

Equal Opportunity and Outcomes Assessment

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At all levels of instruction, the landscape of student evaluation has been altered by the arrival of Outcomes Assessment (OA). OA is rooted in a number of distinct and somewhat conflicting purposes, methods of evaluation, and units of evaluation.¹ The purposes include institutional accountability and improvement of instruction. The methods of evaluation are sometimes qualitative, such as observations of student performance, and sometimes quantitative, in the form of standardized tests. The units of evaluation, or significant scores, vary from individual students to building, district, or state-level performance. Broadly speaking, OA aims to determine what students are able to do, sometimes both before and after instruction occurs so as to measure the “value added” by instruction, and to use that to enforce academic standards and improve teaching and academic programs. To the extent that OA systems are implemented and effective, the quality of instruction might improve, and greater equality of educational opportunity might be obtained for underserved students. Teachers at all levels might also be constrained by more regimented schemes of student evaluation, penalized for deficiencies in student learning through external accountability schemes, or both.

Much has been written about OA in the guise of No Child Left Behind, usually with a focus on high-stakes tests, but the significance of OA for routine student evaluation has received little scholarly comment. This is a significant oversight, but perhaps not surprising, since routine student evaluation has not exactly basked in the philosophical limelight. In this essay, I will aim to shed such light as I can — probably not limelight — on some puzzling questions about fairness in student evaluation. These puzzles have to do with moral luck pertaining to one’s constitution (constitutive luck), the responsibilities of others to contribute to one’s intellectual or moral development (developmental or constitutive responsibility), fair equality of opportunity, the contributions of one’s own choices to one’s opportunities, and the extent to which one can be held responsible for those choices. By the end of my attempts to resolve these puzzles, we will have returned to OA and identified some possible benefit in it.

CONSTITUTIVE LUCK AND CONSTITUTIVE RESPONSIBILITY

Assigning a grade is tantamount to holding a student responsible for an academic performance, while also recognizing the teacher’s responsibility to conscientiously nurture the student’s academic development within a specified domain. The teacher bears significant responsibility for the state of the student’s understanding, knowledge, and ability — responsibility for academically salient aspects of how the student comes to be constituted. This is a kind of intergenerational constitutive responsibility, which a teacher may fail to fulfill to the extent that her teaching is inadequate. A teacher should, and likely will, feel it improper to impose low grades when deficiencies of her own teaching are to blame for poor student performances. By contrast, she should, and likely will, feel it proper to ignore

third-party contributions to a student's intellectual limitations when she assigns grades. This is a bit puzzling, since we surely want grades to be fair, and it seems just as unfair that a student should suffer from one bit of bad constitutive luck as another.

The language of moral luck seems appropriate here. "Where a significant aspect of what someone does depends on factors beyond his control, yet we continue to treat him in that respect as an object of moral judgment, it can be called moral luck," wrote Thomas Nagel, in a classic discourse on the topic.² Nagel distinguished four ways in which the objects of moral judgment are subject to luck, one of them being constitutive luck, or luck with regard to one's personal characteristics or the kind of person one is. Traits of temperament and inclination are determined largely by factors beyond a person's control, including aspects of one's upbringing and social circumstances, but they matter to how one acts and is morally judged. Intellectual traits are similarly determined largely by factors beyond a person's control, and matter to one's academic performance and grades.

Grades do not express moral judgments, of course, but to the extent that grades are rewards and penalties administered within a state sanctioned institutional framework, the judgments imposed through grades are morally significant. Concern with moral luck is explained by the thought that judgments of moral worth and responsibility should of all things be the most secure against luck, or matters beyond one's control. Perhaps that is so, but if our concern is a human justice we can work toward and not a cosmic justice beyond this world, the judgments of worth and responsibility imposed and sanctioned by institutions of government should concern us the most. Grades are judgments of worth and responsibility imposed and sanctioned by institutions of government, and fairness seems to require that the bases of such judgments be within the control of those judged.

For these reasons, constitutive luck with respect to intellectual virtue should matter in much the way that constitutive luck with respect to moral virtue matters. The constitutive luck entailed by upbringing and other formative factors beyond a student's control should matter to the fairness of grades. Yet, it doesn't seem to in the way that bad luck in the quality of the teaching at hand does. If teachers should mitigate the severity of grades in light of deficiencies in their own instructional practices, why should they not also adjust individual grades in light of information about formative deficiencies in their students' homes and communities — that is, in light of intellectually formative bad constitutive luck outside of school? The teacher's responsibility matters to the fairness of grades, but other constitutive luck and the responsibility of others doesn't seem to, and this is puzzling. It's all equally a matter of luck from the student's point of view, isn't it? Indeed, it would seem to be, and this suggests that the idea of moral luck does not capture all that is at stake. There seems to be a problem of constitutive responsibility that does not reduce to a problem of constitutive luck.

GRADES AND FAIR EQUALITY OF OPPORTUNITY

Another puzzle about student evaluation emerges when one considers the significance of constitutive luck for fair equality of opportunity. Fair equality of opportunity, writes John Rawls,

is said to require not merely that public offices and social positions be open [to all, in accordance with talent] in the formal sense, but that all should have a fair chance to attain them....Those who have the same level of [natural] talent and ability and the same willingness to use these gifts should have the same prospects of success regardless of their social class origin, the class into which they are born and develop until the age of reason.³

And in order for those with the same level of native talent, ability, and ambition to have substantially equal opportunity in a market system, “Society must establish, among other things, equal opportunities of education for all regardless of family income.”⁴ Rawls recognizes that one’s sense of self-worth (hence motivation and “willingness to use [one’s] gifts”) is strongly influenced by education and other institutions, and he articulates a theory of justice which entails that societies have a responsibility to be equitable in their formative influences on their members’ constitutions — their self-respect, moral powers, and ability to compete and flourish.⁵ This formative or constitutive responsibility must be borne before children can justly be held responsible for the consequences of their choices.

The ramifications of the constitutive responsibility associated with fair equality of opportunity are spelled out in some detail by Brian Barry. Barry, like others who dwell on what would be required to create “equal opportunities of education for all regardless of family income,” concludes that

The first demand of social justice is to change the environments in which children are born and grow up so as to make them as equal as possible, and this includes (though it is by no means confined to) approximate material equality among families. The second demand — which is more pressing the further a society fails to meet the first — is that the entire system of social intervention, starting as early as is feasible, should be devoted to compensating as far as possible, for environmental disadvantages.⁶

The cumulative developmental disadvantages of poverty are simply too great to be overcome without substantially equalizing family resources, and in our current circumstances there can be little progress toward equalizing educational opportunity without aggressive interventions in the form of parent education, assistance, and “multidimensional high-quality child-care.”⁷

Most important for our purposes are the academic consequences of children’s choices, and the factors that shape their choices. How well they do in school is a function of both their abilities and their choices, but both are subject to luck or factors beyond their control, and children are in any case too immature to be made to suffer long-term consequences for making poor choices. A problem arises because the grades that report how well they do become part of a cumulative record, which has a powerful impact on their opportunities in life. This seems to place the burden of choices before “the age of reason” on the children themselves, violating the terms of fair equality of opportunity. This is the problem I will elaborate now in more detail.

Grades should reflect the quality of school work, but in doing so they will ignore the role of constitutive luck that accounts for variations in academic performance and impairs quality of foresight, judgment, and capacity for disciplined follow-through and sacrifice. In a society without social justice of the kind Barry describes, those variations in performance will be substantially attributable not simply to luck,

but to institutional failures of constitutive responsibility. Grades, which are thus insensitive to constitutive luck, injustice, and the inappropriateness of holding children responsible for the consequences of their choices, will in turn become part of a cumulative record that will profoundly influence later opportunities. It matters a great deal, then, *when* one can ethically hold children responsible for, or expect them to bear the burden of, the poor choices they make, such as to neglect their studies, to be disruptive in class, or to choose easy classes which will not prepare them for college. Can we justly allow children's choices to influence the quality of education they receive, if the result is widely divergent opportunities for children of comparable native endowments?

Barry finds it doubtful "how far decisions taken even by older children can be said to be autonomous in a way that generates responsibility for outcomes."⁸ I would agree, but take the argument a step farther. A fundamental educational goal must be to enable children to develop good judgment and the ability to act from it, and until some meaningful threshold of such judgment and ability is achieved, impositions of responsibility must be guided by educational purposes. The psychological evidence on maturity and independence of judgment is that the developmental bases of such judgment continue to develop through the late teens. There are thus reasons of more than administrative convenience for setting the threshold, or "age of reason," at the conclusion of high school, provided schools do their part to nurture rational and informed judgment.⁹ Accepting this, it follows that to the extent that grades in primary and secondary schools are intended to inform and motivate students, they have an acceptable function, but to the extent that they become external credentials or a basis for meritocratic allocations of subsequent educational resources, they violate the terms of fair equality of opportunity. Fair equality of opportunity requires that we not allow children to make educational choices that diminish their opportunities, but instead aim for "equal educational attainments at the age of 18."¹⁰

If this is the right way to understand fair equality of opportunity and assignments of responsibility to children, then there is an obvious tension between the requirements of justice and conventional uses of grades at the primary and secondary levels. Fair equality of opportunity should govern the allocation of desirable offices and positions, and it requires that if grades are used as credentials in making those allocations, they should express accurate judgments of students' work. Yet the quality of that work reflects choices for which children cannot properly be held responsible, so fair equality of opportunity seems to preclude the use of grades as credentials.

RECONCILING CONSTITUTIVE AND INDIVIDUAL RESPONSIBILITY

In order to now address, and perhaps resolve, these puzzles, I will begin by addressing the nature of responsibility.¹¹ I will argue that judgments of individual responsibility can be reconciled with the developmental or constitutive responsibilities of adults, teachers, and just institutions, and that the reconciliation shares a common structure across the moral and academic domains. I will also argue that failures of constitutive responsibility are problematic in a way that constitutive luck as such is not.

In itself, a judgment of responsibility is simply a proposition expressing a kind of relationship between an actor and something the actor has done or produced. It is a form of diagnostic judgment, tracing conduct or its product to a corresponding state of moral or intellectual excellence or defect. Having such a diagnosis does not entail any one form of response. One must still determine what form of response is most productive and ethically acceptable. An ethically acceptable response will honor the requirements of interpersonal respect, and it will not treat guilt as voiding those requirements. This view begins in a conception of respect for persons as rational beings, and infers a requirement to deal with others as much as possible through truthful and reasoned persuasion and instruction and only as a last resort through force and violence.¹² In the context of instruction, judgments of responsibility presented as praise and blame may be deployed with educational purpose, but harsh censure and punishment cannot be appropriate until educative efforts have run their course.

“Free will” is not a presupposition of judgments of responsibility, since they treat a rational actor’s state of character as an origin of conduct, but are compatible with the view that the development of character and a rational will is a social and political responsibility, largely beyond the actor’s control.¹³ It follows, clearly enough, that immunity from moral luck is not assumed. Aspects of natural endowment, upbringing, and formative circumstances beyond an actor’s control will influence moral judgments of her/his conduct. Isn’t this terribly unfair? It’s not unfair if a judgment of moral responsibility is a diagnostic judgment, and not a license to impose censure and punishment. What fairness demands is that we limit our use of judgments of responsibility by observing a principle of noncoercion: gentle persuasion and instruction are to be used first and as much as possible, and punitive measures used as little as possible. That is, a society’s constitutive responsibilities to its members must be fulfilled before censure and penalties can be justly imposed. The fulfillment of constitutive responsibility is in this way a fundamental determinant of what can justly be imposed on a person, in a way that moral luck as such is not.

The judgments of academic merit expressed by grades reflect inferences from academic performances to states of mind — of knowledge, understanding, and ability — and are considered accurate only to the extent that the merits of performances or intellectual products really do reflect corresponding virtues of mind. Conditions that defeat inferences from the merits of academic work to corresponding virtues of mind are called “cheating,” and are grounds for voiding a favorable judgment and grade. Considerations that defeat inferences from deficiencies in academic work to corresponding deficiencies of mind are called “excuses,” just as they are in the moral sphere. In short, the academic judgments expressed by grades attribute academic performances to states of mind in much the way that judgments of moral responsibility attribute good and bad conduct to states of moral character. Like judgments of moral responsibility, grades do not function simply as judgments of academic merit, however. When grades are communicated to students, they are perceived as expressions of approval or disapproval, and often inspire

feelings of satisfaction or distress. As we have seen, they also function as rewards and penalties in the form of credentials within and beyond educational systems, much as judgments of culpability or merit may trigger further consequences.

These observations about responsibility suggest that adequate teaching is assumed when we grade, much as adequate constitutive investments are assumed when we venture to censure and punish. When teaching is adequate, the student's intellectual virtues can be credited in part to the teacher. However, it follows from the nature of judgments of responsibility that academic performances and products generated from those virtues are ones for which the student is responsible and can claim credit, even if there is a form of serial responsibility running through the student's state of mind or intellectual virtue back to the teacher. The teacher's responsibility does not undercut the student's. When teaching is inadequate, the student will be similarly responsible for the flawed product if it is a product of his poor understanding or deficient ability. That too is a consequence of the nature of responsibility, but in this case the teacher will not only be responsible for the flaw in the product, but is furthermore in no position to express disapproval or impose any penalty on the student. The teacher's responsibility does not undercut the student's responsibility in this case either; it does undercut her authority or right to criticize or impose penalties. If adequate teaching is taken for granted, teachers can credit students with their successes and failures, providing they do so in ways which do not violate the requirements of fair equality of opportunity. As we've noted and will soon revisit, those requirements have teeth at the primary and secondary school levels.

We can now see that constitutive responsibility has a distinctive status, not reducible to constitutive luck, because it stands in an important relationship to having authority. Neither in morality nor in student evaluation is luck in natural endowments eliminated, though in both there is reason to think that some form of global equity in constitutive investments is required. Respect for persons as rational beings compels us to put instruction first, in both domains, before imposing responsibility in ways that may cause pain and diminish life prospects. In both cases, education is not uniformly and completely efficacious, however, and we may be compelled to secure vital public goods to some extent through other means. In the moral and criminal domain, we may need to deny liberties or compel compensation, and in the world of productive endeavor beyond schools and college, we need to inform, guide, and select on the basis of what people can and will do, in ways productive for them and for society. Some luck arising from differences of endowment will enter into this, but luck egalitarians can insist, as Rawls does, on a secondary principle of distributive justice which ensures that tolerance of unequal life outcomes will work to the advantage of the worst off.¹⁴ That is perhaps as much immunization against constitutive luck as one can envision enacting as a matter of public policy. Accuracy in collegiate credentials will matter to fair and efficient allocations of society's offices and positions, and in a just society, as Rawls conceives it, those fair and efficient allocations will also yield mutual advantage, making bad constitutive luck not as unlucky as it might have been.

EQUAL OPPORTUNITY AND OUTCOMES ASSESSMENT

The responsibility structure on fair equality of opportunity makes it hard to see how grades accumulated in the course of schooling can legitimately function as credentials or a basis for meritocratic allocations of subsequent educational resources at all. Fair equality of opportunity requires that we not allow children to make educational choices that diminish their opportunities, but instead aim for equal educational attainments, while an accumulating record of grades seems to be pervasively influenced by choices that have the potential to diminish opportunities.

One might dispute the conception of fair equality implicated in this puzzle, but I am not inclined to myself. Allowing children to be burdened by the long-term consequences of immature and uninformed choices seems a most unacceptable form of constitutive luck, and it is hard to see how any system of distributions substantially controlled by such choices could be morally legitimate. Making such choices meaningful, and equally so (as they must be to bear any justifying weight in a scheme of just distributions), would itself require a globally equalizing education for autonomy up to some threshold of adequacy probably unattainable much before the age of eighteen years old. I will simply accept, then, that grades assigned in the course of schooling cannot legitimately function as external credentials or internal bases of meritocratic educational allocations. An essential corollary to this is that schools must be designed to minimize the impact of immature choices not only on grades, but on learning.

We are left, then, not with a puzzle, but with a problem that calls for educational reform. Grades should only be used in schools to promote learning and make decisions conducive to equal educational attainment, and not released for use as credentials. Assessments of talent for use in labor markets and admissions to higher education should not occur until the completion of high school, when the effort to produce equal educational attainments as a basis for fair equality of opportunity will have run its course. And to spare children the weight of responsibility for choices subject to countless matters of luck they can scarcely understand, care must be taken in motivating and supervising them.

An important aspect of the Aristotelian view of moral development and the constitutive responsibilities of adults is its emphasis on supervision to ensure that children do the right things so they can develop well. They won't be told, "These are your choices, and these are the consequences of making the wrong choice." Some children will simply follow their antecedent inclinations, do the wrong things, and get used to suffering the consequences. We can regard this as exactly what cannot be tolerated, if adults are to honor their developmental or constitutive responsibilities to children. Being too undeveloped as autonomous agents to properly bear the consequences of their choices, their developmental fate should not in any case rest with those choices. And this applies as much to the development of intellectual virtue as moral virtue. We can't, in fairness, simply give children the choice to learn or not — to develop intellectually or not — then expect them to suffer the consequences if they were not adequately motivated. We need, rather, to provide

supervision and instruction that motivates and leaves little room for immature choices that curtail favorable development and opportunity.

Grades could be used to tailor the education of individual students pursuant to their own development and needs. A system that would tailor allocations of educational resources in this way would be egalitarian, not meritocratic, at least until a threshold of adequacy is reached — a threshold of intellectual efficacy and self-determination, including with respect to the efforts students make to learn and the quality of their judgments.

OA could support this conception of ethically appropriate evaluation policies, by encouraging productive and motivating supervision of students' intellectual development, and by providing exit exams or other forms of evaluation that could serve as credentials. It would need to have the right ends in view, and use the right kinds of measures of student learning, which are at present very far from existing in standardized test formats. OA might thereby serve the purposes of justice, but it will only do so if schools are able to rise to the demands of educating all students adequately. At its best, OA can create incentives to teach well and align teaching and evaluation with intended curricular outcomes. Used cleverly by schools as a tool of self-assessment, it might be a useful tool of educative capacity building. It is no remedy for a fundamental failure to invest adequately in the intellectual formation of children, however, and at its worst, it might regiment and raise academic standards without enabling more children to achieve them.

1. Trudy W. Banta and Associates, *Building a Scholarship of Assessment* (San Francisco, Calif.: Jossey-Bass, 2002), 3–11.

2. Thomas Nagel, "Moral Luck," in *Mortal Questions* (Cambridge: Cambridge University Press, 1979), 25.

3. John Rawls, *Justice as Fairness: A Restatement* (Cambridge, Mass.: Harvard University Press, 2001), 43–4. See also, John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), 73.

4. Rawls, *Justice as Fairness*, 44.

5. See Rawls, *Theory of Justice*, 101 and 107, where Rawls emphasizes the value of education "in enriching the personal and social life of citizens" and "provid[ing] for each individual a secure sense of his own worth."

6. Brian Barry, *Why Social Justice Matters* (Cambridge: Polity, 2005), 58.

7. *Ibid.*, 60.

8. *Ibid.*, 46.

9. See Laurence Steinberg and Elizabeth Cauffman, "Maturity of Judgment in Adolescence: Psychological Factors in Adolescent Decision Making," *Law and Human Behavior* 20 (1996): 249–72.

10. Barry, *Why Social Justice Matters*, 47. Barry proposes that the demands of justice are met to the extent that equal educational attainments are achieved at this age. Equality of this kind is not strictly required if the burden is to ensure that the structure of society does not undermine equality of opportunity (as opposed to ensuring that all aspects of constitutive luck, or undeserved advantages and disadvantages, are eliminated), but it may — on some interpretation — be the most reasonable administrative target.

11. What follows is a sketch of the account I have developed in more detail elsewhere. See Randall Curren, *Aristotle on the Necessity of Public Education* (Lanham, Md.: Rowman and Littlefield, 2000),

160–74 and related background material at 21–34 and 43–62. For an application of the account that addresses the moral distinctiveness of childhood, see Curren, “Moral Education and Juvenile Crime,” in *NOMOS XLIII: Moral and Political Education*, eds. Stephen Macedo and Yael Tamir (New York: New York University Press, 2002).

12. See Curren, *Aristotle on the Necessity of Public Education*, 21ff.

13. I argue that this is a responsibility fundamental to establishing a rule of law. See Curren, *Aristotle on the Necessity of Public Education*, 150 ff; and Curren, “Public Education and the Demands of Fidelity to Reason: A Response to Dwyer, Feinberg, Hourdakakis, Pendlebury, Robertson, Strike, and White,” *The School Field* 13, no. 1 (2002): 79–105, 82–9.

14. The reference here is to Rawls’s *difference principle*: “Social and economic inequalities...are to be to the greatest benefit of the least-advantaged members of society” (*Justice as Fairness*, 42–3). Being least-advantaged does not mean being least advantaged with respect to natural endowments, but one effect of the principle would nevertheless be to mitigate the disadvantages of bad luck in natural endowments. Whether this would be true even of people with severe cognitive impairments is a matter of dispute.

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