Equal Opportunity for Groups

I. Conceptual framework: the place and task of the equality of opportunity principle

There are a number of different ways in thinking abstractly about equality of opportunity. Some theorists start with reflections about popular usages (Radcliffe Richards 1998). Others try inductive approaches beginning with considerations about cases of application (Barry 2001). Again others try to define equality of opportunity according to its place and function within a general theory of justice or equality (Gosepath 2004). For the conceptual framework of this essay a rather structural version of the last strategy is used. It tries to conceptualize equality of opportunity through specifying its main tasks, functions and places in a theory of distributive justice. Therefore, the central step of analysis consists in identifying its essential tasks. Or, what is the point of equality of opportunity?

1. Equality of opportunity is part of a theory of distributive justice. Its purpose is the solution of a distributive problem. In contrast to other views (Nozick), a distribution connects a quantity of goods or burdens from a total set of such objects to a number of beneficiaries selected from a total set of applicants or potential claimants. If this is what distribution is essentially about, Nozick’s overall view of holdings which refuses to consider shares (and comparisons) is not a theory of distributive justice.

2. Equality of opportunity is not a distributive criterion (desert, need, entitlement etc.), that is the aspect with regard to which an allocation is organized, but a principle or distributive rule (e.g. proportionality) which determines the kind and amount of an allocation. This is indicated by the use of the term "equality" in equality of opportunity.
3. More specifically, equality of opportunity is a procedural rule. If a distribution is typically a two-step affair, in which first the set of possible claimants and then the actual beneficiaries are defined, the equality of opportunity principle is primarily concerned with the appropriate functioning of the second step.

4. Insofar, equality of opportunity is essentially a procedural rule of a selection process. Contrary to a common assumption that equality of opportunity speaks in favour of greater inclusiveness of potential first-step claimants, the equality of opportunity principle in the strict sense is conceptionally not able to fulfill this task. The reasons for inclusion in the first place must be independent and substantive reasons (e.g. distributive criteria, democratic citizenship, persons paying relevant contributions or optional application). Thus e.g., the move from hierarchical exclusiveness to general inclusion of all adult members can be motivated by equality, but the equality of democratic citizenship and not by a equal opportunity principle. If in some contexts optional application is the correct first-step rule, there is no way of critizising the voluntary application or non-application of some persons with the help of the equal opportunity principle. To avoid misunderstandings, in another context or from another (e.g. reflective) perspective, the determination of the pool of potential claimants may be seen as the final step of a different allocation. The equality of opportunity principle then aims at equalizing the conditions and chances of all admitted participants. Either the selection process is simply the application of a distributive rule, then equal opportunity consists mainly in equalizing access (nobody is missed or priviledged). Or the selection is reached by some procedure (examination, contest), then equality of opportunity has to secure equal conditions for the participants within the procedure. Therefore, it seem more appropriate so state, that the substantive reasons help to determine the specific content of the relevant opportunity (opportunity of what). Thus, one should not conclude from the fact that there is a close connection between the concept of equality and equal opportunity that both concepts have identical purpose, content and scope.

5. What sort of equality? There is no way to establish in general terms how equality is to be interpreted in equality of opportunity. That is, the principle of equal opportunity as such or pure conceptual reasoning does not tell us how equalization is to be understood. At least the specific context, the kind of opportunity and the ultimate benefit are in part necessary to determine the relevant meaning of equality. In some cases it may be rather formal as in having equal rights (access). In other cases it may be rather statistical as in the prevention of
structural discrimination. In again other cases it may be rather substantive as in the case of de facto equal chances of specified individuals.¹

6. Equality of opportunity as a procedural principle is more concerned with the input (access) and throughput (procedural conditions) than with the output (results). The equalization of results is not an aim of the equal opportunity principle. Some egalitarian theorists see equality of opportunity as a default principle, when the simple equal distribution of goods is not attainable. If the equality of output cannot be reached for various reasons, then at least the equality of access and conditions should be guaranteed. But this way of talking about outputs and results is misleading, since equality of opportunity as the solution of a distributive problem will inevitably yield some results. But its proper results (and objects) are opportunities. And if one defines an opportunity in abstract terms as a chance of an agent to choose to attain a specified goal without hindrance (see Westen 1997, 160f), then the difference can be stated in terms of opportunities and benefits. An opportunity is a specified and circumscribed chance to reach a benefit if the agent wishes so. If the agent does not use the chance she will not reach the benefit. And even if she takes the opportunity, the attaining of the benefit is in some cases merely possible but not guaranteed.

Thus, it is plausible that it is not a necessary sign of a violation of equal opportunity if different participants to the distributive procedure do not end up with the same amount of benefits. Nevertheless, in some cases different allocative results can be seen as sufficient evidence for unequal opportunities. But this observation or conjecture is not the end of reasoning but simply its starting point. The required argument is complex and has to take the distributive context, the kind of good and procedure, background conditions etc. into consideration as well.

7. The equal opportunity principle is not primarily related to the allocation of goods, but concerned with how to select applicants. Thus, the opportunity is not the good that is to be distributed in the first place, but part of the way how the selection is carried out.

8. The selection of beneficiaries can be reached by applying a distributive principle or by using a procedure. Such a selection procedure is typically characterized by competition. This may sound trivial or analytic, insofar as any competition for a valued but scarce good is in the

¹ Some theorists interpret this as different steps rather than as alternatives (see Gosepath 2004, 437ff).
end some kind of selection. But, firstly, to see a distributive procedure as a selection is typically the perspective of the distributive agency, while the claimants of the good view the procedure rather as a competition with others. Secondly, if the distributive task is solely done by the agency, that is without any contribution of the involved claimants, the required principle of equalization would best be described as equal treatment or equal concern and respect. Thus, the principle of equality of opportunity should be interpreted as a distributive rule which focuses typically the involved claimants in a competitive procedure. Within a competitive procedure, the selecting agency’s role is confined to supervising the procedure and to identify and choosing the winning or highest ranked participant. The idea is that the procedure should substitute for the selector’s discretion.

The principle of equal opportunity aims at equalizing the terms of a competitive procedure for all participants, either by securing equal starting positions or equal conditions (rules, means, obstacles etc.) within the competition. Therefore, the central point of the principle is to secure the fairness of the selection. The appropriateness of the distribution, on the other hand, has to be determined with reference to the substantive reasons and criteria mentioned above. Discrimination e.g. can be the arbitrary exclusion of claimants or the application of irrelevant or unconnected reasons. Both, the arbitrariness and the irrelevance, can be identified and criticized only with the help of such substantive reasons. Perhaps one can modify the Rawlsian idea and state with some simplification: The appropriate considerations within a fair framework will attain distributive results which can with considerable confidence be suspected as just.

9. Nothing in this restricted conceptual framework rules out that political (parties, parliamentary groups), social (trade unions, churches, organizations, associations) or ethnocultural groups (ethnic and national groups or their organizations) are potential claimants. While the proposed framework holds a restricted view about the place and task of the equality of opportunity principle, it is quite formal and tolerant in relation to the kinds of claimants. There is no (political or legal) reason to suppose that collectives as such cannot be proper subjects of equal opportunity claims.

A good illustration is the case of national elections, a typical competitive selection procedure. In Germany the elections to the federal parliament are organized through lists of officially

---

2 In Matt Cavanagh’s distinction of two kinds of competitions – beauty contest and sporting competition – this
registered parties. In order to keep the campaign as fair as possible the registered parties get the equal opportunity of publicly funded television time for advertising. There are some informal rules restricting the upper limit of campaign expenditures with more or less the same intention. And although there is also an incentive motive in the public funded compensation for election campaigns for successful parties, the measure is normally seen as support especially for smaller parties in order to get the election chances more equal. A similar concern for equal opportunity can be found in the German act that exempts political parties of national minorities from the 5%-quorum in national and state elections.

The political process in parliament is another example of a competitive procedure. The rivalry of government and opposition is not a clear case of equal opportunities. But some parliamentary rules concerning party competition are intended to equalize chances of participation. Regulations of speaking time, representations and chairmanships in committees, public funded financial support, certain rights to ask the government etc. are related to parliamentary groups (Fraktionen). Furthermore, the participation of so-called socially relevant groups (trade unions, churches, other lobby groups etc.) in consultative bodies of government and administration (e.g. broadcasting board) do raise questions of equal opportunities as well. This is especially significant, if the consultation is equipped with state-delegated competences, even if the consultation itself is not a competitive process.

Similar issues of equal opportunities arise if a market competition between social or religious groups is partially interfered by state-delegated competences. In granting organized religious groups (mostly churches) the right to provide confessional religious education within public schools, which is in Germany a constitutional duty, the selected groups will have a considerable advantage with respect to their reproduction compared to non-recognized groups. The recent debates about Islamic education in public schools highlighted the unequal opportunity background. The related question, whether the state still should care about equality of opportunity for religious groups, if these are perfectly private associations competing for members in a non-state market, is a question of the limits of equal opportunity.

seems more related to the beauty contest (see Cavanagh 2002, 33f).  
1 Liberties (e.g. to run private schools) and immunities (e.g. tax releases) can probably have the same effects.  
4 The Jehovah’s Witnesses are recently granted this official status in Berlin.
II. Limits

1. As described above, the equality of opportunity principle is only part of a general distributive justice framework and thus also a dependent principle. Some theorists cannot see any general limits of application, neither to specific societal sectors nor to particular tasks (see Schaar 1997, 137; Westen 1997, 166). Others want to confine the application of the principle in at least two ways. The first view proposes a restriction on specific goods, for example posts and positions5 (see Rawls §§ 12-14; Gosepath 2004, 433ff). The rationale can be either that the distribution of these goods is inherently competitive (meritocratic criterion), so that equal opportunity is needed as a secondary principle. Or the distribution become competitive because the good is scarce and highly valued but indivisible (see Gosepath 2004, 436; Rae et al. 1981, 65). Thus, there is need for procedure which is regulated by equality of opportunity. It need not be a competitive one, but can select claimants by rotation, waiting lists, first come first serve principle, lotteries etc.. The other view proposes a restriction of application to the public domain (see Arneson; and the above example). The clearly private sphere is thought not to be obliged to use the principle of equal opportunity. It is not that there would be no meaningful cases of application, quite the contrary. The background is simply a decision to separate responsibilities, which requires an independent defense. Both views can partly be combined.

While the distribution of (public) jobs and positions is a clear case of application, a general restriction to these cases is at odds with the above framework. If scarcity can create competitiveness in distribution, this is valid for other goods as well. But the main reason for the applicability (and necessity) of the equal opportunity principle, as described above, is the kind of selection procedure. If a competitive selection procedure is involved in the distribution, then the equal opportunity principle has a clear applicability, as long as the involved parties care about it’s fairness. Therefore, the proposed point of view is different.

If jobs were the only relevant goods, groups would play only an indirect role insofar as the equal opportunity principle would primarily be related to individual members of such groups applying for jobs. The main interest of this paper, however, is whether collectives as such can be potential entities of distributive claims and how the equal opportunity principle can be applied to them. If posts and positions are interpreted differently as to include tasks and

5 The necessary prerequisites for application for positions, educational and other, are normally also included.
ascribed competences (as in the above example), then collectives or their representatives have to be admitted as relevant subjects.

While the distribution of goods and burdens in the public sphere are clear candidates for the equal opportunity principle, at least in liberal democratic societies, the non-applicability to the non-public sphere, however defined, is not clear and established. Furthermore, the question of determination of the boundary is still open and not fixed. The EU-directives against discrimination want to include indirect and some non-state discriminations. Relevant subjects are non-state employers, landladies, shopkeepers, restaurant owners etc., which are prohibited to discriminate against clients and job seekers. At least, one can say that the definition is the proper task of political decision-making, that can in principle be done in a number of ways. Therefore, there is prima facie nothing wrong if the decision-making process establishes federal units with a second-chamber representation, provides political parties with special will-formation competences or attributes certain liberties and competences to various kinds of social and ethnocultural groups as such. If political decisions can establish groups as relevant distributive entities in the political sphere and if they then compete for scarce goods (party competition, federal decision-making, competition for public funds etc.), there is good reason to believe that the principle of equal opportunity applies to groups as well.

2. Going back to the first view of limitations, it is necessary to discuss the proposed relationship to meritocratic principles. Sometimes it is not only stated that equality of opportunity is confined to goods that are distributed according to desert within a competitive procedure (contest, examination), but that equal opportunity is identical with or contains the assumption that careers are open to the talented or ablest applicant (see Barry 2005, 39; Galston 1997, 174; Gosepath 2004, 437ff). Stefan Gosepath formulates this idea in both directions, when he writes:
"The central idea of fair equality of opportunity is therefore: Unequal shares of social posts and positions are fair, if they are achieved (deserved) and attributed according to qualifications." (440)
"A person is in favour of equality of opportunity, because he wants to estimate true achievement or desert in order to reward or distribute accordingly. And turned around: For that person, who entirely rejects meritocratic criteria (at least within a certain sphere)" equality of opportunity cannot have a meaningful place in his conception of distributive justice." (441, my translation)
The proposed conceptual framework rejects this assumption in three respects. First, equality of opportunity is not identical with meritocracy or the application of a desert criterion. According to the framework, the place and point of the equal opportunity principle is entirely different to such an end-result criterion as desert. Second, meritocratic assumptions are not a necessary part of equality of opportunity. Equality of access and procedural conditions can be combined with other distributive criteria and principles as well. If these propositions are right, then the criticisms of the desert principle (vagueness of meaning, impossibility of determination etc.), if sustainable, do not affect the equal opportunity principle (see Gosepath 2004, 440f). Third, the appropriate relation is rather revers: In order to be fair and acceptable to all involved parties, the desert criterion or procedure (like any other) has to be qualified with equality of access and conditions. The equality of opportunity principle does not and cannot provide reasons for the appropriateness of the distributive criterion. Its sole purpose is the fairness of the distributive process.6

III. Intercultural justice

1. A well-known justification for group rights within multiculturalist theory is that certain group-protecting measures for ethnocultural groups are necessary means for the rectification of their present disadvantages (see Kymlicka 1995). Kymlicka’s conception proceeds in two steps. The first step presents an autonomy- and identity-based argument for the essential value of individual cultural membership. It should be interpreted as something like a Rawlsian primary good. Thus, the first step focusses centrally on the determination of the relevant good or object of protection (Schutzgut). It states which good and the reason why it has to be protected. The point of the second step is to establish when and how the protection is necessary and justified.7 Its main argument invokes an equality principle that demands compensations for disadvantages, for which the demanding group is not responsible. And since mere inequalities are not necessarily disadvantages, it is inevitable at least to identify the agent or agents who could be held responsible for that situation. In Kymlicka’s conception this is typically the majority, that is the ethnocultural group that dominates public life and the

---

6 Perhaps even this relation (at least in the context of job allocation) is what Cavanagh will reject because fairness will provide reasons for enforced intervention, although he also describes meritocracy as part of equality of opportunity (see Cavanagh 2002, 2f, 22f).

7 The theory of the right to culture (see Margalit/Halbertal) neglects the second step and therefore cannot determine the amount of protecting measures and is in this sense an all or nothing affair. Furthermore, if it is able to derive some rights from the fundamental right to culture (e.g. against discrimination or forced assimilation), they will be quite general rights of all citizens and not special rights.
political power. The equality assumption in this argument can be best interpreted as an equal opportunity principle for ethnocultural or minority groups (see Ladwig 2000), for it is intended to secure equal starting positions and equal procedural conditions in social and political affairs.

The impossibility of state neutrality in certain ethnocultural affairs and the inevitability of nation-building of the majority group are presented by Kymlicka as reasons, why minority groups in that society are regularly disadvantaged. Although the proposition of unavoidability of disadvantage seems to be overstated (not every minority is a disadvantaged minority), since the referred to relation is not a conceptual but an empirical and therefore variable one, the relation helps to illustrate the politically inspired competition for scarce goods. The equality argument concentrates on present disadvantages for it compares the situations relating to specific goods of majority and minority at a particular time-slice (cross-section task). The conception does not consider the effects of past disadvantages or historical injustices. But even though it is in principle possible to add it to the argument, the differences are considerable. The rectification of past disadvantages and injustices are typically a longitudinal section which do not compare different groups but the same group at different times. Therefore, a combination will not be possible without difficulties.

2. Ethnocultural groups typically demand the removal of formal discriminatory rules and institutions (institutional change, exemptions), a better guarantee or legal means against prejudicial behavior (anti-discrimination laws), better chances of political competition or more secure protection of their vital interests (guaranteed representation, veto rights, self-governmental possibilities) and measures to mitigate their economic vulnerability (tax exemptions, financial aid from public funds or at least a fair share thereof). Some of these measures directly refer to individual members of such groups (anti-discrimination laws), others are best understood as liberties, immunities and competences of organizations or groups as such (e.g. the German law that exempts political parties of national minorities from the 5%-quota in national elections, or tax releases for religious organizations).

The central idea of the rectification of disadvantages between groups is to enable for all relevant groups to compete on an equal footing. The elimination of non-comparative injustices of particular subjects or their absolute vulnerability (survivance) is not within the scope of the argument. Furthermore, the argument is conceptually terminated. It seeks the
elimination of the disadvantage. Thus, the duration, amount and scope of the justified measure depends on the duration, amount and scope of the concerned disadvantage. The duration may be long-lasting but not endless. Therefore, the argument faces some difficulties in the justification of permanent group-protecting measures or rights.

3. But even if it is settled that groups are relevant entities for the application of the equal opportunity principle and that certain group-protecting measures can be best understood as securing equal terms for groups, there remains the question of the relevant competitive constellations and the proper base line. According to Kymlicka, the appropriate base line of comparison or the reference point of determining disadvantages is the predicament of the majority at a particular time. So there is no absolute, external or other standard within the cross-sectional comparison.

Concerning the relevant context of justice, two conceptions can be distinguished. The independent single-relation view starts with the claims of a minority group that it is unfairly disadvantaged compared to the situation of the majority group. The cross-section compares only a single relation. And it is independent because other comparisons between other groups within the same society at the same time are justificatorily unconnected. The situation of other groups simply does not matter for this case. If they are considered, they are reflected independently, that is in sequence. This is the view Kymlicka does not advocate but does apply.

The constellation view, on the other hand, recommends to consider the entire societal situation of majority and various relevant minorities at once. In a situation of contest (participation in political decision-making) it is quite obvious to consider all involved parties at once. This is in part what equality of opportunity requires. The constellation view starts with the assumption that the relation between two groups have justice-relevant effects on other relations. Furthermore, it suggests that the justice of the parts cannot be determined independent from the justice of the entire constellation. Thus, the whole picture of intercultural justice will be more complex and complicated.

[8] Perhaps in Kymlicka’s conception both end up with the same results, for he assumes that all minorities are necessarily disadvantaged. But even if this is granted, contrary to the above argument, different minorities do not normally suffer from the same disadvantages to the same degree.
4. The problem will be more difficult, if at least three other justice-relevant constellations are considered. a. Consider societies in which there is no clear or dominant majority, but simply various non-dominant groups of more or less equal size. For conceptual reasons it is impossible to speak of minorities where there is no majority. In this case one can speak only of different social or ethnocultural groups. And if no group was able unilaterally to dominate the political system and official culture, according to Kymlicka’s theory, there could be no problem with disadvantages. And even more, for the lack of a majority and the reference point of comparison, Kymlicka’s theory could not even meaningfully be applied. But if these groups compete for scarce public resources, equality of opportunity will obviously be one of the first priorities for the involved parties. In some contexts,\(^9\) it is rather likely that they will be anxious about any possible change in the balance of power (see Walzer). Furthermore, there is no reason simply to assume that there will be no disadvantages between the groups. This would be contrary to social and political experience.

b. Consider societies where a majority is confronted with different minority groups of very different size and power. Then any unilateral change of the majority M - minority A-relation alters thereby also the comparative M - minority B-relation and the relation between A and B. If this is right, then the whole constellation has to be considered at once. Quebec is a good illustration. Assuming for the sake of argument that the granted self-governmental possibilities and measures securing the French language and culture might be justified with Kymlicka’s theory, this fact of different opportunities will challenge the relations of the First Nations (within Quebec) to the Canadian majority. Since political opportunities are involved, the balance of power is shifted at their expense. They have no unequal opportunities vis-à-vis the Canadian majority and vis-à-vis the Quebec minority. Perhaps they suffered no disadvantages before the change, but after it they possibly will. And they will do so because the more encompassing constellation was not taken into consideration in the first place. If one tries to deal with the new Canadian majority – First Nations-relation in the independent and sequential way, that is in disregard of the Quebec case, there is a considerable likelihood to get the things really wrong.

c. Suppose there are various minorities of different size and power. As in the case of confederations, there is no reason to suppose that these differences cannot have disadvantageous effects between these groups. It is also impossible to exclude the possibility

\(^9\) One could perhaps think of Switzerland, Belgium, Lebanon etc.
of situations of inter-minority competition. But the majority cannot then function as the reference point for these comparisons. Moreover, it is probable, that various and varying base lines could be identified. To neglect such problems has to be interpreted as a serious deficiency of an encompassing theory of intercultural justice.

IV. Conclusion

In this essay the issue of equal opportunity for groups or collectives was raised, but not addressed in a direct way. It was throughout assumed that groups and organizations may be proper subjects of the equality of opportunity principle. The question whether there are any peculiarities in justification and application in the case of collectives was not examined.

Instead, a rather technical view of equality of opportunity was proposed which started with the determination of the its proper places and tasks in a theory of distributive justice. In this context, the restricted functions and the formal and procedural character was emphasised. Second, throughout the text, the central role of political decision-making in defining contexts and establishing competitions was mentioned. Third, it was argued that the equality of opportunity principle has only a loose connection to meritocratic principles. The view that equality of opportunity is identical with or contains meritocracy was rejected. This is another aspect why the conception is restricted. Finally, the relation of intercultural justice and equality of opportunity was examined and a constellation view of justice proposed. The constellation conception does not only take the different forms of cultural pluralism into account, but make the thinking about justice more complicated.

References


