

2003

## Book Review of Against Equality of Opportunity

Michael Ashley Stein

---

### Repository Citation

Stein, Michael Ashley, "Book Review of Against Equality of Opportunity" (2003). *Faculty Publications*. 715.  
<https://scholarship.law.wm.edu/facpubs/715>

## BOOK REVIEWS

*Against Equality of Opportunity*. By MATT CAVANAGH. [Oxford: Clarendon Press, 2002. viii, 218, (Bibliography) 2 and (Index) 3 pp. Paperback £12.00. ISBN 0–19–926548–8.]

THIS book is an ambitious and provocative challenge to meritocracy and equality, two foundations of equality theory. In questioning and opposing the prevailing account of what constitutes appropriate employment opportunity, Matt Cavanagh provides a refreshing, and at times disquieting, critique of broader anti-discrimination jurisprudence. His assessment is worth reading, even when it occasions a clenched jaw.

A lengthy introduction sets forth the monograph's central question as defining what is meant generally by the term "equality of opportunity", and specifically "what would be the fair way for jobs to be allocated" (p. 5). It then provides an exegesis of the arguments presented in the book's three parts. Cavanagh concludes that neither meritocracy nor equality is a defensible concept, whereas certain forms of discrimination are justifiable.

Part one ("Meritocracy") defines meritocracy as the widely held notion that when filling a job opening an employer ought to engage the most qualified individual. Cavanagh opposes this premise by arguing that the notion of meritocracy has a greater interest in efficiency than in fairness. Because expediency cannot justify overriding an employer's property or autonomy rights, merit alone does not provide a sufficient reason for abrogating an employer's hiring decision. He further avers that those who believe meritocracy is based in fairness do so for two incorrect reasons. Holding to an erroneous expectation that the labour market normally operates on meritorious grounds leads both to a sense of disappointment when a particular candidate is not hired, as well as to a false conclusion that something unfair has occurred. Furthermore, although meritocracy does entail non-discrimination by preventing employers from overtly discriminating on the basis of race or sex, non-discrimination does not entail meritocracy. Accordingly, Cavanagh rejects the accepted wisdom that employers ought to be compelled to hire the most qualified person.

Turning from meritocracy, Part two ("Equality") engages the concept of equality as a valid justification for equal workplace opportunity. Cavanagh categorises the more salient theories offered by egalitarians, most notably G.A. Cohen, Ronald Dworkin, and Thomas Nagel, into three ideals, each of which he rejects. The first theory posits that all individuals in a community are equal shareholders in a common enterprise. Such a notion might hold true in the public arena, for instance as applied to the franchise, but does not translate to the private labour market, where from a practical standpoint it is impossible to provide everyone with an equally decent job. This disjuncture between public and private spheres, Cavanagh maintains, compels egalitarians to shift gears and argue in favour of one or

both of the other two theories. Providing people with either equal assistance or an equal chance to succeed in life, however, merely gives those same individuals the means by which to advance themselves and thereby become relatively unequal in an opposite sense. Although he is not disinclined towards a more limited version of equality, one that would prohibit discrimination on the basis of race and sex, Cavanagh is very much against an idea of equality that wholly equates non-discrimination with equality of opportunity.

In Part three ("Discrimination"), Cavanagh elaborates on the contextual propriety of discrimination, setting out a theory as to what types of discrimination are justifiable. Discrimination is morally wrong when it involves treating individuals with unwarranted contempt. By contrast, he avers that discrimination lacking malice is morally correct. Thus, an employer who genuinely believes that blacks are less capable employees than whites, or who "just doesn't like them", or who feels "uncomfortable" around them is, according to Cavanagh, expressing a non-judgmental preference that ought not to be interfered with (p. 176). Ethically speaking, such a predilection is of a level to gentlemen preferring blondes to brunettes. Similarly, he maintains that employment policies and practices with discriminatory effects are justifiable so long as their initial goal was not to treat the adversely effected individuals as moral inferiors. Thus, an employment screening procedure that unintentionally excludes blacks or women would, under Cavanagh's theory, be licit and should be shielded from external intervention.

The brief concluding section ("Conclusions") does not recapitulate the previous arguments, but instead represents that the world, and the philosophical view of the world, is complex, and not always consistent or univocal. Cavanagh ends by explaining that his intended audience is "those private intellectuals, if there are any left out there" (p. 217).

*Against Equality of Opportunity* raises some worthy points in the first two Parts, especially about the imprecision frequently applied to the definition of equality and to its normative aspirations. As such, that portion of the monograph is a welcome reminder that an ecumenical understanding of equality of opportunity ought not to be taken for granted. Part three, however, is deeply flawed. Unlike the earlier sections which engage existing scholarship, Cavanagh ignores wholesale an entire corpus of equality literature on the different type of stigma and subordination that attaches to members of protected groups, such as black and women, as opposed to brunettes, or other unprotected individuals. Similarly, he seems unaware of studies on the manner in which some proxies used for statistical discrimination, rather than reporting neutral and empirically accurate facts, reconstitute social prejudice because of the assumptions that underlie their findings. Moreover, he entirely side-steps the question of why a worksite that an individual employer did not establish himself, but which nonetheless precludes the participation of women or people with disabilities because of its design (in not having appropriate toilets or changing facilities), or excludes the employment of blacks by maintaining a pre-existing racially restrictive environment (either by acceding to customer preferences or through reliance on word-of-mouth hiring practices) does not treat those individuals as moral inferiors and with unwarranted contempt. Cavanagh would be well within his rights to disagree with all of these contentions, but at the very least they should

have been acknowledged. The book, and its audience, are the lesser for the privation.

M.A. STEIN