⁷⁸ This means that the amount of money spent on the education of every public school student in the United States, except for those living in Hawaii, is determined at least in part by the wealth of the property of the district in which the child resides. Accordingly, more money is spent on the education of a child living in a property-rich district than on the education of a child living in a property-poor district.

The resulting disparities in educational funding are substantial. For example, during the 1967-68 school year, while one wealthy district in San Antonio spent \$594 on public education

⁷⁸ *The Condition of Education 2012: Public School Revenue Sources. Rep.* Washington, D.C.: U.S. Department of Education, National Center for Education Statistics, 2012. Available at: http://nces.ed.gov/programs/coe/pdf/coe_sft.pdf. This 2012 report presents evidence from the 2008-09 school year, the most recent year for which the U.S. Department of Education has compiled comprehensive statistics.

per pupil, another district in the same city could only afford to spend \$356.⁷⁹ In the same state, the poorest district could afford to spend less than \$250 per pupil.⁸⁰ Such disparities are not unique to Texas in the 1960s. In Connecticut in the 1972-73 school year, the effective yield per pupil in the poorest district was eleven-percent of the effective yield per pupil in the wealthiest.⁸¹ And in Vermont in 1995, the wealthiest district spent 260-percent of what the least wealthy district spent per student.⁸² Though these are just a few examples, they serve to illustrate the extent to which financing schemes for public education that are based in part on the value of local property taxes can and do create sizable variations in the amount of money different school districts are able to spend per pupil.

These variations are an unavoidable result of this type of school financing program. Given the nature of the role of property taxes in this scheme, two districts that differ in property value that are taxed at the same rate yield substantially disparate results, and a property-poor district would thus have to tax itself at higher rates to yield the same amount of funding for education as their wealthier counterparts. In most cases, however, the disparities are so great that to adjust the tax rates of the districts so as to generate comparable tax revenues for education is unrealistic and infeasible. In Texas in 1970, for example, one property-poor district would have had to tax itself at twenty times the rate of a nearby district just to match that district's revenue from property taxes.⁸³ Not only do these schools have different resources as a result of the system, but on top of this, the system provides no real means for the poorer districts to match the expenditures of the wealthier districts.

⁷⁹ *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).

⁸⁰ Farber, Daniel A. *Retained by the People: The "Silent" Ninth Amendment and the Constitutional Rights Americans Don't Know They Have*. New York: Basic, 2007: 145.

⁸¹ *Horton v. Meskill*, 172 Conn. 615 (1977)

⁸² *Brigham v. State of Vermont*, 692 A.2d 384 (1997)

⁸³ Irons, Peter H. *The Courage of Their Convictions: Sixteen Americans Who Fought Their Way to the Supreme Court*. New York City: The Free Press, 1988: 287.

This unequal funding significantly undermines the self-respect of students who attend school in poorer districts. The unequal distribution of state benefits creates the impression that those who are disadvantaged by the distribution are in some way second class citizens.”⁸⁴

Students who attend school with less funding than other schools truly believe themselves to be second-class citizens of a government that is more concerned with the interests of the wealthy. In his 1991 book *Savage Inequalities*, Jonathan Kozol interviewed students from two neighboring school districts. One of these districts was wealthy, and other was poor. The effects of the disparities of educational funding on the students who attended the poorer school are striking. These students commented that society must not really care about them, and that the rich people ensure all the advantages for their own children and themselves.⁸⁵

As we explore challenges to this type of financing scheme, it will be fruitful to consider how this issue has been treated by the American legal system. As Tocqueville noted about the “influence of the legalistic attitude” in the United States, “There is hardly a political question in the United State which does not sooner or later turn into a judicial one,”⁸⁶ and financing public education based in part on revenue from local property taxes is not an exception. The first federal challenge to this scheme began in 1968, when parents of children who were attending public schools in Texas filed a lawsuit challenging the fact that their children’s school received significantly less funding than nearby schools in wealthier districts.

This case, which came to be known as *San Antonio Independent School District v. Rodriguez*, was heard first by the Federal District Court for the Western District of Texas sided

⁸⁴ *Hooper v. Bernalillo County Assessor*, 472 US 612 (1985)

⁸⁵ Kozol, Jonathan. *Savage Inequalities: Children in America's Schools*. New York: Crown Pub., 1991: pp. 152-155.

⁸⁶ Tocqueville, Alexis De. *Democracy in America: And Two Essays on America*. Trans. Gerald E. Bevan. London: Penguin, 2003: 315.

with the Edgewood Concerned Parent Association in 1971. But the defendants appealed to the Supreme Court, which, in 1973, sided with the school district.⁸⁷

Among their findings in this case, the Court held that the financing scheme did not discriminate against the poor. Although the Court acknowledged that it may lead to less funding for school in districts with less revenue from property taxes, the Court remained unconvinced that all wealthy people live in property-rich districts and all less wealthy people live in property-poor districts. There are two problems with this reasoning. First of all, there is a strong positive correlation between the price of houses in a district and the amount of funding poor pupil the school in that district receives.⁸⁸ But secondly, it is impermissible that wealth of any kind, whether or property or of individuals, is a significant determinant of the amount of funding that a school receives.

Ultimately, however, we care about these disparities in funding only insofar as they lead to disparities in educational opportunities. For as it happens, it is not the money that is distributed unequally to citizens, but the educational opportunities. Some have challenged the notion that financial resources have a substantial effect on educational opportunities. In fact, the Court's decision upholding this type of financing system expounded above, *San Antonio Independent School District v. Rodriguez*, relies largely on the assumption that unequal funding does not necessarily mean unequal educational opportunities.⁸⁹ As Justice Powell observes in the majority opinion of the Court, "Indeed, one of the major sources of controversy concerns the extent to which there is a demonstrable correlation between educational expenditures and the quality of

⁸⁷ Sracic, Paul A. *San Antonio v. Rodriguez and the Pursuit of Equal Education: The Debate over Discrimination and School Funding*. Lawrence: University of Kansas, 2006.

⁸⁸ See Figlio, David N., and Maurice E. Lucas. 2004. "What's in a Grade? School Report Cards and the Housing Market." *The American Economic Review*, 94(3): 591-604.

⁸⁹ Sracic 67.

education.”⁹⁰ Many judicial opinions have expressed skepticism on these grounds as well, some even maintaining that a constitutional right to education would not require equality of access to revenue.⁹¹ Former Secretary of State Hilary Clinton challenges this kind of skepticism, holding, “Whenever anyone says it's not a money problem, they're talking about somebody else's money and somebody else's child.”⁹² For a serious study establishes that differences in financial resources translate to significant differences in educational quality. The scholarly sources that seek to challenge the significance of school funding fail to say that school funding is not important: all they do is suggest that other factors, such as one’s family life, may be even more influential.⁹³ It may be true that other factors are influential, but this possibility does not undermine the importance of school financing.

Statistical evidence from many states supports the contention that educational quality is strongly correlated with the financial resources of the school district. In Texas during the 1968-69 school year, one property-poor district was able to offer teachers a salary only 80% of what a property-rich district was offering its teachers. In this property-rich district, 100% of the teachers had college degrees, while only 80% of the teacher in the property-poor district held college degrees.⁹⁴ The Supreme Court of Tennessee, a state with a comparable financing scheme, affirmed this connection between financial resources and the quality of education:

The evidence indicates a direct correlation between dollars expended and the quality of education a student receives. In the ten richest districts for the school year 1988-89, [66%] of the elementary schools and 77% of the secondary schools were accredited compared to 7% and 40% among the ten poorest districts.⁹⁵

⁹⁰ *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973)

⁹¹ *Edgewood Independent School District v. Meno*, 917 S.W. 2d 717 (Tex. 1995), as modified, (Feb. 16, 1995)

⁹² Clinton, Hillary Rodham. Brown at Fifty: Fulfilling the Promise. *Yale Law & Policy Review*, Vol. 23, No. 1, 213-224 (Winter, 2005): 222.

⁹³ Richards, David A. J. Equal Opportunity and School Financing: Towards a Moral Theory of Constitutional Adjudication. *The University of Chicago Law Review*, Vol. 41, No. 1, 32-77 (Autumn, 1973): 53.

⁹⁴ *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973): Marshall Dissent.

⁹⁵ *Tennessee Small School Sys. v. McWherter*, 851 SW 2d 139 (1993).

In the same case, this court also describes the decaying physical facilities, lack of school supplies, and sparse technological resources of the schools in the less wealthy districts. Schools in the property-rich districts did not face these problems.⁹⁶ Money can buy better school facilities, better educational resources, and better teachers.

The more money a school district has, the more educational resources such as textbooks and computers they will be able to acquire for their students; the more teachers they will be able to hire, reducing class sizes; the more money they will be able to offer teachers, attracting the most qualified educators; the better they will be able to manage their facilities, providing a more state-of-the-art learning environment. It is further undeniable that all these factors play a significant role in educational quality and opportunities. Reflecting on factors that are influenced by financial expenditures, the Vermont Supreme Court listed foreign language resources, computer technology, teacher of equivalent training and experience, the salaries and benefits a school can offer to teachers.⁹⁷ In their construction of a similar list, the Connecticut Supreme Court included the “size of classes” and the “training, experience and background of teaching staff.”⁹⁸ These factors are all largely determined by the financial resources of the school district. And what is more, these factors are all strongly relevant to the quality of education provided by a school.

In 2000, the Supreme Court of Kentucky directly tied differences in educational expenditures to differences in student scores on standardized testing, finding that, “The achievement test scores in the poorer districts are lower than those in the richer districts and expert opinion clearly established that there is a correlation between those scores and the wealth

⁹⁶ *Tennessee Small School Sys. v. McWherter*, 851 SW 2d 139 (1993).

⁹⁷ *Brigham v. State of Vermont*, 692 A.2d 384 (1997)

⁹⁸ *Horton v. Meskill*, 172 Conn. 615 (1977)

of the district.”⁹⁹ It is not my intention to make a case for test scores as a perfect, or even a reasonably reliable, indication of student achievement. However, even if test scores are severely limited as indicators of student achievement, it is nonetheless troubling that wealthier schools tend to significantly outperform their less wealthy peers on this front. Every sphere in which wealthier schools surpass poorer schools by any measure is evidence that children born into wealthy community receive some type of advantage that children born into less wealthy community do not.

The current widespread scheme of financing public education, in part, by revenue from local property taxes is clearly incompatible with the principle for the democratic distribution of social goods established in the previous section, which asserts that distributive policies must differentiate possible recipients of some social good for relevant reasons only, wherein current distributions of social goods are not considered relevant reasons. To allow the quality of public education a child receives to be so closely linked to the wealth of the community in which that child lives is incompatible with the equality of concern and respect due by democratic governing policies to all citizens.

Part D: Horizontal Equity

If it is impermissible that more money is spent on the education of children from wealthy families than on the education of children from poorer families, perhaps the same amount of money should be spent on the education of all. Such a financing scheme, which we may call *horizontal equity*, holds that “all children are entitled to the same amount of money from the government for any government provided resource.”¹⁰⁰ If public education were financed

⁹⁹ *Rose v. Council for Better Education*, 790 S.W.2d 186 (1989)

¹⁰⁰ Satz, 628.

according to these standards, educational financing would not be permitted to vary according to the wealth of the community into which a citizen is born.

A popular objection to this notion of equity is what Derek Parfit has called “leveling down,” whereby equality is achieved by taking away from the better off all that makes them better off than the worse off. Such a process is not novel in the history of education funding. In California in 1971, a successful lawsuit challenging unequal funding for public education¹⁰¹ led to a decrease in the proportion of state revenue spent on education, in order to increase equality.¹⁰² According to Parfit, if we take away from some people only to make those people worse off, “there is *nothing* good about what we have done.”¹⁰³ Actually, there is something good in leveling down. Satz and Parfit are both too quick to jump to the conclusion that decreasing the quality of some is a bad thing. If there is more equality, there is a more level playing field, and more equality of opportunity for all.

To illustrate that leveling down may not be bad in all cases, let us consider an extreme example. In an educational system with n number of schools, let us suppose that $n-1$ number schools spend x number of dollars per pupil. Let us suppose that this is sufficient money for qualified teachers, small enough class sizes, an adequate curriculum, and suitable facilities in good condition. One school in this system, however, spends $3x$ number of dollars per pupil. This school has extremely qualified and talented teachers, very small class sizes, an exhaustive and advanced curriculum, and over-the-top facilities and resources, such as textbooks and technological equipment. Surely, it is great for the students that attend this one school to have such a superior educational opportunity. But the result of this superiority is that these students will likely be more qualified for college admissions, competitive jobs, and a host of other social

¹⁰¹ *Serrano v. Priest* (Cal. 1971) 5 C3d 584.

¹⁰² Satz 628.

¹⁰³ Parfit, Derek. "Equality and Priority." *Ratio* December 10.3 (1997): 211.

goods than their peers from other schools. In addition, the unequal distribution of a public resources will give these students a sense of entitlement, as if they in some way merit these additional resources, and all the other students aware of this inequality will similarly feel as if they warrant being on the inferior side of the distribution. In this case, we can imagine that it would be a good thing if all schools spent x number of dollars per pupil, especially if we caveat that x number of dollars is enough to provide each student with a thorough education, whatever that means. The result of leveling down in this overly-simplified example would be increased equality and increased equality of opportunity. Of course, some may object that it is absurd to suppose an educational system in which all school are well-funded, and a single school spends four times the amount of money per pupil as is necessary to a good education. Nonetheless, this extreme example serves to rebut the claim that nothing good ever comes of leveling down. Of course, the ideal is that all children have an equally good education, rather than that all children have an equally bad education. But it is mistake to ignore the extent to which what constitutes a good or bad education is exceptionally relative.

Horizontal equity is attractive because it appeals to the relativism of educational quality. In the distribution of social goods, some will win and some will lose. A good education is one that prepares citizens for the opportunity to be winners in this distribution. If some citizens receive a better education, they are more likely to receive advantages, and those citizens that receive the comparatively worse distribution are not prepared for the opportunity to emerge a winner in the distribution of social goods. Regarding the implications of this argument for private schools, Brighthouse asserts:

A government committed to equal opportunity may not have to abolish the private sector, but it would certainly have to ensure that the private sector conferred no opportunities greater than those routinely provided by the state sector.¹⁰⁴

¹⁰⁴ Brighthouse 148.

In other words, private schools are permissible, so long as students of public schools are not effectively shut out from opportunities available to private school students. In order to assess whether some education is good or bad, we must therefore assess how it compares to the quality of other educations. “Expectations are connected: by raising the prospects of the representative man in one position we presumably increase or decrease the prospects of representative men in other positions.”¹⁰⁵ A good education for all citizens must therefore seek an equal education for all citizens.

I follow Satz in maintaining that the cases for adequacy and the cases for equality are not as distinct from each other as most theorists make them out to be: in fact, considered properly, one seems to imply the other. Both cases seek to ensure all children with an education that will allow them the opportunity to compete for social goods. For an education to be adequate in preparing citizens to be winners in the distribution of social goods, it must be equal or near equal in quality, seeking to raise all students to a comparable level. As Michael Walzer writes,

If the teachers are committed to the basic disciplines necessary for democratic politics, they will try to establish a shared knowledge among their students and to raise them to something like the same level. The aim is not to repress differences but rather to postpone them, so that children learn to be citizens first—workers, managers, merchants, and professionals only afterward.¹⁰⁶

However we define the relationship between public education and equality of opportunity, we must be sensitive to the relativistic nature of a good education. For an education to respect the way that citizens in a democracy are equal, and for an education to display an equal concern and respect for all citizens, it must be *adequate*, and it must be *equal*.

¹⁰⁵ Rawls, *A Theory of Justice* 56.

¹⁰⁶ Walzer 203.

CHAPTER FOUR: EDUCATION AND SUBSTANTIVE EQUALITY OF OPPORTUNITY

In the last chapter, I held that public education conforms with democratic principles when it is both adequate and equal, or henceforth, *equally adequate*. A system of public education may be regarded as equally adequate when it equips all students with an equal opportunity to compete for social goods. Because education is a means to provide citizens with the equal opportunity to attain primary social goods, public education accomplishes this goal when all students, from all public schools, from all socio-economic backgrounds, have the equal opportunity to compete for primary social goods. Students will have equality of opportunity to compete only if they all have an equally adequate education.

There are many different ways to understand what constitutes equality of opportunity. In this chapter, I will assert that formal opportunity is insufficient, and that only substantive equality of opportunity, whereby representative citizens from all sectors of society have an actual chance of attaining the good in question, complies with democratic equality. Next, I will connect substantive equality of opportunity to the function of public education in the United States. Public education allows citizens substantive opportunity to attain social goods, but this substantive opportunity can only be said to be equal opportunity when representative members from all sectors of society receive the same advantages from public education.

Part A: The Shortcomings of Formal Equality of Opportunity

All distributions must demonstrate an equal respect and concern for all citizens. In the previous chapter, I argued that from this follows the principle that *distributive policies must differentiate possible recipients of some social good for relevant reasons only, wherein current distributions of social goods are not considered relevant reasons*. In other words, citizens from

all sectors of society may be considered as possible recipients of social goods. Rawls articulates this notion in the second half of his second principle of justice, which proposes that “social and economic inequalities are to be arranged so that they are [...] attached to positions and offices open to all.”¹⁰⁷ This is a minimal form of equality of opportunity, whereby the law does not expressly forbid certain people from holding certain social position or attaining certain social goods. This minimal form, which we will call *formal equality of opportunity*, is grossly inadequate insofar as it fails to conform with democratic equality of concern and respect.

In a brilliant illustration of the shortcomings of formal equality of opportunity, Williams tells a story of a society with a prestigious warrior class. At first, it was the law of the land that warriors were only recruited from certain wealthy families. We can agree that this policy is clearly at odds with democratic equality, because those that are not members of these wealthy families are not even considered for the position, and are thus not shown equal respect and concern. Accordingly, this is not a policy to which all members of society could rationally consent. Having established that the status of the warrior is a prestigious position to which all members of society may want access, those members of society who are not also members of these certain wealthy families would not consent to the policy. The policy is therefore incompatible with a government of the people.

Let us suppose therefore that the law is changed, and now, all members of society may be considered for membership into the prestigious warrior class. Formal equality of opportunity is hence established. I maintain, however, that equal concern and respect for all citizens would not yet exist. In order to gain membership into the warrior class, one must pass a test, a central component of which is great strength. Because the duties of the warrior in part demand great physical strength, let us accept that the test is consistent with differentiation for relevant reasons.

¹⁰⁷ Rawls, *A Theory of Justice* 53.

The problem, however, is that in this society, all but the very wealthy live in poverty. Because they are severely undernourished, those living in poverty have little physical strength. In contrast, members of the very wealthy families are well-nourished, and many of them are able to develop great physical strength. As a result, despite the establishment of formal equality of opportunity, the distribution of social goods changes very little, if at all. The warriors are still recruited almost exclusively from the wealthiest families, and though the law now permits those living in poverty to become warriors, the reality is that they do not have much of a chance.¹⁰⁸

Given these facts, it would seem absurd to say that equality of opportunity has been established. One who holds such a position would have to say that the common people in this society did not have an opportunity before, but with the establishment of formal equality of opportunity, they did. In reality, however, very little changed for common people aspiring to be warriors. Before the law changed, citizens were excluded from the warrior class if they were not from the wealthiest families. After the law changed, citizens were excluded from the warrior class if they were undernourished. But because virtually all those outside of the wealthiest families are undernourished, those outside the wealthiest families and those who are undernourished are one and the same. This formal equality of opportunity led to no real change. The law as it is written has changed, by the practical state of affairs has not. But we are not at all concerned with the law as it is written: we are very much concerned with the practical state of affairs. As Williams says of rights that may only be secured by “moneyed and educated persons,” laws with no actual impact are hollow, without substance:

[T]o insist that everyone *has* this right, though only these particular persons can *secure* it, rings hollow to the point of cynicism: we are concerned not with the abstract existence of rights, but with the extent to which those rights govern what actually happens.¹⁰⁹

¹⁰⁸ Williams 100.

¹⁰⁹ Williams 98.

The function of laws is to regulate practical affairs. To evaluate a law solely as it appears on paper is meaningless, because it ignores the function of the law.

To demonstrate how meaningless this would be, consider a society in which the law permitted citizens to fly in public parks. My example assumes that, in keeping with facts about actual human beings, people are not able to fly (without planes, hang gliders, or the like). This means that a law that purports to permit them to fly does not effectively regulate practical affairs. In some sense the permission it grants is even meaningless. We must therefore consider laws so far as they practically govern actual states of affairs.

A defender of formal equality of opportunity may object that I am too quick to dismiss the possibility of a citizen from outside the wealthiest families developing the requisite physical strength. For surely, this possibility is more likely than human aeronautics. Perhaps this is so. But even if an impoverished citizen could develop great physical strength, what would this possibility require? If all members of society outside of the wealthiest families are so undernourished as to be weak and frail, then in order for one of them to develop physical strength, he or she must either require significantly less food than anyone else, or receive significantly more food than everyone else in his or her position. Ruling out the first possibility as unrealistic, let us consider what it would take for an impoverished member of society to receive significantly more food than anyone else. As all members of society outside of the wealthiest families are so impoverished that there is not enough nourishment to provide for everyone sufficiently, they are all eating less than they reasonably need. In order for one of them to receive more food, then, a number of others would need to reduce their share to even less. Only then could one of them become healthy and strong, and accordingly, have a reasonable chance of becoming a warrior. In such an instance, we can concede that this select member of the

impoverished classes has an opportunity to become a warrior. Yet to say that all members of society have an *equal* opportunity to become a warrior is a patent falsehood.

In many respects, equal opportunity in the United States resembles equal opportunity in William's warrior society. In this analogy, acceptance into the warrior class correlates with access to positions of influence and responsibility, which positively correlate with income and wealth, and nourishment correlates with education. In the United States today, an equally adequate education is necessary to the attainment of many social goods in the same way that nourishment in William's warrior society was necessary to admittance into the warrior class.

Part B: Substantive Equality of Opportunity

In a democratic society, interested in equal respect and concern for all citizens, formal equality is insufficient. Instead, there must be some sort of substantive equality of opportunity that ensures that representative citizens from all sections of society have an equal opportunity to attain social goods. This requires that government is structured in such a way that considerations of merit are distinct from the circumstances into which one is born.

In an 1813 letter to John Adams, Thomas Jefferson maintains that unless some government action prevents people from inheriting all of the advantages or disadvantages of their parents, substantive equality of opportunity will be unattainable. Jefferson holds that some notion of merit unrelated to social inequalities is the only relevant reason for differentiation in distributive policy.

I agree with you that there is a natural aristocracy among men. The grounds of this are virtue and talent [...] May we not even say that that form of government is best which provides the most effectually for a pure selection of these natural aristoi into the office of government?¹¹⁰

¹¹⁰ Jefferson, Thomas. "To John Adams." Ed. Albert Ellery Bergh. *The Writings of Thomas Jefferson*. Vol. 13.: Thomas Jefferson Memorial Association, 1905: 396.

Though Jefferson is specifically referring to positions of political influence in this passage, the point can be applied to all distributions of social primary goods: the most relevant reasons for some person to receive some social good concerns the possession of relevant merit. Jefferson calls those societies in which relevant merits is rewarded with social advantages, a “natural aristocracy.” In a natural aristocracy, all citizens are considered for some good, such that all those with the relevant qualifications may be found and rewarded.

This concept of a natural aristocracy is to be contrasted with an “artificial aristocracy.” Jefferson uses this latter term to refer to a system in which those in positions of power and authority gain their positions by virtue of their wealth or some circumstance of their birth. “The artificial aristocracy is a mischievous ingredient in government, and provision should be made to prevent it’s (sic) ascendancy.”¹¹¹ This quote is particularly significant for its characterization of the artificial aristocracy as mischievous. It is harmful, but it is also sly. It is undoubtedly harmful to the project of a true democracy, because it is a de facto aristocracy. Though the law might allow for the equal standing of all citizens, citizens are not actually equal. Instead, there exists a ruling class of citizens, composed of those with wealth, social standing, or family influence. Members of this class tend to gain membership in virtue of being born into particular circumstances, and those who are not born to this kind of privilege have a difficult if not impossible prospect of attaining it.

But the mischievous character of such a system lies not in the harm it causes, but in its potential to do so discreetly. For even if formal equality of opportunity is established by the law, rule by artificial aristocracy can permeate political, economic, and social institutions. For if some person has accumulated wealth or influence, it is probable that his or her offspring will inherit this wealth or influence. It is therefore not enough to permit equality: tangible steps must be

¹¹¹ Jefferson, “To John Adams” 396.

taken to prevent the development of an artificial aristocracy. Provision must be made. Social and economic inequalities undoubtedly establish a kind of hierarchy, but we must question whether those on top should be there based on facts about their birth or facts about themselves, or put another way, based on institutional inequalities or on individual differences. Rawls observes the same limitations of nominal equality:

But since there is no effort to preserve an equality, or similarity, of social conditions, except insofar as this is necessary to preserve the requisite background institutions, the initial distribution of assets for any period of time is strongly influenced by natural and social contingencies.¹¹²

The point is that unless actual care is taken to curb the influence of these contingencies, they will strongly influence the distribution of institutional inequalities in a society. Formal equality of opportunity by no means leads to the practical existence of equal opportunity.

This violates the democratic demand of equal respect, as it strongly undermines the self-respect of members of the disadvantaged class. An important component of self-respect is that it may only be attained if one has “a confidence in one’s ability, so far as it is within one’s power, to fulfill one’s intentions.”¹¹³ This requires that people from all sections of society must actually have a chance of attaining their goal. I say people from all sections of society instead of all people because “when principles mention persons, [...] the reference is to representative persons holding the various social positions, or offices established by the basic structure.”¹¹⁴ This is to ensure that policies cannot be directly tailored to particularly advantage or disadvantage particular people or particular sets of people. So according to this important component of self-respect, if a person feels that whatever they do they cannot fulfill their conception of the good,¹¹⁵ then self-respect is out of reach. This condition mandates that government is not structured in such a way that some people are categorically unable to achieve their notions of the good. If

¹¹² Rawls, *A Theory of Justice* 62.

¹¹³ Rawls, *A Theory of Justice* 386.

¹¹⁴ Rawls, *A Theory of Justice* 56.

¹¹⁵ I assume here that all conceptions of the good are reasonable and realistic.

government is structured in such a way that there is nothing within one's power that one can do to achieve one's conception of the good, then one cannot secure the social bases of self-respect. Because equal respect for all is fundamental to democratic equality, democracy must ensure that people from all sections of society must actually have a chance of attaining all social goods. This leads us to a second democratic principles of distribution: *The distributive policies must be such that representative members from all sections of society may actually have a chance of attaining all social goods.*

Returning to Williams' example of the warrior society, a defender of formal equality of opportunity in this case may insist that great physical strength is a reasonable condition for entry into the warrior class. It is unfortunate that the vast majority of healthy and strong members of this society are concentrated in the wealthiest families, but the fact remains that great physical strength is necessary if one it to perform the function of a warrior. To allow people without great physical strength to become warriors would corrupt the function of the warrior, and lead to the demise of the warrior class altogether. In other words, because there must be some method of selecting who receives social goods and who does not, is it not reasonable that the factors that are differentiated are relevant to the function of the good in question? Let us accept this: it is reasonable that physical strength is a necessary condition for entry into the warrior class. However, as we saw before, even if the law permits all citizens to become warriors, the requirement of physical strength remains a barrier to equality of opportunity.

Citizens born into wealthy families have a great deal more of an opportunity to become warriors than the vast majority of citizens in this society, who are born into poverty. One's opportunities are therefore strongly influenced not by any facts about the person as a person, but

by the socio-economic standing into which one is born. There is no substantive equality of opportunity, because citizen's opportunities differ across different sections of society.

It seems then that a system of allocation will fall short of equality of opportunity if the allocation of the good in question in fact works out unequally or disproportionately between different sections of society, if the unsuccessful sections are under a disadvantage which could be removed by further reform or social action.¹¹⁶

But how can we simultaneously concede that physical strength is a reasonable and relevant reason for differentiation, and also that equality of opportunity is out of reach so long as only those members of the wealthiest families are able to develop great physical strength? The key lies in reform and social action.

Substantive equality of opportunity requires that some type of reform ensures that equality of opportunity is more than meaningless string of words, and actually governs practical affairs. For Williams, true equality of opportunity will never exist as long as the distribution is allocated unequally, and if the disadvantages of the unsuccessful sections of society could be removed by some government reform. True fairness in this sense requires that the government takes steps so that disadvantages from one's current share of social do not influence people's opportunities or future distributive shares. "Thus the principles holds that in order to treat all persons equally, to provide genuine equality of opportunity, society must give more attention to those [...] born into less favorable social positions."¹¹⁷ Substantive equality of opportunities requires that governing principles in some way pay special attention to disadvantaged classes, or else those born into advantaged classed will have more opportunities. This principle has significant implication for public education.

Part C: Substantive Equality of Educational Opportunity

¹¹⁶ Williams 100.

¹¹⁷ Rawls, *A Theory of Justice* 86

As Williams explains, true equality of opportunity regarding some good will never exist as long as the distribution of that good is allocated unequally to different sections of society, if the disadvantages of the unsuccessful sections of society could be removed by some government reform. In the case of the warrior society, it is not clear if government reform could remove the disadvantages from the unsuccessful sections of society. For these disadvantages could only be eradicated if all members of society received sufficient nourishment, but it is not clear from where the supplementary nourishment to the lower class could come. In his critique of arguments for substantive equality of opportunity, Robert Nozick holds, "Like others, Williams looks only to questions of allocation. He ignores the question of where the things or actions to be allocated and distributed come from."¹¹⁸ In other words, it is one thing to say that certain people have a need for that good, and an entirely different thing to say that they should receive that good. For the former question, by focusing exclusively on the beneficiaries of a distribution of goods, mistakenly ignores the source of the distribution. Nozick's larger point is that in many cases, the good in question could only be distributed on different terms by taking something away from those who have the good, as in income or wealth, or by making unjust requests of those who provide the good, as in healthcare.

This critique is compelling, and a complete theory of equality of opportunity needs to take it seriously. The subject of public education, however, is uniquely immune to this line of criticism. For unlike many social goods, public education is currently provided to all. With this in mind, it is permissible to focus exclusively on the beneficiaries of public education.

In the United States today, social goods are allocated unequally to different sections of society. In direct conflict with the principles established in the previous chapter, in the United

¹¹⁸ Nozick, Robert. "Justice Does Not Imply Equality." 1974. *Equality: Selected Readings*. Ed. Louis P. Pojman and Robert Westmoreland. Oxford: Oxford UP, 1997: 104.

States today, one's allocation of social goods is largely effected by the socio-economic standing into which one is born. "Kids born into disadvantaged environments are at much greater risk of being unskilled, having low lifetime earnings, and facing a range of personal and social troubles, including poor health, teen pregnancy, and crime."¹¹⁹ A 2006 study by the Center for American Progress found, "Children from low-income families have only a 1 percent chance of reaching the top 5 percent of the income distribution, versus children of the rich who have about a 22 percent chance."¹²⁰ This level of social mobility cannot be brushed aside as an unavoidable fact of developed countries. In fact,

Intergenerational mobility in the United States is lower than in France, Germany, Sweden, Canada, Finland, Norway and Denmark. Among high-income countries for which comparable estimates are available, only the United Kingdom had a lower rate of mobility than the United States.¹²¹

Clearly, American citizens born into lower-income families are under a disadvantage in the distribution of social goods. The question is therefore whether can this disadvantage be removed by some government reform.

Reports have found that these differences in social mobility may be largely explained by the United States' "relatively low level of equality in overall educational opportunity."¹²² If all citizens have equal educational opportunities, it is more likely that all may have the equal opportunity to compete for social goods. A 2006 report by the Brookings Institution found:

in many respects, the U.S. education system tends to reinforce rather than compensate for differences in family background. Strengthening opportunity requires greater, and more effective, investments in education, especially for America's youngest children.¹²³

¹¹⁹ Heckman, James J. "Promoting Social Mobility." *Boston Review* Sept.-Oct. 2012.

¹²⁰ Hertz, Tom. *Understanding Mobility in America*. Rep. Washington, D.C.: Center for American Progress, 2006.

¹²¹ Hertz, *Understanding Mobility in America*, 2006.

¹²² Beller, Emily, and Michael Hout. "Intergenerational Social Mobility: The United States in Comparative Perspective." *The Future of Children: A Collaboration of The Woodrow Wilson School of Public and International Affairs at Princeton University and The Brookings Institution*. 16.2 (Fall 2006).

¹²³ Sawhill, Isabel V. *Opportunity in America: The Role of Education*. Rep. Washington, D.C.: Brookings Institution, Fall 2006.

In other words, though greater investments in education may lead to greater equality of opportunity, the current system of public education serves to exacerbate existing inequalities. Much of current education reform, such as the “No Child Left Behind” Initiative, introduce demanding testing requirements, and purport to be concerned that all students can meet these demands. The reality, however, is that “most current accountability schemes may only exacerbate existing inequalities because [...] they do not ensure sufficient educational resources to meet established high-outcome standards.”¹²⁴ In this sense, aiming to improve the educational of all children by testing them is like allowing the impoverished citizens to test to become warriors in William’s warrior society, but not providing them any nutrition. Without any change in their resources, they have little chance of being successful. Government reform must therefore give citizens from disadvantaged backgrounds the resources they need to be successful. In order for education to serve as substantive equality of opportunity, it must therefore in some way pay special attention to disadvantaged classes.

Many programs exist in the United States today that aim to provide additional educational resources to students from low-income communities. The most successful of these programs tend to target children in their earliest years of education. The past couple decades in the United States have witnessed the establishment and growth of many such programs, commonly referred to as Early Intervention. A study of the effects of these programs has found that Early Intervention programs can make students from disadvantaged backgrounds less likely to enroll in special education programs, more likely to graduate high school on time, have a higher paying job and lower chance of being on welfare, and less likely to be arrested. In other words, programs like these can provide students with more of an opportunity to compete for social goods. But the opportunity is not yet equal. Although these programs and others like them

¹²⁴ Koski 572.

are a step in the right direction, there is still a long way to go. No student should be disadvantaged in the distribution of social goods by the distribution of social goods of the community into which he was born. This is what democratic equality requires.

CONCLUSION

This project presents an argument for a specific interpretation of democratic equality, inspired by a conception of democracy as government equally of, equally by, and equally for the people. I have argued that this notion of equality requires that democratic government show equal concern and equal respect for all citizens. Grounded in these deals, I have asserted that a distribution of social goods conforms to the way that citizens in a democracy are equal when it is in accord with the following two principles:

1. Distributive policies must differentiate possible recipients of some social good for relevant reasons only, wherein current distributions of social goods are not considered relevant reasons.
2. The distributive policies must be such that representative members from all sections of society may actually have a chance of attaining all social goods.

Recognition of the equality of democratic citizens requires that all citizens have the substantive equality of opportunity to successfully compete for social goods. Because all governing policies must show an equal concern and respect for all citizens, all governing policies must be fair to all citizens.

In the United States today, reform of the system of public education is an essential step towards substantive equality of opportunity. Education is a necessary condition to successful competition in the distribution of social goods, but this competition is only fair when citizens from all disadvantaged sectors of society have an actual chance of attaining the social goods for which they compete. Accordingly, fair competition requires that students from less wealthy communities receive comparable advantages from education as students from wealthier communities. This requires that additional resources are allocated to the public education of disadvantaged members of society.

Though this project is about equality and equality of opportunity, it would be a mistake to ignore completely the potential tension between equality and another fundamental American

democratic ideal, the ideal of liberty. A lot of factors influence both academic performance and a citizen's ability to compete successfully in the distribution of social goods. These factors include family structure, values, and resources; the community environment; and a host of other factors related to anything one can do or see or experience outside of the classroom.¹²⁵ To strictly regulate any of these factors can be seen as an impermissible encroachment on citizens' liberties to structure one's life in a way of one's choosing and the liberty to pursue one's own ends. Thus, "the principles of fair equality of opportunity can be only imperfectly carried out, at least as long as some form of the family exists."¹²⁶ If we are committed to preserving the family structure, which I propose we should be, we need to consider how we draw the line between the liberties of the home and the equal opportunities of all.

This tension between the liberty of citizens to live their own lives on their own terms and the equal opportunity due to all citizens is particularly unique in the case of children. While liberty is undoubtedly important, one's childhood can irrevocably determine the scope of one's liberties as an adult. In this way, ensuring opportunities, and in particular, educational opportunities, gives substance to the principle of liberty. If a citizen desires some type of life or access to some social good, but has no practical means of attaining it, it is difficult to say that he has the liberty to live that kind of life or to access that social good. Reminiscent of Isaiah Berlin's notion of positive liberty,¹²⁷ liberty, in this sense, requires that people have the ability to choose between practically available options. Equally adequate education equips citizens with this ability. A system of public education that provides an equally adequate education to all

¹²⁵ See Gonzales NA, Cauce AM, Friedman RJ, Mason CA. "Family, peer, and neighborhood influences on academic achievement among African-American adolescents: one-year prospective effects." *Am J Community Psychol.* 1996 Jun;24(3):365-87.

¹²⁶ Rawls, *A Theory of Justice* 64.

¹²⁷ See Berlin, Isaiah, 1969, 'Two Concepts of Liberty', in I. Berlin, *Four Essays on Liberty*, London: Oxford University Press. New ed. in Berlin 2002.

citizens, and thus allows all citizens to compete for social goods on terms that are fair, gives substance to the equal liberties of all citizens by allowing all citizens effective access to the means of their freedom. This is what equal respect and concern for all citizens requires. This is the American democratic ideal.

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