

Equality of Opportunity: Derivative Not Fundamental

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Equality of opportunity in some form or another is a norm that is widely accepted in modern democracies, even among those who are otherwise hostile to egalitarian justice norms. The principle of formal quality of opportunity (careers open to talents) is especially uncontroversial. It holds that all should be free to apply for competitive positions that confer advantage and applications should be judged on their merits. Many people also hold that there should be, at least to some degree, equal opportunity to become qualified for such contests. Many regard these norms as fundamental requirements of justice. These equal opportunity norms capture the attractive idea that justice unequivocally condemns hereditary hierarchies of caste and status.

This essay resists this consensus.¹ In what follows I explore two approaches to norms of nondiscrimination and equal opportunity. One approach takes these norms to be fundamental, high-priority principles of justice. John Rawls urges that a substantive equal-opportunity principle that he calls “fair equality of opportunity” (FEO) that incorporates careers open to talents is a basic principle of justice.² This equal opportunity norm along with two other principles—a principle protecting equal basic liberties for all and a principle regulating social and economic inequalities—constitutes the substance of social justice, the shape the basic structure of society must assume to qualify as just. Rawls’s system is complex, but exploring and criticizing the place of equal opportunity within it is worthwhile, because (1) Rawls’s ideas about justice are elaborated in clear and explicit detail, not merely lightly sketched, and (2) his conception of justice as terms of social cooperation that free and equal persons would find acceptable resonates with widely and deeply held convictions to the effect that justice involves respect for individual moral rights not maximizing the pursuit of any collective goal.

The second approach to be explored develops this latter idea of justice as requiring the greatest possible degree of fulfillment of the morally supreme goal. This essay takes this moral goal to be enhancing the quality of people's lives. The quality of an individual's life, her well-being, is better, the more she gains in her own life the items on what has been called an "objective list" of goods.³ The supreme moral goal balances a double concern, increasing the aggregate of individual well-being and making the distribution of well-being across persons fair. In this perspective, norms of equality of opportunity like all other norms are affirmed or qualified or rejected depending on the degree to which they help or hinder the fulfillment of the one supreme goal. This approach to equal opportunity norms is not necessarily a deflationary account. Equal opportunity norms are regarded as having instrumental significance, but what is good as a means can be of the utmost moral importance.

I shall defend the second, prioritarian approach to the assessment of equality of opportunity by comparing its implications for this issue to those of the Rawlsian approach.

1. Rawlsian equality of opportunity.

Formal equality of opportunity is the ideal of careers open to talents. It requires that positions of advantage be open to all applicants, and that applicants are selected on the basis of merit. Let's stipulate that one application is more meritorious than another if it indicates that placing the first applicant rather than the other in the position of advantage will do more to advance the morally innocent aims of the enterprise the position serves.

A society could satisfy careers open to talents even if it is deeply divided into social groups, and only members of the top groups ever gain positions of advantage. This could occur, for example, if individuals become qualified only through costly education and socialization, which only members of top groups can afford for their children.⁴ A society that runs public schools for all children financed by general tax revenues takes a step toward bringing it about that all individuals as they grow up have a chance to become qualified for the desirable positions society offers. One might wonder how far a society should go in this direction. Rawls affirms

full equality of a sort. He affirms that inequalities in general resource holdings or what he calls primary social goods are only acceptable on two conditions. One of these is fair equality of opportunity (FEO): those with the same native talent and the same ambition should have the same prospects of success in competitions for positions of advantage that confer these inequalities. The second condition is that the inequalities must function to maximize the primary social goods holdings of the social group that is worst off in its holdings of primary social goods. This last condition is called the “difference principle.”

In a sense, a society that satisfies FEO (construed as incorporating careers open to talents) and the difference principle is a classless society.⁵ Being born into one or another social group in society does not cause one’s prospects of becoming well off or badly off to rise or fall. Nothing but one’s native (genetic) talent endowment and one’s own ambition predicts success in competition for higher positions in the social structure.

To get a sense of how Rawls’s FEO fits within his system of principles, we need to round out their description. According to Rawls a just basic structure is one that satisfies two principles. One is the equal basic liberty principle, which holds that all members of society are equally entitled to an equal and fully adequate package of civil liberties and basic rights called “basic liberties.” The second is the principle that regulates inequalities in the distribution of primary social goods other than those included in the basic liberties—social and economic inequalities. These are to be set so they are attached to positions and offices open to all under conditions of fair quality of opportunity and maximize the primary goods holdings of the worst off social group. These different parts in Rawls’s system are linked by strict lexical priority relations: One norm has strict lexical priority over a second if any increase (or averted loss) however slight in the fulfillment of the first trumps any increase (averted loss) however large in the fulfillment of the second. In Rawls’s nested system of principles, the equal basic liberties principle has strict lexical priority over both FEO and the difference principle, and FEO has lexical priority over the difference principle.⁶

There is one further aspect of Rawls's system that is important for our discussion. He introduces further priority rules that qualify the insistence on full equal basic liberty for all and on FEO. For our purposes the relevant further priority rule is that less than equal opportunities for positions of advantage (rather than the equal opportunity as specified by FEO) are acceptable if and only if this gives rise to greater opportunities for positions of advantage for those with less than fair-equal opportunity.

In my account, engaging with Rawls leads to rejection of his doctrines and affirmation of a form of egalitarianism that is more consequentialist and even utilitarian in orientation than the trend of recent political philosophy.⁷

The next section of this essay states some Rawlsian arguments for FEO and finds some holes in them. Before doing that I suggest the gist of my claim. Here are two examples that show us that equal opportunity construed in the Rawlsian way does not belong in the set of fundamental moral principles.

Suppose we see a society in which the equal basic liberty principle is secured (this is not our concern), FEO can be satisfied, and inequalities can satisfy the difference principle. Society is highly stratified, but there is a Rawlsian rationale for the stratification. We notice that although FEO can be satisfied, doing so is incredibly costly, because parents just in the course of being good parents heap educational and skills advantages on their children. Parents are unequally good at doing this, so equally talented and ambitious children raised in different families tend to have very different prospects. Aggressive government programs and social monitoring and testing of children can (we shall assume) fully offset these effects, rendering FEO fully satisfied. But enormous resources must be devoted to this task. In particular, consider that talented children of very rich individuals must be provided with enormous special training and state-provided education, so that they end up with the same prospects for positions of advantage as the equally talented children of the super-rich. So here's a proposal: we could drop this Head Start program for the children of the very rich, which means FEO would not be fully satisfied. These

resources could instead be turned to other uses, which would redound to the benefit of the very worst off group in society. (Let's suppose these are the very untalented children of the poor, whose prospects are far less than the prospects of the talented children of the poor, and needless to say, far less than the prospects of the talented children of the very rich.) The end result of implementing the proposal would be that the children of the very rich have slightly worse competitive prospects than other equally talented and ambitious children and the very worst off members of society get significantly more primary social goods. My claim is that since the overall life prospects of the talented children of the very rich are still far greater than the overall life prospects of the worst off, their complaint—generated by the fact that they will suffer if FEO is not fulfilled—is less, and less morally important, than the corresponding complaint the very worst off members of society would have if the proposal were not implemented and their situation were not alleviated.

Hearing this discussion, some might wonder whether it matters fundamentally whether people have more or less of resources. What really matters, one might think, is not how big one's pile of resources is, or how one's pile compares to other people's, but how good is the life that you can expect to lead with those resources you have. I endorse this response. So let's amend the example just a bit, by stipulating this in the scenario we are envisaging, the worst off end up, even after the FEO-violating proposal is implemented, worse off in overall quality of life—and we can add, through no fault of their own—than the talented children of the very rich. So we surely should implement the proposal. In quality of life terms, the complaint the worst off have, if the proposal is not implemented, is morally more weighty than the complaint the talented children of the very rich have, if the proposal is implemented. To accept this is to reject FEO.

Here is another example to the same point. Consider a political society that is deeply divided into distinct ethnic or cultural groups. To foster social trust and cooperation across groups, consociational democracy devices are in place to ensure that no group rides roughshod over others. Suppose these include a permanent affirmative action quota system that reserves a

per capita share of especially desirable jobs and places in universities to members of each group. This system violates FEO (and careers open to talents as well). But for all that, the system might work well, in the sense that economic productivity is increased and some of the surplus is taxed and transferred so that good quality lives for people, with good fairly distributed, are thereby maximized. Again, when FEO is not a good tool for advancing ultimate moral goals, it deserves to be given no weight in policy determination.

2. Defending and Attacking FEO.

Several arguments for FEO appear in embryonic form in a suggestive remark by Rawls in *A Theory of Justice*. Regarding the possible interpretations of this remark I am indebted to essays by Seana Shiffrin and by Robert Taylor.⁸ Rawls imagines that social arrangements that violate FEO might be thought justifiable on the ground that they bring about a greater fulfillment of the difference principle than would otherwise be possible. Rawls denies that this would be an adequate ground for tolerating the violation of FEO. Those denied fair equality of opportunity to obtain positions of advantage “would be right in feeling unjustly treated.” He adds, “They would be justified in their complaint not only because they were excluded from certain external rewards of office such as wealth and privilege, but because they were debarred from experiencing the realization of self which comes from a skillful and devoted exercise of social duties. They would be deprived of one of the main forms of human good.”⁹

One elaboration of this remark starts by distinguishing the good of self-realization or development and exercise of one’s valuable capacities from the lesser good of purchase and consumption of goods and services. The former is superior to the latter. If we press this idea, and affirm that self-realization has strict lexical priority over consumption, we can then parlay this thought into an argument for the lexical priority of FEO over the difference principle. The connecting thought is that the social primary goods whose distribution is regulated by the difference principle contribute to consumption whereas FEO regulates the distribution of offices

and positions that are vehicles for self-realization. Given these stipulations, parties in the original position seeking to advance their interests by choice of principles under a veil of ignorance about their particular circumstances would choose to give strict lexical priority to FEO over the difference principle.

This line of thought might sound objectionably perfectionist. The response to this is that the assumptions about the hierarchy of human goods that figure in this argument do not involve any commitment to any specific, particular, controversial conception of the good. Self-realization is a generic, abstract ideal. One could affirm the superiority of developing and exercising one's valuable capacities over passive consumption activities while leaving it entirely open which capacities are valuable and most worthy of pursuit, or even whether capacities can be rank-ordered at all. So perhaps the perfectionism required to get this argument for FEO off the ground is moderate and unobjectionable. Be that as it may, I shall not press this objection.

This argument for FEO nonetheless collapses under scrutiny. It is worthwhile to dwell on this point, because the flaws in this argument turn out to reappear in other kindred lines of thought that might be drawn from Rawls's comment.

The first problem is that it just is not true that the social primary goods whose distribution is regulated by the difference principle are useful only for low-grade consumption and not for the finer things in life. These social and primary goods include leisure (time in which one is not required to be working at one's employment or self-employment that contributes to economic production) as well as income and wealth. Free time is quite obviously a resource that may be used for a wide variety of ends including spiritual and intellectual development, cultural creation, and the skillful and devoted fulfillment of social duties. Free time is also complementary to income and wealth; if I am starving and entirely lack access to sustenance, free time may be of little use to me, but if I have adequate funds, a wide array of rich life plans becomes available to me, provided I have free time in which to pursue them. Nor is this just an abstract logical possibility. The creative use of free time and extra money to pursue life plans that are central to

reasonable persons' highest aspirations is a commonplace fact of life visible in every corner of modern societies. There is simply no plausibility to the claim that the goods regulated by the difference principle are only useful for purchasing baubles and trivial pleasures. So the crucial claim that self-realization trumps mere consumption so therefore FEO trumps the difference principle breaks down at the start.

This point would still hold true even if the difference principle only regulated the distribution of income and wealth, and bid us to arrange the basic structure of society to maximize the long-run financial expectations of those who are worst off in this respect. If this were the case, it would still be incorrect to suppose the goods we get via the difference principle are only useful for low-grade consumption and not high-grade self-realization. Having an amount of money gives one the freedom to purchase anything available for sale up to that amount. What this array of goods and services for purchase includes varies with culture and other local circumstances, but again there is no reason to think that what money can buy will not standardly be highly useful for self-realization. To create art works, one needs materials and a space in which to work; to surf, one needs a surfboard; to go on a pilgrimage, one needs the wherewithal for travel; and so on.

A second problem is that it is anyway implausible to posit a strict lexical priority of self-realization over mere consumption. I am not challenging the idea that some activities are more important for success in life than others for any reasonable plan of life. For example, learning about art and history, I readily grant, enhances one's life to a greater degree than gaining mindless pleasures such as those of guzzling beer and eating candy. However, in deciding what to do, the inferior goods have some weight, and some trade-offs make good sense. If we can get a lot of simple pleasure at the cost of just a little bit less learning, the choice of simple pleasure is better. I submit that this example generalizes. So if the argument proceeds from the premise that self-realization has lexical priority over consumption to the conclusion that FEO has lexical priority over the difference principle, the starting point of the argument is incorrect.

A third problem is that even if it were true that some primary social goods are uniquely suited to contribute to self-realization and different primary social goods are uniquely suited to contribute to consumption and self-realization trumps consumption, these claims fall short of justifying FEO. Look at this issue from the standpoint of parties in the original position.¹⁰ If I know I shall care immensely more for meaningful work as a vehicle for self-realization than for money as a vehicle for consumption, then I should give priority to bringing it about that I actually engage in meaningful work or perhaps seek to maximize my prospects of getting meaningful work. If I am following a maximin rule of choice in the original position, then I should choose to maximin the attainment of meaningful work by the most disadvantaged social group—if self-realization trumps consumption, then the worst off group is the group in society that has least meaningful work. If self-realization will be all-important then we should strive actually to get self-realization, not choose principles that guarantee fair procedures in competitions that give meaningful work to some and not others. Note also that maximizing access to positions that confer above-average primary goods is emphatically not the same as maximizing access to meaningful, fulfilling work. There is a plain mismatch between the considerations adduced to support FEO and what the considerations, if accepted, would actually plausibly support. The argument supplied to support FEO, if otherwise acceptable, would instead support specifying the index of primary social goods regulated by the difference principle so that the means to self-realization are trumps in the index.

To be sure, this conclusion might appear to be complicated by the fact that whether one can gain self-realization from an office or position or job or post depends on there being a good enough match between the skills and abilities required for successful fulfillment of the role and the skills and abilities one possesses. Lacking ability in physics, I cannot gain self-realization, but only frustration, by being awarded a job as rocket scientist or physicist. However, this point does not stretch so far as to entail that one cannot gain significant self-realization from carrying out the duties of a post unless one is the applicant who is most qualified for the post. Provided

one can perform the associated duties adequately or to a good enough degree, one can gain the all-important self-realization from occupying the position. A further obvious point is that one's successful or unsuccessful performance in a social role may affect, in some cases to an immense extent, how successfully the enterprise to which one is contributing operates, and this in turn will affect the life prospects of those people in society who become dependent on the quality of the operation of the enterprise. But these points are fully consistent with the conclusion stated at the end of the previous paragraph.

It should be noted that the first two of the three defects I have found in the Taylor-Shiffrin-Rawls argument for FEO apply to the fallback position, FEO amended by the associated priority rule, as well. We recall this priority rule allows FEO to be violated provided this results in greater opportunities for positions of advantage for those with lesser opportunities for these positions. These first two defects suffice to show the unacceptability of FEO qualified by the priority rule.

Seana Shiffrin advances some reasons for accepting FEO that do not succumb to the counterarguments just reviewed. Her strategy of argument starts with an insight. Rawls does not say much by way of justifying why FEO should be accorded strict priority over the difference principle, but equally Rawls does not say very much by way of justifying why FEO should be subordinated to the equal basic liberty principle rather than accorded the same priority accorded to this latter principle. If we are designing appropriate principles for the basic structure of a society of free and equal persons, why should we regard equality of opportunity principles as having lesser importance than the protection of civil liberties and other basic freedoms? The answer isn't obvious. This suggests a strategy for defending FEO: find arguments supporting it that borrow from or echo the main arguments advanced by Rawls to support the priority of basic liberty over the difference principle. Perhaps the case for FEO can ride piggy-back on the case for the equal basic liberties principle.

An argument for equal freedom of conscience that is supposed to be available in the original position starts with the thought that the parties know that they might have religious obligations or comparable obligations of conscience that they will regard as nonnegotiable. If they have such convictions, fulfilling them will have sacred importance, so they must by choice of principles in the original position safeguard their liberty in this regard. They must have freedom of conscience, understood as including freedom of worship and freedom to work out their own convictions. So they must insist on a principle guaranteeing freedom of conscience that has the highest priority. (The equal basic liberties principle includes freedom of conscience plus other civil liberties and democratic citizenship liberties.)

In a similar way, we can suppose that the parties in the original position know that they might turn out to have work and similar other social role aspirations that are absolutely central to their conception of the good. This possibility suffices to render it the case that they must safeguard this interest by choice of principles if they can. We can say more. The parties in the original position know general facts such as systematic social science supplies, and we know that for most people, work is central to their lives, so its meaningfulness or lack thereof has a large impact on their opportunity to lead a successful life by their own lights. Moreover, having opportunities to perform a variety of social roles, according to one's native talent, can be important by way of providing a rich context for discovery of values and choice of life plan even if one does not take up the opportunity. Much the same can be said of freedom of conscience—the opportunities it guarantees can provide a rich context of choice even if not exercised. If the parallel between freedom of conscience (or perhaps other civil liberties included in the equal basic liberty principle coverage) and opportunity for playing especially fulfilling social roles holds, then if the arguments for the priority of basic liberty over the difference principle are successful, the parallel arguments will suffice to justify the priority of fair equality of opportunity over the difference principle. And if the parallels are especially close, perhaps equal basic liberty and fair equality of opportunity should have the same priority status.

Rawls has various arguments for the priority of equal basic liberty. Not all are equally good. One that has some force is that if people give priority to developing and exercising their interests in forming and (when appropriate) revising their conception of their good and cooperating with others on terms they can recognize as fair, they will reasonably give priority to sustaining the conditions necessary to fulfill these interests, and these conditions prominently include the central basic liberties. One should never identify fully with one's present desires and aims, which might be worthless, but should instead strive to be open to criticism of one's current aims that will guide one toward superior ones. This should lead one to support a regime of strong education and also robust protection of free speech and related civil liberties, generating a social environment conducive to this criticism and improvement of aims. But I clearly am fully able to develop a conception of the good and cooperate with others fairly even if I lack access to the plummy jobs the economy offers, so this consideration does not generate a parallel argument for the priority of FEO. In contrast, the argument sketched in the previous paragraph seems noticeably weak. I might have a conception of the good and the right that puts an emphasis on gaining material goods—not necessarily for crass ends. (Perhaps my main religious obligation is to go on a pilgrimage to the Holy Land, which is expensive.) I might instead have a conception of the good and the right that puts an emphasis on having and exercising freedom of public worship or other aspects of freedom of conscience. These possibilities cancel each other out and do not lend any support to the priority of basic liberty.

In passing, let's consider the idea that having the opportunity to gain social roles that confer advantages including meaningful work can be beneficial to an individual even if the opportunity is not exercised. This thought is more plausible if the opportunity in play is more robust than what fair equality of opportunity provides. That I have the real freedom to pursue any one of various paths in life might well contribute to the quality of my deliberation and choices pertaining to how to live, but the idea that having the same competitive prospects as anyone else with the same talents and ambitions is less compelling. Suppose I lack talent. Why does it make

my life better to know that if I were natively talented my prospects for lucrative and fulfilling opportunities would be just as great as those of anyone else with roughly the same native talent and ambitions? Perhaps having “opportunities” that I know I cannot actually reach and exercise helps me deliberate about values and choose a plan of life, but surely this effect, if it exists at all, is slight. Once again there is a mismatch between the considerations adduced to support FEO and what those considerations really tend to support.

A second consideration urged by Shiffrin to support lexical priority for equal opportunity over other aspects of social justice appeals to the importance of self-respect and hence to the moral imperative of sustaining for all members of society the “social bases of self-respect.” Self-respect here I shall suppose to be the individual’s confident and reasonable belief that her plan of life is worthwhile and that she is competent to fulfill it. (Rawls actually excludes the qualifier “reasonable,” but I can’t conceive how promoting people’s unreasonable belief that their plan of life is worthwhile and that they are competent to fulfill it could be thought to be a justice requirement.) The social bases of self-respect are features of the basic structure of society that help to facilitate and sustain all members’ self-respect. Rawls had argued that instituting firm guarantees of civil liberties of democratic citizenship promotes a culture of democratic equality and constitutes the best available strategy for securing the self-respect of all members of society under modern conditions. Whereas fixed class and caste hierarchies tend to undermine the self-respect of members of subordinate groups, establishing an equal status of democratic citizen for all members of society tends to promote the self-respect of individuals. This train of thought is held to support the lexical priority of the equal basic liberties principle over other aspects of social justice, and Shiffrin urges with some plausibility that the same argument supports lexical priority for careers open and FEO over the difference principle.

Two issues arise. One is whether, if promoting the self-respect of all is of paramount importance for social justice, then is it so that according lexical priority to equal opportunity (along with civil liberties) over the difference principle is warranted in order best to promote self-

respect? A second issue is whether it is so that promoting the self-respect of all is of paramount importance for social justice.

Regarding the second issue, I want to register some doubts. An individual's having a belief that his plan of life is worthwhile and that he is competent to fulfill it stands in complicated and uncertain relationships to an individual's actually attaining what is genuinely good for himself and for others. For some, perhaps many people, being anxiously doubtful about the merits of one's life plan and about one's competence to fulfill it might contribute significantly to actually eventually adopting a genuinely worthwhile plan and fulfilling it, or to achieving other goods that are not part of one's life plan. (For others, having an unreasonably exaggerated sense of self-confidence might be prerequisite to reasonably successful achievement.) Self-respect as understood here is not itself of paramount moral importance nor does it seem to be a good practical proxy for what is of ultimate moral importance. Self-doubt and anxiety can spur achievement. For each individual, there may be some low level of self-respect, such that below that level, one will have too little sense of efficacy to accomplish anything worthwhile. But the importance of one's level of self-respect is the degree to which it promotes or hinders achievement of genuinely worthwhile aims. Trying to increase people's degree of confidence in their plans and abilities when doing so reduces the good attained in people's lives (weighted by priority) is a bad idea, not a justice requirement.

Regarding the first issue, I would say that whether violations of FEO and even violations of careers open to talents dampen people's self-respect in a way that should count as wrong depends on the nature of the case. If the alternative to careers open and FEO is feudal caste hierarchy, surely abolishing feudalism as a way to gain the social bases of self-respect for commoners is a good idea (justifiable from many different justice perspectives). If a society violates careers open and FEO in order to achieve other values that make sense, it strikes me as unlikely that maintenance of careers open and FEO would be effective means for propping up people's self-respect, on the assumption this is a paramount goal. Suppose that policies that

entrench affirmative action for disadvantaged groups in a plural society with deep cleavages among groups work to maximize priority-weighted quality of life for people despite violating FEO and careers open. Why should better off people who must accept some losses in this arrangement have reason to become dejected in ways that erode their sense that their plans of life are worthwhile and they are competent to fulfill them? To promote everyone's self-respect, what is needed above all are social policies that help people orient toward good values, develop their native abilities into skills, accurately assess their personal strengths and weaknesses and the likely circumstances they will face, and form flexible life plans that will best help them lead good lives and lives respectful of the rights of others.

In these comments I do not mean to downplay the importance of public recognition in the structure of basic social arrangements of the idea that each person's life and its success are important, and equally important, for all of us, so our agent, the government, ought to show equal concern and respect for all. The public recognition that everyone counts fosters attitudes that foster success in leading good lives, and especially the success of those who are disadvantaged. To the extent this is so, prioritarian morality will tend to uphold the public recognition. That everyone does count the same is a broad truth that consequentialists as well as Rawlsians will embrace. Egalitarian political morality of this sort does not necessarily embrace equal opportunity principles of the Rawlsian variety.

One should also note that the wholehearted embrace of meritocracy that is implied in acceptance of FEO and careers open to talents carries a latent threat to the self-respect of those who lose competitions for especially desirable positions in society. In societies that do not fulfill FEO, one can say, perhaps I am just as competent as those who have done so much better than me in market and social competition. In a perfect meritocracy, with FEO perfectly fulfilled, there is still residual luck that plays a role in who gets success: FEO guarantees that all with the same native talent and same ambition have equal chances for competitive success, not necessarily equal outcomes. But the role of chance in determining who succeeds is reduced under meritocracy. So

meritocracy may tend to undermine the self-esteem of those who time and again are not winners. One might object that if one's sense of self-esteem is based on false belief about one's level of talent, such self-esteem is unreasonable. Or one might object that one should not feel badly about oneself due to factors entirely beyond one's power to control. But the intractable fact is we do tend to feel badly for possession of faults we cannot avoid having. Arranging competitions so that their results reveal the real merits of competitors is not an unqualified good.

Shiffrin suggests another reason why parties in a Rawlsian original position might be motivated to give special priority to fair access to employment according to FEO. She writes that "employment is, typically though not necessarily, a crucial and appropriate method by which able parties participate in the joint project of social cooperation."¹¹ That is, crucial to flourishing is developing and exercising one's moral powers including one's capacity to cooperate with others on fair terms. Desirable competitive positions often provide unique and important opportunities for contributing to noble projects, helping to make one's society just and fulfilling.

It is true and important that part of one's good is contributing to the advancement of what is right, the project of social justice. So one reasonably seeks opportunities to make contributions. However, once again the consideration that meaningful work is valuable does not obviously provide reason to embrace FEO. Perhaps one should embrace "meaningful work for all." In the original position, not knowing whether I have lots of talent, some, or none, I don't have any special reason to opt for principles that guarantee I will have the same prospects for meaningful work opportunities as others equally talented. Setting aside the original position framework, I would maintain that if meaningful work is an important component of human good, institutions should be arranged to maximize the meaningful (rather than meaningless) work that is done and to distribute it with an eye to making possible meaningful achievement for those who are badly off in this respect, consistently with balancing this aim against the pursuit of other components of good for people and their fair distribution across persons.

4. Prioritarianism and equal opportunity.

The discussion to this point has for the most part remained within a Rawlsian framework, which is too confining. Rawls's difference principle aligns justice with priority for the worse off. So far, so good, in my view. However, Rawls twists this orientation into maximin: give strict lexical priority to advancing the interests of the very worst off. This is too extreme. A penny for the worst off outweighs any loss of resources for any number of even slightly better off individuals: this is implied by maximin but not a plausible implication of a candidate fundamental moral norm.¹² It is useful to attend to the resource holdings that people get, but fetishistic to regard justice and morality as fundamentally concerned with the distribution of resources. What fundamentally matters is not the quantity and quality of stuff people get but the quantity and quality of good lives people attain. The relaxation of maximin and the rejection of resourcism yields prioritarianism, which says one ought always to choose acts and policies that maximize a function of people's well-being that gives weight to greater aggregate well-being and more weight to obtaining a well-being gain for a person, the worse off over the course of her life she would otherwise be.¹³

For the prioritarian, all other moral considerations such as norms of truth-telling, reciprocity, fraternity and equality are valued as helps or hindrances to maximizing well-being weighted by priority for the worse off. This utilitarianish characteristic of the doctrine attracts traditional deontological objections against it. This is familiar territory. I have nothing to add to these discussions. I do note that priority becomes more plausible, the more its components are filled out sympathetically, so that the justice goal so described looks like a reasonable maximand. The two components are what's good for people and its distribution across people. Let's just say a little about the first of these.

Broadly utilitarian approaches to social justice tend to be associated with hedonistic and desire satisfaction conceptions of utility. This association can impede recognition of the plausibility of some broadly utilitarian approaches. Pleasure is a great good, and pain a great bad,

but there are many other goals that a prudent person reasonably seeks, in order to attain good for self. The itch of desire motivates our choices of action, but erratically, since it is commonplace that some things we desire for their own sakes, as part of well-being, we eventually recognize to be of slight value, or worthless, or worse than worthless. My overwhelming desire for cotton candy and for having more toys than my neighbors, fully satisfied, do not provide the satisfaction of anything we should recognize as genuine well-being. These considerations provide grounds for opting for an objective list conception of the good life, but of course this phrase just names a problem and does not solve it.¹⁴ What items belong on the list and how should they be ranked against each other? To give priority a hearing, just suppose we have worked out the best answers we can discover to these questions.¹⁵ With that in place, the priority principle would be fully specified by setting the weights in its priority component: the moral value of gaining well-being for a person is greater, the greater the amount of well-being gained, and greater, the worse off the person would otherwise be in overall lifetime well-being.

In order for people to have a reasonable prospect of living a good life—a life rich in well-being—many factors play a role. These factors interact in complex ways that vary from individual to individual. Having more plentiful valuable options is generally good, unless the extra options distract and confuse, and lead to choice of a worse option than would have been chosen from a reduced option set. Socialization to instill moralized dispositions can make one cooperative and helpful or puritanical and meddling.

Consider formal and substantive equality of opportunity in this light. First, getting more opportunity for people tends to be beneficial, even if the opportunities are not equally shared. Why is it morally a matter of concern that everyone have the same in this respect? Suppose we can either institute policies that maximize weighted well-being—a function of well-being that gives extra weight to gains for those who are worse off—or policies that bring about equality of opportunity. The general case for priority over equality applies here as elsewhere. Even if Bill Gates is better off than I am, still, if getting me one unit of well-being results in a loss of X units

of well-being for Bill, the prioritarian will say, If X is sufficiently large, it is morally better to bring it about that I forgo the one-unit gain and Bill keeps X units. The same point applies if we are dealing with the distribution of opportunities regulated by an equality of opportunity principle. If morality requires opportunities to be provided, our principle should be priority of opportunity not equality of opportunity.

Second, measures to promote equality can be costly. Family ties and family loyalty are productive of human good; it's a good thing that parents tend to have special concern for the welfare of their own children. This tendency has an obvious cost: parents have unequal resources and are unequally competent at helping their children, and some parents care more intensely for their children than other parents do. The boost in life prospects that children gain from their parents and more broadly from their local social environments varies widely across children; this unequal boost leads to massive violation of FEO. Trying to prevent parents from doing what leads to this pervasive violation of FEO would amount to counterproductive leveling down. In principle, society can arrange institutions and practices so that full parental freedom to raise their children as they choose can be compatible with society-wide maintenance of FEO. Institutions and practices can be put in place that will roughly offset the unequal boosts in life that different children receive, so that if your parents read Harry Potter stories to you and my parents do not, some agency of society brings it about that Harry Potter stories are read to me (or that I get some equivalent intellectual stimulus). However, to be even roughly effective in sustaining FEO across time, these countervailing booster policies will be very expensive. Family practices must be monitored, and a wide array of continuously varying booster devices deployed. Even if successful, the policies predictably will alter parental incentives in unfortunate ways. The parents whose special efforts to help their own children are offset by state aid to other children will have less incentive to make special efforts on behalf of their children, and the parents whose inept or half-hearted or impoverished efforts to give their children a boost are continuously corrected and overshadowed by social controls will sense what is going on and feel a diminished sense of

parental efficacy. To avoid sapping the authority of parents whose children need help, social intervention in family life can take the form of efforts to improve parental competence, but this can be an uphill battle, especially in families where children are lagging the most. FEO holds that in deciding on social policy, we should be completely indifferent to these costs of implementation, in the sense that if the most cost-effective way to bring about compliance with FEO costs X trillions of dollars per year, we should institute this compliance strategy, provided doing so does not reduce the extent to which the equal basic liberties principle is fulfilled, regardless of the size of the number X, and regardless of the losses thereby imposed on other justice values.

To be sure, failure to satisfy FEO, and especially egregious large-scale failure to come close to satisfying FEO, can itself be costly in terms that register in a prioritarian accounting. Children born in poverty who fail to get a decent education and fail to develop their native talents into useable skills will not be contributing to the scheme of social cooperation as effectively as they would if FEO were effectively regulating society. Many Thomas Edisons will have no chance to invent electric light bulbs; many Richard Feynmans will have no chance to become great physicists. However, this is just the point. To the extent that formal and substantive equality of opportunity norms serve as effective instruments for promoting quality of people's lives fairly distributed, to that extent these equal opportunity norms should be valued as means and assiduously implemented.

NOTES

¹. Criticism of the Rawlsian principle of fair equality of opportunity occurs in an essay by Larry Alexander, "What Makes Wrongful Discrimination Wrong? Biases, Preferences, Stereotypes, and Proxies," *University of Pennsylvania Law Review* 141

(1992), pp. 149-219, and in Thomas Pogge, *Realizing Rawls* (Ithaca: Cornell University Press, 1989).

². John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, rev.ed., 1999), pp. 52-85. For criticism of Rawls's principle of fair equality of opportunity, see Richard Arneson, "Against Rawlsian Equality of Opportunity," *Philosophical Studies* 93 (1999), pp. 77-112. It should be noted that although I describe Rawls's principle of fair equality as "fundamental" and "basic," this means that it in Rawls's system it is affirmed as required for its own sake, not as a means to some further moral goal. Rawls does argue for his fundamental principles of justice by showing that they would be chosen in a hypothetical construction, the original position. In this sense Rawls's principles are derived.

³. See Derek Parfit, "What makes Someone's Life Go Best," in his *Reasons and Persons* (Oxford: Oxford University Press, 1984), appendix I, pp. 493-502.

⁴. This point is made in Bernard Williams, "The Idea of Equality," reprinted in his collection, *Problems of the Self* (Cambridge: Cambridge University Press, 1973), pp. 230-249.

⁵. Taken literally, fair equality of opportunity could be satisfied in a society that does not satisfy formal equality (the careers open to talents norm). I assume that the Rawlsian will interpret fair equality of opportunity as incorporating careers open to talents.

⁶. Adam Swift and Harry Brighouse and Adam Swift suggest that the basic liberty to date and mate according to mutual choice and to raise one's children as one chooses (within limits) constrains the implementation of FEO. However, this is doubtful. Let parents interact with their children as they will. In principle, the state can always offset

any boost a parent gives a child by giving compensating boosts to children who would otherwise be left at a competitive disadvantage. See Swift and Brighouse, “Legitimate Parental Partiality,” *Philosophy and Public Affairs* 37 (2009), pp. 43-80.

⁷ . On this form of egalitarianism, called *prioritarianism*, see Derek Parfit, “Equality or Priority?”, reprinted in Matthew Clayton and Andrew Williams, eds., *The Ideal of Equality* (New York: Macmillan and St. Martin’s Press, 2000), pp. 81-125.

⁸ . Seana Shiffrin, “Race, Labor, and the Fair Equality of Opportunity Principle,” *Fordham Law Review* 72 (2004), pp. 1643-1675; Robert Taylor, “Self-Realization and the Priority of Fair Equality of Opportunity,” *Journal of Moral Philosophy* 1 (2004), pp. 333-347.

⁹ . Rawls, *A Theory of Justice*, rev. ed., p. 73.

¹⁰ . Rawls proposes that the principles of justice we should accept are the principles that rationally self-interested agents (who give priority to certain Kantian interests) would select as principles to regulate their social life in an appropriately designed decision problem (called the “original position”) that includes a veil of ignorance that deprives the agents of all knowledge of particular facts about themselves and their situation in the society they will inhabit.

¹¹ . Shiffrin, “Race, Labor, and the Fair Equality of Opportunity Principle,” p. 1668.

¹² . On the maximin idea, see Rawls, *A Theory of Justice*, pp. 132-133. Rawls says maximin is a good rule to follow not generally, but only when special circumstances obtain, these being circumstances that hold in an appropriate setting for choosing principles of justice. On my view, a fundamental moral principle necessarily holds always and everywhere, so maximin could not be a fundamental moral principle. Rawls

supposes maximin will not actually give rise to implications for choice that are counterintuitive in the situations we face, when choosing how to arrange basic structural institutions. This claim by Rawls is clearly wrong, I submit.

¹³ . The characterization of the notion of prioritarianism in the text commits the prioritarian to holding that the proper measure of a person's condition for purposes of deciding what she is owed by others is her well-being level. One might formulate alternative versions of prioritarianism that employ other measures of a person's condition—for example, her set of resource holdings.

¹⁴ . Along with the Parfit discussion cited in footnote 3, see James Griffin, *Well-Being: Its Meaning, Measurement, and Moral Importance* (Oxford: Oxford University Press, 1986), and Thomas Hurka, *Perfectionism* (Oxford: Oxford University Press, 1993).

¹⁵ . Objection: The Rawlsian will say that in a diverse society that protects free speech, people will always disagree regarding conceptions of the good. So the welfarist justice standard is unavailable. In reply: this large topic deserves a full discussion. My line would be that reflective equilibrium methods can find reasonable consensus on the good (partial comparability).