

## **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 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 of us also hold that there should be, at least to some degree, equal opportunity to become qualified for such contests. Many of us hold that these norms are fundamental requirements of justice. These norms capture the attractive idea that justice unequivocally condemns hereditary hierarchies of caste and status. A society in which people of one skin color rather than another, men rather than women, individuals with opposite-sex rather than same-sex sexual orientation, or members of one rather than another ethnicity or supposed race enjoy superior rights, privileges, and opportunities is by virtue of that fact an unjust society.

This essay resists this consensus.<sup>1</sup> 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) along with the principle of formal equality of opportunity or careers open to talents is a basic principle of justice.<sup>2</sup> 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. These principles are rank-ordered. Equal liberty has first priority, equal opportunity has second priority, and the social inequality principle (the difference principle) has the lowest priority. Rawls’s system is complex, but exploring the place of equal opportunity within it is worthwhile, because Rawls’s ideas about justice are elaborated in clear and explicit detail, not merely lightly sketched, and also because 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 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. As I see it, this moral goal is 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.<sup>3</sup> 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 describe the second approach, but do not say much by way of defending it. I hope to persuade you that the second approach is at least worth taking seriously mainly by arguing that the first approach is deeply flawed.

### **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. John Rawls's principles of justice are proposed for the regulation of the basic structure of society—major institutions viewed as affecting people's life prospects. Positions of advantage are then interpreted as inequality-conferring positions in this basic structure.

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.<sup>4</sup> 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 what principle might set a standard that tells us 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 careers open to talents and the difference principle is a classless society. 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.

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.<sup>5</sup>

Rawlsian equality of opportunity as just characterized might sound forbiddingly complex, but the basic idea strikes me as simple and attractive. Suppose we start by observing significant inequalities in a society that satisfies the equal basic liberty principle. The general-purpose resources that the society's system of social and economic cooperation makes available to people are distributed in a lopsided way: some get far more than others. Might this be justified? Rawls suggests three conditions must be satisfied. First, the positions that confer superior benefits must

be open to all in a formal sense. Second, these positions must be open to all in a stronger, substantive sense—those with the same native talent and same ambition should have the same prospects of competitive success. Third, these inequalities must work in some way to maximize the overall index of social primary goods going to the social group that is worst off in this respect. The FEO ideal is the ideal of a classless society in which everyone has, in a sense, the same chance to gain specially advantageous positions, regardless of race, creed, color, sex, sexual orientation, and so on.

Focusing on Rawls's doctrine of equality of opportunity is not narrowing one's sight onto one particular, idiosyncratic view. Rawls captures the core of a grand liberal tradition. As G. A. Cohen admirably puts it, in Rawls's work "the politics of liberal (in the American sense) democracy and social (in the European sense) democracy rises to consciousness of itself."<sup>6</sup> Engaging with Rawls, I submit, helps us learn what equality of opportunity ideals should mean to us.

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.<sup>7</sup>

Eventually I want to state some Rawlsian arguments for Rawlsian fair equality of opportunity and find some holes in them. Before doing that I suggest the gist of my claim. Here's an example that shows 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 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 perfectly 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 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.

## **2. The interpretation of equal opportunity and nondiscrimination norms.**

Equality of opportunity clearly consorts with norms of nondiscrimination. Both of these resonate with the ideal of a society unmarred by hierarchies of caste and status. However, the connections between these concepts are loose.

Consider this nondiscrimination norm: When choosing among applicants for admission to student status at competitive secondary schools, colleges and universities, among applicants for jobs and positions in the public sphere at for-profit and not-for-profit enterprises, and among applicants for bank loans and venture capital, it is wrong to base one's decision on the skin color, religious creed, ethnicity, race, sex, sexual orientation, or related group membership of the applicants.

It is immediately clear that everyone's conforming to nondiscrimination does not ensure that Rawlsian FEO is satisfied. The reverse is true as well. The satisfaction of Rawlsian FEO (if it is understood as a freestanding principle that does not incorporate careers open to talents) can be satisfied even though nondiscrimination is not. For example, imagine that the control of competitive positions is evenly distributed across members of hostile ethnic groups. Every competitive position is controlled by a member of some ethnic group, and in choosing among applications for the position he discriminates against members of all other ethnic groups, so nondiscrimination is always violated. However, the effect of the discrimination in one case is offset by discrimination in other cases, in such a way that FEO is overall satisfied.

The satisfaction of nondiscrimination in a society is consistent with violation of formal equality or careers open to talents. This is so in virtue of the fact that careers open requires that selection among applicants for competitive posts be done according to meritocratic criteria, whereas nondiscrimination does not include any such requirement. For example, an employer might choose among job applicants on a whimsical basis, or by random selection, or by identifying the applicant who most needs the job. On the other hand, if careers open is satisfied, then so is nondiscrimination. If applicants are selected according to merit, that is, according to the degree to which the application indicates that the applicant, if given the competitive post, would function in it so as to advance the morally legitimate goals of the enterprise weighted by their relative importance, then they are not being selected on a discriminatory basis.

There are a few complications to note.<sup>8</sup> One is that if race or another group membership is what is called a bona fide occupational qualification (BFOQ), then selection by race or other group membership is nondiscriminatory. Example: If the director of a play seeks someone to play the role of a character who becomes pregnant and bears a child, being a woman might be reasonably held to be a BFOQ for this position. Another type of case involves discrimination at a remove. Suppose the employer of a firm seeks an applicant for a skilled post, hiring whom will maximize her firm's profits, and suppose the customers of the firm are racially prejudiced, and will be less likely to buy products to which the skilled labor of African-Americans has contributed. Would not being African-American then be a BFOQ for this position in these circumstances? Answer: No, because, making profits by catering to the wrongfully discriminatory tastes of potential customers should not be regarded as a morally legitimate enterprise goal.

There are also questions about the relationships between nondiscrimination and equal opportunity norms and the broader ideal of a society that is free of caste and class hierarchy. This is a large topic, one this essay does not try to engage. Notice that we can conceive of a society in which there is no discrimination in the treatment of applications and careers open as stated is satisfied yet wrongful discrimination and hierarchy persist. Suppose that white males currently control access to positions of advantage and carve up work into tasks and formulate job

descriptions and enterprise goals in ways that are favorable to white males as opposed to members of other groups. Perfectly meritocratic hiring and selection into competitive places in schools might then coexist with what intuitively seems to be wrongful discrimination against some people in virtue of their group membership. We might then simply respond by broadening the formulation of the norms, so that nondiscrimination forbids arbitrary treatment of an individual in virtue of her group membership on any occasion in public sphere activities and enterprises and careers open is similarly broadly framed.

There remains the restriction of the field on which these norms are to apply to the public, as opposed to the private sphere. However we draw the public/private distinction, wrongful hierarchy could persist by transmission of caste status in private contexts. The nondiscrimination norm intuitively seems appropriately to regulate private decisionmaking. It is morally wrong, one would suppose, for me to choose friends and romantic partners and associates and spouses on a racist basis for the same reason that it is wrong for me qua member of a public sphere selection committee to choose among applicants on a racist basis. There is more than an echo here of themes articulated in writings by G. A. Cohen. The norms of justice that one embraces for the function of regulating the basic structure of society surely have their source in underlying principles of justice that have implications for the arrangement of the nonbasic structure and for the regulation of personal conduct as well. Justice norms, understood as trumping moral principles, can't be cabined.<sup>9</sup>

### 3. 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.<sup>10</sup> 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.”<sup>11</sup>

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 that costs 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. 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. One might wonder how one nonarbitrarily chooses metrics for these disparate goods in order to compare them, but no matter what one takes as the unit of learning or the unit of guzzling, there will always be a trade-off ratio between the disparate goods according to the chosen metric. 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.<sup>12</sup> 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. 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 rather 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. 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. I simply think that arranging society to meet the prioritarian principle

will provide thus recognition. 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 the degree to which their results reveal the real merits of competitors is maximized 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."<sup>13</sup> 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 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.<sup>14</sup> 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.

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.<sup>15</sup> 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 compelling answers to these questions. With that in place, then 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 exactly 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.

### **5. Do equal opportunity policies serve prioritarian goals?**

It would be seriously misleading just to say that the prioritarian does not endorse equality of opportunity in the strong Rawlsian sense or even the weaker careers open to talents except in circumstances in which these policies happen to work out for the best—lead to better outcomes as assessed by the prioritarian weighted well-being standard. Stopping there leaves unanswered the question, how strong is the prioritarian instrumental case for equality of opportunity in either form. There is a general issue here regarding the relationship between consequentialist principles and liberal political morality. For the consequentialist, if she is a liberal, her commitment to liberalism stems not just from her foundational principles but also from her empirical beliefs. Liberalism on this view is a matter of lore not principle. However, some core liberal convictions will be deeply entrenched in a consequentialist morality allied to plausible empirical claims—so the consequentialist claims. This approach does not oppose standard liberal convictions and does not reject liberal political morality, but reinterprets it. Viewed as a project, prioritarian consequentialism succeeds if the types of liberal policies it recommends as well as the types of liberal policies it disfavors add up to a version of political morality that commands our allegiance after reflection. So we need to consider the plausibility of the policy implications that prioritarianism generates in various possible scenarios.

A liberal prioritarian is a liberal because she believes liberal policies will best achieve prioritarian goals in actual and likely circumstances. In different circumstances, she would change her tune. She would espouse conservative policies in circumstances in which they were the best available means for achieving prioritarian goals, and totalitarianism or communism or anarchism in the circumstances, if any, in which each of these political programs would be the best means to this end. Priority is vindicated if the iffiness, the contingency of its policy recommendations, is appealing after full reflection and scrutiny. The doctrine is defeated if it reflectively unacceptable to countenance instituting a proposed policy in possible circumstances, however unlikely, in which instituting that policy would lead to best consequences by the prioritarian standard in those possible circumstances.

We might distinguish deep and shallow features of prioritarian liberalism. The deep features are justified given very broad and stable features of our nature and the character of the world we inhabit, which are bound to hold pretty much come what may. The shallow features are justified given features of the world that might or might not obtain, or that obtain now but might well be altered in the future, or that hold in some parts of the world today but not others. This contrast between deep and shallow is one of degree.

I'm unsure to what extent, if at all, formal and the Rawlsian substantive equality of opportunity principles should find a place in a prioritarian liberalism. Resources are not a reliable proxy for well-being, so norms formulated in terms of resource distribution are unlikely to track what morally matters very closely. Leximin priority, or so it seems to me, is a nonstarter. Equality, everyone's having the same of being treated the same, is not per se morally valuable according to the prioritarian. (The equality that matters is equal counting of different people's interests—everyone count for one, nobody for more than one, along with priority weighting that varies depending on how badly off one is going to be over the course of one's life.) But these points still leave a lot unsettled. Any policies we adopt will only imperfectly serve our ultimate goals, so the fact that a policy proposal only imperfectly advances prioritarian goals is not grounds for dismissal.

Another divergence between Rawlsian principles and priority that might have relevance for policy choice is that the Rawlsian principles are concerned to regulate opportunities of a sort. A place in a university is an opportunity to learn; a loan of capital is an opportunity to put money to good use; a good job is an opportunity to achieve meaningful and fulfilling work; a political office is an opportunity to advance political aims. According to prioritarianism, it is not the case that the things that ultimately matter are opportunities individuals have for well-being. Even opportunities for well-being are not the correct currency of justice. It's rather well-being achievement, achieving a good quality of life, that matters. So there is the possibility that a policy that achieves more opportunity or more opportunity equally distributed should be rejected in favor of policies that get fewer opportunities to people but greater successful exercise of opportunities and so greater well-being fairly distributed. For example, if we are choosing higher education policies, a policy that gets more high-quality educational opportunity for each member of society would not be as attractive for the prioritarian as an alternative policy that gets fewer opportunities in people's hands but gets them in the hands of people who will exercise them so there is more learning and ultimately more improvement in quality of people's lives.

So, will equal opportunity norms figure as deep components, shallow ones, or not at all in prioritarian liberalism? Not deep, surely. Between "shallow" and "not at all," I'm unsure.

In what follows I describe two generic scenarios. In one, toleration of violations of the norm of careers open to talents is economically efficient, all things considered, given specified circumstances. Since this toleration generates an economic surplus, it is in principle available to be taxed for prioritarian ends, so the overall outcome is more just than it would be if careers open were upheld. In another generic scenario, In the second scenario, violations of careers open and FEO are not assumed to be economically productive, but might yet by virtue of distributive improvement yield more justice than would be obtained by policies that upheld equal opportunity

norms. I don't say either scenario is likely, just possible. I have no objection to upholding equal opportunity norms as instrumentally useful for maximizing the achievement of prioritarian goals and on this ground suitably included as components of prioritarian liberalism.

In the first scenario, we imagine that letting employers hire and fire at will, and not requiring them to conform to careers open to talents produces economic gains, that can be harvested by progressive tax policy and turned to advancing prioritarian ends. This might be so if economies operate as networks, in which traders and buyers and sellers of services have limited information about those they deal with and find that dealing with members of their own social group facilitates trust and cooperation for mutual gain. In this network economy, group membership is predictive of market position. In the economy in which formal equality of opportunity and a fortiori Rawlsian FEO are not upheld, the economic value of total goods and services produced rises, and so progressive taxation can capture more revenue for transfer policies that benefit the disadvantaged members of society. In this way prioritarian justice is achieved to a higher degree than could be done in the equal opportunity society

A defender of equal opportunity norms regarded as fundamental components of justice might object to my depiction of scenarios in which adherence to equal opportunity conflicts with prioritarian maximization and it seems that equal opportunity should give way. The objection is that I have simply described some perhaps unlikely cases in which the application of meritocratic rules yields surprising results. If society is divided into groups, and members of the separate groups tend to cooperate better with one another than with outsiders when there are social and economic gains to be had, then in context, being of one group or another can per se constitute a qualification for a post. If an enterprise has mainly Korean-American (or gay, or Christian, or female, and so on) employees, who cooperate more efficiently with one another than with outsiders, then hiring a Korean-American for an additional job will result in greater firm output at less real cost than will hiring a member of another group. Given the contextual complementarities, being a member of a group can be a genuine job qualification in one setting and a genuine demerit in another setting.

There are short-term and long-term effects to consider in analyzing these situations. Perhaps an all-male office will initially function ineffectively if women are hired for desirable posts formerly reserved for men, but after a transition period, function more effectively. However, the complementarities under review might be stable over time for some types of productive enterprise. In such cases, being a member of one social group rather than another can constitute a BFOQ, so lopsided hiring of members of one social group can be compatible with full compliance with careers open to talents.

I am supposing that what goes on when members of a group work more effectively with one another than with outsiders does not amount to malfeasance or unjust conduct on the part of the insiders. The individuals are not in the grip of racial or some other social group prejudice. Instead we are dealing with benign group solidarity, which is compatible with full compliance by all members of society with the principles of justice as is assumed in Rawlsian ideal theory.

In the other type of case, people of, say, one race belligerently refuse to cooperate with persons of another race hired to be their work colleagues, so for that reason hiring no outsiders but only more members of the race of the insiders would do more to boost the firm's output and profits. This sort of malign group hostility merits a different response in a just society than the examples of benign group solidarity (this is not to say the two types of case would always be easy to distinguish in practice). To be sure, one might press just this sort of case as an argument against the prioritarian approach and in favor of giving nondiscrimination and equal opportunity norms a high place in fundamental principles of justice. The unblinking accountant's eye of the prioritarian utilitarian will count the gains from catering to malign racism as genuine gains for justice. –The prioritarian must bite the bullet in response to this objection. But the bullet may not be too tough to bite. Malign racism of the sort that figures in this example will almost certainly be causing myriad bad consequences throughout society of the sort the prioritarian principle

registers as unjust. When this is so, the prioritarian's principle will then tell her to combat such racism not cater to it. If one tries to imagine examples in which across the board, hostile and malicious dispositions on the part of members of one group to mistreat the members of another somehow magically produce good lives for people fairly distributed, we need to see the example carefully described to see what exactly we are dealing with, and in the remote and strange possible world in which maximizing prioritarian goals involves catering to racism and the like, I find my own intuitions uncertain and tentative, not yielding a resounding clear counterexample against priority.

Let's return again to the economy of social networks, in which membership in one or another social group qualifies as a qualification for a post in some settings (and perhaps a disqualification in others). Are the inequalities that result compatible with Rawlsian FEO? I'm unsure what to say here. One might hold that in modern societies, with pervasive group membership complementarities in production, being born a member of one such group or another can count as part of one's native talent endowment. In this case, the fact that group membership has a causal influence on the distribution of inequalities in possession of desirable posts and positions is compatible with its being the case that those with the same native talent and same ambition have the same prospects of competitive success. One might alternatively hold that in societies as just described, being born into one or another social group does not qualify as meritorious, but is rather a matter of luck that affects the distribution of persons across desirable posts, so it will not be true that those with the same native talent and the same ambition have the same chances of competitive success. In the latter case the economy might well operate in a way that accords with prioritarian principles but violates equal opportunity in the Rawlsian sense.

Let's just suppose we go with the former alternative. In this case, I have not yet succeeded in displaying a case in which priority conflicts with equal opportunity and it is clear that in this conflict we should favor priority. Nor have I succeeded in describing a case in which, on the assumption we embrace priority as the foundational principle, that foundational commitment will in practice lead sometimes, in some circumstances, to rejection of equal opportunity norms. For such cases, let's look at another scenario.

My second scenario envisages that modern diverse political societies will tend to be plural societies, divided by deep cleavages by groups different in language, culture, religion, ethnicity, folkways, habits, norms, and values. If we think of political governance as carried out on a world scale, the point just made holds more definitely, and to a greater degree. In such divided societies, consociational democracy arrangements might be more or less permanently appropriate, and consociational devices to secure fair distribution across members of different groups might well need to institute some permanent form of affirmative action, which assigns desirable positions to members of different groups on a quota system or something similar. Just as seats in parliament might be reserved for members of the recognized social groups in proportion to their numbers, the same might be done for desirable positions in society.<sup>16</sup> As I am using the term "affirmative action" here, it refers not to policies that aim to facilitate bringing it about that the ideal of careers open to talents is more nearly satisfied than would otherwise be the case, in circumstances in which divisive history and other problems make fulfillment of that ideal very difficult. Rather I am supposing that affirmative action policies aim to produce competitive selection outcomes by deviating from the outcome adherence to careers open would have reached, in favor of outcomes in which groups whose members tend to be less qualified nonetheless gain some share of the desirable positions. Why not always hire the best, assign the best qualified to competitive posts? The answer is that we envisage that over the long run, giving desirable positions to the less qualified (but not so unqualified as to gum up the works) yields better outcomes as assessed by the prioritarian well-being ranking.

A similar situation arises if we imagine public policies that are instituted with a view to ensuring "meaningful work for all." The idea would be to guide and channel research in industrial and organizational design, and use tax policy applied to the conduct of business firms

and other enterprises with a view to bringing it about that the array of jobs and posts that the institutions of society offers to prospective applicants is skewed toward providing more challenging and fulfilling and satisfying and truly contributing work that is not concentrated in a few good jobs but widely spread, than would have been the case in a well functioning market economy absent those government interventions. With these policies in place, society might function inefficiently if the efficiency norm is attaining greater output of goods and services for a given input of material resources and labor. Society might likewise fail to satisfy the Pareto norm when Pareto is interpreted as rejection of policies that lead to states of affairs that could be altered by satisfying someone's actual preferences to a greater degree without thereby bringing about lesser satisfaction of anyone else's actual preferences. Despite these supposed flaws, society might yet be chugging along perfectly according to prioritarian principle—maximizing the weighted-well-being achieved overall by people. And that, some of us think, is what counts.

## NOTES

<sup>1</sup> . I have worked at this topic in prior essays. See my "Against Rawlsian Equality of Opportunity," *Philosophical Studies* 93 (1999), pp. 77-112; also "What Is Wrongful Discrimination?," *San Diego Law Review* 43 (2006), pp. 775-807.

<sup>2</sup> . John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, rev.ed., 1999), pp. 52-85.

<sup>3</sup> . 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.

<sup>4</sup> . This point is made in Bernard Williams, "The Idea of Equality," in Peter Laslett and W.G. Runciman, eds.,

<sup>5</sup> . Rawls, *A Theory of Justice*, p. 266. As stated, this priority rule is ambiguous. On one interpretation, it allows violations of FEO provided those in society who have least prospects of gaining competitive positions of advantage thereby gain greater opportunities of that sort. On another interpretation, it allows violations of FEO provided that those who thereby lack the same prospects for success as those with comparable native talent and ambition nonetheless gain overall in their opportunities for positions of advantage via this violation. On the second interpretation, if natively talented very well off people have less than equal prospects as all others with similar native talent and ambition, they (along with all others at any talent level who are in this same position) must benefit via gains in opportunities for positions of advantage from the proposed FEO-violating policy. The second interpretation is as I would put it more meritocratic, more solicitous of the interests of the natively talented and ambitious, than the first.

<sup>6</sup> . G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA and London: Harvard University Press, 2008), p. 11.

<sup>7</sup> . 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).

<sup>8</sup> . One complication not mentioned in the text is statistical discrimination. If membership in a group is correlated with possession of traits that are relevant qualifications, and group membership is easier to determine than possession of the relevant traits, using group membership as a proxy qualification may be part of the most efficient strategy for advancing legitimate enterprise goals in selection among candidates. However, use of this strategy might sometimes be morally suspect or appropriately banned by law, if the distributive consequences for the groups who suffer statistical discrimination are untoward as assessed by just distribution principles.

<sup>9</sup> . Cohen's writings on this topic are summarized in his *Rescuing Justice and Equality*, chapters 1-3.

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<sup>10</sup> . 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.

<sup>11</sup> . Rawls, *A Theory of Justice*, rev. ed., p. 73.

<sup>12</sup> . 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.

<sup>13</sup> . Shiffrin, "Race, Labor, and the Fair Equality of Opportunity Principle," p. 1668.

<sup>14</sup> . 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.

<sup>15</sup> . 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).

<sup>16</sup> . On plural societies and consociational democracy, see Arend Lijphart, *Democracy in Plural Societies: A Comparative Exploration* (New Haven and London: Yale University Press, 1977); Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* (New Haven and London: Yale University Press, 1984); also Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (New Haven and London: Yale University Press, 1999). Lijphart does not himself recommend affirmative action as part of a package of consociational democracy policies.