Michigan Law Review

Volume 82 | Issue 4

1984

How Radical is Liberalism?

Virginia L. Warren
Chapman College

Follow this and additional works at: <https://repository.law.umich.edu/mlr>

Part of the [Law and Philosophy Commons](#)

Recommended Citation

Virginia L. Warren, *How Radical is Liberalism?*, 82 MICH. L. REV. 761 (1984).
Available at: <https://repository.law.umich.edu/mlr/vol82/iss4/13>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

HOW RADICAL IS LIBERALISM?

Virginia L. Warren*

JUSTICE, EQUAL OPPORTUNITY, AND THE FAMILY. By *James S. Fishkin*. New Haven and London: Yale University Press. 1983. Pp. vii, 200. Cloth, \$18.95; paper, \$8.95.

For some years, American liberals have recognized a need to reevaluate those policies of theirs that were designed to achieve social justice — because some of the Great Society programs were less successful than others, and also because citizens have become increasingly reluctant to finance social programs through their taxes. Published just in time to be read before the 1984 presidential election, James Fishkin's *Justice, Equal Opportunity, and the Family* examines the liberal's vision of a just society and finds it wanting. Fishkin is a liberal¹ who finds inconsistency at the very core of liberalism. He seeks to establish that this conflict among liberal principles is not only a practical problem in the world as we find it, but a problem for "ideal theory" as well, that is, a conflict that would arise even if conditions in the world were as good as reasonably could be expected. His aim

is not to discredit liberal theory but only to emphasize that a more adequate version of liberalism must face certain hard choices that have, heretofore, been glossed over. This book is an effort to chart the terrain for such a reformulation. [P. 158].

He concludes that liberals must qualify their claims and make those difficult decisions. If liberals address this challenge, then, in the future, liberal theory might provide more concrete guidance for politicians, and liberal policies might appeal to a wider segment of the population.

While Fishkin teaches in a department of political science, his doctorate is in philosophy. His book is analytical and theoretical, and is written with the utmost clarity. All the logically possible alternatives to a problem are crisply laid out, and he is always careful to keep the reader aware of the overall structure of his argument (although sometimes he repeats himself more often than clarity requires). Fishkin has read widely (with a few possible exceptions to

* Assistant Professor of Philosophy, Chapman College, Orange, California. B.A. 1969, Vassar College; M.A. 1970, Ph.D. 1979, University of Michigan. — Ed.

1. He writes, for example: "We need to continue, indeed to expand, the Great Society's wave of experimentation with efforts to improve the developmental conditions of the least advantaged." P. 147.

be noted below) in political science, political philosophy, and related fields, and his footnotes offer an extensive annotated bibliography that would be extremely useful for anyone desiring an overview of recent political theory. Although the book concentrates on the issue of securing equal job opportunities, Fishkin also reflects on the broader implications for liberalism in the areas of equal access to the political, legal, and health care systems. He thus offers a comprehensive critique of the liberal view of social justice.

I. FISHKIN'S ARGUMENT

Fishkin offers us "a new variation on an old theme: the conflicts between liberty and equality" (p. 2). (As we will see shortly, he thinks that his variation *is* new — and surprising.) Equality, in Fishkin's variation, refers to equal job opportunities and resolves into two components — *the principle of merit* and *equality of life chances*. Liberty refers to the *autonomy of the family*. Fishkin finds these three principles to be in irreconcilable conflict, forming a *trilemma*, wherein "commitment to any two of these assumptions rules out the third" (p. 5). He claims, in other words, that it is impossible to adhere fully to all three commitments simultaneously; at least one principle will always have to be sacrificed or compromised.²

The main "trilemma" of the book consists of "two central liberal assumptions about equal opportunity, on the one hand, and our common moral assumptions about the family, on the other" (p. 4). According to the first element of the liberal conception of equal opportunity, the principle of merit,

there should be widespread procedural fairness in the evaluation of qualifications for positions. No discrimination should be permitted on the basis of race, sex, class, ethnic origin, or other irrelevant characteristics. [P. 4].

The merit principle requires that selection among candidates for jobs (or for admission to college or graduate school, given that higher education is a prerequisite for many jobs) is to be based on qualifications that are directly related to job (or school) performance. Ensuring that criteria for hiring (or admissions) are insulated from prejudices and from preferences that are idiosyncratic or self-interested will eliminate one source of unfairness. However, a competition based on merit — one which is fairly conducted in the present — can still be considered unfair if some individuals have previously

2. Fishkin is investigating the consequences of *fully* realizing, in practical terms, one's moral principles. His project here is similar to that of another recent book of his. In *THE LIMITS OF OBLIGATION* (1982) he found that commonly held assumptions about the nature of moral obligations conflict with a seemingly innocuous moral principle — "if we can save a human life at minor cost [to ourselves], we are obligated to do so," *id.* at 3 — when the consequences of applying that principle on a wide social scale are recognized.

had little chance to develop their talents or to acquire the appropriate qualifications. Hence the second part of the liberal conception of equal opportunity is equality of life chances. The third part of the trilemma is not so much a standard liberal principle as a belief that Fishkin thinks is held by most people in our society: “the *autonomy of the family* — permitting parents to substantially influence the development of their children . . .” (p. 5).

Fishkin maintains that we can have a merit system *and* see that everyone has equal life chances (the two components of equal opportunity) — but only if we are willing to grossly interfere with how parents raise their children, thus compromising family autonomy to a great degree. And we can maintain both family autonomy *and* the merit system — but only if we forgo the ideal of equality of life chances, since some children will have a much better chance of having their talents developed than will other children. Finally, we can maintain both family autonomy *and* equality of life chances — but only if we give up the merit system and substitute a system of random allocation of jobs, so that parents are free to raise their children as they wish but without their children’s life chances being thereby influenced.

Fishkin believes that we should be surprised by the fact that liberty and equality conflict in this way. He thinks it is surprising for two reasons, which, taken together, make this conflict potentially quite damaging to liberalism. First, consider what must be equalized:

It has long been a theme of libertarians that equality of outcomes could be maintained only at a substantial cost in liberty. It is more surprising, however, that even the apparently less drastic process principles of equal opportunity produce the same conflict. Once the role of the family is accounted for, the conflict between liberty and equality becomes an unavoidable problem at the core of liberal theory. [P. 132].³

In other words, it is widely known that a high cost in personal liberty would have to be paid in order to arrive at and to maintain a society in which everyone actually had equal positions (regarding status, jobs, income, etc.). Fishkin, however, thinks that it has not been generally recognized that an intolerably large degree of liberty — that is now taken for granted — would have to be forfeited *even if* the demand for equality were lessened to having everyone participate in “a fair competition . . . for unequal positions in society” (p. 1), which is the traditional liberal ideal of equal opportunity. He concludes that “the apparently more modest process equalities considered here, if taken seriously, pose conflicts with liberty that are equally [as] stark and unavoidable” (p. 169) as the conflicts with

3. See Fishkin’s discussion, pp. 133-40, of the libertarian views of Robert Nozick as presented in *ANARCHY, STATE, AND UTOPIA* (1974).

equality of outcomes. Rather than being bland, the liberal ideal of equal opportunity is "*a startlingly radical idea*" (pp. 106-07, emphasis added). Equal opportunity is "radical" because its full implementation would require fundamental changes in family life.

Second, Fishkin considers it surprising that this particular conflict between liberty and equality still arises for liberal theory when we presuppose the most favorable situation that can reasonably be imagined for a modern, industrial society. Following John Rawls,⁴ he specifies two features of "ideal theory." The first ideal assumption that Fishkin makes is that, while families will occupy different socioeconomic levels, there will be only "*moderate scarcity*" in the society as a whole.⁵ The second feature of the realistically ideal society is "*strict compliance*." That is, it is assumed that the two principles of equal opportunity are currently complied with — with "good will, cooperation, and conscientious agreement" (p. 46) on how to implement them — and, furthermore, that these principles have been complied with in that society's recent history (so that issues of compensatory justice do not arise).

Fishkin's point in focusing on "ideal theory" is to underscore the seriousness of the purported conflict in liberal theory:

It would be less surprising if one or more of our central assumptions had to be sacrificed under unfavorable conditions where extreme scarcity, lack of compliance, or a historical legacy to injustice made any particular principle difficult to implement. My argument, rather, is that under the best conditions that might realistically be imagined for a large-scale industrial society, this trilemma arises. In this sense, the basic liberal approach to equal opportunity does not amount to a coherent ideal once complications involving the family are systematically taken into account. [P. 6].

Fishkin claims, in sum, that to accept that there will inevitably be conflict between the two liberal principles of equal opportunity and a commonly agreed-upon degree of personal liberty (involving the family) — even assuming the best circumstances realistically available — is "to admit that liberalism can only offer a seriously tarnished and compromised ideal for public policy" (p. 8). If these three commitments which liberals make come into conflict with each other, the world cannot be blamed; and, since the conflict is not accidental and will never simply go away, liberals are obliged to come up with specific solutions.

Although Fishkin concentrates on the trilemma of merit, equality of life chances, and family autonomy, he sees that conflict as a single

4. J. RAWLS, A THEORY OF JUSTICE (1971).

5. By "moderate scarcity" Fishkin means two things: (a) "conditions well beyond subsistence are possible for everyone in the society"; and (b) there is a "realistic budget constraint" such that "legitimate" demands for national defense, health care, etc., cannot all be met because resources are limited. P. 45.

instance of a more general pattern — making his claims potentially even more disruptive to liberal theory. “The essential core of contemporary liberalism can be thought of as a series of process equalities — institutionalized practices designed to guarantee equal consideration of everyone’s preferences or interests” (p. 158). In addition to equal job opportunities, the other process equalities that Fishkin examines are political equality, equality before the law, and nationalized health care (pp. 158-69).

These other trilemmas have the following structure. Equal access to the political, legal, and health care systems can be maintained only if people are unable to secure unfair advantages — for example, as a result of having a higher socioeconomic status. But the rich and powerful will generally have more opportunities to have their voices heard in the political arena, to use the legal system to their advantage (*e.g.*, through retaining better lawyers), and to procure better medical treatment than would the poor. Yes, there are ways of effectively implementing these processes that attempt to put the competition for the basic requirements of a good life on a fair and equal footing. But, Fishkin claims, the degree of liberty that would have to be sacrificed in order to insulate these procedures from the usual consequences of inequities in money and status would be regarded as intolerable by most people. (He mentions the alternate strategy of *eliminating* the background inequities that are disrupting the equal access procedures; but he correctly maintains that the cost in liberty would then undoubtedly be much greater than the cost of merely insulating these procedures from existing inequities (p. 168).)

Fishkin’s conclusion regarding all of these trilemmas is that liberals cannot simultaneously make full commitments to the following three things. First is the commitment to a procedure designed to guarantee equal access to jobs (based on merit), or to the political, legal or health care systems. The second commitment concerns insulating that procedure from the inequalities in socio-economic status that are assumed to exist in societies in which unequal outcomes are permitted. Such insulation requires that the rich and powerful be prevented from using their general advantages to give themselves and their children a competitive advantage when the procedure (the first commitment) is applied. The principle of equality of life chances, for example, insulates the process of selecting job candidates based on merit. The third commitment is to a generally accepted degree of liberty regarding family autonomy, freedom of speech and association, and freedom to contract for superior legal and medical services.

At the end of the book, Fishkin explains that there is a deficiency in liberal methodology, and not only in liberal principles. After examining recent attempts by liberal theorists to justify their principles

of justice, he concludes that, no matter whether the metaethical justification of specific normative principles is deductive or inductive or both,⁶ that justification will inevitably be "inconclusive." While this inconclusiveness, according to Fishkin, does not mean that liberal theory must be reduced to subjectivism, he argues that it can do no better than advance "conflicting *prima facie* principles, to be traded off in particular cases" (p. 192).⁷ The resulting "honest but limited liberalism"

is at an ideological disadvantage compared to many of its competitors. It affirms a plurality of conflicting [*prima facie*] principles without adding up to a single ideal or unified vision for the organization of institutions in a just society. It lacks a unified program because it lacks any general priority relations among its conflicting parts. How its principles are to be balanced remains an open question, to be faced in particular cases as they present themselves. . . . [I]t offers us no single vision of social justice in clear focus. [P. 193].

The force of the trilemmas against liberalism amounts, then, to this: Liberals cannot *fully* realize the three principles of each trilemma if these principles are understood to apply without exceptions constantly being made on an intuitive basis. Either one or more of the principles must be modified — thereby sacrificing accepted liberal standards of liberty or equality — or else liberals must accept that these principles, as they stand (without priority principles to resolve conflicts among them), represent a disturbingly incomplete ideal. In either case, he urges, liberals should waste no time in making the difficult decisions that will point public policy in a single, clear-cut direction.

Having set forth the structure of Fishkin's argument, I shall now examine the principles of the main trilemma more closely, and then

6. A deductive metaethical justification would begin with a *method* (e.g., Rawls' "Original Position") of arriving at normative principles from which specific normative principles would be deduced. In contrast, an inductive justification would arrive at specific normative principles by *generalizing* from judgments about specific cases. Deductive methods are inconclusive, Fishkin maintains, because there will always be disputes about the specific features of the proposed method, and because a better procedure might be devised in the future. Pp. 182-83. However, inductive methods are also inconclusive, because the principles arrived at by generalizing from past cases might not yield correct answers when applied to novel cases. This uncertainty arises because the addition of even one new feature to a situation can completely change what the morally correct action would be, and we can never be sure that we have foreseen *all* the possible combinations of all the morally relevant features. Pp. 186-89. The foreseeability problem remains even if it is granted, for the sake of argument, that the moral judges — upon whose particular decisions the inductive principles are based — are "perfectly unbiased and competent." P. 186.

7. Fishkin maintains, however, that most liberals regard their principles (as established) as being exceptionless. He also claims that most liberals believe it to be *impossible on rational grounds* to question whether their principles are correct. Pp. 170-71. I find the latter claim odd indeed, since liberalism traditionally upholds the right of free speech, in large measure, because one cannot be absolutely certain that one's views are perfectly correct.

assess the overall significance of his critique of liberal views on social justice.

II. FAMILY AUTONOMY

For Fishkin, liberty, like charity, begins at home — with family autonomy. His concept of family autonomy deserves careful attention so that his main claim about the conflict between family autonomy and the liberal ideal of equal opportunity can be evaluated. His full definition of this concept is:

AUTONOMY OF THE FAMILY: *Consensual relations within a given family governing the development of its children should not be coercively interfered with [by the state] except to ensure for the children the essential prerequisites for adult participation in the society.* [Pp. 35-36].⁸

"Essential prerequisites," we are told, refer to "the physical and psychological health of the child and his or her knowledge of those social conventions necessary for participation in adult society" (p. 36), including being literate. Family autonomy, as Fishkin defines it, is equivalent to parental autonomy: parents should be able to do what they want with their children, without outside interference, as long as the children are not thereby harmed. More specifically, he speaks of family autonomy in terms of parents wanting to secure the development of their children's talents and to insure that their children develop those qualifications which are prerequisites to obtaining and holding down good jobs. Those qualifications would presumably include the skills of writing and speaking, social skills, and the character traits of perseverance and assertiveness, in addition to any skills or knowledge related to a specific profession. Fishkin deliberately limits family autonomy to as narrow and noncontroversial an area as possible so that the eventual trilemma will have the maximum amount of force. He thus excludes from his discussion families in which there are custody disputes (disputes about who the members of the family are) and in which the parents disagree about child-raising practices (p. 36).⁹

Since the fundamental conflict addressed by Fishkin is between equality and liberty, it might be wondered why he concentrates on family autonomy instead of on the more standard individual liberty. For, as he is fully aware (p. 43), if the commitment to equal opportunity conflicts with seeking advantages for one's own children (for example, in obtaining admission to law school), then that commitment would also conflict with seeking advantages for oneself.

8. For Fishkin, a family may be headed by a single parent or by a homosexual couple, but there must be at least one child. P. 36.

9. In order to be noncontroversial, he also excludes some things that would obviously conflict with the merit principle: "[F]amily autonomy is not meant to govern job assignments in adult society. It should not be construed to protect nepotism, the buying of positions, or large-scale inheritance." P. 37.

Fishkin offers two reasons for focusing on *family* autonomy. First, he sees his interpretation of family autonomy as a value held by most members of our society, not only by liberals. It is "our customary commitment" (p. 106), a part of "conventional morality" (p. 43), and it represents "the way of life we commonly take for granted" (p. 107). Second, he views liberals, in particular, as committed to family autonomy because of their specific theoretical commitment to John Stuart Mill's private sphere of "self-regarding" actions. Mill held, in *On Liberty*, that actions should be immune from interference both by other individuals and by the state when those actions affect only oneself or other adults who have voluntarily consented to be involved, or when there is no highly probable risk of a significant amount of direct harm to specifiable other individuals. As Fishkin notes (p. 40), although Mill's basic principle refers to persons "in the maturity of their faculties," Mill specifically requires parents to restrict their children's liberty for the latter's own good (in certain respects); and if the parents neglect this duty, then the state is justified in stepping in. Thus, Fishkin focuses on family autonomy both because the liberal conception of liberty requires such commitment, and because he sees equal opportunity as conflicting most obviously and directly with that aspect of "the sphere of liberty most precious to the way most of us live" (p. 145).

Fishkin usefully points out (pp. 154-57) that Rawls — although aware of the conflict between his principles of justice and common assumptions about the family — makes no attempt to resolve that conflict. Moreover, it is undoubtedly true that virtually all liberals would subscribe to *some* version of family autonomy, if only to disallow taking children from their natural parents whenever someone else could raise them better. Still, we may question whether family autonomy, as defined by Fishkin, is an obvious moral right to be protected as part of the private sphere of individual liberty. In answering this question, we should distinguish between two senses of being free to raise one's children as one sees fit. We may mean, first, being free to help one's children develop as full human beings. State interference with such a goal may legitimately be seen as significantly harmful to those children, and thus as being morally impermissible. Second, we may mean giving one's children a competitive advantage in the marketplace, in the hope that they will beat out others in securing a good education, a well-paying job, and high social status.

Fishkin may be assuming that one has a moral right to see that one's children develop as persons, and I would agree (although even here I would add some qualifications).¹⁰ A liberal might reasonably

10. Even helping one's children to develop fully as human beings must be restricted to some degree. Otherwise, this liberty could be so widely construed that it would include ensur-

feel, however, that it is far from clear that one has an *unrestricted* moral right to give one's children a competitive advantage in the marketplace. Indeed, such an unrestricted right *would* preclude a commitment to equal opportunity for all. Most liberals would claim, I think, that one has a moral right to give one's children a competitive advantage *only if* the competition were fair — that is, only if the other competitors had a reasonable opportunity to secure the same skills and knowledge and the evaluation criteria were themselves fair. While Fishkin nowhere explicitly states that family autonomy includes the moral right of parents to gain for their children an unfair advantage in the competition for jobs, he nowhere distinguishes between enabling one's children to develop as human beings and enabling them to beat out the competition.¹¹ Hence he allows our positive moral evaluation of the former goal to extend to the latter goal; and an unrestricted commitment to enabling one's children to win competitions for jobs (assuming that one extends this right to all parents) is, it is true, utterly inconsistent with a commitment to equal opportunity.

Liberals could, however, consistently believe in equal opportunity for all and in a reasonable interpretation of family autonomy. Such an interpretation might be stated as follows:

MY MODIFICATION OF THE PRINCIPLE OF FAMILY AUTONOMY: *Parents are entitled to encourage their children's basic development as human beings without interference by the state (unless the parents are compromising the essential well-being of the child). However, parents are not entitled to seek a competitive advantage for their children when their children's competitors for jobs have had no reasonable chance at developing their talents or of obtaining the necessary qualifications — unless those parents have put a non-trivial amount of effort into trying to help the children of the disadvantaged to obtain a fair chance at compet-*

ing the acquisition by one's children of countless skills, the knowledge represented by several graduate degrees, and many years of work experience; and then the distinction between developing as a person and acquiring a competitive edge in the marketplace would dissolve. The liberty to have one's children develop as persons should be limited to fairly basic attitudes, values and skills. Though further specification would be required, a distinction between a person who is a flourishing human being and one who is successful in the world can, I believe, be drawn.

11. For example, Fishkin writes:

It would be hopelessly unrealistic to expect advantaged parents to consent voluntarily and universally to conditions that were explicitly designed to render their children worse off. But any effective leveling down strategy [which brings rich children down to the level of poor children] would, by definition, have that result.

P. 80 (footnote omitted). In other words, the family autonomy of rich parents would be restricted if their children were brought down to the level of their competitors. But would such a restriction be morally impermissible? The term "worse off" is ambiguous; children could be worse off as human beings, or worse off competitively in the marketplace. It might be "hopelessly unrealistic" to expect most rich people voluntarily to refrain from doing all they could to ensure that their children would beat out others in competing for jobs. However, one might expect rich *liberal* parents to refrain from seeking *unfair* competitive advantages for their children, if those parents claim to be committed to equal opportunity for all.

ing.¹² Moreover, until equal opportunity is achieved, part of encouraging one's children's development as human beings will include getting them to appreciate that their success in the world results, in part, from the fact that many of their competitors (and potential competitors) did not have a reasonable chance to compete with them.

Fishkin may have correctly identified a commonly held view about the family — that parents should be allowed to seek the best for their children — but I question whether he has captured what reflective liberals would claim about parental authority over the development of their children.

I have just suggested a way of modifying family autonomy so that it is a principle to which many liberal parents could adhere (although they might not hold it now), yet which is compatible with an ideal of equal opportunity that still has some bite in it. My next point has less to do with a conflict in ideals than with a divergence between ideals and practice.

In addition to the two plausible reasons (cited above) which Fishkin gives for singling out family autonomy from the rest of the private sphere of protected actions, another reason, of which he is apparently unaware, may be affecting our intuitions about family autonomy. If some liberals espouse equal opportunity and also deliberately will that their own children not compete on a fair basis with other children, those liberals do not simply have conflicting values without ever realizing it; they are hypocrites — *they are trying to cheat for their children*.¹³ Perhaps one reason why family autonomy may intuitively seem to rest on firmer moral ground than other areas of the private sphere is that cheating for one's children may seem to many to be more noble than cheating for oneself. The former may seem nobler because sacrifices are demanded of parents, such as paying for an expensive private school or taking the time to read to their

12. Other exceptions should probably be built into the principle. In particular, if advantaged parents have worked diligently to achieve *some* morally worthy goal — even if it is unrelated to equal opportunity — that would be enough to make it morally permissible for them to try to give their children a competitive edge when they know that others in that competition have (through no direct fault of the advantaged parents) been denied equal opportunity. What I am trying to do is to disqualify the following as morally permissible: advantaged parents, who are aware that the ideal of equal opportunity is not yet realized, doing a great deal to give their children a competitive edge while doing nothing to improve the lives of those less fortunate — that is, parents who complacently say that because they did not cause the original problem they do not have to be part of the solution.

13. By "cheating" I mean that one seeks to avoid the results of a fair competition (governed by as much equal opportunity as exists at present) either for oneself or for one's children.

The situation is, of course, more complicated than I have thus far made it out to be. For example, one's children may be (and feel) relatively disadvantaged if — *compared to their peers and friends* of the same race, sex or class — their talents are not as well developed. See Kavka, *When Two 'Wrongs' Make a Right: An Essay on Business Ethics*, 2 J. BUS. ETHICS 61 (1983) (discussion of under what (limited) conditions violations of a moral rule are justified *because* others are already violating that rule).

young children. While I recognize the seriousness of the decision not to give one's children every competitive advantage at one's disposal,¹⁴ I do not see cheating for one's children as noble; nor, I contend, should liberals who are committed to equal opportunity.

Details still need to be worked out concerning how much one may favor one's own children so that they can more readily attain worldly success. (I am assuming that morally one may — indeed must — favor them regarding their development as human beings.) However, if one is committed to equal opportunity, then one should be prepared to accept — for oneself and for one's children — *at least some* of the results of equal opportunity, even if one (or one's children) could do better by getting an unfair edge. My modified version of family autonomy does not require (indeed it forbids) that the children of the advantaged be harmed as persons. It only denies that they have an unrestricted moral right to the competitive advantages they will receive *because* equal opportunity is not, in fact, available for all.

Being committed to equal opportunity does preclude looking out only for Number 1 and Number 1's children. If that is what Fishkin's trilemma comes down to, then I wholeheartedly concur with him. Being committed to a just society will cost the advantaged some of their comparative advantages, though it may cost them none of their humanity; in fact, their humanity may be enhanced. In wanting the best for their children, liberals often, in fact, look at the benefits that are possible only if equal opportunity is realized in society, and see the non-zero-sum aspects of human relationships in addition to the realities of (zero-sum) competition. Where I disagree with Fishkin is in his maintaining that family autonomy is actually interpreted by liberals to mean that people must be free to act upon their desire to *not* want equal opportunity to apply to them or their children. Espousing family autonomy should not give moral license to extended selfishness.

III. HAVE LIBERALS BEEN BLIND TO THE FAMILY?

Fishkin contends that liberals have failed to see how "radical" equal opportunity really is because of their "blindness to the role of the family" (p. 146). To some extent he is quite correct, and I applaud his attempt to incorporate issues relating to the family into political philosophy. Much more thinking and theorizing awaits to be done regarding morality and the family. Yet I find his claim about "blindness" to be much too harsh in the light of the recent

14. The strength of the desire to give one's children (or, by extension, one's grandchildren or one's friend's children) every competitive advantage is aptly described in the aphorism, "a liberal is a radical with children; a conservative is a liberal with children."

literature on the children's rights,¹⁵ women's rights, and gay rights movements.

Conservatives who claim that they are "pro-family" have made it clear that many of this country's traditional views about the family (including the notion that it consists of two heterosexual parents, a working father as head of the household, and a mother who does not work outside the home — unless forced to by economic necessity, in which case she still continues to perform all her usual domestic responsibilities) count against standard liberal ideals. "Pro-family" has come to symbolize, for example, opposition to teenage girls obtaining contraception without parental permission, as well as opposition to the Equal Rights Amendment and to according homosexuals full civil rights. In so doing it opposes both the ideal of equal opportunity and, to a significant degree, the Millian private sphere (for women, gays, and older minor children) in the name of protecting family unity and parental (often the father's) authority over how children are to be educated and raised. In contrast, liberals have been much more likely to favor restricting parental control over children — both to prevent harm to the children (*e.g.*, in cases where, on religious grounds, parents refuse potentially life-saving medical treatment for their children) and to support the autonomous decisions of older minors.

So far, Fishkin and I are not far apart. The difference between our assessments of how blind liberals have been concerning the family could be a matter of degree, of emphasis. However, I am reminded of last autumn, when an audience of N.O.W. members was told by John Glenn that "we" had simply not tried hard enough to get the Equal Rights Amendment passed. The two "we's" — Glenn's and the audience's — were not the same. When Fishkin refers to his interpretation of family autonomy as identifying "the core area of negative liberty [Mill's private sphere] that is most central to the way most of us have structured our lives," (p. 84) many liberals who support the feminist and gay movements may feel left out of the group defined by "us."

The problem is *not* that many people, for a variety of reasons, do not have children, with the result that child-raising is not central to their lives. For, those without minor children of their own may feel inclined to favor their grandchildren, nieces and nephews, and the

15. Fishkin explicitly declines to discuss the issue of children's rights. P. 37. He prefers to examine families in which parents and children basically cooperate, in order to show that his trilemma arises even under ideal conditions. However, the issue of children's rights arises not only when children rebel, but also when they do not know enough, or are powerless, to oppose their parents. Hence, children's rights apply in "normal" cases, and not only when the family is breaking down. On the issue of raising children to be autonomous adults, see Feinberg, *The Child's Right to an Open Future*, in WHOSE CHILD? CHILDREN'S RIGHTS, PARENTAL AUTHORITY, AND STATE POWER 124 (W. Aiken & H. LaFollette eds. 1980), and Bishop, *Children, Autonomy and the Right to Self-Determination*, in *id.* at 154.

children of their friends in just the way parents do. The problem is more fundamental; Fishkin's portrayal of parental authority over children as being *the* least controversial part of personal liberty will strike many liberals as odd.

Fishkin is careful to explicitly include homosexual couples with children and single-parent families when defining the family. And what he writes does not contradict the main goals of those movements which support the rights of children, gays, and women. Yet his assertion that liberals have been blind to the fact that equal opportunity would require them to alter dramatically their domestic lives suggests some degree of near-sightedness on his part regarding how many liberals are already aware that equality begins at home¹⁶ — where it often causes much pain and conflict among the family members.

Consider, for example, the historical situation of women. Their autonomy has been severely restricted by their bearing and caring for children and, until recently, their authority to raise their children as they saw fit was severely restricted by the authority of their husband over them.¹⁷ Most women did not experience either their home as their castle or their children as their natural subjects. Instead, home was the place wherein it was terribly difficult to find "a room of one's own."¹⁸ Without question, there are many liberals

16. For example, truly giving "equal pay for equal work" (or — somewhat more radically, but still in keeping with the liberal ideal of equal opportunity — equal pay for work requiring *comparable* training, skills and effort) would dramatically affect the family structure, not to mention its large-scale effects on the economy generally.

17. See Carl N. Degler's comprehensive historical account relating the situation of women with the traditional view of the family, in *AT ODDS: WOMEN AND THE FAMILY IN AMERICA FROM THE REVOLUTION TO THE PRESENT* (1980). His main thesis is that "the equality of women and the institution of the family have long been at odds with each other. . . . [T]he family's existence assumes that a woman will subordinate her individual interest to those of others — the members of her family." Pp. vi-vii.

18. See V. WOOLF, *A ROOM OF ONE'S OWN* (1929).

Considering the extensive footnotes that Fishkin gives us on most aspects of political philosophy, it is curious that he refers to no sources on gay rights and that only two recent books on women's rights are discussed (in brief footnotes). Even when he refers, p. 65 n.38, to Susan Moller Okin's *WOMEN IN WESTERN POLITICAL THOUGHT* (1979), he mentions her discussion of Plato's views on child-raising and the family without calling attention to her critique of Mill's essay on *The Subjection of Women*, in *ESSAYS ON SEX EQUALITY* 125 (A. Rossi ed. 1970). Okin concludes her chapter on Mill as follows:

although a very forward-looking feminist in many respects, he in no way perceived the injustice involved in institutions and practices which allowed a man to have a career and economic independence, and a home life and children, but which forced a woman to choose between the two. His refusal to question the traditional family and its demands on women set the limits of his liberal feminism.

S. OKIN, *supra*, at 230 (emphasis in original). Among those feminist works which consider the issue of the family are N. CHODOROW, *THE REPRODUCTION OF MOTHERING: PSYCHOANALYSIS AND THE SOCIOLOGY OF GENDER* (1978), and B. FRIEDAN, *THE SECOND STAGE* (1981). See generally *SIGNS: JOURNAL OF WOMEN IN CULTURE AND SOCIETY* (1975 -), a periodical which frequently publishes reviews surveying the recent literature relevant to women's issues within a variety of academic disciplines.

who are in need of hearing Fishkin's message about how social equality would require fundamental changes in traditional family life. But he would have done better to explicitly address different groups of liberals, since the "we liberals" to whom he addresses his message is far from all-inclusive.

IV. PREFERENTIAL TREATMENT AND THE MERIT PRINCIPLE

A good portion of the book (pp. 55-64, 82-105, 108-31, 149-50) is spent discussing the issue of preferential hiring and admissions. Fishkin provides a clearly stated survey of the main moral arguments on both sides of the debate, as well as a careful philosophical analysis of those arguments. The *DeFunis*¹⁹ and *Bakke*²⁰ cases (along with secondary literature on them) are singled out for special treatment. He handles this controversial subject in an extremely thorough and fair-minded way, raising and answering many interesting objections to his own arguments in the process.

Fishkin considers preferential hiring and admission within the context of his main trilemma of merit selection, equal life chances, and family autonomy. He focuses upon those instances of preferential treatment — or reverse discrimination — that produce "significant and widespread sacrifice of the principle of merit in assignment [of jobs or places in school] in order to favor some specified group defined in terms of arbitrary native characteristics (such as race, sex, or family background)" (p. 87). He considers two distinct moral justifications that are often offered for such preference: (a) to equalize the life chances of those whose opportunity to develop their talents and to acquire job qualifications was severely restricted (but where limited opportunities were not necessarily caused by past injustices), and (b) to compensate for past discrimination, that is, for past violations of the merit principle. In contrast to other parts of the book, Fishkin does *not* limit his attention here to ideal theory (as witnessed by his consideration of compensation for past injustices). He proceeds by stipulating the following *minimum condition* (on the ground that it "seems reasonable" — which it does):

[N]o sacrifice in one of these three central principles [merit, equal life chances, and family autonomy] should be undertaken *unless the sacrifice is necessary for a gain in one or more of the other two*, or unless there is some other valuable gain (according to other principles that would then have to be argued for, in turn). [P. 84, emphasis in original].

Fishkin examines various arguments in favor of considering racial and ethnic minorities as groups²¹ — for example, preferentially ad-

19. *DeFunis v. Odegaard*, 416 U.S. 312 (1974).

20. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).

21. See especially Fishkin's critique of two arguments in favor of preferential treatment:

mitting the most qualified members of disadvantaged groups to law school, even though these individuals may have suffered little themselves. Based on the above minimum condition, he holds that the merit principle should not be compromised unless the life chances of affected individuals are made more nearly equal (pp. 104-05). Hence he concludes that preferential treatment must be *specifically targeted* either (a) at those who actually had the development of their talents severely curtailed or (b) at those who actually suffered the effects of past discrimination.

Fishkin handles the issue of preferential treatment quite well, and I have but two criticisms of it. First, he mentions the need to raise the aspirations of disadvantaged minorities and to supply them with role models (pp. 94-95, 105), only to immediately dismiss these factors as minor, appealing directly to our intuitions without supplying any empirical evidence. Though he gives a much fuller discussion of members of disadvantaged groups who identify with the group as a whole,²² I would have preferred that he take more seriously the many psychological effects which, for example, blacks in this country still suffer *as blacks* even when they are materially well off. Second, his account of preferential treatment hardly deals with women at all. The literature on this topic, and on sexism in general, explores in some depth the psychological effects of sexism even on women who are middle- or upper-class, or who have careers.²³ Fishkin, however, concentrates only on racial minorities.

V. EQUALITY OF LIFE CHANCES: HAVING A NOT IMPOSSIBLE DREAM

Having previously questioned (in Part II) whether Fishkin's version of family autonomy is an interpretation held by most liberals, I will now ask whether most liberals would subscribe to his interpretation of another "horn" of his main trilemma: equality of life chances. Recall that Fishkin regards it as surprising that liberty conflicts not

the view that compensation for past discrimination is owed to certain entire groups, rather than to individuals specifically affected, because all group members *identify* with the group as a whole, pp. 113-26; and the view (which is not based on compensatory justice) that preference is necessary to eliminate a "persisting racial underclass" or "caste," pp. 127-31.

22. See note 21 *supra*.

23. See S. DE BEAUVOIR, *THE SECOND SEX* 641-72 (H.M. Parshley trans. 1968) and M.A. Warren, *Secondary Sexism and Quota Hiring*, 6 PHIL. & PUB. AFF. 240 (1977).

Despite the fact that Fishkin's discussion of preferential treatment concentrates almost entirely on racial and ethnic minorities, he makes the following perceptive point about how giving preference to women as a group is quite different from giving preference to racial minorities as groups:

Perhaps I am far worse-off now than I would otherwise have been, because my grandmother was discriminated against because she was a woman. It is clearly possible . . . [that] I would be better-off if she had not been discriminated against, even though I do not share the characteristic that singled her out for discrimination, namely, her sex.

P. 99.

only with equality of outcomes (as libertarians have demonstrated), but also with the lesser requirement of equal opportunity (pp. 3, 132). Our surprise is lessened, however, once we closely examine his account of equality of life chances. For, in several places, he maintains that equality of outcomes across groups is the practical test or criterion of individuals having been raised with equal life chances.

Fishkin explains equality of life chances in his introductory chapter:

According to this notion, I should not be able to enter a hospital ward of healthy newborn babies and, on the basis of class, race, sex, or other arbitrary native characteristics, predict the eventual positions in society of those children. [P. 4].²⁴

If one can predict where people will end up in the competition merely by knowing their race or sex or family background, then the conditions under which their talents and motivations have developed must be grossly unequal. It is unfair that some persons are given every conceivable advantage while others never really have a chance, in the first place, to develop their talents. The principle of equal life chances, when combined with the principle of merit, would require equal developmental conditions for talent development. [P. 5].

The problem is that in the above two passages and elsewhere in the book, Fishkin runs together several quite distinct conceptions of what equality of life chances involves.

Fishkin's first interpretation of the equality principle is that if one's income, status and occupation (that is, the outcome) can be predicted based on the arbitrary characteristics of one's group (race, class or sex), then we must infer that the chances that individuals in these different groups had for developing their talents and skills is "grossly" (p. 5) or "unacceptably" (p. 31) unequal.

His second interpretation is that it is unfair if some (but not all) competitors "never had a chance" to develop their talents and skills.²⁵ The contradictory of "never having had a chance" is having had *some* chance — what Fishkin elsewhere calls a "suitable" (p. 31) or "appropriate" (p. 20) chance, and what I would call a reasonable chance, a not impossible dream. Notice that this second interpretation of equality of life chances is much weaker than the first. To tell whether a chance is reasonable, the probability that one will succeed

24. Fishkin offers a good definition of this slippery term: "A native characteristic will be considered arbitrary unless it predicts the development of qualifications to a high degree among children who have been subjected to equal developmental conditions." P. 32 (footnote omitted).

25. Fishkin also relates this idea — that it is unfair if a person never had a chance to compete on an equal footing — to the merit principle. He claims that it would be "manifestly unfair" if one's qualifications for a job were evaluated according to how members of one's group (with whom one shares arbitrary characteristics) tend to perform because, regardless of one's "own past or present *actual performance* of relevant tasks," one "would never have had a chance to compete, to prove [one's] own competence." P. 24 (emphasis in original).

— based on arbitrary characteristics — must not be too low (however that is operationally defined). Under this second view, however, that probability does not have to be as high as the success predicted for members of all other groups. As the unemployment rate for black teenagers approaches fifty percent, one would say that a black teenager's chance for getting a good job is not a reasonable one. But, on the second view, the unemployment rate for black teenagers need not be the same as for white teenagers in order to give the latter group a fair chance to compete.

Fishkin's third interpretation is that equality of life chances requires "equal developmental conditions for talent development" (p. 5). Elsewhere he softens that slightly to say that "the causal conditions for talent development [should be] substantially equalized across all sectors of society" (p. 20). And his formal statement of the principle of equality of life chances is a version of his third interpretation. "The prospects of children for eventual positions in society should not vary in any systematic and significant manner with their arbitrary native characteristics" (p. 32, emphasis omitted). This third view is clearly much stronger than the second, which requires only a reasonable minimum for everyone's development of talents and allows for some people having much greater opportunities than others. The third view is also stronger than the first, which claimed that "grossly" unequal developmental conditions were unfair; for, under the third view, smaller disparities in developmental conditions seem also to be "unacceptable."

I maintain that the second view captures what most (but not all) liberals would embrace: everyone's life chances should be raised to some reasonable minimum level. That is, the focus should be on ensuring that no one's dreams are impossible, instead of on enabling everyone to have equally possible dreams. And while predictability of grossly different outcomes across groups (the first interpretation) might lead us to infer that some people had no real chance of success at all (the second interpretation), we might not require that (nearly) equal outcomes be predictable (the third interpretation).²⁶

The "incoherence" which Fishkin discovers in liberal theory amounts to this. If liberals are *really* committed to process equalities (for example, merit selection), then there must be (nearly) equal outcomes, on average, for groups that are differentiated only by characteristics unrelated to job performance. His reason is that the existence of unequal outcomes proves that the process equalities were not fully insulated from unequal background conditions. But if that is Fishkin's argument, it amounts to saying that liberals who

26. Note that while predictability of outcomes should make us *extremely suspicious* that developmental conditions were unfair, predictability, in itself, is at most a useful criterion of whether the outcome was arrived at fairly; it does not itself define a fair procedure.

believe in process equalities are, whether they realize it or not, committed to equal outcomes — and, as we already knew, requiring equal outcomes involves a great degree of interference with liberty. The issue is whether liberals can still commit themselves to a version of equal opportunity (and, more specifically, of equality of life chances) that is *both* a robust, morally worthy goal *and* that does not require equal outcomes.

It is clear from Fishkin's description of the other trilemmas that he assumes that the liberal goal is full equalization (that is, equal outcomes). For example, he holds that equal access to medical care requires that the rich should not be able to buy better medical care than the poor (p. 168) — rather than simply ensuring that the poor have adequate medical care. Perhaps this is the point where "ideal theory" gets in Fishkin's way. It is probably true that almost all liberals would *ideally* prefer a society in which members of all groups could be expected, on average, to have equal outcomes; that is, they would prefer a society in which all people's dreams were equally possible. But drawing inspiration from such a utopia does not necessarily mean that one will commit oneself to realizing that ideal in the present.

If Fishkin does equivocate between merely insulating process equalities from the most stultifying effects of poverty and racism, and requiring equal outcomes for all groups as a criterion that the process was insulated, he is not the only one. The two *prima facie* standards courts recognize under title VII — "disparate treatment" and "disparate impact"²⁷ — reflect a similar equivocation. But even the latter doctrine does not commit us to equal outcomes, as it does not apply to performance-related employment criteria that *may* correlate with race due to discrimination in other areas.²⁸

VI. CONCLUSION

Several groups of people would benefit from reading *Justice, Equal Opportunity, and the Family*. First, the book would be useful for those who desire a clear and thoughtful examination of liberal views on the issue of equal opportunity (including a well-argued analysis of the morality of preferential hiring and admissions, featuring the *DeFunis* and *Bakke* cases). Second, it would benefit those who want a comprehensive overview of the contemporary literature in political philosophy. And third, it would serve liberals who are concerned with pinpointing the conflicts within liberal ideals in order that more specific guidelines for public policy may be devised.

27. See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

28. See *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975).

The strong points of Fishkin's book are many. He raises provocative issues, locates them within a broader theoretical framework, and demonstrates an urgent need for liberals to set certain priorities. His main message — that liberalism has radical implications for ordinary life — needs to be heard by many. In particular, moral issues relating to the family require an on-going debate.²⁹ Some liberal theorists, such as Rawls, need to show how family autonomy and social justice are to be wedded. More concretely, the conflict which Fishkin points to between (parental) autonomy, on the one hand, and a conception of social justice that seeks to alleviate human suffering, on the other hand, is an instance of a larger problem with which liberalism has not yet fully come to grips: how to help people in need without undermining — indeed, furthering if possible — their capacity for autonomous choice.

The book has two principal shortcomings. First, not all of the weaknesses Fishkin finds in liberalism are unique to liberalism. For example, if some liberals offer *prima facie* principles with little guidance about how these principles are to be weighed against each other in specific cases, many of the adherents of the other political perspectives also fail to specify their priorities. And although he is correct that liberal theory lacks an absolutely certain method of establishing its basic principles (pp. 169-93), no metaethical system has the guarantees he requires; one can always question whether a method of justification is sound. Second, he might have done more in the way of offering solutions to the trilemma.³⁰ In particular, it would have been useful if he had identified a variety of possible liberal interpretations of the principles of merit, equality of life chances, and family autonomy. I have maintained that many liberals already hold weakened versions of these principles (for example, by requiring that everyone have a reasonable chance of competing for jobs, but not necessarily the same chance), or else I have suggested specific ways in which these principles could be made consistent (for example, by modifying family autonomy so that parents are quite free to encourage their children's growth as human beings but are not free to give their children *every* competitive advantage in pursuing jobs). If Fishkin had distinguished among versions of the

29. Moral and political philosophy are only recently coming to grips with many of the moral concerns that face family members — by asking, for example, what responsibilities grown children have for their parents. See J. BLUSTEIN, *PARENTS AND CHILDREN: THE ETHICS OF THE FAMILY* (1982); *HAVING CHILDREN: PHILOSOPHICAL AND LEGAL REFLECTIONS ON PARENTHOOD* (1979).

30. He does discuss some ways out of the trilemma. However, the two main alternatives he discusses (in addition to preferential hiring, which compromises the merit principle) are completely sacrificing merit by assigning jobs via a lottery, and giving up the principle of equal life chances in favor of the principle of equal outcomes. Pp. 110-13, 131-46. Neither of these two alternatives, however, suggests the specific compromises that are needed to make the three components of the trilemma consistent.

three trilemmic principles, the distinction would have helped us in evaluating different conceptions of liberalism. Instead of focusing on solutions, however, he prefers to demonstrate how urgently solutions are needed if liberalism is to be compelling and complete.