A R T I C L E

Fair Equality of Opportunity and the Place for Individual Merit in a Liberal Democratic Society

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Although equality of opportunity is a fundamental idea of the egalitarian project, there is a continuing controversy about the effective distributive implications of the notion. This paper focuses on this controversy, and maintains that when equality of opportunity is correctly understood, it entails strong distributive implications. In this way, this paper intends to reject the notion that equality of opportunity is associated with a non-institutional idea of meritocracy: an idea which is often used as an ideological tool to make unacceptable inequalities seem acceptable. This paper defends the argument that only an 'institution-dependent' conception of equality of opportunity, such as Rawls' fair equality opportunity, is the most adequate interpretation for a liberal democratic society. Nonetheless, it does not mean that individual merit has no place in liberal democratic societies. Fair equality of opportunity - if correctly understood - is deeply relevant and might contribute to a significant reduction of economic inequality, much more so than is currently perceived in the public debate.

Keywords: Fair equality of opportunity; meritocracy; John Rawls; luck egalitarianism; economic inequality.

I n the current debate the issue of the disparity of 'goods' between people seems to be attached to an idea of equality, and for this reason it has generated an egalitarian debate[1]. In broad terms, egalitarianism claims, for a wide array of reasons, that if some people are worse off than others this gives rise to moral and political concerns (HIROSE, 2014). The egalitarian camp is vast and varied, wherein several conceptions of equality are advocated with uniquely different distributive implications[2]. However, there is a notion of equality – equality of opportunity – that is present in all egalitarian accounts, to different degrees and levels of priority, and thus can be considered the central axis of the egalitarian project.

The idea of equal opportunity

> …involves the absence of restrictions on entry into desired social and political positions. Positions are to be held open to everyone to compete for on grounds of qualifications relevant to performing the tasks of that position, regardless of people's racial, ethnic, or gender group, religious or philosophical views, or social or economic position. Equal opportunity developed out of the rejection of hereditary nobility, and the idea that people are to be assigned social positions by birth (FREEMAN, 2007, p. 88).

Equality of opportunity performs a fundamental function that explains why it is central to the egalitarian debate. Indeed, given that egalitarians do not believe in perfect material equality (i.e. individuals should own the same amount of material resources), then they must not avoid answering a decisive question: "Who will obtain the social positions that come with more of the currency of egalitarian justice? Almost any answer to this question will invoke some conception of equal opportunity" (FISHKIN, 2014, p. 41). In other words, if egalitarians also care about basic individual liberties, freedom of choice of occupation, and pluralism of

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[1]Egalitarian distributive theories diverge on what 'goods' should be fairly distributed, whether in terms of welfare, primary goods, resources, or capabilities. For the debate see: Brighouse and Robeyns, 2010; Sen, 1980. In this paper, I will only take into account economic inequality in terms of income and wealth.

[2]For a spectrum on the different distributive principles – the difference principle, prioritarianism, sufficientarianism and limitarianism – see respectively: Frankfurt, 2015; Parfit, 2000; Rawls, 1971; Robeyns, 2019. In this debate, I recently proposed an alternative distributive principle called: 'the principle of proportionality'; see: Alì and Caranti, 2021; Alì, 2021 (forthcoming).

conception of goods, they cannot but include in their egalitarian accounts a certain conception of equality of opportunity. This is because, as Fishkin observes, equality of opportunity "is not only a kind of equality, but also a kind of freedom. Opportunities open up the freedom to do and become things we otherwise could not" (FISHKIN, 2014, p. 02). Moreover, "opportunities have a distinctive value because of the roles they play in shaping who we are. Opportunities shape not only the paths we pursue, but also the skills and talents we develop and the goals we formulate" (FISHKIN, 2014, p. 03).

This broad scope of equality of opportunity explains why this notion is central beyond the egalitarian debate. Indeed, it is not surprising that also those who believe that economic inequality is not a problem of justice appeal exactly to the notion of equality of opportunity. Many anti-egalitarian scholars argue that distributive inequalities should reflect only individual merit and effort, and therefore, equality of opportunity seems to be the ideal, or even the only, principle of economic distribution in a liberal society. The point is that equality of opportunity is, in principle, insensitive to inequality of result (or ex-post), or better is an essential ex-ante concept: everyone should have an equal starting point. From this perspective, equality of opportunity is strictly linked to the notion of meritocracy, so that once equality of opportunity is reached, economic difference between individuals no longer matters. Put in these terms, it seems inevitable to consider equality of opportunity a weak egalitarian idea, or worse "an idea that makes unacceptable inequalities seem acceptable" (SCANLON, 2018, p. 40). It means that, although equality of opportunity is a fundamental idea of the egalitarian project, there is a deep controversy about the effective distributive implications of the notion.

This paper aims to focus and clarify this controversy. The hope is to show the strong distributive implications of the idea of equality of opportunity when it is understood in the most compelling way for a liberal democratic society. The investigation intends to illuminate the problem from two different perspectives: a theoretical and a practical one. From a theoretical point of view, although I believe that equality of opportunity taken alone[3] cannot exhaust all that distributive justice

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[3] This is a normative position often endorsed by luck egalitarianism. In the second section, I will argue about the main flaws of this position.

requires, I agree with Scanlon (2018) that when it is taken seriously, equality of opportunity can have strong egalitarian implications which extend far beyond the mere substantive equality of opportunity of education. However, the existence of these significant and wide distributive effects are proved only if we are able to reject the notion of equality of opportunity associated with a certain idea of meritocracy – a non-institutional notion; "that is to say, not dependent on institutions that are justified in some other way" (SCANLON, 2018, p. 119) – which is often used as an ideological tool in order to make unacceptable inequalities seem acceptable[4]. On the contrary, I defend that only what Scanlon calls an 'institution-dependent' conception of equality of opportunity, like Rawls' fair equality opportunity, is the most adequate conception for a liberal democratic society. To be clear, according to an institution-dependent conception "what counts as a talent depends on the justification of the institution in question and the nature and justification of the position within it for which individuals are being selected" (SCANLON, 2018, p. 44). Therefore, in the first section, I will clarify the different ideals beyond the notion of equality of opportunity and the various normative prescriptions they entail. Rawls' fair equality opportunity (FEO) seems to be the most adequate understanding of equality of opportunity for a liberal democratic society. In the second section, this theoretical scrutiny of the idea of equality of opportunity will allow me to unmask a potentially ideological use of the notion as a tool for portraying a particular economic distribution as 'natural' or 'pre-political'. It happens when equality of opportunity is associated with a non-institutional idea of meritocracy; but, such a conception of meritocracy is politically, if not morally, unworkable. However, a certain notion of 'merit' can have a place in our liberal democracies if it is anchored to Rawls' idea of individual legitimate expectations. In the last section, I defended that the idea of equality of opportunity, when correctly understood, entails strong distributive implications. It requires a set of distributive public policies and social reforms (some rather radical) that extend far further than the

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[4]Here I mean ideology as a 'neutral' notion. It means that an ideological idea is simply one that provides a kind of selective justification (moral or political) about a certain state of affair. A similar 'neutral' notion of ideology seems to be adopted by Piketty in 'Capital and Ideology '(2020). Thanks to an anonymous referee for forcing me to clarify this point.

mere substantive equality of opportunity of education. Thus, a short list of distributive implications of the fair equality opportunity conception is provided with a particular attention to Brazilian socioeconomic distribution.

For sure, an answer to the theoretical question about how ample and substantive should the distributive implications of equality of opportunity be might seem self-evident for those who study public policy and politics. Indeed, they usually and correctly assume that, yes, equality of opportunity entails significant re-distribution in society. Nonetheless, any chances that the several social and political 'on re-distributive' reforms (only some of them are depicted in the last section) also advocated by public policy scholars are obstructed from obtaining as much public consensus as possible. It depends, along with many other things, on how well citizens recognize that those reforms are compatible with the moral and political ideas and values implicit in a liberal democracy. On the contrary, if citizens believe that the strong distributive implications of a certain idea of equality of opportunity disregard some other moral and political ideas – such as individual merit and effort – shared and considered valuable in a liberal democracy, the chance to implement transformative public policies is sharply reduced. Thus, a bridge is necessary between the normative debate and empirical and public debate[5]. From this perspective, it is worth underlining how the idea of equality of opportunity has a great centrality, not only among scholars but also in the public debate of liberal democracy.

Indeed, very common in the public debate is its use to assess the fairness of current economic inequality, and consequently all controversies that appear in the theoretical debate are reproduced. For example, the case of Brazil may clarify this point[6]. example, Cardoso (2010) analyzes an important survey[7] which demonstrates the perception and justification of Brazilian income inequality from the point of view of inequality of opportunity. The result shows that, in Brazil, rich and poor share a similar idea of 'social justice' based on criteria such as merit, ability, and opportunity. According to Cardoso (2010), although the unequal

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[5]Thanks to an anonymous referee for forcing me to clarify this point.

[6]Throughout the paper, I will often refer to Brazil to show the practical effects that different conceptions of equality of opportunity might have in terms of economic distribution and public policy.

[7]Survey 2001- Iuperi/ISSP. See: Scalon, 2004.

structure of Some empirical studies have confirmed that equality of opportunity is a normative commitment widely shared by Brazilian citizens[8]. For income distribution is perfectly visible to poor Brazilian citizens, and hence society is effectively perceived as unequal, this economic inequality does not seem to be considered illegitimate. Moreover, in Brazilian political culture, the market is valued as much as the state as an agent of fair and/or equitable distribution (CARDOSO, 2010, p. 214). This impression seems to be confirmed by Arretche's and Araújo's analysis (2017) of Brazilian electorate opinion regarding the intervention of the state for the reduction of inequality and the adoption of taxation as an instrument of intervention. Starting from some recent surveys, Arretche's and Araújo's conclusion (2017) is that a large majority of Brazilian electorate still supports the social intervention of the state for reduction of inequality (albeit the support of the poor to the social intervention of the state has paradoxically diminished), but "it also happens that the aversion to increased taxation for redistributive purposes has remained high until 2014, suggesting a contradictory preference of individuals, who wish for 'redistribution without taxation'" (ARRETCHE and ARAÚJO, 2017, p. 16). In other words, in these studies Brazilian citizens give distributive priority to merit and individual effort, whilst assigning a fundamental role to the state regarding the provision of education and health services and the elimination of inequality of opportunity. So, a particular conception of meritocracy also seems to play a central normative role.

Equality of opportunity is not a monolithic concept; on the contrary, it can be conceived in different ways. In the same way, Brazilian public opinion seems to embrace different conceptions of equality of opportunity (at least, according to these studies), but often leading to contradictory preferences regarding

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[8]Note that since re-democratization in 1988, Brazil's political institutions have unequivocally been set within the family of liberal democracies. The fundamental principles of the new constitution (Title I and Title II, Chapter I) are grounded in the constitutional tradition of liberalism. For this reason, the idea of equality of opportunity can be considered one of Brazil's political and constitutional promises. Moreover, the constitution prescribes a generous system of social rights (Title II, Chapter II and Title VIII, Chapter II), one which brings to mind most modern social-democracies (for this interpretation see: BONAVIDES, 2015; 2013), insofar as it seems to justify a substantial (not merely formal) interpretation of equality of opportunity.

permissible economic inequality and just distribution. Furthermore, these contradictions emerge even more stridently when the notion of equality of opportunity is used as an ideological tool. For example, in Brazilian public opinion, both formal and informal, the idea of equality of opportunity is often employed in criticism of Brazil's most important social assistance instrument against poverty, the 'Bolsa Família'[9] program, with the famous sentence: "Não dê o peixe, ensine a pescar" [Better to teach them to fish, than just give them fish]. Regardless of whether 'Bolsa Família' actually helps reduce inequality of opportunity, the arbitrary selectivity with which it is applied reveals the use of ideology. On the one hand, many use the notion of equality of opportunity as a weapon against a supposed public assistance policy and, on the other hand, these same people reject the distributive implications that the notion, even the simple formal one, implies.

Thus, from a practical point of view, this paper aims to build a piece of that aforementioned bridge, by dissociating the idea of equality of opportunity from a non-institutional idea of meritocracy. It might represent a great egalitarian advance, in particular in a non-ideal scenario; for example, in the case of Brazil. Although Brazil is one of the most unequal countries in the world in terms of income and wealth distribution[10], in this current non-ideal scenario, equality of opportunity, if correctly understood and applied, might contribute to a relevant reduction of economic inequality[11], much more than is usually affirmed in the Brazilian public debate.

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[9]The 'Bolsa Família' Program was created in 2003 as part of President Luiz Inácio Lula da Silva's 'Fome Zero Program' (see: PINZANI and RÊGO, 2013). The program is though mainly for families, even if it is also paid for individuals. There are three main conditions. "The allowance is granted to individuals or families whose income per capita is less or equal to R$ 77. [...] For school age children under fifteen there is a 'variable' allowance per capita of R$ 35 for a maximum of five children [and] the participants have to meet two conditions in order not to lose the allowance: if there are children in the family, they have to go regularly to school and to get regular vaccinations" (PINZANI and RÊGO, 2016, p. 118).

[10]According to the 'World Inequality Report 2018' (ALVAREDO et al., 2018), the top 1% own 27.8% of Brazil's total wealth. For others data see: Medeiros, Souza and Castro, 2015; Souza, 2018. For a broad picture of inequality in Brazil generally, not just economic inequality, see: Arretche, 2015.

[11]It is common to think about economic inequality in terms of vertical inequality; i.e. hierarchical inequality between social classes. However, inequality is always a multiple dimensional concept, and in a broad picture we should also consider the horizontal inequality; i.e. inequality within the same social class resulting, for instance, from gender and racial inequality. It is important to keep in mind that equality of opportunity has re-distributive effects both in terms of vertical and horizontal inequality.

The notion of equality of opportunity and its three-level justification

The idea of equality of opportunity is a fundamental element in modern liberal thought. It is grounded on "the basic idea of a fair competition among individuals for unequal positions in society" (FISHKIN, 1983, p. 01). However, this notion can be separated out into several different ideals. A good starting point to begin our discussion is offered by Scanlon (2018), who states that the key idea of equality of opportunity is grounded in the nature and basis of what he calls a three-level justification – institutional justification, procedural fairness, substantive opportunity – and the way in which they interrelate[12].

The institutional justification claims that inequalities generated by a certain institution should be justified, and this justification can take different forms. For example, it might be claimed that inequalities are justified simply by the fact that they arise out of interactions between individuals exercising their property and contract rights or, alternatively, because institutions simply give individuals what they deserve or, as in Rawls' justice as fairness, institutions are just only if the inequality they generate benefits everyone, but primarily those who are the worst off (SCANLON, 2018, p. 41). However, for the moment we can put aside this kind of justification – I will return to it later.

We can now discuss the two components of equality of opportunity: procedural fairness and substantive opportunity. "Procedural Fairness concerns the process through which individuals are selected for positions of advantage, [while] substantive opportunity concerns the education and other conditions that are necessary to become a good candidate for selection through such a process" (SCANLON, 2018, p. 53). They correspond to the classical distinction between the formal and the substantive understanding of the idea of equality of opportunity, bearing in mind that there are several medium positions between the two extremes.

Arneson's definition (2015, pp. 02-08) states that "formal equality of opportunity requires that positions and posts that confer superior advantages should be open to all applicants. Applications are assessed on their merits, and the

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[12]For the debate on Scanlon's relational egalitarianism see: Scanlon, 2000; O'Neill, 2013, 2008.

applicant deemed most qualified according to appropriate criteria is offered the position" (ARNESON, 2015, p. 02). This means that social positions and careers should be open to talented people without arbitrary discriminations and restrictions. From this point of view, "discrimination [...] occurs when there are widespread beliefs about the inferiority of members of certain groups, and this leads to their being excluded from positions of authority and expertise, on grounds of their supposed unsuitability or lack of ability" (SCANLON, 2018, p. 48). From this perspective, formal equality of opportunity and 'careers open to talents' denote the same idea.

However, in effect it is difficult to realize formal equality of opportunity in "societies that are marred by a history of caste hierarchy and systematic discrimination that excludes some groups in the population from any significant access to the fruits of social cooperation" (ARNESON, 2015, p. 15). In this context, although formal equality of opportunity is proclaimed in law, many superior positions in society may continue to be assigned to previously privileged groups. Thus, 'affirmative action' is a strategy for increasing the effective opportunities enjoyed by disadvantaged groups; for example, preferential quota for access to education or job positions for disadvantaged ethnic or gender groups until all social groups have a share of the main social positions proportional to their numbers in society. Paradoxically, affirmative action programs seem to violate the formal equality of opportunity that they claim to fulfil, but we can say that, in non-ideal circumstances, a partial and temporary violation of formal equality of opportunity might be required for the effective implementation of this normative ideal in the long term.

However, formal equality of opportunity is not sufficient. Indeed, even in a society where it is perfectly implemented, social positions are assigned to those who are advantaged by social circumstances. In other words, formal equality of opportunity is only able to guarantee what Rawls calls the 'system of natural liberty'. But, he notes that "the most obvious injustice of the system of natural liberty is that it permits distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view" (RAWLS, 1971, p. 72). Therefore, substantive equality of opportunity, or in Rawls' terms FEO, is necessary to eliminate or reduce as much as possible the competitive advantages that socially

favourable circumstances confer on some individuals. So, "assuming that there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system, that is, irrespective of the income class into which they are born" (RAWLS, 1971, p. 73).

This means that FEO imposes a duty on society to offer, for example, education opportunities to those who are socially disadvantaged, but who have the same abilities and aspirations as those who are more advantaged. In this case, society should offer universal public education, scholarships, or a voucher system in a private education system. But education is not the only requirement. FEO implies that the advantages that well-off parents can confer on their children through better socialization and access to a social network of well-off individuals should be entirely eliminated (ARNESON, 2015, pp. 15-16). Indeed, for Rawls, the institutional requirements imposed by FEO are not only "equal opportunities of education for all", but also "preventing excessive accumulations of property and wealth" (RAWLS, 1971, p. 73).

However, given that the family is one of the most prominent sources of inequality in modern society, FEO could be extremely demanding (and probably undesirable) in relation to the sphere of the family. As Fishkin observes, "if taken seriously, it would require systematic intrusions into the family and a vast reform in the way of life we commonly take for granted" (FISHKIN, 1983, p. 01). According to him, the implementation of the formal and substantive equality opportunity (which he calls respectively the principle of merit and equality of life chances) and the "autonomy of the family" (the liberty to substantially influence the development of their children) takes the form of a "trilemma"; i.e. commitment to any two of these assumptions rules out the third (FISHKIN, 1983, p. 05). In other words, "either systematic intrusions into the family would be required to equalize development conditions despite unequal outcomes or the whole liberal focus on equal opportunity – as distinct from equal outcomes – would have to be abandoned" (FISHKIN, 1983, p. 06). The point is that individuals' development of qualifications, motivations and formation of talents also depend on the cultural and

socioeconomic condition of their families. Governments could try to remove inequalities of opportunity that derive from family but "to be successful, they would have to intervene coercively to separate upper strata children from all of the advantages that their parents might attempt to give them" (FISHKIN, 1983, p. 68). For example, schools are insufficient, by themselves, to eliminate inequalities created by different home environments. Of course, the existence of a private school system is itself a fundamental impediment to the elimination of these inequalities. However, things would not go better even with a universal public education system supported by an additional universal voucher plan. Indeed, given that parents will vary greatly in their ability to select schools and that inequality in the education system is also due to socio-economic differences that impact our urban areas in which schools are inserted, the only solution, but quite impracticable and undesirable, might be to randomly spread children throughout the metropolitan area (FISHKIN, 1983, pp. 70-71)[13]. Furthermore, beyond the school compensatory task, individual qualifications, motivations and formation of talents are affected by home environments. A solution of this inequality would also require an intrusive intervention into the autonomy of family. For example, parents should be replaced full-time in the care of their children by (maybe, public) paraprofessionals (FISHKIN, 1983, p. 77).

More recently, Brighouse and Swift (2014) also focus on the conflict between substantive equality of opportunity and parents' rights. On the one hand, they defend the family in terms of the value of the parental relationship so that parents' rights should be those activities (for instance, spending time with their children or transmitting them valuable knowledge) that can be considered 'necessary' or 'essential' to secure the distinctive value of the parent-child relationship. Only inequalities generated from these activities are permissible. On the other hand, parents have no right to confer their wealth on their children because this is not an activity that generates familial relationship goods. Although, Brighouse and Swift's account (2014) aims to mitigate the dilemma, it remains insoluble. Indeed, their account intends to eliminate or

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[13]See for the same argument de Vita (2007, p. 244).

reduce not the degree of inequality produced by parental activity itself, but only those inequalities that come from not 'necessary' or 'essential' activities.

For all these reasons, it is not surprising that Rawls affirms: "the principle of fair opportunity can only be imperfectly carried out, at least as long as the institution of the family exists" (RAWLS, 1971, p. 74). If severe intrusions into the autonomy of the family unit are a requisite to fully achieving the idea of equality of opportunity, this only is as a consequence of its disputable egalitarian implications.

However, even when FEO is completely satisfied, a moral arbitrary factor still remains at stake. Indeed, "in that circumstance, an individual's prospects for doing well in public sphere interactions with others depend not just on her own ambition and effort but also on her native talent endowment—her genetic endowment considered as a potential for talent development" (ARNESON, 2015, p. 25). This is what Rawls calls the natural lottery, stating that "there is no more reason to permit the distribution of income and wealth to be settled by the distribution of natural assets than by historical and social fortune" (RAWLS, 1971, p. 74). In Rawls' justice as fairness, the arbitrariness of the natural lottery is compensated by the difference principle rather than FEO[14]. But, not all scholars follow Rawls' solution.

A different conception of equality of opportunity – known as luck egalitarianism – aimed at remedying social and natural arbitrary circumstances[15]. In this conception, unlike in Rawls', equality of opportunity is conceived of as playing the core role in a theory of distributive justice, and not as one of several components in a theory of justice. Luck egalitarianism is usually presented as an extension and generalization of a fundamental insight in Rawls' conception of justice, one that Rawls himself failed to fully realize: the issue of individual responsibility[16].

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[14]Fair equality of opportunity is only the first condition that social and economic inequalities should satisfy: "they are to be attached to positions and offices open to all under conditions of fair equality of opportunity". While the second condition is the difference principle: "they are to the greatest benefit of the least advantaged members of society" (RAWLS, 2005, p. 06).

[15]About luck egalitarianism, see: Dworkin, 2000; Mason, 2006; Roemer, 1998.

[16]However, the idea that luck egalitarianism completes a fundamental element of Rawls' conception of justice is hardly contested. See: Daniels, 2003 and Scheffler, 2003.

Then, according to luck egalitarianism, the individual responsibility should be understood as an (adult) voluntary choice. It means that justice should distinguish between the outcomes that result from individual voluntary choices (option luck) and those that are independent of individual voluntary choices (brute luck). "Option luck is a matter of how deliberative and calculated gambles turn out – whether someone gains or loses through accepting an isolated risk he or she should have anticipated and might have declined. Brute luck is a matter of how risks fall out that are not in that sense deliberate gambles" (DWORKIN, 2000, p. 73).

So, according to luck egalitarians, justice consists of adequately compensating for brute luck. The point is to identify the sensitive choices individuals are responsible for, and contrastingly, the natural endowments and social factors for which they are not and, therefore, may claim legitimate compensation in the name of justice. In this way, the luck egalitarian conception of equality of opportunity seems to eliminate the arbitrary nature of both social and natural lotteries at once.

However, under greater scrutiny, the moral and political implausibility of this account swiftly emerges. The two most relevant objections to luck egalitarianism are advanced by Scheffler (2003) and Anderson (1999). According to Scheffler, "the most obvious difficulty is that the degree of weight that the luck egalitarian places on the distinction between choices and circumstances seems, on its face, to be both philosophically dubious and morally implausible" (SCHEFFLER, 2003, p. 17). On the one hand, "unchosen personal traits and the social circumstances into which one is born are importantly, albeit not exclusively, constitutive of one's distinctive identity;" but on the other hand, "people's voluntary choices are routinely influenced by unchosen features of their personalities, temperaments, and the social contexts in which they find themselves" (SCHEFFLER, 2003, p. 18). The strict distinction between choices and circumstances seems to appeal "from an implausible understanding of the metaphysical status of the category of choice" (SCHEFFLER, 2003, p. 18). While Anderson (1999, p. 310) observes that if no one should suffer from undeserved misfortune, it means that the state must make judgments of moral responsibility in assuming outcome to brute or option luck. In this way, luck-egalitarianism requires the state to make grossly intrusive, moralizing judgments of individual choices, and therefore interfere

heavily on their privacy and liberty. Moreover, making a distinction, as luck egalitarianism does, between what is a voluntary risky lifestyle and what is not, or what is an unchosen preference and a voluntary one, might lead to the paradoxical result of compensating those who are already most advantaged at the cost of the worst off[17].

The main shortfall in luck egalitarianism stems from the wrongful interpretation of Rawls' view of the arbitrariness of social and natural lotteries, which, in contrast to what luck egalitarians believe, are neither arbitrary itself nor dependent on individual choices. Rawls is quite explicit on this: "the natural distribution is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts" (RAWLS, 1971, p. 102). At this point, we should recall Scanlon's (2018) three-level justification, and exactly the first one: institutional justification. We can then correctly incorporate FEO into Rawls' theory of justice and, in doing so, show its primary justification. As Freeman correctly observes, the first reason for FEO is that "it is integral to the equal status of free and equal citizens" (FREEMAN, 2007, p. 91). Indeed, the 'institutional justification' in Rawls' theory of justice is specifically the idea of free and equal citizens. This means that inequalities depending on natural and social contingencies are arbitrary if, and only if, they determine the distribution of primary social goods, specifically the social bases of self-respect, in such a way that does not ensure the condition of equal and free citizens. It is true that the two principles of justice as a whole aim to realize this fundamental moral and political idea, but we should be aware that each part or component of the two principles, in this case FEO, should also be seen as its realization[18]. In this respect, for instance,

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[17]In this respect, G. A. Cohen's luck egalitarianism account (1989) is relevant in the debate because he tries to overcome the problem of intrusive and moralizing judgments of individual choices by means of his intrinsic egalitarianism and what he calls "ethical solution" (COHEN, 2008, p. 189). This means that individuals, simply by reason of their egalitarian ethos, 'voluntarily' choose the occupation in which they are more talented without requiring any special economic incentives for it. However, as interesting as Cohen's proposal may be, it falls within the debate of the purely ideal theory which means that, for Cohen (2008, p. 302), justice does not prescribe "rules of social regulation" or standards of political justification; what it is, instead, the fundamental purpose of Rawls (and mine too).

[18]For this point see also de Vita, 2017.

Rawls' distributive requirement against excessive accumulations of property and wealth also allows a strong connection between fair equality opportunity in the economic domain and the idea of the fair value of political liberty[19]. In this sense, equality of opportunity should also be guaranteed in the political domain ensuring that all citizens would have a fair chance to influence politics and, thus, avoiding that the most affluent citizens enjoy a significantly bigger share of political influence than the one left to the middle class and, a fortiori, to the worst-off[20].

Equality of opportunity as a non-institutional idea of meritocracy

At this point, we have all the elements enabling us to reject another common, perhaps the most popular, interpretation of equality of opportunity which is associated with a certain idea of 'meritocracy'. According to Arneson's definition (2015), in a broader sense a meritocratic society is "a society in which 01. equality of opportunity obtains and 02. rewards and remuneration gained by individuals are proportional to their individual desert". So, "according to the broad meritocracy ideal, […] equality of opportunity is then either a means to meritocracy or partly constitutive of it" (ARNESON, 2015, p. 31). There are various pure desert-based theories[21] (based on effort, ability, responsibility, and so on) but all of them have two essential features in common. They are based on 01. a certain moral value which has absolute priority in assigning individuals gains, and 02. the idea that what individuals deserve "is logically prior to and independent of public institutions and their rules" (FEINBERG, 1970, p. 87) or as Scanlon (2018, p. 119) says more recently, "not dependent on institutions" (or 'non-institutional').

However, we have strong reasons to believe that a pure desert-based theory is politically, and even morally, unworkable. First, it is intrinsically teleological and, therefore, fails to provide a justification that leaves room for reasonable pluralism. In other words, it is not clear why a desert-based distribution grounded on a certain moral value, rather than another, would be accepted by those who are less advantaged from it (SCHEFFLER, 2000). Second, even taking for granted

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[19]About the fair value of political liberty, see: Rawls, 1971, pp. 201-205, 222-234, 278. And Rawls, 2005, pp. 05-06, 324-331.
[20]Thanks to an anonymous referee for suggesting to me to make this point explicit.
[21]See: Kagan, 2015.

that it would be possible to reach a unanimous consensus on the moral value according to which individual regains and rewards should be assigned, another problem immediately arises: it is very difficult, or even impossible, to discern individuals' motives from those we should identify which are truly meritorious (RAWLS, 1971)[22].

A way to avoid these objections is to abandon the idea of desert as having moral value. Alternatively, we might simply endorse the view that the free market is the most effective, and in a liberal society the only means to assign individual rewards and remunerations proportional to their productivity (MANKIW, 2013). From this perspective, it is not necessary to give priority to a particular and comprehensive moral value nor to scrutinize individuals' motives. Instead, what matters is only that individuals pursuing and developing their talents and abilities 'deserve' 'entirely' the fruit of their market participation. Not accidently, this is the most common manner to defend the idea of meritocracy in the public debate. It goes without saying that the equality of opportunity also associated with this idea of meritocracy considerably limits the set of acceptable re-distributive policies. However, this idea of meritocracy shares a fundamental feature with a pure desert theory: it also conceives individual talents and abilities as 'pre-political' or independent of public institutions and their rules. Therefore, a third and decisive objection can be raised: individual abilities and talents are, by contrast, institution-dependent notions in the sense that they depend, at least partly, on existing social arrangements[23]. Merit is institution-dependent from two different aspects. First, what talents are the most economically valuable depends on the goals of the social institutions and on the way in which these institutions are organized. Scanlon (2018) explains convincingly why ability and talent are institution-dependent in this first sense.

> The talents that are an appropriate basis of selection for a position of advantage
> are just those characteristics, whatever they may be, possession of which makes

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[22]However, as Scanlon notes (2018, pp. 120-124), pure desert theories are sometimes valid, for instance, when they regard expression of praise, admiration, gratitude, blame or condemnation; i.e. what concerns retributive justice. But, it plays no role in the justification of distributive shares.
[23]For this argument see: Rawls, 1971; Scheffler, 2000.

a person likely to perform in the position in question in a way that promotes the aims that provide the institutional justification for having that position. [...] If a position requires lifting heavy objects, then physical strength is an important form of ability. But if the job is done with a fork-lift truck then it is not. If succeeding in a particular job, or in a university course of study, requires one to understand French, then knowledge of French is a relevant ability. If everything is done in English, then it is not. This dependence on the goals that justify an institution and on the way it is organized to promote these goals are what I mean by saying that the idea of talent, or ability, that is relevant to procedural fairness is "institution-dependent (SCANLON, 2018, pp. 44-45).

According to the second aspect, we can observe that individual talents and abilities are logically inseparable from the set of equality of opportunities that any individual has at their disposal to develop and expand them. In other words, a logical priority does not exist between 01. an initially guaranteed equality of opportunity and 02. individuals who are subsequently free to take advantage of their talents and abilities. To be clear, this objection to the core idea of meritocracy does not concern the practical problem to achieve a perfect implementation of equality of opportunity, like the problem of intrusion into the family raised by Rawls (1971) and Fishkin (1983). This objection instead appeals to a sort of epistemological problem. Fishkin (2014, pp. 56-65) highlights the point. When our definition of merit is (a) a reflection of natural talent and effort[24] and, at the same time, not 02. a reflection of circumstances of birth and the advantages that they produce, it presupposes that we should attempt to search for talent and effort, isolated from circumstances of birth. "But this is not how human development works. All of our traits and capacities result from an ongoing, continuous, iterative interaction over time between a person and the various facets of her environment" (FISHKIN, 2014, p. 61). Fishkin adds: "Whatever agency we may or may not possess, the self that exercises that agency is shaped by experience. There is no way to separate a person from the accumulated effects of her interactions with her circumstances, including her opportunities, because the product of those accumulated interactions 'is' the person (FISHKIN, 2014, p. 64).

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[24]I have already said that, instead, for luck egalitarianism, effort is something for which individuals could rightly be held as being responsible for.

For these reasons, a non-institutional idea of meritocracy is politically, if not morally, unworkable. Its main flaw is that it draws economic distribution as 'natural' or 'pre-political'.

However, a question is still open: does this mean that individual talents, ability, effort, and responsibility are ideas that should have no place in our liberal-democratic societies? The answer is no. On the contrary, it is entirely legitimate to think that these ideas should have some roles and functions in the designation of different social positions, provided that these ideas are not considered to be a benchmark for a just distribution as a whole or for shaping the basic structure of society. For this reason, we should make a fundamental distinction between the moral desert and legitimate expectations; in other words, between what individuals deserve and what they are entitled to. Rawls (1971) seems to catch this distinction quite well.

> It is perfectly true that given a just system of cooperation as a scheme of public rules and the expectations set up by it, those who, with the prospect of improving their condition, have done what the system announces that it will reward are entitled to their advantages. […] But what they are entitled to is not proportional to nor dependent upon their intrinsic worth (RAWLS, 1971, pp. 103 and 311).

Someone can object that the idea of anchoring 'merit' to individual entitlements according to citizens' legitimate expectations is a forceful reading of Rawls's theory of justice. In fact, individual 'merit' does not play any role in the distribution of primary goods. For instance, according to the difference principle, "the inequality in expectation is permissible only if lowering it would make the working class even more worse off" (RAWLS, 1971, p. 78), no taking into account individual responsibility, ability or efforts. Indeed, this is the main objection moved by luck egalitarianism against Rawls. However, an interpretation that leaves enough room for individual responsibility, ability or efforts as normative ideas of 'second order' in a liberal democracy does not seem to betray the spirit of Rawls' justice as fairness. In other words, if the two principles of justice are respected, citizens in a liberal democracy may claim that the social position they occupy between the top and the bottom of economic distribution (difference principle

respected) also depends, to a certain degree, on their ability, effort or responsibility in developing their natural talents. Here, the point is not to offer the most genuine interpretation of Rawls' theory of justice, but just to show that when individual 'merit' is associated with Rawls' notion of citizens' legitimate expectations, it does not seem to be either morally or politically problematic[25], and it should have a place in a liberal democracy. By contrast, a non-institutional idea of meritocracy is not a practicable normative political ideal, and is often used as an ideological tool for portraying a particular distribution as 'natural' or 'pre-political'.

Five areas of distributive public policies and social reforms

In terms of normative distributive requirements, equality of opportunity associated with a non-institutional idea of meritocracy limits, unduly, the set of justifiable distributive policies. Indeed, all that matters is professional advancement open to all and, at least, substantive equality of opportunity only regarding education, in order to give all citizens the opportunity to participate in the free market. Other re-distributive policies, such as limitation of great fortune or heredity, are considered as illegitimate state interventions. By contrast, an 'institution-dependent' conception of equality of opportunity, when correctly understood, entails strong distributive implications. It requires a set of distributive public policies and social reforms (some rather radical) that extend much further than the mere substantive equality of opportunity of education. Making an accurate list of these public policies would require a lot of space and would go beyond the goal of this paper. However, we can, at least, individuate some broad areas of these distributive interventions. Regarding Brazil, we can observe how some public policies find justification in this 'institution-dependent' conception of equality of opportunity, and other more incisive ones would be required.

01. Formal equality of opportunity component requires that no kinds of discrimination and restriction regarding job positions (public and private) are allowed by law. But in a non-ideal scenario where some 'informal' social

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[25]However, some authors believe that merit is a problematic ethical notion in itself. For example, Markovits (2019) sustains that meritocracy is an ethical trap also for those who are at the top of distribution, obliging self-exploitation and a work-load of crushing intensity. Similarly, Sandel (2020) argues about the tyranny of merit that hampers any politics of the common good. However, in this paper, I deal with meritocracy only regarding the (deontological) domain of social justice.

practices still perpetuate gender, racial, or religion discriminations, an effective program of affirmative actions is required (although temporary). From this perspective, it seems to be justified that affirmative action policies are implemented in Brazil. Since 2003, quotas for blacks had been established in many Brazilian public universities. This affirmative action policy was uniformed and applied to the entire national education system with the Law nº 12.711/2012. Moreover, the Law n° 12.990/2014 established affirmative action for the entry of workers into the federal public administration[26].

02. Substantive equality of opportunity requires a set of distributive measures. Education is the most common area of intervention. Here, I want to stress only a particular aspect: the relevance of the 'geographical' inequality. Much has been said about the enormous educational advantage that elite universities give to those who attend them, but often the huge advantage that comes from attending a primary or secondary school in a certain district rather than another is frequently underestimated. In Brazil, this kind of educational inequality requires a radical and urgent intervention.

03. In the Brazilian public debate, it is common to discuss substantive inequality of opportunity in terms of inequality of education, much less common is to argue about the social and material condition of students and their families. There are no educational policies that can compensate for the disadvantages deriving from a condition of poverty, especially extreme poverty. It is not surprising that the aims of the Bolsa Família program are not only to increase economic inclusion and economic development, but also and above all to create citizenship and promote civic inclusion (PINZANI and RÊGO, 2013). Although, 'Bolsa Família' is considered one of the most effective and largest anti-poverty programs around the world[27], it can be considered just a partial first step towards the more radical Van Parijs' proposal of a universal and unconditional basic income (VAN PARIJS,

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[26]For more details, see: Feres, 2018 and Moehlecke, 2002.
[27]See: The World Bank link (2007).

1995; VAN PARIJS and VANDERBORGHT, 2017, p. 161)[28]. His proposal is universal and unconditional in the sense that a basic income is paid to everyone on an individual basis, in cash, without means test or work test, and irrespective of income from other sources[29]. A basic income is one of the most innovative and effective proposals to avoid the 'poverty trap'. Nonetheless, the unconditional condition might be considered too demanding, and in contradiction with the key notion of fair equality of opportunity that simply presupposes fair conditions (formal and substantive) to allow all citizens to 'participate' in social cooperation. However, there are some basic income proposals that aim to mitigate this problem; for instance, Atkinson's 'participation income' (2015) which is a universal, but also 'conditional' basic income. It would be paid at the same rate for all adults, not on the basis of citizenship but of 'participation'. Atkinson defines 'participation' broadly as making a social contribution taking into account the range of activities in which a person of working age might be engaged[30].

04. The tax system is one of the most fundamental instruments to reduce inequality of opportunity. First of all, it should be organized to be fair in itself and, at the least, avoid that the richest citizens pay lower tax rates than their secretaries (SAEZ and ZUCMAN, 2019). Secondly, the tax system is not simply a tool to collect revenues, but is also a means to regulate capitalism in a way in which the free market might implement a fair outcome and avoid unjustified advantages of substantive opportunity[31]. This means to prevent excessive accumulations of property and wealth, not only from one generation to another establishing a taxation of inheritance and gift (at least on the great

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[28]Some scholars opt for another distributive instrument: a basic capital endowment (a unique amount of money paid to all at the start of adult life); see: Ackerman and Alstott, 1999, Piketty, 2020.

[29]By contrast 'Bolsa Família' is a conditional means-tested program. Note that in Brazil, on January 08, 2004 (exactly 24 hours before the Bolsa Família Program was instituted) a form of universal and unconditional basic income (Renda Básica de Cidadania) was established by law (Lei n° 10.835); see: Lavinas, 2018. Nonetheless, there has been no national implementation of this law. The first local attempt of implementation is in the city of Maricá (in the State of Rio de Janeiro), see: Matthews, 2019 (Vox link).

[30]For example, "full or part-time waged employment or self-employment, by education, training, or an active job search, by home care for infant children or frail elderly people, or by regular voluntary work in a recognized association" (ATKINSON, 2015, p. 219).

[31]On the debate about the necessity for a mix of predistributive and redistributive reforms and policies see: O'Neill, 2017.

fortunes), but also among the same generation. As Piketty says, "there is no need to wait for Mark Zuckerberg or Jeff Bezos to turn 90 years old and pass their wealth to their heirs in order to collect taxes" (PIKETTY, 2020, p. 978). For sure, a more progressive wealth and property taxation should be the priority in Brazil.

05. The labour market is usually taken into account in terms of formal equality of opportunity; in other words, if all citizens have the effective possibility to participate in the labour market, regardless of their gender, racial, or other characteristics. But much more should be made about substantive opportunities. This latter dimension is particularly important in a labour market marked by flexibility and precariousness, such as the Brazilian one. We should look at the substantive opportunities that allow citizens to change jobs or start entrepreneurial enterprises. Over the past 30 years, the dominant public discourse in liberal democracies has offered flexibility as the magical solution that would have allowed more opportunities. Unfortunately, things went in the opposite direction[32].

Cleary, these five points do not exhaust all dimensions concerning the implementation of fair equality of opportunity; a further and more elaborated discussion is needed.

Conclusion

In this paper, I rejected the notion that equality of opportunity is associated with a non-institutional idea of meritocracy, in favour of an 'institution-dependent' conception of equality of opportunity. Individual merit should not be considered to be a benchmark for a just distribution as a whole or for shaping the basic structure of society. Nonetheless, individual responsibility, ability or effort are ideas that may have room in a liberal democracy when they are associated with Rawls' notion of citizens' legitimate expectations. Thus, the purpose of the paper was to show that an 'institution-dependent' conception of equality of opportunity – like Rawls' FEO – is,

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[32]See: Azmanova, 2020.

first of all, the most adequate interpretation for a liberal democratic society, and secondly, that it entails strong distributive implications, much more than is usually thought in the public debate. Thus, although equality of opportunity taken alone is insufficient in terms of (ideal) social justice, its full implementation might represent an enormous egalitarian advance in a non-ideal scenario, like in the case of the actual Brazil.

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Revised by Rissa L. Miller
Submitted on October 10, 2020
Accepted on July 06, 2021

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