

Bottlenecks

A New Theory of Equal Opportunity

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Introduction

Equal opportunity is a powerful idea at the center of the egalitarian project. It is a beacon by whose light we can see many current injustices, but also a long history of major egalitarian reforms. Consider the elimination of privileges of hereditary aristocracy; the destruction of state systems of racial apartheid; the gradual widening of access to primary, secondary, and higher education; and the entry of women into jobs, public offices, and educational settings formerly reserved for men. Each of these reforms moved society in the direction of equal opportunity. Today these changes are uncontroversial. The general concept of equality of opportunity¹ is sufficiently widely accepted and popular that advocates of radically divergent political and social agendas regularly invoke it. In debates about affirmative action, for example, different conceptions of equal opportunity appear at the heart of the main arguments of both sides.

This book proposes a new way of thinking about equal opportunity—and about the myriad questions in law, public policy, and institutional design that center on notions of equal opportunity. Essentially, the proposal is that we aim to restructure opportunities in ways that increase the range of opportunities open to people, at all stages in life, to pursue different paths that lead to forms of human flourishing. In doing this, we ought to give particular priority to those whose current range of opportunities is relatively narrow.

This way of thinking, which I call *opportunity pluralism*, involves a shift in focus. Instead of focusing on questions of whose opportunities are equal or unequal to whose, opportunity pluralism requires us to look in a more structural way at how the opportunities in our society are created, distributed, and controlled. This shift brings new questions into view. In part, it prompts us to scrutinize the bottlenecks in the opportunity structure: the narrow places through which people must pass if they hope to reach a wide range of opportunities that fan out on the other side. Thus, in addition to questions about discrimination and group-based exclusion, we ought to ask why our society allows people to pursue certain paths only if they have jumped through particular hoops or passed particular tests at particular ages. In situations of intense competition and scarcity, opportunity pluralism prompts

¹I use “equal opportunity” and “equality of opportunity” interchangeably.

us to focus not only on the question of fairness in who will win the desired and scarce positions, but also on the question of what features of the opportunity structure are causing this degree of competition and scarcity in the first place.

Although we have scarcely begun, some readers may already sense something of a bait and switch. This book promised to be about equal opportunity, and although we are talking about opportunities, equality seems to have dropped out of the equation. Opening up a broader range of opportunities to everyone is not the same thing as making opportunities equal. But opportunity pluralism is a conception of “equal opportunity” in the broad sense in which that phrase is ordinarily used in political discourse and in some philosophical writing. Moreover, this book will argue that opportunity pluralism is a powerful lens through which to view the entire set of problems of social justice with which egalitarians and advocates of equal opportunity are concerned. Opportunity pluralism provides a strong argument for each of the egalitarian changes listed above—along with many other changes past, present, and future, including some that other egalitarian theories might lead us to miss.

In order to understand why it is necessary to reformulate the project of equal opportunity in such a novel and unfamiliar way, we first need to see what is missing from our usual ways of thinking about equal opportunity.

A. How We Think about Equal Opportunity

Let us begin by taking a step backward. Many kinds of equality have value. Why is equal opportunity in particular such a powerful and resonant idea?² There are a number of reasons, but two are especially relevant to the argument of this book. First, equal opportunity is not only a kind of equality, but also a kind of freedom.³ Opportunities open up the freedom to do and become things we otherwise could not. As each of the examples above illustrates, equal opportunity expands the range of paths open to us—educationally, professionally, and in other spheres—thereby giving us the freedom to pursue lives whose contours are to a greater degree chosen by us, rather than dictated by limited opportunities. As freedoms go, this is an important one.

² In this, equal opportunity is not unique. A number of important forms of equality are inextricably from, or constitute, forms of freedom. Political equality is an example.

³ By freedom, I mean more here than simply the absence of legal or governmental interference. I mean freedom in the sense of actually being able to do or become something. For a helpful discussion, see G. A. COHEN, *Freedom and Money, in On the Currancy of Egalitarian Justice and*

Second, opportunities have a distinctive value because of the roles they play in shaping who we are. Opportunities shape not only the paths we pursue, but also the skills and talents we develop and the goals we formulate. We do not come into the world with fixed preferences, ambitions, or capacities, but develop all of these through processes of interaction with the world and with the opportunities we see before us. Opportunities therefore have profound effects on how each of us develops and who we become. We tend to think of opportunities in this way only in certain contexts, primarily when considering questions of child development and early education, when human potential is at its most inchoate. But in fact we continue to be shaped in profound ways by opportunities in adulthood and throughout our lives.⁴

Modern societies are marked by inequalities of opportunity of many different kinds, many of them overlapping and/or interacting in complex ways. When some parents read bedtime stories to their children and other parents do not, this creates early inequalities of opportunity.⁵ The schools in different neighborhoods and towns often seem to magnify rather than diminish the developmental chasms that separate children by the time they arrive at school.⁶ Meanwhile, in the workplace, well-controlled studies show that employers remain far more likely to offer callbacks and job interviews to applicants whose names sound white.⁷ Many young adults—especially wealthy ones—find jobs through their parents and families.⁸ These examples begin to sketch only a few areas of a large and varied terrain. Because inequalities of opportunity are so pervasive and multifaceted, and because opportunities have such deep effects on the shape of our lives and

⁴This second reason to value equal opportunity relates to the first reason in a complex and somewhat circular way. It is in part through opportunities that we develop and refine the preferences and values we use in exercising the freedom that equal opportunity provides.

⁵ See ADAM SWIFT, *How Not to Be a Hypocrite: School Choice for the Morally Perplexed Parent* 9–20 (2003) (noting that an entire spectrum of parental activities, including activities like reading bedtime stories, passes on advantages to children, thereby creating inequalities of opportunity).

⁶ See *infra* section IV.A.3, beginning page 212 (discussing the economic segregation of schools).

⁷ See, e.g., Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, 94 AMER. ECON. REV. 991 (2004) (finding that switching the names on the tops of résumés, leaving all else constant, generates large gaps in callback rates by race from actual employers who posted help wanted ads in Boston and Chicago).

⁸ Cf. Miles Corak & Patrizio Piraino, *The Intergenerational Transmission of Employers*, 29 J. LABOR ECON. 37, 48–49 (2011) (finding in a large Canadian dataset that about 40 percent of sons worked at some point for a specific employer that also employed their father—a figure that rises suddenly and steeply to almost 70 percent when the father is in the top 1 percent of income earners); Linda Datcher Loury, *Some Contacts are More Equal than Others: Informal Networks, Job Tenure, and Wages*, 24 J. LABOR ECONOMICS 299, 310 (2006) (in U.S. survey data from 1982, finding that many young men found jobs through “prior generation male relatives who knew the boss or served as a reference,” and that these young men “earned substantially more than those who directly applied to the employer or used formal methods”).

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on who we become, the overall problem of inequality of opportunity in a modern society is almost too vast, too overwhelming, to wrap one's mind around.

And so we find ways to break this problem down. Most often we focus on questions of equal opportunity in particular, well-defined domains. Sometimes we focus on college admissions, or on hiring decisions by a large employer. In competitive domains such as these, our conversations about equal opportunity tend to fall into certain familiar grooves: debates about merit, discrimination, and affirmative action. However, in certain other domains, we apply an entirely different set of conceptual tools. When we consider the opportunities for verbal interaction for pre-school age children, or the educational opportunities that different elementary schools offer their students, we think about equal opportunity in developmental terms instead of meritocratic ones.

Sometimes we think across multiple domains at once. When we do, we tend to narrow the scope of our inquiry in a different way, by focusing on particular dimensions of inequality of opportunity that are relatively theoretically tractable. Most commonly, we focus on economic opportunity—in particular, on the relationship between family background and economic success, or between class origins and class destinations—because this captures one very important dimension of inequality of opportunity.

Breaking the problem of equal opportunity down in these ways seems useful and perhaps even inevitable. Otherwise where would we begin? It is possible to offer coherent (if contested) visions of equal opportunity in specific domains such as college admissions. It is much harder to imagine what it would be like for an entire society to equalize all kinds of opportunities, for all of its people, all of the time. Moreover, it is far from clear that this would even be desirable.⁹ And yet, something important is lost when we break the problem of equal opportunity down in each of these ways.

Consider some limits of the class origins–class destinations framework as a measure of opportunity. In a patriarchal society, a woman might grow up in modest circumstances and marry into wealth, achieving great success in class terms. Her trajectory exemplifies class mobility; the more there are like her, the weaker the relationship between class origins and class destinations. Yet at the same time, she might never have had more than the most constrained range of paths open to her to pursue other, different kinds of roles in her life, offering different forms of human flourishing.

Or consider instead a more complex case: a woman living in a contemporary society in which a system of gender roles has been preserved but transformed. Now, all jobs are open to women, but most of the good jobs are open only to

single, childless women (and all men). Under these constraints, no individual path is closed to her, but many combinations of paths are. Suppose she chooses marriage and children and achieves both a high standard of living and a good measure of happiness and satisfaction. Even so, the opportunities she had—the combinations of choices open to her around which she could build a life—were in an important way, quite limited. Those limits may have shaped not only the trajectory of her life, but also her preferences and values. They may have shaped what she decided she wanted out of life, as well as which paths she pursued. Of course, from some perspectives—happiness, preference satisfaction—there is nothing wrong with this state of affairs. However, we ought to find this example more troubling from the perspective of the two reasons for valuing equal opportunity introduced above. Why should she, by virtue of the way her society treats women, face such limits on the kinds of lives she might pursue?

Meanwhile, consider some of the limitations of focusing only on specific domains, such as college admissions. When we discuss equal opportunity in such domains, we typically assume a single competitive application process for limited set of openings that all relevant persons are seeking. Our questions usually focus on how such a competitive process could provide equal opportunity, however defined, on the basis of race, sex, or some combination of these and other similar demographic variables. Many broader questions tend to fall outside the scope of our discussion: why these openings are so scarce in the first place why so many applicants are seeking them; how it was determined what counts as “merit” in this competition; and how individuals developed or obtained those forms of merit. Viewing a particular competitive domain in isolation, we view it outcome as a kind of endpoint or goal, sometimes even as a kind of reward or prize. However, if we widened our lens just a little, we would observe that, in the context of the larger opportunity structure, the outcome of every competition is an input for the next competition.¹⁰ Our college admissions decisions shape the qualifications and skills—as well as the demographics—of a crop of college graduates who will go on to compete in other, different contests, such as the contests for jobs at Fortune 500 companies or for commissions as military officers.¹¹

The concatenation of different competitions and developmental stages creates real problems for the project of deciding in isolation what would constitute equal opportunity in any one domain. The skills, credentials, and other assets that competitors bring to any one contest are a product of the results of previous contests and previous developmental opportunities, which were often unequal. If success breeds success, and we reinforce achievement with new and richer

⁹ See *infra* section I.C.3, beginning page 65 (discussing the problem of the starting gate).

¹⁰ See *infra* section I.C.3, beginning page 65 (discussing the problem of the starting gate).

¹¹ See *infra* Pages 71–72 (discussing *Grutter* amici).

developmental opportunities, then the project of equalizing opportunity comes squarely into conflict with rewarding performance.

In that case, the very earliest developmental opportunities, which precede any meaningful performances worth rewarding, begin to take on an outsized significance. However, it is precisely those earliest opportunities that are the furthest out of reach for egalitarian policy intervention. Parents have, and should have, some significant degree of freedom as to how to raise their children. Although society can and should offer help to parents with limited resources, it is hard to imagine a way of actually *equalizing* all developmental opportunities for young children that does not involve removing them from their parents (especially the children with the greatest advantages, along with those with the greatest disadvantages)—or other scenarios that are implausible, dystopian, or both.¹²

When we focus our attention on particular competitive contests, such as college admissions, we also sometimes lose sight of another set of larger questions about how those contests fit into the trajectories of people's lives. During the twentieth century, many countries adopted testing regimes that sorted children at relatively early ages into tracks that shaped their futures.¹³ Such regimes, such as the British eleven-plus examination, an IQ-style test that sorted eleven- and twelve-year-olds into different types of secondary schools, had vast effects on individuals' opportunities. One important line of critique of such regimes is that they entrench the effects of past inequalities of opportunity: They sort children on the basis of skills and abilities honed through developmental opportunities that were unequally distributed, and then they reward the children who enjoyed richer developmental opportunities with yet more opportunities. But there is also another, quite different ground on which we might criticize efforts to sort children irrevocably into different tracks that shape their futures. Not all of us are as serious about education at age eleven or twelve as we might be at eighteen or thirty. Why should performance at a particular chronological age, whether eleven or twelve, or eighteen at the moment of college admissions decisions, have such outsized effects on the trajectory of one's life?

There is nothing inevitable about such ways of structuring educational opportunities. For example, in the United States, community colleges, which provide opportunities for transfer to four-year colleges, offer an on-ramp back onto the highways of opportunity for those whose performance as teenagers may have led to an early exit. It is difficult for many theories of equal opportunity to come to grips with why such on-ramps might be of value—that is, provided we stipulate that the initial sorting mechanisms were fair in all relevant ways, so that everyone

at age eighteen or eleven had a fair chance. If everyone has a fair opportunity measured *ex ante*, from birth, many theories would hold that our inquiry is at an end; there is no reason to look into the second chances that society does or does not make available to those who need a second chance only because they squandered their first. However, if we care about giving people the freedom to shape their own lives—so that the contours of their lives are to a greater extent self-chosen rather than dictated by limited opportunities—we ought to care not only about their opportunities measured *ex ante* from birth, but also about the ranges of opportunities open to them at other points along the way, including for those who have, for one reason or another, failed to jump through important hoops at particular ages.¹⁴

Most of our usual ways of thinking about equal opportunity also suffer from a deeper, more fundamental conceptual problem. To put it simply, many of us imagine that conditions of equal opportunity exist when each individual can rise to the level that his or her own talents and efforts permit.¹⁵ In fact, that is often how we define equal opportunity itself. John Rawls, for example, offers a principle of "Fair Equality of Opportunity" (FEO) that has this shape: "assuming that there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system."¹⁶ From this perspective, success is a product of some combination of talent, effort, and opportunity; we can tell that opportunities are equal when talent and effort alone determine success.¹⁷

For this framework to make sense, it must be the case that there are some "natural" abilities and talents that precede, and do not themselves depend on, opportunities. This is a straightforward enough premise, and one that squares with popular understandings of heredity and environment in our present genetic age. However, it is not true.¹⁸ As I discuss in chapter II, it is true that we are not blank slates—we are all different, and we respond differently to different environments and opportunities.¹⁹ But it is not true that any part of our talents,

¹⁴ See *infra* section III.A.3, beginning page 144 (discussing the anti-bottleneck principle).

¹⁵ See *infra* section I.A.1, beginning page 29 (discussing Rawlsian FEO). This is an oversimplification, as I discuss in chapter I, there are a number of competing ways of understanding the project of equal opportunity even at this level of abstraction. But this commonly held, intuitive view will do for now.

¹⁶ JOHN RAWLS, *A Theory of Justice* 63 (rev. ed. 1999) (hereafter "TOJ"). All citations to TOJ in this book are to the revised edition.

¹⁷ This formulation ignores luck. But including luck does not solve the problem discussed in these paragraphs. For a discussion of luck-egalitarianism, see *infra* section I.A.3, beginning page 35.

¹⁸ See *infra* section II.B, beginning page 88.

¹⁹ Thus, there is no one set of opportunities that will function as a fair baseline of equality for everyone. See *infra* section II.E, beginning page 115.

¹² See *infra* section I.C.1, beginning page 48 (discussing the problem of the family).
¹³ See *infra* section I.C.3, beginning page 65 (discussing testing regimes and starting gates).

or for that matter our efforts, can be isolated from the opportunities and experiences the world has afforded us. Instead, everything we are and everything we do is the product of layer upon layer of interaction between person and environment—between our selves, our efforts, and our opportunities—that in a sedimentary way, over time, build each of us into the person we become.²⁰ It is no more possible to extricate a persons’ “natural” abilities from these layered effects of developmental opportunities than it is possible to separate a person from herself. Thus, the project of isolating effort or “natural” talent from opportunities and other circumstances is fundamentally incoherent. We will have to build a theory of equal opportunity on a different foundation.

Finally, there are limitations to the strategy of breaking down the problem of equal opportunity by focusing on some single scale of outcomes or rewards. Such a single-scale approach has much to recommend it. It helps make a complex, multifaceted problem more tractable. Thus, quantitative empirical work on inequality of opportunity, particularly work by economists,²¹ tends to focus on a single scale of economic success, usually income. More philosophically inflected work often employs other, more sophisticated metrics. For instance, we might consider equal opportunity for achieving happiness, well-being, advantage, or the social positions that come with a greater share of Rawlsian primary goods. No matter the metric, we frame the project of equal opportunity as a problem of how to give people a fair chance to reach high on our chosen outcome scale.

Over the past several years, questions of class inequality and class mobility—including, specifically, the relationship between class origins and class destinations—have occupied American public discourse to a degree not seen in decades. This is a positive development; in any society in which class matters, it is worth discussing whether, or to what degree, parents’ class predicts their children’s class. At the same time, a single scale of class outcomes is too blunt an instrument to detect many of the most interesting dimensions of social mobility and immobility in complex, modern societies. For example, sociologists and labor economists are beginning to discover that children not only follow their parents in terms of socioeconomic status, but perhaps even more strikingly, many children follow directly into their parents’ occupations; the more finely we slice the data in terms of specific occupational categories, the further from random chance and the closer to their parents the children seem to fall.²² A child

may choose to follow a parent either into a general occupational category or into a specific occupation for any number of overlapping reasons—because the parent demonstrates the appeal of such a path in a way that causes the child to form an ambition to pursue it; because the parent gives the child special developmental opportunities and knowledge; because the parent helps the child obtain the job; or because the child has access to few other options. If children follow their parents into particular occupations, this will generally tend to perpetuate broad-gauge class inequalities. But perhaps we ought to find it troubling even if it did not.

To see the issue here, imagine a far more extreme case than our own: a society in which everyone must learn a trade on a parent’s knee, so that all children have the same occupation as at least one parent. Suppose that all jobs in the society offer similar prospects for income, prestige, and other rewards. (This need not mean perfect equality—suppose that in each job, some do well and some do poorly, but the distribution of outcomes looks the same for every job.) In terms of our outcome scale, there could be perfect equality of opportunity here: One’s chances of ending up high or low on that outcome scale do not depend on family background. Nonetheless, if we care about affording individuals the freedom to decide for themselves which paths in life to pursue, we ought to be troubled by the very limited range of opportunities this society allows each person. Similarly, in our own society, we ought to be concerned if access to different jobs and professions is governed to some significant degree not only by class background (which is problematic in itself), but also, in a more granular way, by special developmental opportunities and career opportunities that come with having parents or family members in specific occupations.

Focusing on a single outcome scale—any outcome scale—results in a somewhat flat and limited picture of *how* opportunities matter in our lives. Consider two people with similar class backgrounds. The first attends an American university, where a vast range of potential careers and lives open up before him. The family of the second requires him to leave school at eighteen and join the family business, which he does. Suppose the two are equally successful, in economic terms and in other terms as well—they are equally happy, equally respected. They live equally flourishing lives. Moreover, a few decades along, each strongly prefers his own life to the other’s, and far from being envious, would be quite unhappy if forced to trade places. Despite all this, it would be odd to assert that the two enjoyed equal opportunities. In fact, there were some very consequential differences in the opportunities that shaped their lives and their preferences, differences that do not show up on any outcome scale on which the two score equally high. An outcome scale gives us no sense of the range of paths they saw open before them—the range of different goals they were able to see themselves

²⁰ See *infra* section II.D, beginning page 104 (offering an account of this iterative interaction).

²¹ In contrast, sociologists, especially in Europe, tend to make use of class schemas that do not represent class in terms of a single hierarchical scale. See, e.g., Richard Breen, *The Comparative Study of Social Mobility*, in: *Social Mobility in Europe* 1, 9–14 (Richard Breen ed., 2005).

²² See, e.g., Jan O. Jonsson et al., *Occupations and Social Mobility: Gradational, Big-Class, and Micro-Class Reproduction in Comparative Perspective*, in: *Persistence, Privilege, & Parenting: THE COMPARATIVE STUDY OF INTERGENERATIONAL MOBILITY* 138 (Timothy M. Smeeding et al. eds., 2011).

pursuing, leading to lives marked by different combinations of dimensions of human flourishing.

What is missing here is the idea that opportunities matter in part not because they help us reach high on any particular scale of outcomes, but because through choosing which kinds of opportunities to pursue, we obtain important materials out of which we build a life. Many different pursuits and paths in life have value. Arguably, some of them have value incommensurable with the value of some of the others. Opportunities matter in part because they help each person formulate and revise his answer to the question of which paths and pursuits matter to him.

B. Opportunity Pluralism

This book is about the ways societies should, and do, structure opportunities. This subject is broader than the question of how to equalize opportunities or how we ought to define the state of affairs in which opportunities are equal. As the foregoing discussion suggests, I think there are reasons to be skeptical that equalization is the best paradigm for thinking about how opportunities ought to be distributed or structured. Not only is equalizing opportunities in certain cases impossible, and in certain other cases undesirable, but it also leaves too much out: It does not address a number of normatively important aspects of how a society structures its opportunities.

Many have argued that *equality* is not a precise description of what matters about the distribution of opportunities—after all, we can achieve equality of anything simply by “leveling down,”²³ as in the case of a terrible natural disaster that takes away most of everyone’s opportunities—and that instead we ought to focus on other distributive principles such as *maximin* (maximizing the minimum, or improving the opportunities of those with the least) or *priority* (trying to improve everyone’s opportunities, but giving priority to those whose opportunities are the most limited).²⁴ In ordinary political discourse, and sometimes

²³ A substantial literature has developed around the leveling-down objection to equality principles (although usually not in relation to opportunity). See, e.g., Derek Parfit, *Equality and Priority*, 10 RATIO 202, 211 (1997); Larry Temkin, *Egalitarianism Defended*, 113 ETHICS 764 (2003).

²⁴ For instance, Rawls’s conception of “Fair Equality of Opportunity” (FEO), mentioned above, actually aims for maximin rather than strict equality. FEO expressly permits departures from strict equality of opportunity on maximin grounds: Inequalities of opportunity are permitted if and only if they “enhance the opportunities of those with the lesser opportunity.” Rawls, TOJ 266. There is some ambiguity about how exactly to interpret this oft-ignored maximin aspect of FEO. See Thomas W. Pogge, *REALIZING RAWLS* 165–181 (1989). Another possible distributive principle, *sufficiency*, might also be applied to opportunities. See Andrew Mason, *LEVELING THE PLAYING FIELD: THE IDEA OF EQUAL OPPORTUNITY AND ITS PLACE IN EGALITARIAN THOUGHT* 145

even in philosophical writing, the general term “equal opportunity” is capacious enough to encompass such alternative principles as these, even though they are not, strictly speaking, equality principles. “Equal opportunity” in this more capacious sense also encompasses the argument of this book, which is rooted in the same broadly egalitarian tradition. However, my project here is not simply to argue for an alternative distributive principle akin to maximin or priority.²⁵ In order to begin to address all the problems outlined above, we need a more fundamental shift in the way we think about opportunities and their distribution. Each of the problems outlined above makes our task more difficult. If we hope to take into account the concatenation of different contests and developmental stages rather than focusing on a single competitive or developmental domain; if we aim to consider opportunities measured not only from birth but from all points in the life course; if we begin with a philosophically realistic picture of the layered processes of human development rather than with assumptions about natural talents; and if ultimately we care not about any single scale of outcomes or rewards, but about the full richness of the different, incommensurable goals that people might formulate for themselves; then it might seem that we have set up an impossible task. Discarding all of one’s existing strategies for breaking down a complex problem and rendering it tractable is not ordinarily the best approach to solving it. But as it turns out, there is much to be gained from looking squarely at the structure of opportunities as a whole rather than viewing it piecemeal. While this book will (inevitably) propose some new ways to break the problem down into manageable pieces, we can arrive at these only by paying attention to larger questions about the overall shape of the opportunity structure. If we look carefully, we can find these structural questions lurking behind many existing debates about equal opportunity.

In a deservedly famous 1962 essay, Bernard Williams offered a provocative example of a warrior society—an example that will play a significant role in the argument of this book.²⁶ In this society, there are two hereditary castes: warriors and non-warriors. The warriors defend the society, a job requiring great athletic skill, and they are rewarded for this important work with all the prestige and all the good things the society has to offer. Egalitarian reformers argue that this situation is unfair, and they succeed in changing the rules; the hereditary caste system is replaced with a fair athletic contest in which sixteen-year-olds

(2006) (characterizing as a conception of “equality of opportunity” a proposal that, in part, seeks sufficiency of basic educational opportunities).

²⁵ In the end, the proposal of this book is compatible with, and I endorse, a version of Priority. See *infra* section III.C.1, beginning page 188.

²⁶ Bernard Williams, *The Idea of Equality*, in 2 PHILOSOPHY, POLITICS, AND SOCIETY 110, 126 (Peter Laslett & W. G. Runciman eds., 1962). My version here adds some details that fill out the example.

of any background can try to earn one of the coveted warrior slots, of which there are, as before, a fixed number. As it turns out, the children of the warriors have effectively been training their whole lives for the contest. They are better nourished, healthier, stronger, and more confident. They win. Although a certain formal kind of equality of opportunity has been achieved, identical substantive inequalities of opportunity persist, in that everyone remains in the role family background would predict. Williams argues that this “supposed equality of opportunity is quite empty—indeed, one may say that it does not really exist—unless it is made more effective than this.”²⁷ Formal equality of opportunity at the moment of decision cannot by itself do the work that one would expect a principle of equal opportunity to do. Something more is required. At a minimum, we must also address the developmental opportunities (or lack thereof) that precede the contest.²⁸

This realization leads inexorably to a number of deep problems. In certain respects, the developmental opportunities two different people experience cannot be made truly equal. Even in a science-fiction world in which two people could grow up in literally identical circumstances, because they are two different people, they would not be able to interact with those circumstances in exactly the same way. Thus, they would not experience precisely the same developmental opportunities.²⁹ In other respects, the developmental opportunities two people experience ought not to be made truly equal. Many inequalities stem from sources that egalitarian public policy should not reach, such as certain aspects of parents’ liberty regarding how to raise their children.³⁰

Once we accept that at least some inequalities of developmental opportunities will exist, the problem that the warrior society example encapsulates becomes more acute. If we set up one critical contest at *any* age, and condition future membership in the warrior caste on success in that contest, it does not take any advanced grasp of sociology or of rational choice theory to predict certain results. Parents will attempt to use their resources (of various kinds) to give their children advantages in the contest. Differences in resources will affect the children’s outcomes. Society will face complex problems of social justice analogous to modern debates about affirmative action. Should children from less advantaged backgrounds receive preferences or bonus points of some kind to make up for in some way the developmental opportunities they lacked? Should

we judge present performance, projected future performance, or what each person has made of the opportunities she has been given?³² Certain other consequences, less often remarked upon, are equally predictable. Many children will come to understand the enterprise in which they are engaged, in the years leading up to the test, as one of preparation for success or failure. They will form the goal of succeeding on the test and joining the warrior caste.³³ This goal will shape the development and the plans of life of those who succeed on the test and those who fail.

The warrior society is a useful thought experiment, but it would not be a very appealing society to live in. The social order is too monolithic. There is only one profession, or only one apparently worth pursuing; no other paths are available to those who fail the test. Because the whole society is structured around or contest, everyone is seeking the same path to success and flourishing. Such society lacks a kind of *pluralism* that enriches the contemporary world: a variety of paths one might pursue, or enterprises in which one might engage, along with some degree of disagreement about which of those are best or most valuable, so that not everyone is fighting for exactly the same scarce slots.

Thankfully, the warrior society is an unrealistic portrait of any modern society. But in various respects, different modern societies resemble the warrior society to a greater or a lesser degree. In a hypothetical modern society I call the “big test society,”³⁴ there are a number of different careers and professions, but a prospects of pursuing any of them depend on one’s performance on a single test administered at age sixteen. The big test society will predictably have many of the same features as the warrior society: Even though people are pursuing different goals, they will all focus their efforts (and any advantages they can give the children) on the big test, since all prospects depend on its results. Such a test is an extreme example of what I call a “bottleneck,” a narrow place in the opportunity structure through which one must pass in order to successfully pursue a wide range of valued goals.

A bottleneck need not be a test. For example, in a society marked by discrimination or caste, it is membership in the favored caste that functions as the crucial qualification: Only those of the right race, sex, or ancestry can pass through the gateways to opportunity. Others may sometimes attempt to pass as members of the favored caste in order to sneak through the bottleneck and reach the opportunities on the other side.

²⁷ *Id.*

²⁸ See *infra* section I.A, beginning page 25 (discussing competing conceptions of equal opportunity).

²⁹ See *infra* sections II.C, beginning page 100, and III.E, beginning page 115.

³⁰ See *infra* section I.C.1, beginning page 48 (discussing the problem of the family).

³¹ See *infra* section I.C.2, beginning page 56 (discussing the problem of merit).

³² *See id.*

³³ See *infra* section I.C.4, beginning page 74 (discussing the problem of individuality).

³⁴ See *infra* section I.C.3.i, beginning page 66 (discussing the big test society).

In chapter III, where I develop the notion of bottlenecks in more detail, I call bottlenecks like these *qualification bottlenecks*. I also introduce two more kinds of bottlenecks. *Developmental bottlenecks* are not about the tests or qualifications that determine what happens at a particular moment of decision. Instead, they concern critical developmental opportunities through which people must pass if they are to develop important abilities or skills that they will need to pursue many of the paths their society offers. Suppose that almost all jobs in a society—as well as many activities other than jobs—require literacy. In that case, regardless of whether anyone actually imposes a literacy test at a critical moment, the opportunity to *develop* literacy constitutes an important developmental bottleneck. Without it, a person will be unable to proceed along many paths.

A final type of bottleneck, the *instrumental-good bottleneck*, exists when people who may have widely varying conceptions of the good, who may be seeking quite different goals, nonetheless find that they all need the same instrumental good—the paradigm case is money—in order to achieve their goals. Instrumental-good bottlenecks collapse a certain pluralism of goals and preferences, rendering people's goals and preferences more uniform. For instance, imagine that ten different people have ten different rank orderings of different careers, from preschool teacher to police officer to investment banker, based on the different weights and values they place on various features of those careers. Now imagine that for some reason, money becomes much more important in this society; much more essential for achieving more of the goals each person has. Imagine that some significant amount of money becomes instrumentally indispensable for achieving, say, physical safety and health, which all of our ten people value highly, along with other goals of special importance to each of them.

In that case, those ten rank orderings will now collapse toward a single scale. People will prefer careers that are more likely to earn them the money they need.³⁵ This is not because they have become greedier, or because the intrinsic value they place on money is any different than before. It is because money has become more of a bottleneck, in the sense of being more necessary, instrumentally, to reach the outcomes that each person values. An instrumental-good bottleneck will also become more severe if it becomes more difficult to obtain (enough of) the good. That is, suppose we alter the *distribution* of money in such a way that now, only a very select few of the jobs and professions enable a person to cross the threshold of money that many major goals require. In the wake of such a change, a person would have to have very idiosyncratic preferences not to attempt to obtain one of those select few high-earning jobs. Otherwise, whatever one's preferences and values, a rational person facing a bottleneck of this

kind ought to make every effort to maximize her chances of obtaining one of the high-earning jobs because of how much of a difference the money makes.

As this example of money suggests, bottlenecks are inevitable. There is no way of structuring opportunities that eliminates them. However, different ways of structuring opportunities have the effect of making different bottlenecks more or less severe. In chapter III, I offer stylized descriptions of two models of how a society might structure opportunities, which I call the “unitary” and “pluralistic” models.

The unitary model resembles the warrior society and the big test society.³⁶ In the unitary model, everyone has identical preferences about which jobs and social roles they would prefer to hold. This might come about because some powerful force of social conformity leads to a deep lack of normative pluralism, in which everyone holds creepily identical views about the kind of life they wish to live, the good things they value, and the goals they wish to pursue. Alternatively, this might come about because an instrumental-good bottleneck is sufficiently powerful that it collapses everyone's different values and goals into a single rank-ordering of which jobs and social roles are best. In this unitary model, all of those desired jobs and roles are competitive positions with fixed numbers of slots. The preparatory positions that enable a person to compete for those slots—the educational experiences and credentials, apprenticeships, entry-level positions, and so on—are likewise competitive positions with fixed numbers of slots. The qualifications required to obtain each of these jobs, roles, and preparatory positions are uniform across the society. One must enter the relevant preparatory positions at prescribed ages and in the proper sequence. Furthermore, there is no way for anyone to strike out on their own and create new enterprises or new kinds of jobs or roles. The opportunity structure is, from the perspective of any individual, wholly external and fixed.

This admittedly stylized model marks one endpoint of a spectrum. At the other end is the pluralistic model, which is necessarily a little harder to visualize. In the pluralistic model, people hold diverse views about what constitutes a good life, and they have different preferences about which social roles and jobs they would prefer to hold. These different social roles and jobs genuinely offer some different, and incommensurable, things a person might value; different possible lives involve different (combinations of) forms of human flourishing.³⁷ People thus disagree about what constitutes “success.” This requires that no instrumental-good bottleneck, including money, be too severe. Many of the

³⁵ See *infra* section IV.A.1, beginning page 200 (discussing the fear of downward mobility).

³⁶ See *infra* section III.A, beginning page 131.

³⁷ See *infra* section III.C, beginning page 186 (discussing perfectionism and the role of human flourishing in the argument of this book).

goods that people value are non-positional—that is, one's enjoyment of the good is unaffected by who else also has it.

In the pluralistic model, many different processes and gatekeepers, employing different criteria, decide who will get any given job or role. Most of those jobs and roles are not fixed in number—that is, there may be somewhat more or fewer slots, depending on how many people pursue them. This is also true of the preparatory positions that enable people to become qualified for the various roles. Rather than competitive, zero-sum contests for limited slots, in the pluralistic model many of the important educational experiences, apprenticeships, entry-level positions, and so on are relatively noncompetitive. Where there is competition, it is not one competition but many. Different institutions employ different criteria, so that no one criterion constitutes too much of a bottleneck. Moreover, one can pursue any of these paths at any age.

Finally, in the pluralistic model, for many valued roles, the only gatekeeper is the most decentralized one: a market. Those aspiring to such roles need not convince any large institution or admissions committee to give them a coveted slot, but instead can take out an advertisement or hang out a shingle and give it a try. For this part of the pluralistic model to exist, capital, knowledge, and other relevant resources must be relatively accessible; otherwise, access to capital, knowledge, and so forth may itself become a powerful bottleneck constraining people's opportunities.³⁸ There is also a deeper entrepreneurial dimension to the pluralistic model. In the warrior society, there was only one profession; in the unitary model, the landscape of professions and workplaces was fixed. In the pluralistic model, society makes it possible for individuals to strike out on their own and create new kinds of enterprises and pursuits that did not exist before. Nor is this dimension of the opportunity structure limited to the economic sphere. In the pluralistic model, individuals have the space, socially as well as economically, to engage in what John Stuart Mill called "experiments in living," creating new activities, roles, and modes of social organization for themselves and others.

The project of this book is to advance an idea I call *opportunity pluralism*: the idea that societies ought to move their structures of opportunity away from the unitary model and toward the pluralistic model. I will have much more to say in chapter III about why such moves, even at a small and incremental level, are worthwhile—and also about the potential costs in terms of efficiency of such moves, which are not always as great as they might appear.³⁹ But for now, let me

start by explaining how moving in the direction of the pluralistic model alters some important incentives in a society.

In the big test society, as in the warrior society, of course parents pass whatever advantages they can to their children, and children use whatever tools they have at their disposal to improve their performance on the test. It would be irrational to do otherwise, given that the test is the bottleneck through which one must pass to reach any path that anyone (without very idiosyncratic preferences) would value. A parent who thinks his child might be inclined in some other direction, toward some other kind of activity, ought to do his best to squelch that inclination and get the child back on task. The test is the measure of success. Any young person seeing a bottleneck of such magnitude in front of her is likely to internalize this definition of success and organize her own life accordingly.

A more pluralistic opportunity structure creates different incentives. It gives individuals the space to reflect in a more personal and ongoing way about what paths they would like to pursue and what goals in life they value. Instead of being locked into a series of concatenated zero-sum competitions with their peers, people in a pluralistic opportunity structure see before them the first steps on many different paths. In part by taking some of those steps—and in many cases, by changing their minds and trying something else—people can pursue lives whose goals, to whatever degree they may be achieved, are at least more authentically their own.

Moreover, a pluralistic opportunity structure ensures that for those who do not succeed at first—for example, those who for one reason or another drop out of school—all is not lost. The starting points of many paths remain open. The same is true for people who pursue one path for many years and then decide to start over, gradually building up the experience and qualifications to pursue something else.

There may be natural limits on how far this idea can be pushed. Human life is only so long; learning to do some things well takes a great deal of time; and some abilities that children develop easily may be more difficult for adults to develop. But opportunity pluralism reduces the extent to which the social order reinforces these natural limits with arbitrary, inflexible structures that mandate that the only people able to pursue certain paths are those who won specific contests at specific ages. By lowering the stakes of such contests, opportunity pluralism ameliorates (though it cannot eliminate) a number of the other problems discussed above, including the problem of concatenation, through which early advantages are magnified so that those who are behind cannot catch up.

If there are many paths, each of which one might have good reasons to prefer, this changes the shape of the opportunity structure. Instead of a pyramid, with a series of zero-sum contests to reach higher and narrower stages toward the top, the opportunity structure begins to look more like a city, with many different

³⁸ In addition, the market itself must not create or reinforce bottlenecks, such as when discrimination is widespread in a market.

³⁹ See *infra* section III.B.8, beginning page 179. The efficiency issue is complex. Although unitary opportunity structures often involve the least costly testing mechanisms, they also often involve the greatest waste of human capital.

structures and various roads and paths among them, so that wherever a person may be situated, she has a range of choices regarding where to go next and what goals to pursue.

case: We generally develop ambitions to pursue paths that we actually see. Equal opportunity is such a powerful ideal in part because it helps to cut through all of this. Opportunities give us access to different ways of flourishing in the world, some of which we can then make our own.

I.C. Four Problems for Equal Opportunity

The foregoing discussion only adds to and fills out what amounts to quite a long list of reasons why we value equal opportunity. Indeed, the value of equal opportunity seems overdetermined. It would be enough if we cared about any one or any subset of the various reasons we have for valuing equal opportunity: distributive fairness and desert, efficiency, social cooperation, or, as emphasized above, promoting human flourishing and autonomy.

Nonetheless, in the rest of this chapter, I discuss four independent (albeit interconnected) reasons why equal opportunity cannot be achieved—and perhaps even more troublingly, why in certain respects it *ought* not to be achieved—at least if it is defined in any of the ways we have discussed so far.

I.C.1. The Problem of the Family

Rawls points out in his discussion of FEO that “the principle of fair opportunity can be only imperfectly carried out, at least as long as some form of the family exists.”⁸² Rawls is right to put it this strongly. It is not just that families, as we know them today, make fair equality of opportunity impossible to achieve. This problem would arise, at least to some significant degree, under any conceivable form of the family that we would recognize as a family.

i. Parental Advantages

The basic problem arises because parents—and families more generally—act in ways that give their children advantages. Parents do this to different degrees and in different ways, creating inequalities of opportunity that begin early, run deep, and tend to persist. Parents directly transfer money to children, which can make it possible for a child to pursue opportunities (paying for college, starting a business) that would otherwise be impossible. Financial advantages also play a subtler role, enabling some children to take risks in pursuit of their goals, secure in the knowledge that their family would provide an economic backstop in the

event that things go poorly. If these direct financial advantages were the primary way that parents gave their children advantages, then egalitarian policymakers would have a considerably easier time promoting equal opportunity. Tax and transfer policies can attack such inequalities directly. For instance, society could use money obtained through income or wealth taxation to provide everyone with a basic income or to distribute a measure of wealth to each rising generation.⁸³ However, most of the advantages parents and families give children are nothing like these simple financial advantages and are consequently much more difficult to equalize or even mitigate.

Consider a few examples. Parents (and families—I focus on parents for simplicity) can use connections to give their children a leg up in competition for jobs and educational credentials. Parents can send their children to better schools, either public or private, that dramatically improve their educational and professional prospects. Parents can choose to live in good neighborhoods that offer advantages in safety, special resources, and social opportunities that derive from interactions with privileged peers and *their* families, thereby connecting children to networks that offer a wealth of opportunities. Parents can provide or arrange a vast array of experiences that are developmentally significant, from books to extracurricular activities to travel. Parents give their children advantages by showing them (often by example) that certain paths exist in the world that they might one day pursue themselves. Without necessarily even meaning to do so, parents pass along habits of appearance, vocabulary words, ways of speaking, and other characteristics that some observers will later understand as proxies for meritorious traits, which can give children substantial advantages. Parents give children advantages by engaging them intellectually, teaching them about the world, and, especially, instilling in them a sense of self-worth and efficacy. Through interaction and care, parents help children develop their executive function, basic social skills, and other capacities that are essential to becoming competent adults.

The advantages all these parental acts provide are so obvious that it seems awkward, perhaps even perverse, to view some of them as special advantages rather than simply as good parenting. This is especially true of those toward the end of the above list. But good parenting is a special advantage in a world where not all children are lucky enough to experience it. Although there are contested and culturally contingent questions about exactly how far parents ought to go in providing their children with certain kinds of advantages, most parents ordinarily have some desire to further the development of their children. Many parents conceive of this as a major life goal; some believe it is their responsibility to help

⁸² RAWLS, TOJ, at 64.

⁸³ See *infra* note 79 on page 223.

their children grow and develop into full, actualized people who realize their potential.

We can separate two strands of motivation here—although in practice the two often converge for reasons I will discuss.⁸⁴ On the one hand, a parent might want his child to get ahead in life, to do better than other children. On this view, children are engaged in a competitive, perhaps ultimately zero-sum, struggle for future social roles and their attendant rewards, and parents want to improve their child's chances of ending up among the winners. Alternatively, a parent might want to improve (or even maximize) his child's chances of developing her potential and becoming an actualized, talented, flourishing person, defined in some way that is absolute rather than relative. It would not matter to this second parent what special opportunities other children have (except perhaps to the extent that those provide information about what opportunities exist). In some cases, these two categories of motivation will lead parents to take different kinds of actions, but in other cases, their results are indistinguishable. Let us work from the agnostic premise that some version of at least one of these parental motivations—either of which might lead to the passing of advantages—will remain a part of human life as long as families exist. In addition, it is important to acknowledge that parents pass along many advantages to their children inadvertently, without any particular intention to do so.

Parental advantages make the principle of fair life chances impossible to achieve. Not all parents are equally motivated or equally able to pass on advantages. Even very sweeping, large-scale changes to the institution of the family or the norms surrounding parenting would not solve this problem. As long as families differ in some respects, and some parents have somewhat more resources or more ability to pass on advantages than others, fair life chances cannot be achieved.

In theory, we could solve this problem by eliminating the institution of the family entirely. But this is not a serious idea. There are powerful reasons to continue to allow families to exist in ways that will pass along advantages to children. Some of these reasons are prudential, but many are moral. Parents have liberty and autonomy interests in being able to choose to have children and to raise them in particular ways.⁸⁵ Although these interests have limits, it is important

to recognize that for many people, various aspects of childrearing are important dimensions of a flourishing life—and moreover, the kind of life they have chosen. If we value flourishing and autonomy (not to mention basic reproductive freedom), then society cannot eliminate parental advantage.

ii. Mitigation and Compensation

Society can reduce the magnitude of the inequalities of opportunity that arise from parents passing on advantages to children in a variety of ways. The state may direct special programs toward the children of parents who are the least able to pass on advantages. Or the state may provide every child with some basic developmental opportunities on a mass scale (preschool for all, for example, or universal children's healthcare) that have the effect of reducing inequalities.

Both of these approaches can help a great deal, but they cannot neutralize the inequalities of opportunity we are discussing here. Even in principle, if we imagine a state that is much more intrusive and controlling of families' lives and child-rearing practices than we would ever allow, the differences are still far too great. As a machine for passing on advantages to children and giving them the formal merit they need to win the contests of life, the family is simply far too effective.⁸⁶

Some egalitarians might respond with a different approach: *compensation*. Under this approach, children who are unlucky in their parents are granted other resources and advantages as compensation. We redistribute resources to mitigate the consequences of certain forms of bad luck—in this case, bad luck in our parents and related circumstances of birth. One version of such an approach is Dworkin's hypothetical insurance market—and as Dworkin argues, we need not literally set up such an insurance system, but can instead evaluate other policies such as tax and transfer policies, health policies, and so on, to see how well they approximate the kind of compensation we conclude would be just.⁸⁷

A compensation approach could certainly be helpful. But it could not, even in principle, fully neutralize the effects of the unequal opportunities. Imagine, for simplicity, that the plan is simply to redistribute income or wealth directly to those children who are unlucky in their parents.⁸⁸ This would improve those children's welfare, and it would increase their opportunities (since income and wealth create many opportunities). But even if society chose to tax itself at

⁸⁴ See ADAM SWIFT, HOW NOT TO BE A HIPPOCRITE: SCHOOL CHOICE FOR THE MORALLY PERPLEXED 21–33 (2003); *see also infra* pages 144–146.

⁸⁵ See JAMES S. FISHKIN, JUSTICE, EQUAL OPPORTUNITY, AND THE FAMILY, 35–43 (1983) (discussing “the autonomy of the family”); Harry Brighouse & Adam Swift, *Parents' Rights and the Value of the Family*, 117 ETHICS 80, 102 (2005) (arguing for a limited sphere of parents' rights based on a fundamental right to “an intimate relationship of a certain kind with their children”). To call this interest an autonomy interest is not the same as asserting that parents should enjoy a sphere of complete autonomy within the family. Parents' interests must be balanced with children's interests,

a complex problem. *See generally* MATTHEW CLAYTON, JUSTICE AND LEGITIMACY IN UPBRINGING 48–123 (2005); Brighouse & Swift, *id.*, at 101–106.

⁸⁶ See *infra* pages 125–126.

⁸⁷ See *supra* pages 39–40.

⁸⁸ This is Van Parijs's approach, although the only individuals who would receive the extra resources on his account are those who all agree are worse off. *See supra* note 79 on page 46 and accompanying text.

extreme levels to provide extensive compensatory resources, the compensation would do nothing to replicate the developmental processes that make the more advantaged children who they are.

The next chapter examines these developmental processes in more detail. For now, the point is simply the one noted above: A compensation approach would provide what Rawls calls “external rewards” and indeed would provide some opportunities, but it would not necessarily open the door to the “realization of self” that is “one of the main forms of the human good.” The recipients of compensatory aid will gain the substantial subset of opportunities that money can buy but will lack many other opportunities not fully commensurable with those. Money generally does not enable or qualify a person to do the jobs and inhabit the social roles that are desirable for reasons not limited to external rewards.

One response to this argument is to hold that we need broader forms of redistribution that are not limited to income and wealth. What about policies that aim to alter the distribution of not only money, but some of the other features that make particular jobs and social roles desirable? Paul Gomberg argues that society should alter the structure of work itself in order to more broadly distribute the opportunities “to develop complex abilities, to contribute those developed abilities to society, and to be esteemed for those social contributions,” so that “no one’s working life need be consumed by routine labor.”⁸⁹ Like compensation, this approach has some promise. Essentially it presses toward a flatter distribution of many of the features, beyond resources, that make some jobs more rewarding and worthwhile than others. It is true, as Gomberg suggests, that even adults can develop some complex abilities they do not already possess, and that the structure of jobs affects people’s opportunities to do this.

However, there are real limits to how far this proposal can be pushed, both practically and even in ideal theory. Specialization has many practical benefits. And even in ideal theory, if the structure of jobs became less hierarchical and specialized, this would still do little to address the inequalities of early developmental opportunities that shape the kinds of people we all become. As long as not all jobs and social roles are identical, developmental opportunities will shape who ends up doing what. Families do not merely provide advantages in terms of who will be the surgeon and who will be the nurse’s aide in some future hospital (although they certainly do that). They shape us in ways with deeper consequences for our competencies, our ambitions, and even our goals in life. They affect which contests we will enter, as well as which we will win.

Thus, unless we are willing to destroy the family and move to a system of collective childrearing, like the one contemplated in Plato’s *Republic* or in mythologized versions of early Israeli kibbutz experiments, life chances will never be completely independent of circumstances of birth. The family constrains the achievement of any conception of equal opportunity that includes the principle of fair life chances. One way to understand this problem is as part of a *trilemma* in ideal theory. We can achieve any two, but not all three, of the following: (1) the principle of the fair contest; (2) the principle of fair life chances; and (3) families that pass on advantages to their children.⁹⁰ Our present social and economic order is characterized approximately by formal equality of opportunity coupled with families passing on advantages, (1) and (3). Children’s life chances depend greatly on the circumstances of their birth.

In theory, we can imagine a society that eliminated the institution of the family—grossly violating the autonomy of parents—and thereby achieved both the fair contest and fair life chances, (1) and (2).⁹¹ If we wish to keep the institution of the family and instantiate the principle of fair life chances, (2) and (3), the remaining strategy is to use mechanisms of reverse discrimination, which violate formal equality of opportunity by placing individuals who have faced disadvantages based on their birth circumstances in educational places and jobs for which they are less formally qualified. At the extreme, a “reverse-discrimination warrior society” could achieve (2) and (3) while allowing families to pass on unlimited advantages. However, there are good reasons to value the fair contest, beginning with efficiency. There would seem to be good reasons to avoid at least the extreme situation in which social roles are assigned in ways that bear little relation to individuals’ developed skills and other job-relevant characteristics.⁹²

Many policies that mitigate the advantages families pass to children are highly justifiable—particularly policies that manage to reduce inequality by leveling up. Those policies provide us with some room to maneuver. But more than just

⁸⁹ FISHKIN, JUSTICE, EQUAL OPPORTUNITY, AND THE FAMILY, at 44. This trilemma applies whenever there are some positions in the society more desirable than others—as will be true in any society with distinct jobs and social roles. “Fair life chances” is my counterpart to the “equal life chances” in the original version of the trilemma. Even if we imagine that life chances should depend on natural talents—and should not in that sense be “equal”—we still cannot achieve all three elements of this trilemma.

⁹⁰ Indeed, by itself, even the elimination of the family would not be enough to achieve fair life chances, because families are not the only circumstance of birth. One would also have to eliminate racism, sexism, and other sources of unequal opportunity based on circumstances of birth.

⁹¹ See *id.* at 55.

⁹² PAUL GOMBERG, HOW TO MAKE OPPORTUNITY EQUAL: RACE AND CONTRIBUTIVE JUSTICE 1–2 (2007).

a bit of maneuvering is needed. In all modern societies, and especially in the United States, life chances are strikingly dependent on circumstances of birth.⁹³

The problem of the family is a serious wrench in the machinery of Rawls's TOJ—one that causes the machinery of Rawls's special conception of justice to grind to a strange and unsatisfying halt. Seeing this requires delving a little further into how Rawls's special conception of justice works. Rawls strongly rejects what he calls intuitionism, which is the balancing of competing first principles of justice that occurs when we lack a solution to the problem of which one has priority.⁹⁴ Rawls's solution is a theory structured around lexical (absolute) priority rules: The basic liberties have lexical priority over FEO, and FEO in turn has lexical priority over the difference principle. What does it mean, then, if FEO cannot be achieved? The lexical priority of FEO would seem to suggest that coming closer to achieving FEO should always take precedence over any further elements of the theory, including the difference principle. As long as it is possible to come closer to achieving FEO, the difference principle never even comes into play. One might imagine that at some point, gains to FEO could be outweighed by changes in the distribution of primary goods according to the difference principle, but Rawls is very explicit about rejecting such balancing, calling a conception of justice without a priority rule “but half a conception.”⁹⁵ Rawls cannot avoid this set of problems by arguing that they would not arise in what he calls a *well-ordered society*—a society with just institutions, whose members all share and are motivated by a set of principles of justice.⁹⁶ Families exist in a well-ordered society.⁹⁷ And even in a well-ordered society, these

⁹³ See sources cited *supra* note 64 on page 42.

⁹⁴ See Rawls, TOJ, at 30–40.

⁹⁵ *Id.* at 37. In later writing, Rawls became less sure of the lexical priority of FEO over the difference principle, though he neither proposed an alternative balancing rule nor openly endorsed an intuitionistic approach. JOHN RAWLS, *JUSTICE AS FAIRNESS: A RESTATEMENT* 163 n. 44 (2001) (“At present I do not know what is best here and simply register my uncertainty.”) A change of some kind, however, is needed. One cannot maintain (1) a commitment to the lexical priority of FEO over the difference principle, (2) a commitment to a sufficient sphere of family autonomy that FEO cannot be fully achieved, and (3) a substantive commitment to the difference principle. Andrew Mason’s attempt to reconstruct this aspect of Rawls’s theory suggests that the best course is rejecting the priority of FEO. See ANDREW MASON, *LEVELLING THE PLAYING FIELD: THE IDEA OF EQUAL OPPORTUNITY AND ITS PLACE IN EGALITARIAN THOUGHT* 82–88 (2006). Samuel Freeman argues that FEO should be read

as a more limited principle, more distant from its luck egalitarian cousins, a principle that would require only “much more modest measures, namely educational opportunities that enable all to fully develop their capacities, universal health-care provisions, and so on.” SAMUEL FREEMAN, *RAWLS 98* (2007).

⁹⁶ See *Rawls*, TOJ, at 4–5.

⁹⁷ See *id.* at 405 (noting in a different context that “I shall assume that the basic structure of a well-ordered society includes the family in some form...”). Indeed, families in *some* form are certain to exist in any society, well-ordered or not, except a society that prohibits the formation of families, which would obviously violate basic liberties.

families will differ in income and wealth (as well as in other relevant respects).⁹⁸ As long as those two things are true, children’s birth circumstances will necessarily differ; children will be born into different “initial place[s]” in the social system.⁹⁹ That is why Rawls needs FEO in the first place—and why, in light of the argument above, it cannot be fully achieved. Perhaps in a well-ordered society, parents’ motivation to give their children advantages would be limited in important respects. But that does not come close to solving the problem. Parents pass along numerous advantages and disadvantages without even trying to do so, and they pass along others out of motivations that would certainly be present in a well-ordered society. Thus, the problem of the family causes serious difficulties for Rawls’s theory, difficulties that become insurmountable as a result of the lexical priority rule.

The problem of the family confounds other theories of justice as well, if in a less dramatic way. Families are, for luck egalitarians, just the sort of brute luck factor that ought not to affect life chances. But they do—and while those effects can be mitigated, they cannot (and should not) be eliminated. Dworkin’s theory is capable of mitigating the problem of families passing on different endowments of resources to children; its conclusion is that we need to build social institutions that redistribute resources in a way that approximates the workings of the hypothetical insurance market. This approach would help. But it leaves in place inequalities of a deeper, more constitutive kind—inequalities in advantages that parents pass to children that do not take the form of resources, but instead shape children’s ambition, character, and choices. Such advantages may actually be the most important of all, for the same reasons that Rawls argues that of all the primary goods, the most important is “self-respect.”¹⁰⁰

Such advantages are the product of rich, iterative early interactions between children and parents with which it would be both difficult and, in some cases, morally problematic for society to interfere—and for which money and other resources seem a rather hollow form of compensation. Money will make the recipient better off, a lot of money ought to make her a lot better off. But it will not make her anything like the person she might have been under entirely different developmental conditions. It will not make her qualified to do and become all the things she might have done or might have become; nor will it inculcate in her the character, ambitions, goals, and values she would otherwise have had.

⁹⁸ We can infer this from the fact that not all positions in the society necessarily come with the same amount of income or wealth; it is these inequalities that set up the need for the difference principle.

⁹⁹ Indeed, different families would pass along different advantages even in a society *without* differences in income and wealth.

¹⁰⁰ Rawls, TOJ, at 336.

Inequalities of opportunity rooted in the family are not something egalitarians can wash away. In all real-world cases, and to some significant extent *even in ideal theory*, these inequalities are the uneven ground on which egalitarians must build. The unevenness of this ground affects everything that follows. The project of equal opportunity must proceed in a world in which developmental opportunities are not perfectly equal. This challenge sets the next two problems in motion.

I.C.2. The Problem of Merit

If egalitarians cannot make developmental opportunities perfectly equal, they ought then to consider pursuing a different approach at the same time: modifying the principle of the fair contest. Instead of always giving the valued jobs and social roles to the people with the most *formal* merit, we adopt a different definition of merit. For Rawlsian egalitarians, that definition of merit must track *talent and effort*, taken together—not the advantages derived from circumstances of birth. Luck egalitarians who wish to pursue this strategy require a definition of merit that captures a person's responsible choices and excludes not only circumstances of birth but also all other factors that are rooted in brute luck. (Starting-gate theorists reject this approach. After the starting gate, they aim for formal meritocracy only.) Dworkin also never embraces this approach. He recognizes a version of the problem I outline in this section. But for both Rawlsians and luck egalitarians, this strategy is a natural response to the problem of family advantages.)

Let us begin with the Rawlsian egalitarian version of this strategy. It captures an intuitively plausible idea: that jobs and social roles ought to be awarded on the basis of talent and effort, not on the basis of the many unearned advantages that we acquire because of our circumstances of birth, like those that enabled the warrior children to dominate the warrior contest. Remember that by "talent," Rawlsian egalitarians mean *natural talents*—not the accumulated advantages that may come from our "initial place in the social system." The premise here is that in an alternate reality, the same individual (in some sense) might have been born in different circumstances—to parents with different socioeconomic status, or education, or even with a different racial or gender identity in the eyes of her society.¹⁰¹ Rawlsian merit cuts away all of those factors and their effects.

Rawlsian egalitarians seek a definition of merit that is (a) a reflection of natural talent and effort and, at the same time, *not* (b) a reflection of circumstances of birth and the advantages that they produce.

The trouble for Rawlsian egalitarians is that no such thing exists. At least many, and perhaps almost all, facts about a person that are (a) are also (b). Let us examine this problem through an example.

i. An Admissions Example

Suppose you and I are the admissions committee at a medical school.¹⁰² We have before us two applicants, John and Lisa, and we have to choose one to admit. Last year, the choice would have been easy. Back then, we on the admissions committee were formal egalitarians. We just looked at everybody's medically relevant abilities, as measured by an admissions test, and picked the highest scorers. But then a muckraking journalist did an exposé of our admissions process, showing that every single person we admitted last year came from a wealthy family background. We were shocked. In response, we might simply have chosen to move in a formal plus direction, attempting to correct for biases in our test. But suppose we were confident that our test is unbiased; it predicts future medical performance relatively well. Nonetheless, we believe it is unacceptable to admit only the children of the rich. Now, we are Rawlsian egalitarians, and we have decided to judge applicants, from now on, only on the basis of talent and effort—not on the special advantages their parents may or may not have been able to buy or otherwise provide for them. Though we are no longer admitting exactly the students with the best-predicted future performance, we are not throwing the test out the window. We simply want to strip away the effects of the layers of family advantage some applicants received.

Of the two candidates before us, Lisa is the one we would have admitted last year: She has better admissions test scores than John. But Lisa's wealthy parents spared no expense in her education—and used alumni connections to help her get into an excellent university, where she received much better science training than John received at the third-tier university he attended. The university differences, rather than any differences in talents or effort, might explain the difference in scores. John might have more underlying talents than Lisa, but did not have the same chance to develop those talents. On the other hand, Lisa might really be more talented, as she appears. To choose, we would like to answer a counterfactual question: What would their scores have been if the effects of

¹⁰¹ See *supra* note 9 on page 27. From behind the veil of ignorance, there are many things one does not know about oneself, including race, gender, and genetic characteristics. Rawls divides these variables into what he calls "natural assets"—which would probably include some genetic predispositions, as well as many human traits—and "circumstances of birth," which include variables like the racial or gender categories that society thrusts upon us.

¹⁰² This example builds on Williams's argument in *The Idea of Equality*.

circumstances of birth were eliminated and they had both attended the same university?

Luckily, we are no ordinary admissions committee. In the wake of last year's scandal, we purchased a time machine that allows us to transport ourselves back in time and answer this kind of clear-cut counterfactual question. We go back in time, explain the situation to Lisa's college admissions committee, and they obligingly agree to admit John. We jump back to the present for the results. Lisa still has better scores, though the gap is smaller. Lisa worked harder in college and also appeared to have more scientific ability than John from the day she arrived. Problem solved? Maybe not. We have an uneasy feeling that if we had had the time machine last year, this counterfactual test would not have appreciably altered our embarrassing results.

We decide we need a further counterfactual. What if John had also attended Lisa's expensive secondary school, a place famous for instilling the habits of hard work and developing the scientific talents that she displays?¹⁰³ We go back in time again and get John placed at Lisa's school, with a scholarship to cover the cost. Again, back in the present, the gap has shrunk—but Lisa still comes out ahead. It seems that, even back in secondary school, Lisa worked harder than John. She was also a stronger student at the start of secondary school.

Now that we see the potential of this time machine, it would be arbitrary to stop here. What if, when John was small, his parents had taken him to the science museum that made such a big impression on eight-year-old Lisa? What if they had read more books to him at bedtime, or given him the set of blocks that helped Lisa develop the spatial skills that unlocked her mathematical talent? Unlike the cases of secondary school and college, where our counterfactuals turn on binary decisions by admissions gatekeepers, here it would take a fine sifting of Lisa and John's entire life stories to find out which factors were significant. What if John had simply been born to Lisa's parents?

It is not entirely clear what answering such a question would mean, or in what sense the version of John born to Lisa's parents would be the same John. The hypothetical question of how talented a person would be, or how much effort he would make, if he had been born in entirely different circumstances and had led a completely different life, bears almost no relation to the idea of talent and effort that we were trying to isolate. What we wanted was something resembling *present* talent and effort, but adjusted to exclude factors that depended on

advantages that came from circumstances of birth. Each successive use of the time machine strips away a layer of advantage that resulted from circumstances of birth, but it also strips away a bit of our connection with the reality of John and Lisa—the real, developed individuals standing before us, whose present attributes, adjusted to correct for circumstances of birth, are what we are after. As it turns out, once the adjustments are made, in the only way that it is possible to make them (even with a time machine), there may be almost nothing left of talent or effort for us to evaluate.

This example may seem esoteric, but consider its import. As the admissions committee, you and I really do have to choose between John and Lisa—and without the benefit of a time machine. Should applicants be judged on their present talents, fully developed at the moment of decision? This approach—formal equal opportunity—certainly has some appeal, but in many cases, the results seem highly unjust. After all, this was the approach of the warrior society. We will not come very close to realizing the principle of fair life chances unless we can do better than this. But the Rawlsian egalitarian search for talent and effort, isolated from circumstances of birth, is bound to come up empty: it is a search for something that does not exist.

ii. Merit for Luck Egalitarians

For luck egalitarians hoping to modify the principle of the fair contest in light of the principle of fair life chances, the task is, if anything, even more difficult. Instead of isolating talent and effort from circumstances of birth, a luck egalitarian must isolate responsible choices from the effects of brute luck—including luck in our circumstances of birth *and* in our natural talents. An admissions committee attempting to implement such an approach would look, for instance, for those applicants who had chosen to dedicate themselves diligently to the various pursuits that prepare one to be a medical student or doctor—while, at the same time, *not* rewarding the portion of those choices that was derived from brute luck.¹⁰⁴

Thus distinction cannot be made. In the same way that there is no core of talent and effort that can be isolated from circumstances of birth, there is no core of responsible choice to be isolated either. As Samuel Scheffler puts it, to draw the line between choice and chance, we would need to determine which “aspect[] of the self” is the source of each choice: We would need to “disentangl[e] the

¹⁰³ There is much evidence for the proposition that schools can instill habits of hard work—in other words, make students more motivated to put forth effort. See, e.g., Birgit Spinath, *Development and Modification of Motivation and Self-regulation in School Contexts: Introduction to the Special Issue*, 15 LEARNING & INSTRUCTION 85–86 (2005) (discussing evidence that interventions can affect both motivation and self-regulation).

¹⁰⁴ Although the admissions example is framed in terms of one individual case, we could equally speak of the problem at the wholesale level: Luck egalitarians must create institutions that reward responsible choices and not the effects of brute luck. The problems are in most respects the same.

respective contributions made by her will, on the one hand, and by unchosen features of her talents and personal circumstances, on the other.”¹⁰⁵ Because all our choices and efforts are so intimately bound up with the experiences that shape us and the opportunities we see before us, this disentangling is impossible. Dworkin recognizes this problem as well, in slightly different form, in his own distinction between choices and talents. He writes: “It is no more possible to erase all differences in wealth that derive from inequality in talent without also erasing some of those that derive from choice than it was for Shylock to take his pound of flesh without drawing a drop of blood.”¹⁰⁶ Indeed, it is essentially this problem that leads Dworkin to decide not to attempt to disentangle talents from choices at all, but instead to mitigate the effects of differential talents through resource transfers and his hypothetical insurance market.

For our purposes here, the immediate import of the disentangling problem (in its Rawlsian egalitarian, luck egalitarian, and/or Dworkinian forms) is that it spells trouble for the strategy of modifying the fair contest to achieve fair life chances. For luck egalitarians, this problem runs considerably deeper and amounts to a strong objection to the entire luck egalitarian project. Any attempt to achieve luck egalitarian justice would require distinguishing advantages that derive from choice from advantages that derive from luck. This is requiring the impossible.

G. A. Cohen responds to this objection as follows: Luck egalitarians do not seek any “absolute distinction between the presence and absence of genuine choice”; rather, the contributions of background brute luck and genuine choice are “a matter of degree, and egalitarian redress is indicated to the extent that disadvantage does not reflect genuine choice.”¹⁰⁷ Cohen anticipates the “disentangling” problem; he responds that such difficulties are “not a reason for not following the argument where it goes.”¹⁰⁸

For sophisticated luck egalitarians like Cohen, who recognize that all actions, and all advantages, are products of both chance and choice, the model is something like a mathematical disaggregation, separating the contributions of choice or effort from the effects of constitutive luck or other forms of brute luck. It is as if we could know, at least in theory, that of a warrior child’s strength, 60 percent is due to efforts made by the child and 40 percent is due to special advantages of diet or coaching that came with the child’s social position.

But this is not how human development works. As the next chapter argues, all of our traits and capacities result from an ongoing, continuous, iterative interaction over time between a person and the various facets of her environment. We may be more likely to put forth effort in directions where we see opportunities ahead, or in directions in which we are told we have talent. Because of this interaction, most advantage does not derive 60 percent from choice and 40 percent from chance, but rather 100 percent from choice and 100 percent from chance.¹⁰⁹

iii. Roemer’s EOp Proposal and the Limits of Merit

The most innovative attempt to cut through this problem in recent years is the conception of equal opportunity proposed by John Roemer.¹¹⁰ Roemer’s proposal is not designed to address the overall problem of fair life chances. Instead, it is designed for use in more narrowly specified distributive domains with a relatively well-defined outcome scale (healthcare, income, and so on). His idea is that an egalitarian society should enumerate variables that are outside of an individual’s control and that tend to be strongly correlated with the choices (or efforts) that individuals make in the relevant domain.¹¹¹ Depending on the domain, these variables might include sex, race, class background (divided into a small number of discrete categories), and so on. Roemer’s Equal Opportunity (“EOp”) function then groups individuals into “types”: Within each type, all the individuals are identical with respect to all of the enumerated variables. The EOp function uses these types as an indirect means of isolating a version of effort—or a version of the choices for which individuals can fairly be held responsible—from the background variables.

The cleverness of Roemer’s proposal is that it does not attempt to disaggregate the portion of effort that is attributable to the identified background circumstances from the rest. It makes no assumption that such disaggregation is possible. Instead, EOp compares each individual to the others of her type. The EOp function then distributes the best outcomes to those who appear to have put forth great effort *compared with the others of their type*. EOp thus makes the

¹⁰⁵ There are exceptions. For instance, when a small child receives a bequest, there is no choice and only chance.

¹⁰⁶ Scheffler, *What is Egalitarianism*, at 21. See also Samuel Scheffler, *Choice, Circumstance, and the Value of Equality*, 4 *Politics, Philosophy & Economics* 5 (2005).

¹⁰⁷ RONALD DWORKIN, *SOVEREIGN VIRTUE* 341 (2000).

¹⁰⁸ G. A. COHEN, *On the Currency of Egalitarian Justice*, in *ON THE CURRENCY OF EGALITARIAN JUSTICE, AND OTHER ESSAYS IN POLITICAL PHILOSOPHY* 3, 32 (Michael Otsuka ed., 2011).

¹⁰⁹ *Id.*

¹¹⁰ See JOHN E. ROEMER, *EQUALITY OF OPPORTUNITY* (2000). See also John E. Roemer, *Defending Equality of Opportunity*, 86 *MONIST* 261 (2003). For a useful summary and commentary, see the symposium *Equality and Responsibility*, 20 *BOSTON REVIEW* (Apr.–May 1995).

¹¹¹ Susan Hurley notes that Roemer’s EOp function is narrower than the luck egalitarian project in another way as well: It does not reward “effort” in any general sense, but rather identifies a particular direction or type of effort that society pledges to reward. Susan Hurley, *Roemer on Responsibility and Equality*, 21 *LAW AND PHILOSOPHY* 39, 54–55 (2002).

ultimate outcome variable statistically independent of each of the background variables that went into defining the types. EOp proposes that while it may be impossible in theory to extricate personal responsibility from background and experience, in practice, we can come up with a fair approximation of this, by comparing individuals with measurably similar backgrounds with one another, instead of comparing them to others.

Luck egalitarians cannot be completely satisfied with the limited, practical compromise that EOp represents. They have no moral reason for focusing especially on those circumstances of birth that the EOp function identifies and not on other circumstances of birth that are just as arbitrary. Consider two people. Both had difficult lives and overcame tremendous obstacles through extraordinary personal effort. One is poor, a category that the EOp function identifies; the other is wealthy, but suffered at the hands of abusive parents throughout his childhood in ways that constituted an equally severe disadvantage, though one of a more idiosyncratic and perhaps incommensurable character. Luck egalitarians have no good reason to treat these two people differently, but the one whose obstacle was poverty will appear much more merititious relative to type under an EOp function that enumerates a variable for poverty but not for abuse. To salvage the EOp function as a luck-egalitarian strategy, a luck egalitarian might propose that we simply include a new variable for parental abuse.¹¹² But really we will need to code for different varieties of dysfunction and abuse. Perhaps every unhappy family really is unhappy in its own way. Moreover, people interact with the same circumstances differently, due to their own traits and characteristics, which perhaps we would need to code for as well. As we attempt to render Roemer's proposal more consistent with luck egalitarianism, we keep adding types, with no principled stopping point, until each type contains only one person and EOp cannot function.

Implementing luck egalitarianism in this way is not Roemer's aim. EOp is supposed to work as a "rule of thumb" that goes some way toward approximating fairness in a world where some circumstances of birth cause large advantages and disadvantages.¹¹³ (For instance, in later empirical work making use of EOp to evaluate government policies, Roemer considers only three types, based on a single variable, one's father's educational background.¹¹⁴) In a way, EOp is less like luck egalitarianism than it is like a very limited version of the Rawlsian

egalitarian conception of fair life chances: The idea is that outcomes should be independent of *certain* enumerated circumstances of birth.

EOp is an instructive proposal because it brings the problem of merit into especially sharp relief. But EOp does not solve it. If our admissions committee were to build an admissions system around EOp, we would not compare Lisa with John at all; instead, we would ask how much effort (of the relevant kind) each of them made in comparison to others of their respective types. If we include even a few basic variables—income quintiles, a relatively simple race question, gender, and one or two more—the total number of types begins to run into the hundreds.¹¹⁵ Because we do not compare applicants to those outside their type, our admissions committee would have to create a preposterously elaborate quota system, admitting some small number of the best applicants of each type. Long before we had added enough variables to the model to capture much of the full picture of the advantages and disadvantages that derive from circumstances of birth, we would have so many types that the practice of admitting small numbers from each begins to lose its basic reliability—fluctuations in the applicants of a particular type from year to year would greatly affect any individual's chances of admission. The proliferation of types also strains the plausibility of any version of Roemer's "assumption of charity"—the premise that the merit variable we are ultimately looking for and aiming to reward is distributed evenly across the different types.¹¹⁶

These difficulties have not stopped some institutions from implementing the nearest real-world analogue to Roemer's proposal in the college admissions realm: percent plans such as the Texas Top Ten Percent Plan.¹¹⁷ These plans offer admission to a selective state university to the top X percent of each graduating high school class in the state, in that way admitting many people from poor backgrounds who would not otherwise have been admitted. One way to think of such plans is that each school is being treated like a type, in a process closely analogous to an EOp function.¹¹⁸ Due to race and class segregation, schools are often relatively homogeneous in terms of some important demographic variables; top grades are a sign that a person has put forth the greatest degree of effort, in Roemer's terms, within his or her environment. Of course, schools are not as homogeneous as that; within each school, differences in circumstances of birth greatly affect achievement. Thus, even with hundreds or thousands of types (one

¹¹² Roemer proposes that society decide democratically which variables to include.

¹¹³ See Roemer, *Defending*, at 276–277 (describing the use of EOp as a "rule of thumb"); *id.* at 280 (arguing that EOp "would bring contemporary societies closer to justice than what currently exists").

¹¹⁴ John E. Roemer et al., *To What Extent Do Fiscal Regimes Equalize Opportunities for Income Acquisition among Citizens?* 87 J. PUBLIC ECONOMICS 539, 553–554 (2003).

¹¹⁵ The total number of "types" is the number of combinations of values of these variables—that is the clever way EOp avoids complex problems of intersectionality.

¹¹⁶ See Roemer, *EQUALITY OF OPPORTUNITY* 15 (explaining the assumption of charity, which Roemer no longer advocates).

¹¹⁷ See *infra* page 250.

¹¹⁸ See Roemer, *Defending*, at 277–278.

for each school in the state), an approach like this is a very blunt instrument, one that does not come close to actually counterbalancing the effects of socio-economic disadvantage, let alone all the circumstances of birth that affect how individuals fare.

These problems might be avoided if, instead of using the EOp function, we engaged in a different sort of rough justice, by giving compensatory bonus points in our admissions calculus to students from various disadvantaged backgrounds. But that sort of approach abandons the EOp project. It relies implicitly on just the sort of disaggregation of choice from circumstance—deciding, for example, how much of a person's test performance to attribute to their poverty—that EOp managed to escape.

iv. Merit and Self

The admissions example in this section was an attempt to retrace a complex process of human development. We attempted to strip away successive layers of advantage derived from circumstances of birth, looking for a core of talent and effort (or for luck egalitarians, effort alone). But this project turned out to be like peeling away the layers of an onion. By attempting to peel down to a hypothetical version of John who had been born to Lisa's parents, we gradually peeled away the entire developed human being, John, who was before us. There was no person there except the person who was the product of a long series of iterative interactions with the world—beginning before birth and continuing throughout life. All of our choices, not to mention our abilities and talents, are inextricable from our experiences.¹¹⁹

To say this is not necessarily to endorse determinism or to take any position on the metaphysics of free will. It is simply to acknowledge that the part of the self that makes choices is not a separate kernel, hermetically sealed from the rest of

one's constantly developing mind and its interactions with the world. Whatever agency we may or may not possess, the self that exercises that agency is shaped by experience. There is no way to separate a person from the accumulated effects of her interactions with her circumstances, including her opportunities, because the product of those accumulated interactions is the person.

How, then, can equal opportunity—beyond formal equal opportunity—be achieved? When we attempt to modify the principle of the fair contest to achieve

fair life chances, we quickly find ourselves enmeshed in problems of disentangling choices (and/or talents) from circumstances. It would seem far easier to implement equal opportunity at an earlier stage—before people are locked in competitive contests—and then be done with it. That is the starting-gate approach. Of course, the problem of the family will limit how far we can go in equalizing early developmental opportunities. We are still stuck building on that uneven ground. Even so, perhaps this starting-gate approach deserves a closer look than we have given it, since it at least helps us escape the problem of disentangling merit from unearned advantage that arises if we try to implement fair life chances later on, when fully developed people are already locked in competitive contests.

I.C.3. The Problem of the Starting Gate

Starting-gate theories are widely popular, both in ordinary political debates about equal opportunity and in philosophical writing. It is easy to see why. They seem to provide a way of achieving both fair life chances and then the fair contest—first one and then the other—with the starting gate marking the crucial moment when we are done equalizing developmental opportunities and can now proceed with a contest that is formally fair. Different theories locate the starting gate in time with varying degrees of specificity. Richard Arneson, for example, has argued that individuals ought to face equivalent arrays of opportunities for well-being “at the onset of adulthood.”¹²⁰ Some starting-gate theories, like Arneson's, are luck egalitarian in spirit, but others are not.¹²¹ One reading of Rawls's TOJ renders it a starting-gate theory; I have argued that this is not the best reading. However, in later writing, Rawls endorses a version of a starting-gate theory when he suggests that the key to equal opportunity is evening out the effects of the circumstances into which people “are born and develop until the age of reason.”¹²² The underlying intuition is that equal

¹¹⁹ Richard Arneson, *Rawls, Responsibility, and Distributive Justice*, in *Justice, Political Liberalism, and Utilitarianism: Themes from Harsanyi and Rawls* 80, 101 (Marc Fleurbaey, Maurice Salles & John A. Weymark eds., 2008) (essay written in 1996). Arneson retreated from this view and proposed some mechanisms for correcting for brute luck at later stages in Richard Arneson, *Equality of Opportunity for Welfare* *Defended and Recanted*, 71. *Political Philosophy* 488, 490 (1999).

¹²⁰ See, e.g., Peter Vallentyne, *Brute Luck, Option Luck, and Equality of Initial Opportunities*, 112 *Ethics* 529 (2002) (arguing for a version of equal opportunity for advantage that he argues is superior to luck egalitarianism—but also arguing that both should be understood as starting-gate theories); ANDREW MASON, *LEVELLING THE PLAYING FIELD: THE IDEA OF EQUAL OPPORTUNITY AND ITS PLACE IN EGALITARIAN THOUGHT* 4 (2006) (proposing a starting-gate theory in which, before the starting gate, developmental opportunities are distributed according to a principle of adequacy, while after the starting gate, a meritocratic fair contest approach prevails).

¹²¹ JOHN RAWLS, *JUSTICE AS FAIRNESS: A RESTAURATION* 44 (2001) (emphasis added). The reference to “the age of reason” is an attempt to draw a sharp line that could function as a starting gate, which is not explicit in TOJ.

opportunity means different things in each of two domains: first, “the formation of individuals’ capacities and abilities in the early years of life, through the family and the educational system,” and second, “the opportunities that are available to people from young adulthood onward, in higher education, in the job market, and in social life generally.”¹²³ Clare Chambers criticizes a long list of egalitarian political theorists for this sort of thinking, which draws a sharp line at what she calls the “Moment of Equal Opportunity,” which I am calling the starting gate.¹²⁴

i. Limits of the *Ex Ante* Perspective

Let us reprise the warrior society once more—this time in a more appealing, even utopian, incarnation. Imagine that egalitarian reformers succeed in creating warrior skills academies that provide robust, equal developmental opportunities for all to develop their warrior skills. For now, let us not worry about the question of who gets into these academies. Suppose there are places for everyone. Let us also suspend any questions about what *equal* means, given the different combinations of abilities and disabilities the children may have, and the different ways they might respond to any given set of opportunities. Finally, let us entirely suspend the problem of the family by imagining that these academies are also orphanages that take the warrior children from birth.

This radical *equal education warrior society* successfully implements a starting-gate version of the principle of fair life chances: Prospects at age sixteen—the moment of the warrior test—do not depend on circumstances of birth. (In a luck egalitarian variant on this story, the warrior skills academies would somehow additionally manage to erase the effects of differential natural talents, so that the sixteen-year-olds’ prospects on the morning of the warrior test depend entirely on their own efforts.) At sixteen, a select few win the fair contest and become warriors—a group that no longer consists only of the children of warriors but now looks like a representative cross-section of society marked by some combination of talent, effort, and luck (or in our luck egalitarian variant, effort alone).¹²⁵

This society has reconciled the fair contest with fair life chances. Those who failed the test can console themselves with the thought that not only was the test fair, in a formal sense, but in addition, they had every possible opportunity—it

truly was their own talents and efforts (or just their efforts) that led to the bad result. By any measure, they had a fair shot.

For most of the sixteen-year-olds themselves, who have internalized the norms of this warrior society and who anyway tend to believe in the justice of the social arrangements they see around them, this will all seem fair enough. The losers will be deeply disappointed in themselves, but not necessarily in their society. However, suppose that after a few years or decades of reflection on the matter, some of those who lost out in the great contest begin to feel differently. They begin to feel cheated. Without disputing the fairness of the test, they might argue: We were just children. Surely the consequences of a few small mistakes here and there that led to failure on the test—a bit of slacking off, a bit of adolescent rebellion, a bit of interest in goals other than becoming a warrior—should not have had the effect of reducing our life chances in such a drastic and permanent way.

There is something intuitively compelling about the idea that these people ought to have some additional chances in life to compete and pursue some more goals—that it would be better in some way if not *all* doors were closed to them at age sixteen. But how does this rise to the level of a moral claim? The *ex ante* life chances these individuals faced were fair and satisfied the principle of fair life chances. The developmental opportunities they experienced were almost supernaturally fair. Moreover, the contest itself was fair. Viewed *ex ante*, opportunities were equal—indeed they were equal to a degree that would be impossible in real life. So what is the problem?

Perhaps the objection here is a version of the “harshness” objection that critics of luck egalitarianism sometimes advance: that luck egalitarianism is too harsh to those whose bad choices (or disastrous option luck¹²⁶) land them in especially dire straits. Some luck egalitarians respond to that objection by reformulating their theory to include some minimum provision, even for those whose disadvantages are entirely the result of their own responsible choices.¹²⁷ Alternatively, a luck egalitarian could argue that luck egalitarianism itself does not in any way *require* that the outcomes for those who make bad choices be so dire. It is compatible with luck egalitarianism to argue that the overall range of outcomes should be narrower—that the outcomes should be more closely bunched together—so that no one’s outcome is so dire.¹²⁸ (The further one

¹²³ DAVID MULIER, PRINCIPLES OF SOCIAL JUSTICE 181 (1991).

¹²⁴ CLARE CHAMBERS, *Each Outcome is Another Opportunity: Problems with the Moment of Equal Opportunity*, 8 POLITICS, PHILOSOPHY & ECONOMICS 374 (2009).

¹²⁵ My argument places no great weight on it, but brute luck is an inevitable feature of any contest or other sorting mechanism. I suppose a thoroughly luck-egalitarian (and thoroughly unrealistic) version of this story would somehow eliminate luck here as well.

¹²⁶ See *supra* page 36.

¹²⁷ See Kristin Voigt, *The Harshness Objection: Is Luck Egalitarianism Too Harsh on the Victims of Option Luck?*, 10 ETHICAL THEORY & MORAL PRACTICE 389, 404–406 (2007).

¹²⁸ This sort of move invokes what Leslie Jacobs calls “stakes fairness”—fairness in the stakes of a competition. LESLIE A. JACOBS, PURSUING EQUAL OPPORTUNITY: THE THEORY AND PRACTICE OF EGALITARIAN JUSTICE 15–17 (2004) (offering a conception of equal opportunity with stakes fairness as one of its central dimensions).

pushes this idea, the more one is ultimately arguing for distributive equality rather than equal opportunity.) In any case, applying one or more of these luck egalitarian responses, the adult non-warriors could argue that they deserved more of a share of the distribution of wealth, or other basic improvements to their welfare. Even if it was entirely their own choices that got them into this mess, society ought to make their straits less dire. This is an intuitively compelling idea, and also one that could be restated in terms of a number of egalitarian principles of distributive justice, such as Rawls's difference principle.

And yet it does not get to the heart of the complaint. Those who failed the warrior test may not be asking so much for money as for opportunity—for a chance to make something of their lives. They have missed out on “one of the main forms of the human good.” To fix this, they need more than an alleviation of the direness of their straits. They need opportunities to develop and use their capacities. They need the chance to formulate goals and pursue the paths that lead to them.

Now of course one might object that they had those chances and squandered them. But it is not obvious why that ex ante perspective—the pre-warrior-test perspective, assessing the opportunities they had up to that moment—is the only or most important perspective here. For the adults who failed the test, one way to formulate their claim is that they want opportunities now, in the present, to be rewarded for their current efforts and to make use of their talents. At age thirty or fifty, as their performance in the warrior contest recedes into the past, their failure may come to seem less like an assessment of performance and more like a kind of black mark or caste. True, it is a caste they were not born into, but rather were placed into because of their own failures. That matters. Nonetheless, for a thirty- or fifty-year-old saddled with bleak opportunities, it seems unjust that *present talent and effort can earn her so little, and that no amount of talent or effort can repair the effects of what happened at age sixteen*—when she may have been a rather different person along a variety of dimensions, especially in terms of character and motivation.

In place of the warrior society, let us switch now to the slightly more realistic *big test society*. In this society, there are various professions and life paths a person might pursue, but all the desirable ones require that one performs well on a test at age sixteen. For simplicity, let us suppose that the test sends some students to universities, and all good jobs require university degrees; everyone else is consigned to very low-skilled work and meager rewards. There is no way for adults to attend a university or enlarge their career prospects. Although this binary outcome set is a gross oversimplification, the rest of the story is more realistic than one might expect. Many nations' real-world educational systems place overwhelming weight on comprehensive tests given at set ages.¹²⁹

¹²⁹ The trend toward educational testing dates back to Napoleon and to ancient China, but it accelerated greatly during the twentieth century. However, this trend may have peaked. See Max

Why would a society structure its opportunities around a test like the one in the big test society? Suppose that there were a single fixed property of the brain, something like an inborn, genetic IQ, that determined who would do well at all tasks and who would do poorly. If such a property existed, was unchanging, and could be measured, then the big test might make sense in terms of efficiency. It could detect “aptitude,” and we would be able to avoid wasting resources training anyone other than those with the greatest aptitude.¹³⁰ For the reasons I discuss in chapter II, this is a fantasy: There is no inborn trait like that; our capacities to do different tasks change throughout life as we develop them through interaction with the opportunities the world presents. But even if aptitude were an innate, inert, unchanging variable of just this kind, it would nevertheless be implausible to expect that other highly relevant variables—such as effort, ambition, and interest—could be reliably measured at eleven or sixteen or twenty-one and trusted never to vary thereafter. In the big test society, as in the warrior society, arbitrary aspects of the way society has chosen to structure opportunities leave an adult who failed the test with extremely limited prospects, no matter what efforts she may exert as an adult. This ought to trouble us even if at sixteen everyone had a fair shot—and of course it should trouble us even more if everyone did not.

From the perspective of human flourishing, organizing society in any manner that resembles the warrior society or the big test society does at least two kinds of damage. For those who fail the test the damage is clear. Whatever opportunities they might have had ex ante, as adults they face very limited opportunities to develop and exercise their capacities and otherwise to lead flourishing lives in the manner they choose.

Less obviously, this way of structuring opportunities also affects even those who succeed. Throughout their entire childhoods leading up to the big test, the looming test constrains and channels their ambitions and goals, narrowing their sense of themselves and of what constitutes success in life, since it would be irrational (and possibly disastrous) for them to focus on goals other than the big test.¹³¹ The

A. ECKSTAD & HAROLD J. NOAH, *SECONDARY SCHOOL EXAMINATIONS: INTERNATIONAL PERSPECTIVES ON POLICIES AND PRACTICE* 2–14 (1993).

¹³⁰ The SAT was originally the Scholastic Aptitude Test. The ETS has conceded, however, that the test does not measure “aptitude.” In 1994, the ETS changed the official test name to the somewhat redundant Scholastic Assessment Test. Some social scientists have since attempted to prove that the SAT remains essentially an IQ test. See Christopher Shea, *What Does The SAT Test? The SAT Tests...A) General Intelligence B) Academic Aptitude C) Test-Taking Skills D) Nobody Really Knows*, *BOSTON GLOBE*, July 4, 2004, at G1.

¹³¹ This is a criticism that underlies many of the arguments of education theorists critical of high-stakes testing. See, e.g., ALVIN KOHN, *THE SCHOOLS OUR CHILDREN DESERVE: MOVING BEYOND TRADITIONAL CLASSROOMS AND "TOUGHER STANDARDS"* (1999).

inability of starting-gate theories to see the problem with structuring opportunities around the big test—or at any rate, the inability to see these problems as anything more than a version of the harshness objection—is a real moral blind spot for starting-gate theories.

The starting-gate approach faces even more serious problems as a practical strategy for equalizing opportunity. The preceding discussion considered the problem of the starting gate largely in isolation, temporarily suspending the problem of the family and the problem of merit. When we consider the starting gate *together* with those other problems, the wrongheadedness of the starting-gate approach comes fully into focus. Even a reader entirely unmoved by the preceding paragraphs should appreciate that in a society with families, which is to say, in any society, an approach to equalizing opportunity that rests primarily on the device of a starting gate is deeply problematic, even self-defeating.

iii. Compounded Advantage and the Concatenation of Opportunities

The problem is this: There is no place a starting gate can legitimately be placed because, in Clare Chambers's phrase, "each outcome is another opportunity."¹³² Whenever we implement the fair contest principle by rewarding merit, however defined, by hiring or admitting someone, we are then giving that person an opportunity to develop more merit. Positions of increased responsibility and those that require higher levels of skill change us. They enable us to develop and refine skills and talents. Not everyone succeeds in every job or school setting. But when we do succeed, we generally leave with more merit and better future prospects than when we entered. This dynamic is as true of work as it is of school. As John Dewey pointed out long ago, all education is experience, and all experience is education.¹³³

This fact compounds the impact of gatekeepers' decisions. The choice to accept or hire (or not) may have far-reaching reverberations that amplify the differences between those who were chosen and those who missed the cut. Since each selection decision amplifies the effects of previous ones, the advantages of circumstances of birth may be magnified many times. When families give children a leg up in competitions for special educational opportunities—say at selective schools—these enable those children to *develop more merit* by the time they reach later moments of decision or selection. There are multiple

mechanisms by which this works. Attending a selective school or working in a highly sought-after position may improve one's skills, meaning that one will be better able to pass whatever tests come next. At the same time, these experiences may function as credentials, proxies for merit that are often given as much weight as any test (and may indeed be performance-predictive).

Thus, under realistic conditions, where families exist and opportunities are not perfectly equal, there is no fair place to put the starting gate. Any starting gate will have the effect of amplifying past inequalities of opportunity. In addition, the concatenation of opportunities means that wholly apart from circumstances of birth, brute luck may have outsized consequences. An early lucky 'break in either direction may be magnified many times as its reverberations affect a person's qualifications for each future contest.¹³⁴

The problem of the starting gate interacts in a subtle but powerful way with the problem of merit. An institution like the medical school discussed in the previous section, which intends to promote something like a Rawlsian conception of equal opportunity, presumably has other goals as well—goals that might be served by using formal equal opportunity to select the candidates with the most formal merit. This leads to obvious tradeoffs. For any institution facing tradeoffs of this kind, the task would be easier, and the magnitude of the tradeoffs reduced, if *other* preparatory institutions, earlier on, had made the effort to recruit and train more people from disadvantaged backgrounds, so that by the time they applied to *our* institution, they were closer to being as formally qualified as everyone else.

This dynamic played an important role in the 2003 U.S. Supreme Court decision upholding affirmative action at the University of Michigan.¹³⁵ In that case, the Court prominently discussed, and found persuasive, amicus briefs from two unusual sources: a group of Fortune 500 corporations and a group of former high-ranking U.S. military officers. The arguments in that case were only about race, not circumstances of birth more generally; but the military officers' brief succinctly framed the problem: "At present, the military cannot achieve an officer corps that is *both* highly qualified and racially diverse" without affirmative action at an earlier stage, specifically at universities like Michigan whose graduates may become officers.¹³⁶ The Fortune 500 companies similarly argued that

¹³² See Chambers, *Each Outcome*, at 383 (noting that in the common situation in which two candidates are essentially equally qualified, one will be chosen largely at random—a decision whose consequences may then be magnified over time).

¹³³ Grutter v. Bollinger, 539 U.S. 306, 330–331 (2003).

¹³⁴ Brief for Lt. Gen. Julius W. Becton et al. as Amici Curiae Supporting Respondent, at 5, *Grutter v. Bollinger*, available at http://www.vpcommunich.edu/admissions/legal/gru_amicus-uscc/un/Military-l-beth.pdf (emphasis in original).

¹³⁵ JOHN DEWEY, EXPERIENCE AND EDUCATION 25 (1938).

their own ability to recruit a diverse, qualified workforce depended on affirmative action at Michigan and other universities.¹³⁷ The efforts of these employers to achieve diverse workforces do not match up precisely with the Rawlsian goal of making life chances independent of circumstances of birth. But there is some degree of overlap. What these employers realized is that each institution's decisions about who to admit *shapes who is qualified* for the next contest.

Thus, a medical school might prefer that undergraduate programs do the work of seeking out the applicants from disadvantaged backgrounds with unusual talent and motivation (even if they did not have quite as much formal merit as some others, at the time of their college applications). Undergraduate programs, in turn, would prefer that secondary schools do this work, and so on. In each of these educational settings, the principle of the fair contest has at least some force—it will serve some important aims of the institution to admit those with more formal merit. Moreover, no institution ought to admit students who are so far behind in terms of formal merit that they will fail. Thus, at each stage, if an institution wants to select a group that is diverse in terms of their circumstances of birth, it would be much easier if the qualified applicant pool were already diverse in the relevant respects. Then the institution would be freer to act as if it were situated at or after the starting gate—making (more of) its decisions on the basis of formal merit alone—without compromising its other goals.

iii. Focus on the Youngest?

One egalitarian response to this interaction between the problem of merit and the problem of the starting gate is to push our efforts to equalize developmental opportunities down to the earliest possible stages: preschool and other programs for pre-kindergartners. As we move younger and younger, the principle of the fair contest seems to lose much of its force. It seems unnecessary and a little silly to worry about awarding the most desirable preschool places to the most meritorious four-year-olds.¹³⁸ So perhaps at this stage, we can simply pursue policies that aim to make life chances fair.

However, it is just at these earliest stages that the problem of the family is at its most intractable. Parents have more control over their children's circumstances and experiences in these early years than they will later. This is in part a result of contingent social facts, such as the decision to make schooling compulsory for

six-year-olds but not for three-year-olds. But all societies with compulsory schooling set some age at which school begins. In ideal theory, parents' liberty over how to raise their children is substantial but not unlimited; whatever its exact boundaries, some of the countervailing considerations that might weigh against it gain force as children grow older.¹³⁹ Thus, one would generally expect parents to have more control over the experiences and opportunities of younger children than older children. In any event, as a practical matter, in all real societies parents pass on monumental advantages in the years before elementary school begins—and these advantages are some of the toughest ones for egalitarian policies to reach.¹⁴⁰

Furthermore, as a practical matter, the power of egalitarian education reformers to affect who is admitted to a given educational institution tends to be at its weakest when children are youngest. Universities with many applicants from a large area have much more to work with. In the case of elementary schools, which tend for practical reasons to be tied much more tightly to geography, the work of both integration and equalization is harder. As I discuss in chapter IV, egalitarian policymakers can attempt to force integration by class and race, but assuming that well-off parents are free to live where they wish and send their children to private schools if they wish, it may be very easy for them to isolate themselves and their children from the disadvantaged in spite of such policies, or even in direct reaction to them.

For all these reasons, the starting gate is the wrong way to go about achieving equal opportunity. While it has shortcomings even in ideal theory, it is particularly perverse as real-world policy, since there is no place to put the starting gate that does not compound earlier advantages. Proponents of equal opportunity need an alternative, mixed approach. Instead of building a starting gate at one specific place, we have to do some of the work of addressing or mitigating inequalities at every stage. Because of the concatenation of opportunities, the task will be difficult.

iv. Them That's Got Shall Get¹⁴¹

This knot seems intractable. The outcome of each contest—fair or not—creates the background advantages that shape the next. The winners get more, and the

¹³⁷ Brief for 65 Leading American Businesses as Amici Curiae Supporting Respondents, at 5–10, *Gruitter v. Bollinger*, available at http://www.pccomm.umich.edu/admissions/legal/gru_amicus-usc/jun/Fortunes&00both.pdf.

¹³⁸ News reports suggest, however, that at least in elite enclaves of New York City, this *reductio ad absurdum* is already happening.

¹³⁹ For instance, consider childrens' own preferences. There are good reasons why we ought to have more respect for the choices and preferences of older children than those of younger children. Society's interest in civic education also gains force as children become capable of benefiting from civic education.

¹⁴⁰ See *tifua* pages 125–127.

¹⁴¹ BILLIE HOLIDAY, GOD BLESS THE CHILD (Okeh 1941) ("Them that's got shall get / Them that's not shall lose / So the bible says / And it still is news.")

losers get less. Even careful, well-intentioned interventions at each stage might be swamped by magnifying effects that allow those with early advantages to leave the rest in the dust.

But must the contests be arranged in this way at all? Would it be possible to arrange our various competitions in an entirely different way, so that the losers from one round would have a chance to be winners in another?

So far, our discussion has left several important assumptions unstated. We have assumed that all individuals want to compete for the scarce places at higher levels on an academic or professional pyramid. We have assumed a scarcity of desirable slots at each level—educational places and eventual jobs. We have assumed that at each stage, the definitions of talent and effort we were working with were more or less the same: Only one kind of talent or effort matters. In each of these ways, our assumptions have not been entirely unrealistic, but at the same time, they constrained our thinking in ways that forced us to work with something resembling a multistage variation on the big test society. All these constraints exacerbated the problems we have been discussing. Perhaps, then, the solution will involve moving these assumptions into the foreground. We can loosen these constraints if we build a society unlike the one such assumptions describe.

IC.4. The Problem of Individuality

In section I.B, I argued that part of why equal opportunity ought to matter to us in the first place is its power to help people pursue “our own good in our own way”—to achieve the flourishing that comes from developing and exercising our faculties and pursuing goals that are our own. This idea helps illuminate a fourth, deeper criticism of equal opportunity. It also provides the germ of a solution, a means of ameliorating the three interconnected problems discussed above.

i. Schaar’s Nightmare and Nozick’s Dream

One of the stranger aspects of the warrior society was that there was only one profession. Only one thing was valued; only one set of skills counted as merit; and there was only one outcome to which it was worth aspiring. Although the warrior society was never intended as a realistic portrait of a society, it is nevertheless instructive to imagine what kind of human beings would be produced by a society like this. The picture is bleak. With only one thing to aspire to do or become, only one pattern on which to build a life, individuality would be unknown. In the big test society, those who succeed have a broader set of opportunities than the warriors, but we would still expect the opportunity structure to

have some deep and problematic effects. Parents will do their best to focus their children’s energies on the big test, and children will frame their own ambitions around that single, brightly lit and well-marked pathway, which will shape their aspirations and their idea of what success is.

In a classic 1967 essay, John Schaar argued that equality of opportunity is “indirectly very conservative,” inasmuch as it means “equality of opportunity for all to develop those talents which are highly valued by a given people at a given time.”¹⁴² Within a narrow and inflexible structure of opportunities and rewards, achieving equal opportunity does nothing to broaden the plans of life that are open to people, but instead merely channels everyone’s efforts toward a narrow and socially predetermined set of plans and goals. Indeed, equal opportunity may actually reinforce those goals:

No policy formula is better designed to fortify the dominant institutions, values, and ends of the American social order than the formula of equality of opportunity, for it offers *everyone* a fair and equal chance to find a place within that order.... The facile formula of equal opportunity... opens more and more opportunities for more and more people to contribute more and more energies toward the realization of a mass, bureaucratic, technological, privatized, militaristic, bored, and thrill-seeking, consumption-oriented society—a society of well-fed, congenial, and sybaritic monkeys surrounded by gadgets and pleasure-toys.¹⁴³

On one level, Schaar seems to be asking too much of equal opportunity. Equal opportunity is just one important principle, not a complete theory of justice. It is certainly not a complete theory of the good society. Surely we need principles other than equal opportunity to decide how consumption-oriented, thrill-seeking, or militaristic a society ought to be. However, on another level, the charge seems hard to dispute. As the warrior society and big test society illustrate, equal opportunity does tend to “fortify the dominant institutions, values, and ends” of a society, by giving everyone strong incentives to frame their own values and goals in the ways the opportunity structure rewards. Indeed, any opportunity structure—whether “equal” or not—provides such incentives. But making opportunities more equal tends to extend the dominant incentives to *everyone*. That is, under the old caste system, perhaps some of the non-warrior children

¹⁴² John H. Schaar, *Equality of Opportunity, and Beyond*, in Nomos IX: Equality 228, 230 (J. Roland Pennock & John W. Chapman eds., 1967).

¹⁴³ *Id.* at 230–231.

might have disagreed with the value system dominant in their society,¹⁴⁴ but things may look different to them when they too have a fair chance to become warriors. We form our ambitions and goals, our ideas about what we would like to do and become, by looking at the opportunities that actually exist in the world around us and that seem, to some degree, open to us.

Even so, we might look at the dominant institutions and values of our society with a more or less critical eye. Part of Schaar's critique is really a critique of equal opportunity as ideology. He argues that by giving everyone a chance and a strong push to "develop those talents which are highly valued by a given people at a given time," an ideology of equal opportunity causes us to internalize those values and dulls our ability to question them.

The question of how deeply Schaar's critique cuts depends on why we valued equal opportunity in the first place. If our only goal were efficiency, then it would seem that equal opportunity remains well suited to helping us achieve it. Similarly, if our only goal were finding a fair basis for assigning different persons to places in society that come with unequal rewards, we seem to be on track. While we might be concerned for other reasons about the dominant institutions and values of our society, equal opportunity would still be doing its job.

However, if a considerable part of the point of equal opportunity is that it helps individuals pursue "our own good in our own way," then Schaar's critique seems rather devastating. Our principle is doing the opposite of what we need it to do. In order to achieve *that* goal, it would seem that equalizing opportunity may not be enough, and may not even be the right approach. We need to build a structure of opportunities that, instead of fortifying one hegemonic set of institutions, values, and ends, enables individuals to pursue a wider range of life plans and find forms of flourishing they value.

Throughout this chapter up to now, we have employed conceptions of talent and effort that implicitly assumed only one kind of talent or effort mattered. We have at times framed inequalities of developmental opportunities almost as though they were like inequalities of cash: It was not a question of different kinds of developmental opportunities, but simply that some had more and some had less. Most important, we tended to assume that everyone was in a tight, zero-sum competition for the same jobs or social roles or educational slots that they all valued, all of which were scarce. If we change these assumptions, a different picture emerges.

And perhaps changing these assumptions would better reflect reality. After all, we do not live in the warrior society or the big test society. In any real society, there are more paths to success than one. There is some diversity of ambitions and life plans. We are not all competing for the same prize. But oddly, these hopeful points are easier to find among critics of equal opportunity than among egalitarians. Robert Nozick is critical of the entire notion of equal opportunity—even the formal conception—on the grounds that "life is not a race":

The model of a race for a prize is often used in discussion of equality of opportunity. A race where some started closer to the finish line than others would be unfair, as would a race where some were forced to carry heavy weights, or run with pebbles in their sneakers. But life is not a race in which we all compete for a prize which someone has established; there is no unified race, with some person judging swiftness.... No centralized process judges people's use of the opportunities they had; that is not what the processes of social cooperation and exchange are for.¹⁴⁵

Nozick's vision of radically decentralized pluralism is in certain respects quite attractive, but it too is unrealistic. Real societies all lie somewhere in between—somewhere on a continuum between the big test society and Nozick's dream. While it is true that in real societies, life cannot be reduced to a single race, there are centralized processes that judge people's "use of the opportunities they had," such as university admissions. There *are* prizes or outcomes that many or even most of us desire, and for which many or even most of us compete, often for highly rational if socially contingent reasons. Depending on how we set up the opportunity structure, these points may be true to a greater or a lesser degree. At the same time, the sheer complexity of modern society, with its incredible proliferation of different specialized occupations, activities, and subcultures, ensures that there will be at least some very significant plurality of different races to run.

However, you would not glean this from reading most egalitarian political theory, or from listening to most advocates of equal opportunity in the political sphere. Over the past half-century, both have instead made tremendous use of the metaphor of life as a single race or athletic contest, along with associated metaphors like the "level playing field." Although this chapter has emphasized the athletic contest in Bernard Williams's warrior society, it would have been equally appropriate to use—and indeed Nozick may well have been responding to—a 1965 speech about civil rights by President Lyndon Johnson. Johnson declared: "You do not take a person who, for years, has been hobbled by chains

¹⁴⁴ Indeed, in a caste society, different groups might well espouse quite different values and beliefs. It is an interesting question whether any of this diversity can survive the shift toward a more just social order with more permeable divisions, and ultimately a social order with no castes at all. Cf. *infra* page 134 (discussing a related argument of Mills').

and liberate him, bring him up to the starting line of a race and then say, ‘you are free to compete with all the others,’ and still justly believe that you have been completely fair.”¹⁴⁶

The metaphor of life as a race is a powerful one, and it has real value as a simplifying device. It helps render tractable the many different overlapping kinds of injustice that mark our rich, complex, and deeply unequal modern societies. The metaphor is so useful in part because it illustrates many different conceptions of equal opportunity. Formal egalitarians use it to argue for the principle of the fair contest, but as President Johnson’s use of the metaphor (and some of Nozick’s examples) suggest, it can also be used to call attention to unequal developmental opportunities and to argue for fair life chances. Indeed the concept of “fair life chances” itself is in a certain way bound up with the idea that there is a race—with one scale of outcomes or rewards—and the measure of a life is where one ends up on that scale.

However, this idea of life as a single race masks a different, subtler harm. To the extent that opportunities are structured in such a way that life is *really* like a race, with entirely zero-sum competitions and everyone aiming for the same prize, that opportunity structure exacerbates all of the problems this chapter has discussed. Such an opportunity structure greatly constrains individuals’ opportunities to flourish in their own ways. It causes the problem of the family to become especially acute, because families will have very powerful incentives to use every advantage to make sure their children win the race. It raises the stakes of each competitive stage or contest, so that everyone needs to try to win the contests whose rewards provide the best opportunities to become qualified to win at the next competitive stage. This exacerbates the problem of merit and the problem of the starting gate.

When egalitarian political theorists talk about life as a race, a level playing field, or “life chances,” they do not have in mind any such picture of an unusually zero-sum, high-stakes competitive society. Nor do they aim to move society in that direction. Their idea is more abstract and pluralistic. It is that we ought to be able to define some currency of egalitarian justice and measure the distribution of that currency—primary goods, advantage, resources, and so on—to decide whether certain social arrangements are just. These currencies aim to measure the sort of goods or tools a person would need for “carrying out their intentions and...advancing their ends, whatever those ends may be.”¹⁴⁷ In other words,

some conception of liberal pluralism is baked into the currency itself. However, the actual conditions that would be necessary for such pluralism to thrive—the opportunity structures that make it possible for people to formulate their own ends and pursue them—are outside of the frame of the ways political theorists generally think and write about equal opportunity.

ii. Toward a Different Kind of Equal Opportunity

There are exceptions. Schaar briefly considered whether an answer to his objection might be found in the idea that “what actually occurs in a society is not one contest but many kinds.”¹⁴⁸ One essay responding to Schaar amplified this suggestion, arguing that the solution might lie in “the possibility of a large enough number of footraces’ in which the losers at one might excel in another.”¹⁴⁹ Schaar did not think this would work, however, because “any society encourages only some talents and not others, and further, there is ‘a hierarchy of value even among those talents, virtues, and contests that are encouraged.’”¹⁵⁰

Is such a hierarchy of value inevitable? David Miller argues, in an essay on meritocracy and desert, that instead of a meritocracy built around “a single pyramid of merit,...social relations as a whole should be constituted in such a way as to recognize and reward a plurality of different kinds of merit.”¹⁵¹ In such a society, different forms of merit would matter in different spheres. Instead of “economic desert count[ing] for everything,” each of several other spheres—including “artistic achievement,” “public service,” and “education and scholarship”—would “car[y] its own mode of recompense.”¹⁵² By shattering the concept of merit in this way, Miller argues that we can achieve “egalitarianism of the kind advocated by Michael Walzer, according to whom equality is arrived at not by dividing all advantages up equally, but by enabling different people to excel in different social spheres.”¹⁵³

In such a society, why would people not all decide to seek the same goals at the same time, returning the opportunity structure to a “single pyramid of merit?” The answer reveals some deep connections between value pluralism and opportunity pluralism. To achieve something like Walzer’s “complex equality” in

¹⁴⁶ Schaar, *Equality of Opportunity and Beyond*, at 235.

¹⁴⁷ John Stanley, *Equality of Opportunity as Philosophy and Ideology*, 5 POLITICAL THEORY 61, 63–64 (1977).

¹⁴⁸ Schaar, *Equality of Opportunity and Beyond*, at 236.

¹⁴⁹ DAVID MILLER, *PRINCIPLES OF SOCIAL JUSTICE* 200 (1999).

¹⁵⁰ President Lyndon B. Johnson, *To Fulfill These Rights*, commencement address at Howard University (June 4, 1965), available at <http://www.lbjlib.utexas.edu/johnson/archives/home/speecheshom/650604.asp>.

¹⁵¹ RAWLS, *TOJ*, at 79.

¹⁵² *Ibid.*

¹⁵³ *Ibid.*

|| III ||

Opportunity Pluralism

The opportunity structure in any real society is vast and complex. It is an intricate lattice of forking and intersecting paths, leading to different educational experiences and credentials, different jobs and professions, different roles in families and communities, and different goods of intrinsic or instrumental value.

In any real society, different parts of this opportunity structure are organized in different ways. Perhaps the only paths to becoming president involve highly competitive sequences of zero-sum electoral competitions structured in a pyramidal way.¹ On the other hand, the paths that lead to the role of parent do not have this shape; those paths are shaped by various social norms and legal constraints on adoption and procreation that define what is required in the society to have (and to retain parental rights over) a child. In general, the paths to becoming a parent, unlike the paths to becoming president, will not involve zero-sum competitions for fixed numbers of scarce opportunities.

Meanwhile, the question of who (if anyone) controls access to different paths will also vary across the opportunity structure. Becoming a neurosurgeon may require convincing one or a small number of specialized gatekeepers to give you a scarce, coveted slot in a specialized residency program. On the other hand, developing a business selling a handmade product or a piece of software may require only that one learn the relevant skill, obtain some capital, and find willing customers; no particular decision-maker or small set of decision-makers has authority over the question of who can pursue that path.

Although there is great variation and complexity within societies, the overall shape of the opportunity structure also varies among societies. Indeed the shape of the opportunity structure is a highly consequential, if rarely noticed, fact about any society. Some societies organize *more* of the paths worth pursuing in a way that involves zero-sum, high-stakes competitions. Indeed some societies are similar to

the big test society, in which a surprisingly high percentage of career paths depend on a single crucial test that everyone takes at a particular age. Other societies might have a few corners of their opportunity structure laid out in that way, but by and large, they create a variety of paths leading to most of the valued careers and roles, and allow people to embark on the preliminary steps on those paths at different moments in their lives. Societies also vary along a related dimension: In all societies, some characteristics, such as race, gender, class, physical appearance, or the geography of where one grew up, affect which opportunities are open to any given person, for reasons both direct and indirect. But the magnitude of these effects varies. Where these effects are strong, the society is narrowing opportunities by channeling people into particular sets of life paths deemed appropriate for people like them.

Differences in the shape of the opportunity structure matter in a variety of ways—some obvious, some unexpected. Among other things, these differences determine the severity of the interlocking set of problems discussed in chapter I: the problem of the family, the problem of merit, the problem of the starting gate, and the problem of individuality. By reshaping the opportunity structure in the direction of what I call *opportunity pluralism*, a society can render each of these problems more manageable. Changes in the direction of opportunity pluralism do not eliminate, but render less consequential, the unearned advantages that come from families and other circumstances of birth; they lower the stakes in zero-sum meritocratic competitions, thereby altering incentives; they open up more space for people to pursue new paths throughout life, rather than forcing them to concentrate their efforts on a critical starting gate. Moreover, these changes help create the kind of society in which people can to a greater degree choose for themselves which paths to pursue, and what kinds of activities, relationships, and pursuits matter to them, rather than needing to pursue goals whose importance may be largely an artifact of the opportunity structure.

Part A of this chapter argues for four principles or conditions that, together, define opportunity pluralism. Part B discusses one of them, the anti-bottleneck principle, in more detail, teasing out some of its implications. Part C discusses some of the deeper normative questions about commensurability and the value of different opportunities that this account raises.

III.A. Unitary and Pluralistic Opportunity Structures

¹ This may actually be truer of the highest political offices of some other nations than it is true of the U.S. presidency. In U.S. politics, candidates with no prior experience as elected officials regularly become senators and governors and have on occasion credibly run for president.

as possible of the valued goods should be *non-positional* (or less positional) goods, while as many as possible of the valued roles should be *non-competitive* (or less competitive) roles. (3) As far as possible, there should be a plurality of paths leading to these different valued goods and roles, without *bottlenecks* constraining people's ability to pursue those paths. Thus I call this third principle the *anti-bottleneck principle*. Finally, (4) there should be a *plurality of sources of authority* regarding the elements described in the other principles. Rather than a small coterie of gatekeepers deciding what it takes to pursue crucial paths, there should be a broader plurality of different decision-makers with the power to enable a person to pursue a path, and society should enable individuals themselves to create new paths.

These principles are also conditions: To the degree that they are satisfied, together they describe a society structured according to what I will call the *pluralistic model*. The inverse of the four conditions describes what I will call the *unitary model*, which resembles Williams's warrior society or our 'big test' society. Descriptively, in any real society, the opportunity structure will fall somewhere in between the ideal types of the unitary and pluralistic models.

Let us consider each of these principles in turn.

III.A.1. Individuality and Pluralism

At one memorable moment in his argument for the justice of voluntary exchange, Nozick asks his readers to imagine twenty-six men and twenty-six women, named A to Z and A' to Z', all apparently heterosexuals looking to get married.² (Somehow, they are cut off from the rest of society. Let us imagine they are marooned on an island.) All the men and all the women agree on identical hierarchical rankings of which members of the opposite sex they would prefer to marry. Each woman would prefer to marry A, then B, and so on to Z, while each man would prefer to marry A', then B', and so on to Z'. When everyone has paired off with their (similarly named) partner, poor Z and Z' are stuck with each other—since although "[e]ach prefers any one of the twenty-five other partners,"³ they still would rather marry each other than be single. For Nozick, the point of this story is that the marriage of Z and Z' is voluntary; he argues that there is no injustice in the fact that they are worse off than everyone else. Nor, to extend the example slightly, would it be unjust or even surprising if the death of either A or A' (but not both) were to set off a cascade of twenty-five divorces and remarriages, as everyone trades up to a partner they prefer to their current

spouse. Nozick moves on quickly from this example, from intimate association to the world of wages and work. Some readers will not follow him over that threshold. But for my purposes here, this example is interesting not as a parable of free exchange and envy but as an illustrative dystopia of uniform preferences. How unfortunate, for these fifty-two individuals, that they find their preferences so perfectly aligned in a common hierarchy that almost everyone covets the spouses of many of their neighbors.

In real life, thankfully, the world of intimate association does not look quite like this. People have more diverse preferences, not only in terms of whom they prefer but also in terms of sexual orientation, whether to marry at all, and so on. In addition, people's preferences change with time and intimacy. They tend to prefer their chosen partners over others, so that the twenty-five-divorce-and-remarriage cascade seems unrealistic—as well as cruel and rather creepy. However, there are some forces that might render our preferences even in this intimate domain less diverse and more uniform and hierarchical. For instance, suppose all agreed that physical attractiveness were the overriding attribute to look for in a partner, and further agreed on a common standard of physical attractiveness. This could push things quite far in the direction of Nozick's story:⁴

In any aspect of human life in which there is a scarcity of some valued good, role, or position, people will find themselves in competition to obtain it. Both the terms of that competition and the stakes of that competition depend on various aspects of the opportunity structure that are the subject of this chapter. As a starting point, perhaps the most obvious feature of any competition is the number of people competing in relation to the number who can win. Such ratios depend in part on who wants (or needs) to compete. If everyone in a society wants a certain job above all the rest, and only a few can have it, the competition will be fierce—indeed it will be like the competition in the warrior society, in which everyone (arguably correctly) defined a successful life in terms of becoming a warrior. In a real society, there are not one but many jobs and professions. But if everyone agrees on a hierarchical ranking of them all, and the available slots in each one are limited, then we have a competitive situation very much like the one in Nozick's marriage story, this time in the world of work.

Any realistic model of the opportunity structure must take into account the endogeneity of our preferences about exactly which roles we wish to pursue. That is, the opportunity structure itself shapes our preferences. Broad social agreement about a rough hierarchy of jobs or roles may thus be somewhat self-perpetuating,

⁴ Cf. Anne Alstott, *Marriages as assets? Real freedom and relational freedom*, in ARGUING ABOUT JUSTICE: ESSAYS FOR PHILIPPE VAN PARIJS 49, 57 (Axel Gosseries & Yannick Vanderborght eds., 2011) (discussing another mechanism that could have the same effect: To the degree that we all evaluate potential marriage partners on the basis of income, if some have untenably low incomes,

for several reasons. First, broadly desired jobs or roles will tend to come with social prestige that is itself a desired good. Second, we generally obtain ideas from others around us about what is good, valuable, and worth pursuing—in work and elsewhere. Under what conditions, then, will individuals be equipped to make up their own minds about what they value and what they wish to pursue? The answer is: under conditions of pluralism and disagreement, so that people have real access to different ideas about what is valuable and worth pursuing.

This proposition is at the heart of Mill's argument in *On Liberty*. Mill argues that there are “two requisites” for individuality: “freedom, and variety of situations.”⁵ Freedom by itself is not enough, because under conditions of sufficient social uniformity, we would not be equipped to exercise our freedom in a way that reflects or promotes individuality. Mill describes *On Liberty* as a “philosophic text-book of a single truth”: “the importance, to man and society, of a large variety in types of character, and of giving full freedom to human nature to expand itself in innumerable and conflicting directions.”⁶

Mill's focus on the importance of a “variety of situations” and “variety in types of character” makes him concerned about mass culture, in which different people from different trades, professions, neighborhoods, and social classes are beginning to “read the same things, listen to the same things, go to the same places, [and] have their hopes and fears directed to the same objects”—in short, “[t]he circumstances which surround different classes and individuals, and shape their characters, are daily becoming more assimilated.”⁷ Mill argues that the resulting uniformity tends to narrow the set of materials out of which we all construct our plans of life. “There is no reason,” he writes, “that all human existence should be constructed on some one or some small number of patterns”,⁸ the success of a diverse continent like Europe comes from different people (and nations) pursuing “a great variety of paths, each leading to something valuable.”⁹

On one level, it seems to sell human beings short to imagine that we can construct our lives and refine our values only by reference to the “patterns” offered by others. Surely this is too limited a picture. There are always iconoclasts and dissenters. Not everyone adopts the same values as her parents or peers, or

wants to pattern her life on someone else's. There are nonetheless good reasons to believe that Mill's worries about “variety” are well-founded. A more sophisticated picture of why this might be the case can be found in Joseph Raz's work on social forms.¹⁰ It is true that people can combine, vary, and experiment with the social forms they see in their world, just as we combine, vary, and experiment with words and language.¹¹ But we cannot make up social forms out of thin air. Raz argues that we learn what is valuable about many social forms (such as different forms of human relationships) by habituation, through participating in those social forms together with others.¹² It is through our experiences in the world that we decide what it is we value. Even if we reject the views of many (or all) of those around us regarding what seem to be the most important questions, we are doing so on the basis of *other* values that we have developed in the course of our interaction with the world and the social forms we have come to appreciate.

This is why Mill views variety as so essential—variety of situations, of types of character, of “paths, each leading to something valuable.” It is not that people simply choose from among the patterns they see around them. The process is more complex; we can revise and remix others' values, plans, and pursuits into something new. But a society marked by pluralism and disagreement of all the kinds Mill identifies offers individuals a richer set of materials from which to work as they decide, over time, what matters to them.

Thus, the first component of opportunity pluralism is a condition we might frame this way:

Condition One—Plurality of Values and Goals

People in this society hold diverse conceptions of the good, of what kinds of lives and forms of flourishing they value, and of what specific goods and roles they want to pursue; and, in addition, they make this disagreement known.

This condition covers considerable ground, from a foundational layer of diversity of conceptions of the good to a much more practical layer of diversity in regard to what roles (jobs, relationships, other roles in society) and what goods people wish to have in their own lives. These different layers are intertwined in a complex way. Our conceptions of the good define what we value in general, not

⁵ JOHN STUART MILL, *ON LIBERTY* 55, 70 (Elizabeth Rapaport ed., Hackett 1978) (1859). Mill offers this formulation twice. It is a quote from Wilhelm Von Humboldt.

⁶ JOHN STUART MILL, *AUTOBIOGRAPHY* 189 (Penguin 1959) (1873).

⁷ MILL, *ON LIBERTY*, at 3, 70.

⁸ *Id.* at 64.

⁹ *Id.* at 70. One ambiguity in the picture Mill paints is whether these “different classes,” trades, and nations are sufficiently fluid that people are able to move between them, or adopt values across their boundaries. From the point of view of opportunity pluralism, the diversity of values and ways of living must be both accessible and also, to some degree, universal: it does little good if there are diverse values and ways of living but each is bound up exclusively with membership in some durable, fixed group or caste. See *infra* page 137.

¹⁰ See also *supra* section II.E.3, beginning page 121.

¹¹ See JOSEPH RAZ, *THE MORALITY OF FREEDOM* 309 (1986) (“It is no more possible to delimit in advance the range of deviations which still count as based on a social form than it is to delimit the possible relations between the literal and the metaphorical use of an expression”).

¹² *Id.* at 310–311.

just in our own lives. They are our ideas about what matters—from our own relationships and activities to the kind of society or world we want to live in. Some part of any person's conception of the good concerns what a good or excellent life looks like for her in particular; this in turn implies some more specific priorities in regard to what kinds of roles she would prefer to play, what kinds of jobs and relationships and so on she would prefer to have.

I have just suggested a logical relationship that runs from the general to the particular, but the psychological reality might run in either direction. One can imagine someone deciding to become a doctor for reasons that moved from the general to the particular: She was looking for a career that involved helping people, that earned considerable money and social status, that employed reasoning and observational skills—and with some of these general aims in mind, she decided to try to become a doctor. On the other hand, it is at least as plausible to imagine someone without any of those abstract goals in mind simply observing a doctor at work, deciding such work seemed appealing, forming an ambition to become a doctor, and only then or perhaps much later, deciding exactly what aspects of this career are so important and so central to the kind of life she wants to live. Both of these sorts of processes, but perhaps especially the second sort, are more likely to occur when one has more direct and sustained access to a person in a particular role. Such access is unequally distributed. Children growing up in some families and neighborhoods will have access through family members and friends to adults whose careers other children may be entirely unaware of. I discuss this problem and some possible ways of widening such access in chapter IV.¹³

We are not born with either a comprehensive conception of the good or any specific ideas about how we want to live our lives or what roles and goods matter to us. We develop our views about all of these things over time through our experiences in the world. In some cases, it may be possible only through direct experience to understand what is appealing or valuable about some activities, relationships, and roles. In other cases, we may formulate some relatively clear general goals, such as helping others or making a comfortable living, but require more experience before we can successfully determine which paths lead to the right combinations of these goals and are feasible for us to pursue. Our views may not be entirely consistent or coherent, and may not be completely accessible to us. But as we grapple with choices about which opportunities to pursue, we refine and clarify these views to some degree. As we do, each layer of our views—from broad life goals to particular views of what is valuable about specific paths—exerts some influence on the other layers.

For Mill's "variety of situations" and "variety of types of character" to have the desired effect, people need access to those different ideas and ways of living. In a divided society, in which separate groups or clans live far apart with little interaction, there might be a great diversity of comprehensive views, views of what makes for a good life, and so forth, but individuals would have no access to most of this diversity. That is why the last clause of this first condition is necessary. It is important not only that a diversity of views exists, but also that people have broad exposure to those views so that they can revise their own.

Similarly, it does little good for there to be a diversity of views about what *some* people might do or become if those views are coupled with wide agreement that some other group of people should have none of those aspirations, and instead ought to pursue a different, separate set of paths. This is the situation that Mill describes in *The Subjection of Women*. "All the moralities tell them that it is the duty of women, and all the current sentimentalities that it is their nature," to play a very circumscribed and self-abnegating set of roles, "to have no life but in their affections."¹⁴ Mill describes a complex interaction between these prevailing norms, the practical limits his society placed on women's opportunities, and women's ambitions and plans of life. Because women depend on men, and in particular on their husbands, for "every privilege or pleasure," as well as "all objects of social ambition," Mill argues that "it would be a miracle if the object of being attractive to men had not become the polar star of feminine education and formation of character."¹⁵ This situation creates a bottleneck (discussed below) of an especially pervasive kind, where one must be a man to pursue most paths.¹⁶ For everyone to benefit from the diversity and disagreement around them about the good or about what constitutes a good life, there must be not only publicity, in which many people make their disagreements known, but also some degree of *universality*, so that in the main, those ideas of the good and ideas of a good life are not limited by their own terms to particular groups but are views that anyone might choose to apply to his or her own life. Only then are people able to use all the available materials to construct their own sense of what matters to them and what kind of life they would like to lead.

III.A.2. Positional Goods and Competitive Roles

Suppose most or all people in a society hold as one of their main ambitions the goal of becoming the wealthiest individual in the entire society—or, similarly,

¹⁴ JOHN STUART MILL, *THE SUBJECTION OF WOMEN* 16 (Susan M. Okin ed., Hackett 1988) (1869).

¹⁵ *Id.*

¹⁶ See *infra* section IV.A.3, beginning page 212.

the goal of becoming part of the wealthiest 1 percent. By definition, it will be impossible for the vast majority to succeed. Such a competition is entirely zero-sum. There are a fixed number of slots, and anyone who breaks in pushes someone else out. This fact will tend to intensify the competition for any developmental opportunities, jobs, and anything else that has the potential to lead to such riches: If there can only be so many winners, then one had better get a leg up on one's competitors.

On the other hand, imagine a subtly different case. Suppose people value money just as much but in a different way. Specifically, suppose most or all people place a high value on obtaining some absolute (rather than relative) amount of real wealth. This goal is one that any number of people might attain, depending on social and economic arrangements. Indeed if the threshold is modest—suppose we all highly value avoiding poverty—one can imagine a society in which everyone is able to achieve this goal.

The difference between these two cases turns on whether or not people value the relevant good (here, money) as a *positional good*—that is, a good whose value depends on the number of others who possess it and/or the amount they possess.¹⁷ Certain goods may be inherently positional, such as goods subject to crowding.¹⁸ But many other goods can be socially constructed in either positional or non-positional ways. A person might value a big house, a particular real income,¹⁹ or a particular level of education regardless of what others have. But if one values having the biggest house in the neighborhood, being among the highest income earners, or being as educated as (or more educated than) some reference group of other people, then one is framing and valuing those goods in positional terms. Although I began with the most familiar case, it is a mistake to assume that those concerned with positional goods are always focused on reaching the top. Sometimes, the key thing is to reach the middle or avoid the bottom. Thorstein Veblen explained a century ago that money, valued in positional terms, can become the basis of “good repute” not only among the wealthy but across the entire class structure—which is why we have the phenomenon he termed “conspicuous consumption.”²⁰ Some people may wish to be—or appear to

¹⁷ FRED HIRSCH, *SOCIAL LIMITS TO GROWTH* 27 (1976).

¹⁸ For example, a park may be more enjoyable to visit if it is not packed with other people.

¹⁹ Money is a bit of a special case in that nominal currency may be inherently positional: If everyone else suddenly had twice as many dollars tomorrow, prices would likely double, which would cut in half the purchasing power of anyone whose nominal dollars remained constant. Let us put this complexity aside by assuming that by money we mean real rather than nominal amounts. Let us also put aside the deeper complexity that over the long run, the real wealth held by others in our society may shape our own preferences and expectations. Conceptually, at least in the short run, one can imagine valuing an absolute threshold amount of real money.

²⁰ THORSTEIN VEBLEN, *THEORY OF THE LEISURE CLASS* 52–54 (Dover 1994) (1899).

be—above average in income; it may be especially significant to be or appear to be non-poor.²¹ In a world of value pluralism, there will be some disagreement over which goods to value in absolute terms and which in positional terms; for many people, both ways of valuing a given good will play some role in their thinking.

Similarly, of the different roles that people might value, some are competitive and some are not (although here again, people may frame the same role in different ways). If many more people want to be neurosurgeons than society will train and employ in that role, then the competition will be fierce—not only at the last stage of competition for jobs as a neurosurgeon, but also throughout the prior competitions to obtain each developmental opportunity and credential that would tend to give a person a leg up at later stages. On the other hand, it leads to no such competitive incentives if many or even most people seek a role that is basically non-competitive in nature, such as if most people want to marry, be a parent, or be a friend. Although there may be legal, social, and technological barriers that restrict who may marry or become a parent, such goods are non-competitive in the sense that there is no fixed number of marriages or children; one's ability to do these things is not affected by the number of other people who make the same choice.

Of course, any relationship, with the interesting exception of parenting a very small child, does involve a choice by at least one other person to enter into and maintain that relationship. This is not the same as a zero-sum competition for a coveted job, but it introduces an element of competition. The competition is more intense to the degree that people are like the unfortunate inhabitants of Nozick's island, settling on some shared preference or metric that leads to a hierarchy of preferred partners. It is possible to frame the same role or relationship in either competitive or non-competitive terms. It is one thing to want to marry, quite another to want to marry someone toward the top of some agreed hierarchy of desirable spouses. Similarly, it is one thing to want to be (or to have) a friend, but quite another if everyone's aim is to be counted among the innermost circle of friends of those at the top of some social pyramid. It is one thing to want to have a child, quite another to want to have the best child, the most accomplished, the child who outshines his or her peers. These differences affect our incentives—and, as discussed below, they also affect the severity of the problem of the family, the problem of merit, and the problem of the starting gate.

²¹ Cf. KERWIN KOFI CHARLES ET AL., *CONSPICUOUS CONSUMPTION AND RACE*, 124 QUARTERLY J. ECON. 425 (2009) (noting that individuals from a poor “reference group,” defined here as others of the same race in the same state, spend a higher proportion of income than others on visible consumer goods—arguably in order to show that they are not poor).

The *bundling* of goals matters as well. Almost everyone has more than one goal in life. Most People have quite a long list of roles and goods they value to various degrees, perhaps for reasons that seem to them incommensurable with one another. From the perspective of opportunity pluralism, it matters whether these goals are disaggregated, meaning that achievement of one does not depend on achievement of others, or whether they are all linked together. Suppose money, social standing, and a “good” marriage are all linked tightly together: Money has become the basis of good repute, one needs a good reputation to make money, and a good marriage both requires and can increase social standing and money. In a society organized that way, it doesn’t really matter which of those goals a person initially sought, and indeed that may be impossible to disentangle. Bundling these roles and goods has the effect of colapsing together some different objectives people might hold, in the sense that if they seek any part of the bundle, they will have to seek all of it, and will form an ambition to do so. At this point, we have moved from Mill to the world of Jane Austen. The bundling together of these different goods, and in particular the bundling of personal relationships with goods such as social standing and money, is more than enough to set the machinery of an Austen novel in motion.²² Moreover, this kind of bundling has real-world consequences, such as the loveless marriages of some people who married primarily because they wanted to obtain, do, or become things that, in their society, depended on being married. For the plurality of values and goals in Condition One to have the result that people actually seek different goals, we need to unbundle the various goods and roles that people value.

Together, these variables characterizing the kinds of goods and roles people seek, and the degree to which they are bundled together, add up to a second condition:

Condition Two—Non-Competitiveness and Unbundling of Values and Goals

As many as possible of the valued goods and roles should be *non-positional* (or less positional) goods and *non-competitive* (or less competitive) roles; and in addition, the various goods and roles should be unbundled rather than bundled together.

To the degree that Condition Two is satisfied, this has the effect of lowering the stakes of the interrelated problems of merit, the family, and the starting gate

discussed in chapter I. Parents, to be sure, always create inequalities of opportunity by providing developmental opportunities and other advantages to their children. The problem of the family does not go away just because some of the goods and roles people seek are non-positional or non-competitive. Still, moving in the direction of Condition Two lowers the stakes. Zero-sum competitions and positional goods each collapse the distinction between absolute and relative advantage—that is, they turn any person’s advantage into someone else’s disadvantage. If most of the goods and roles people seek are competitive or positional, then parents with resources have powerful incentives to convert those resources into whatever advantages for their own children will exceed the advantages other competing children will possess. Under those conditions, anything parents do to pass along advantages and opportunities not only improves the (absolute) standing of their own children but also *reduces* the advantages and opportunities available to others.

When (more of) the valued goods and roles are non-positional or non-competitive, this effect disappears. Your advantages are no longer my disadvantages. This makes the problem of the family considerably less acute. It may also help prevent an “arms race” effect, in which parents with more resources convert more and more of those resources into additional kinds of advantage for their children in order to keep ahead of one another. Similarly, the problem of merit presupposes—and arises only in the context of—zero-sum competition for scarce roles and educational opportunities. Whenever a valued good or role falls outside those zero-sum competitions, this marginally decreases the stakes of the problem of merit.

There are some limits to how far Condition Two may be pursued. In any society with at least a somewhat specialized division of labor—or to put it differently, in any society with sufficiently complex jobs that some specialization is required—there are some limits, albeit loose ones, on the number of people who are likely to be needed in any given profession. As long as more people want to pursue those roles than are needed, the roles cannot help but be at least somewhat competitive, whatever the method of allocation.

Similarly, any role or career that involves market competition cannot be entirely non-competitive. To be sure, there is a difference between a person hell-bent on being the *most* successful in her field and one who merely wants to be successful. But even though the latter goal is framed in non-positional terms, in most fields and industries, “mere” success comes in part by out-competing others. Where that is the case, in order to be successful in an absolute sense, one must be successful relative to least some competitors.

The clearest way to think about these aspects of different goods and roles is to conceptualize them not in terms of a binary choice between positional and non-positional or between competitive and non-competitive, but instead in

²² See, e.g., JANE AUSTEN, PRIDE AND PREJUDICE 1 (Vivien Jones ed., 2002) (1813) (“It is a truth universally acknowledged, that a single man in possession of a good fortune must be in want of a wife”).

terms of points along a continuum between those endpoints. In this way, we can speak of a good or role becoming *more* or *less* positional or competitive, depending on other features of the surrounding opportunity structure.

In any real society, some of the goods and roles that people value will be highly competitive and/or positional. Others will not. But various aspects of the opportunity structure affect where on the continuum different goods and roles will fall. For instance, imagine two societies where many people place a high value on education. In one, what matters is how much education one has; in the other, what matters most is the relative prestige of one's educational institutions according to some agreed-upon hierarchy. Obviously, the latter view frames education in a more competitive, as well as positional, way.

But why would most people in the first society come to value education one way and most people in the second society another? Broader social mores and attitudes about prestige and status may play an important role, but the answer depends primarily on the shape of the rest of the opportunity structure. Suppose that in order to proceed along many valued paths in the opportunity structure, one needs a certain absolute amount of education—say a particular credential or degree—and that this is something many educational institutions, including some with relatively open (non-competitive) admissions policies can provide. In that case, people are likely to view education in a relatively non-positional, non-competitive way.

On the other hand, suppose that in order to pursue many valued paths in the opportunity structure what one really needs is a credential from a very prestigious institution, suppose that different educational institutions are arranged in a hierarchy, and that a degree from one near the top opens many more doors and does much more for one's prospects than a degree from one in the middle, which in turn is far more useful than a degree from one at the bottom. In that case, education from a relatively prestigious institution becomes an important bottleneck (as discussed below). People will then rationally value education in a more positional way, focusing on where they stand relative to others against whom they are competing.²³

²³ In these examples, we have held constant the degree to which the competition for jobs itself matters in terms of people's values and goals. But suppose it became a bit less important to succeed in the competition for jobs. This would similarly shift the balance of reasons why people value education in a less positional direction. People value education in part for intrinsic reasons having nothing to do with the competition for jobs; if the stakes of the competition for jobs are reduced a bit, those more intrinsic motivations will play a relatively greater role. See Harry Brighouse & Adam Swift, *Equality, Priority and Positional Goods*, 116 ETHICS 417, 488–489 (2006) (explaining how changes such as “equalizing wage rates” or “reforming the job structure to make jobs more equally interesting and responsible” would lessen the competitive, positional aspect of education, as would “allocating jobs by lottery” and so on).

Robert Frank and Philip Cook recognized in the 1990s that this phenomenon was driving changes in American higher education. “If access to the top jobs depends more and more” on having especially prestigious, top-flight educational credentials, they wrote, then “we would expect [students] to do everything in their power to improve their credentials, and indeed they have.... Whereas it was once common for the brightest high school students to attend state universities close to home, increasingly they matriculate at a small handful of the most selective private institutions of higher learning.”²⁴ A more hierarchical picture of the instrumental value of education also feeds back into the institutional choices of schools themselves, which then place a greater emphasis on competing with one another for status within the hierarchy.²⁵ This point may be generalized. The shape of the opportunity structure affects which goods are more or less positional and which roles are more or less competitive. If people understand the opportunity structure enough to appreciate these differences, these differences will shape their own actions and preferences.

At this point in the argument, it may be worth emphasizing that opportunity pluralism is not about preference satisfaction. Because we all form our preferences in large part in response to the opportunity structure we see before us, we should expect, for example, that many people with limited opportunities will have adaptive preferences that reflect the constraints they are under.²⁶ From the point of view of happiness, it may well be helpful to develop adaptive preferences so that one does not want goods and roles that are out of reach.²⁷ But from the point of view of human flourishing,²⁸ such a response—like that of the fox who decides he does not want the grapes he cannot reach—merely underscores, and does not mitigate, the constrained opportunities that produced it.

Whenever some people's opportunities are constrained relative to those of others, *something* in the opportunity structure is doing the constraining. Something is interacting with some characteristic of the relevant set of people in a way that cuts them off from many opportunities. That something, whatever it may be, constitutes what I am calling a bottleneck. The piece of the conceptual machinery of the pluralistic model to which we now turn aims to loosen such

²⁴ ROBERT H. FRANK & PHILIP J. COOK, THE WINNER-TAKE-ALL SOCIETY 148 (1995).

²⁵ See *id.* at 149.

²⁶ See, e.g., AMARTYA SEN, THE INIA OF JUSTICE 283 (2009) (“hopelessly deprived people may lack the courage to desire any radical change and typically tend to adjust their desires and expectations to what little they see as feasible,” which has “the consequential effect of distorting the scale of utilities in the form of happiness or desire-fulfillment”).

²⁷ See *id.*

²⁸ See *infra* section III.C, beginning page 186.

bottlenecks, placing greater priority on those that leave some people's opportunities more severely constrained.

III.A.3. The Anti-Bottleneck Principle

Suppose that Conditions One and Two are satisfied. People hold many different conceptions of the good; they have different ideas about what kind of lives they wish to lead; they have their hearts set on different combinations of roles and goods that they value for different reasons; and furthermore, many of these are non-positional goods and non-hierarchical roles. However, suppose the opportunity structure is otherwise set up as it is in the big test society: In order to pursue most of the roles and goods people value, one must first pass a critical, competitive test at age sixteen. Otherwise one cannot proceed along most of the paths that lead to most of the careers and some of the non-work roles that people value. We can visualize such a test as a *bottleneck*: a narrow place through which one must pass in order to pursue any of the many paths that fan out on the other side and lead to a wide range of valued roles and goods.

A bottleneck like the big test may well reverse any progress we may have made in lowering the stakes or reducing the severity of the interrelated problems from chapter 1—the problem of the family, the problem of merit, and the problem of the starting gate. Parents and families have a variety of reasons for taking actions that provide their children with (different kinds of) advantages. Some of those reasons do not stem from any desire for advantage. For instance, a parent may simply intrinsically enjoy reading to his children. Other reasons are instrumental, as when a parent reads to his children in order to further their intellectual development.²⁹

Among such instrumental reasons, some aim for absolute benefits, others for relative benefits. A parent may want his child to have a fulfilling career or a good life in some absolute sense, or he may want his child to be among the highest school performers or the top athletes or the highest-income segment of the future adult population—that is, the goal may be to outperform others.³⁰ If Conditions One and Two are satisfied, different parents will have different ideas about what they want to enable their children to do and become—and children themselves will, over time, have access to different ideas about what they themselves might want to do or become—with many of these goals being non-positional and/or non-competitive.

Bottlenecks collapse these distinctions. Whatever goals one might have for oneself or one's children, if the only paths to those goals involve performing well on a single high-stakes, zero-sum test at age sixteen, this creates a strong incentive to focus on scoring higher than others on the test. Parents who understand that the opportunity structure is shaped this way have good reason to focus their available resources and energies on making sure their child outperforms others. This is true even if their ultimate goals for their child are non-positional and non-competitive—even if all they want is for their child to have a fulfilling career, or for their child to have the chance to pursue further educational and career opportunities of various kinds depending on the child's own future inclinations. The bottleneck translates such non-positional, non-competitive goals into competitive, positional ones. In that case, even if they are not motivated in the first instance by any desire to give their children advantages relative to other children, they may be just as frenetic in their quest for such advantages, down to getting their child into the right preschool. This situation might also engender some of the competitive motivations that these parents would not otherwise have felt. Because of the high stakes involved, these competitive, instrumental motivations will take on greater significance, perhaps crowding out intrinsic motivations and causing parents to understand the entire enterprise of childrearing in a more competitive way.

The same is true for the children themselves, whose motivations may be even more malleable. If there is one clear gateway through which all must pass in order to reach the many goals different people value, then only a rare child, or perhaps a child disheartened by his own lack of success so far, will fail to develop a strong motivation to succeed on this particular test. Passing through such a bottleneck becomes the definition of success.

A sufficiently powerful bottleneck, in other words, is enough by itself to reorder the incentives and motivations of many participants in the opportunity structure so that they closely resemble the incentives and motivations of those in the warrior society. This is why the big test society, despite the diversity of paths one might pursue, is just like the warrior society in rendering the problems of the family, merit, and the starting gate especially acute. In such a society, we would expect parents to use many or all available resources to push their children ahead of the others in the zero-sum competition on which all depends. Because parents' resources differ, this intensifies the series of problems we have discussed.

The pluralistic model creates different incentives and yields different motivations. To the degree that Condition Three obtains, even parents who are focused in the first instance on their child's relative success over other children will have much less of a universally agreed-upon roadmap for how to proceed. To the degree that the anti-bottleneck principle is satisfied, there are many paths with

²⁹ This distinction is Adam Swift's. See ADAM SWIFT, *How Not to Be a Hypocrite: School Choice for the Morally Perplexed Parent* 21–33 (2003).

³⁰ This distinction is Swift's as well. See *id.* at 30–31.

different qualifications that could lead a child to a given desired outcome; no single set of preparatory steps is the only or best way to prepare for all paths.³¹ Thus, parents seeking to give their children advantages relative to others will not all make the same choices, and will not all press their children toward exactly the same ends. This in itself will help reduce the competitive pressures that make the problem of merit severe. Meanwhile, parents motivated to pursue their child's development in an absolute rather than relative sense will be freer to focus on helping their child grow and develop in ways that they believe constitute growth and development toward individual flourishing—as opposed to those avenues of growth and development that happen to be favored by a particular test or gatekeeper. With the pressure off, parents for whom any of these instrumental motivations coexist with intrinsic ones will be freer to act on the intrinsic ones, or on whichever motivations are the strongest for them—rather than having to subordinate or reorient their goals and values to the demands of the opportunity structure. We can state the anti-bottleneck principle this way:

Condition Three—The Anti-Bottleneck Principle

As far as possible, there should be a plurality of paths leading to the valued roles and goods, without bottlenecks through which one must pass in order to reach them.

The *paths* in this story are the sequences of preparatory institutions and credentials, training opportunities and experiences, and other intermediate steps that allow one either to develop the skills or to secure the credentials that one needs in order to obtain a valued role or good. For example, consider the path to a college education in Germany, where a type of advanced secondary school called the Gymnasium educates a minority of secondary school students, but nearly all (over 90 percent) of those who will be admitted to college.³² Entering the Gymnasium requires strong academic performance and teacher recommendations in primary school. If one is not admitted to the Gymnasium from primary school, it is “virtually impossible” to transfer in later.³³ Because the

Gymnasium stands almost entirely alone as the path to higher education, and because higher education in turn is a bottleneck through which one must pass to access many desired jobs, researchers have found that middle-class families tend to behave just as one would expect. They push for their children to attend the Gymnasium even when their primary school teachers believe the children are not strong enough academically—a pattern that amplifies two other large effects. First, there are large social class gaps on elementary school achievement tests, and second, some research suggests that students from lower social classes “must also perform much better to get a positive recommendation” letter for the Gymnasium.³⁴

The fact that the Gymnasium so dominates the path to higher education means that the bulk of the decisions about who will go to college and who will not are made on the basis of performance in primary school. It is especially problematic to place any kind of starting gate so early, because parental advantages tend to be even more immediate and powerful in the primary school years than they might be later on. This is a stage at which many parents remain deeply involved in their children’s daily homework assignments. The decision to send some children to the Gymnasium amplifies the effects of such early advantages, which are class-linked. Those in the Gymnasium then progress more quickly than those in other schools, so that by the end of secondary school, they are much more qualified for higher education than others.³⁵

Finally, because there is (mainly) one path leading to a university education, and a university education opens so many doors, primary school students have a strong reason to orient themselves during primary school toward the goal of entering the Gymnasium. Gymnasium students have a strong reason to orient themselves toward the university entrance examination (the Abitur). Those whose interests lie elsewhere at either of these junctures are likely to fail to make it through this critical bottleneck, and then they will have few further opportunities to pursue any of the paths that require a college degree.

It does not have to be this way. In the United States, those who do not qualify at eighteen for admission to a university, or who choose not to apply at that time,

³¹ Of course, some parental activities, such as verbal interaction, are essential no matter what path a child may in the future wish to pursue. See *supra* section II.E.4, beginning page 124 (discussing essential developmental opportunities). To the degree that access to these is non-universal, such access constitutes what I call a developmental bottleneck.

³² Thorsten Schneider, *Social Inequality in Educational Participation in the German School System in a Longitudinal Perspective: Pathways into and out of the Most Prestigious School Track*, 24 EUROPEAN SOCIOLOGICAL REV. 511, 512 (2008).

³³ *Id.* There is a small exception for transfers after the tenth grade for students with outstanding exam results.

³⁴ *Id.* at 512–513, 524. The size of this effect is disputed, however. It may really be parent motivation that is doing the work, not bias on the part of teachers making recommendations. See Kai Maaz et al., *Educational Transitions and Differential Learning Environments: How Explicit Between-School Tracking Contributes to Social Inequality in Educational Outcomes*, 2 CHILD DEV. PERSR. 99, 102 (2008). For our purposes, this dispute is less important. Whichever of these mechanisms is the most significant, they all reinforce (class-linked) parental advantage.

³⁵ See Maaz et al., *Educational Transitions*, at 100 (arguing that this early tracking decision “increases the strength of the link between socioeconomic background and student achievement” because class affects the tracking decision, and the “differential developmental environments” offered in different tracks lead to “higher learning rates in the high tracks”).

may instead enroll, either at that time or later, at a community college. These institutions offer not only job-relevant training courses and two-year degree programs but also, importantly, the opportunity for students who do well academically to transfer to four-year colleges.³⁶ These institutions' missions reflect, as two scholars surveying the landscape of U.S. community colleges put it, a "belief that all individuals should have the opportunity to rise to their greatest potential"; that "[a]ccordingly, all barriers to individual development should be broken down"; and that "[P]eople who fail to achieve in their youths should be given successive chances."³⁷ Community colleges have several different and sometimes conflicting functions: providing technical training, degrees, and certificates in fields from nursing to engineering; offering a pathway to four-year institutions; and providing general education for anyone on a non-competitive-admissions basis—including adult and continuing education for students not seeking a degree, and basic courses offering a foundation of literacy and numeracy for students of any age.³⁸

A four-year college degree remains a very significant bottleneck in the United States. Such degrees are required to pursue many valued roles throughout the opportunity structure. It would advance the anti-bottleneck principle to reduce the proportion of jobs that demand such a degree.³⁹ Meanwhile, college admissions involve the closest thing to an American "big test": the SAT and the ACT.⁴⁰ Community colleges certainly do not eliminate this bottleneck, but they mitigate it. They provide an alternative path *around* the main four-year college entrance requirements—academic performance between roughly age fourteen and seventeen combined with test scores and other credentials—so that those who do not or did not qualify for admission on those terms have "successive chances," even years later, to pursue college.⁴¹ In view of the anti-bottleneck principle, it is

particularly important that community colleges (and to some degree, U.S. colleges and universities more generally) accept students of different ages. Such policies move the opportunity structure away from the unitary model and toward the pluralistic model by lowering the stakes, at least slightly, of the competition in twelfth grade. Those who lose out or choose not to compete are not forever foreclosed from pursuing paths that involve higher education.

The anti-bottleneck principle can never be completely achieved. In the domain of higher education, admissions tests or other admissions criteria will be part of almost any system. From the point of view of the anti-bottleneck principle, the question is how to stop any one such requirement (or cluster of very similar requirements) from becoming too severe of a bottleneck. It helps if different institutions employ different criteria—and even better, if each educational institution allows applicants to demonstrate different strengths in more than one way, admitting some students mainly because of their test scores, others mainly because they performed well in community college classes, still others mainly because they submitted a portfolio of promising work in a specific field, and so on. A further group might be admitted provisionally and prove themselves through actual performance in a subset of college classes.⁴²

Creating multiple paths eases some of the pressure on each. Even if students are ultimately in competition for a fixed number of admissions places, they are not in the kind of single big-test competition that produces incentives for everyone to focus as much of their efforts as possible on the single test.

This anti-bottleneck idea is deeply at odds with most of our usual ways of thinking about equal opportunity. From the point of view of *equalizing* opportunity, there are some benefits to a broad-based testing regime in which everyone has an equal chance. Such regimes were, in fact, often introduced as a way of promoting equal opportunity. And to some degree, they do: In comparison to prior systems of admission to elite institutions of higher education that amounted to little more than hereditary aristocracy, testing regimes offered a way to sift through large populations of applicants and find those with particular potential and promise, whatever their backgrounds.⁴³

³⁶ See *supra* pages 33–34.

³⁷ COHEN & BRAWER, AMERICAN COMMUNITY COLLEGE, at 11.

³⁸ See generally *id.* at 219–348.

³⁹ See *infra* section IV.A.2, beginning page 205.

⁴⁰ Four-year colleges themselves can also create such alternate paths. For instance, the Coordinated Admission Program at the University of Texas offers most of the in-state students who apply but are not admitted to the flagship University of Texas at Austin the opportunity to attend college at other

UT campuses instead, with an automatic right to transfer to the flagship campus after one year if their grades are strong (approximately a B+). See UNIVERSITY OF TEXAS, "Information about CAP," <http://bealonghorn.utexas.edu/cap>.

But educational testing regimes do not simply measure some underlying variable, the way a soil sample might measure the content of the ground to see what is there and what will grow. As chapters I and II explored, testing regimes always measure abilities that are in part the result of past developmental opportunities. They thereby create incentives to reshape developmental opportunities in the image of the test. Some people are more able than others to shape their own or their children's opportunities in ways conducive to test success, which sets up the problem of the family and of the problem of merit. These problems are especially acute when tests do not test what children are taught in school. This is why even Charles Murray, coauthor of *The Bell Curve* and no critic of intelligence testing, now argues that colleges should "drop the SAT in college admissions decisions" in favor of "achievement tests in specific subjects for which students can prepare the old fashioned way, by hitting the books."⁴⁴

Pathways to higher education are a useful paradigm case for understanding the dynamics of bottlenecks, but the concept applies far more broadly. Bottlenecks can be found in every corner of the opportunity structure. When a guild restricts entry to a trade, so that the only path to learning the trade is to

secure a scarce apprenticeship, this creates a bottleneck. If there is no other way to learn the relevant skills, then the guild need not even bother policing who can practice the trade. Restricting access to the developmental opportunities people need to learn the skills is enough to create the bottleneck.⁴⁵ In a society where literacy is essential for pursuing the vast majority of paths, not only in work but also in many other areas of social life, the opportunities to develop literacy, or literacy in the society's dominant language, is a bottleneck.

Consider a rather different example. Imagine a society divided geographically into two areas: Those living in Opportunityland have the schools, peers, peers' parents, and so on that provide the knowledge and opportunities that people need to pursue many paths, while those living a few miles away in Povertyland have none of these advantages and have very limited prospects. To the degree that these stylized facts describe a society's geography of opportunity, residency in Opportunityland itself becomes a bottleneck. Even if no one asks your address or treats residency as an important credential, it is a bottleneck because without it one cannot readily pursue many of the paths this society offers. In this case,

³⁻¹²² (2000) (describing the complex mix of social forces, from meritocratic egalitarianism to military necessity), that led to broad adoption of SAT-type testing in the United States).

⁴⁴ Charles Murray, *Narrowing the New Class Divide*, Op-Ed, N.Y. Times, March 8, 2012, at A31.

⁴⁵If there are some paths around the bottleneck, the guild might pursue a dual strategy of restricting learning opportunities and sanctioning those who practice the trade without authorization, so as to render the paths around the bottleneck less viable.

we would expect those in Opportunityland to do whatever they can to make sure their children also grow up in Opportunityland. We would expect rules about zoning, affordable housing, or any other rules that regulate who gets to live in Opportunityland to take on great political salience, with those who are in Opportunityland attempting to keep out those who are out.

Politics and law have only partial control over the opportunity structure. On the one hand, a wide range of policies and laws affect various aspects of that structure directly and indirectly. But on the other hand, numerous independent decisions by institutions, firms, and individuals also shape the opportunity structure by determining which qualifications one must obtain, which paths one must follow, and which skills one must develop in order to be qualified for which roles. Before we discuss the dynamics of bottlenecks in more depth,⁴⁶ let us turn briefly to the question of who controls the shape of the opportunity structure. This too is an important part of what makes an opportunity structure relatively unitary or pluralistic.

III.A.4. Who Controls the Opportunity Structure?

Throughout most of the discussion of different opportunity structures in the argument so far, we have taken the structure to be fixed. Whether it was more unitary or more pluralistic, we assumed that the structure itself was exogenous to the incentives, motives, and decisions of the people whose actions we were discussing. We assumed that from the point of view of an individual facing a lattice of paths and choices, the opportunity structure was something to observe and navigate, not alter. Why might this be the case? In the warrior society, one might assume that the heavy hand of some state planner was at work, defining the warrior caste itself and creating the warrior test. If part of the opportunity structure is fixed—whether by law, by a cartel-like decision by a group of institutions, or through the force of an overwhelming social consensus, this in itself is a constraint on opportunity pluralism.

To sustain pluralism in the goals that people value and around which they orient their lives, a society must have multiple sources of authority about what matters, and they must disagree at least some of the time. If everyone agrees that a single authority, such as an official at the top of a religious hierarchy, is the sole source of correct guidance about what kinds of lives and forms of flourishing to value, this will tend to press toward the uniformity that Mill correctly viewed as a threat to individuality and even to liberty of thought. A society needs more

⁴⁶ See infra section III.B, beginning page 156.

pluralistic sources of authority than this—and it needs to enable individuals to dissent from existing authorities and advocate their own combinations of values.

The same is true of the lattice of paths and qualifications that make up the opportunity structure. In some societies, the state or some other centralized authority exercises considerable control over the major educational pathways and the tests and qualifications required to pursue them. When such centralized control aims for uniformity—sometimes in part in the name of fairness—it also creates bottlenecks. Accreditors and educational authorities can cause the same problems when they require, or provide strong incentives for, educational institutions to converge on a single test or to require a particular sequence of credentials and educational steps.

We can express this idea as a fourth condition, a sort of meta-condition, governing who has control over the elements of the opportunity structure described in the first three conditions:

Condition Four—Plurality of Sources of Authority

There are multiple, competing sources of authority—which do not all agree—regarding the goods, roles, paths, and qualifications described in the first three conditions; and society enables individuals themselves to conduct experiments in living, creating new goods, roles, paths, and qualifications that did not exist before.

If different educational institutions or employers have control over their own admissions or hiring, they may disagree about what tests and other qualifications to require. Some may differentiate themselves in terms of mission and focus, thereby creating distinct pathways that broaden the range of options open to their prospective applicants. Having many diverse decision-makers, rather than a single, central one, opens up space for experimentation with different conceptions of merit.

For instance, a few dozen elite universities in the United States recently began an interesting experiment, perhaps out of a recognition that their standard pathway to admissions—and beyond that, to graduation—had become a bottleneck through which relatively few minority students were able to pass. The colleges entered into a partnership with the Posse Foundation, which uses its own quite different set of criteria, emphasizing leadership skills and teamwork, to select groups of often mostly poor, mostly minority students, all from the same city, and place them at an elite college together, where the students provide additional support to one another. The elite colleges effectively outsource a small slice of their admissions process to this foundation and its unusual criteria. The Posse Foundation students tend to have SAT scores far below those of students admitted through the regular admissions track. Nonetheless, they have been highly

successful: 90 percent graduate, half on the dean's list and a quarter with academic honors.⁴⁷

The effect of initiatives of this kind is to *loosen* the bottlenecks created by tests like the SAT. Such initiatives do not rely on any conclusion that the SAT is unfair or that colleges ought not to use it. On the contrary, such tests may be a useful route by which many high school students demonstrate that they have something colleges are looking for—including some students whom competitive colleges might otherwise have overlooked.⁴⁸ But there is no reason why any one set of tests ought to be the *only* route by which most or all colleges, across a vast and diverse higher education landscape, measure applicants' potential. Offering some alternative tracks—allowing people to proceed to higher education by multiple routes—provides an escape valve, taking some pressure off the test and making it that much less of a bottleneck.

Entrusting many different institutions with the power to define merit and the terms of admission and selection for important paths does not guarantee that they will choose different criteria, or that any of them will be open to experimentation of the kind just described. More than one decision-maker does not guarantee more than one decision. Sometimes many decision-makers converge on a common decision to require all applicants to squeeze through the same narrow openings.

It is useful to consider when and why this occurs. Sometimes the key is competition among the institutions themselves, especially (but not only) where some external accreditor or arbiter of rankings has influence over the standards that different institutions use. In other cases, many institutions or employers adopt a simple, off-the-shelf test because it is available and cheap. In still other cases, institutions are taking advantage of network effects, making themselves accessible to large numbers of applicants who are already taking a particular test. Finally, in theory at least, convergence may result because one test or criterion does a very good job of predicting who will perform well and who will not (and no other could perform comparably).

⁴⁷ See Posse Foundation, *Fulfilling the Promise: The Impact of Posse After 20 Years* 8, 28 (2012); see also Susan Sturm, *Activating Systemic Change Toward Full Participation: The Pivotal Role of Boundary Spanning Institutional Intermediaries*, 54 *St. Louis U.L.J.* 1117, 1129–131 (2010) (explaining the Posse Foundation's model); E. Gordon Gee, *An Investment in Student Diversity, Trust, and Leadership*, 18 *Harv. J. on Leg. & Pol'y.* 18–22 (describing results at Vanderbilt).

⁴⁸ This was why the SAT functioned half a century ago to *loosen* the college admissions bottleneck, see sources cited *supra* note 43 on page 149. It continues to do so today to some degree—even though, as a statistical matter, scores are closely correlated with class advantages; see *infra* note 21 on page 206, there are always some outliers.

In each scenario with the possible exception of the last one, there is considerable room for regulators, accreditors, test developers, the keepers of rankings lists, and others to do what they can to give different institutions and decision-makers the freedom to re-imagine the tests and qualifications that ought to enable someone to pursue a given educational program or a given entry-level job. Governments, for example, might avoid demanding standardization and instead adopt grant-making approaches that reward institutions for experimenting with different and conflicting conceptions of merit.

In some cases, many decision-makers converge on a common set of criteria in whole or part because of a widely held belief or stereotype about what kind of people ought to be pursuing a particular path or goal. When this is the case, government—and in particular antidiscrimination law—may help to disrupt such widely held beliefs and stop many decision-makers from setting up paths and qualifications in a manner that yields (or discourages) applicants from a particular group.

Still, other things being equal, with more decision-makers we ought to see a greater variety of decisions and more dissensus, leading to a wider range of different paths and requirements. In the same way, more sources of authority concerning conceptions of the good will mean, other things being equal, a greater plurality of conceptions of the good.

The most radical, and perhaps the most important, way to decentralize control over the opportunity structure is to take some of that control away from authorities and institutional gatekeepers entirely, and put it in the hands of individuals themselves. This is the idea of the last clause of Condition Four. “Experiments in living” is Mill’s term. Mill draws a close analogy in *On Liberty* between the “liberty of thought and discussion” and the “liberty of tastes and pursuits; of framing the plan of our life to suit our own character.”⁴⁹ He argues that for “the same reasons” that there should be free differences of opinion and experiments of thought, there should be “experiments in living” in which individuals “carry [their] opinions into practice.”⁵⁰ This means that individuals ought to be able to strike out on their own, defining new paths and even new roles and goods that did not exist before, thereby expanding the range of paths available to others to follow and modify. It may not be possible for individuals to create wholly new ends, roles, or paths that do not relate in some

understandable way to what came before. But experiments in living can at least revise existing social forms, just as an entrepreneur with an original idea might offer a new product or business different than anything seen before, yet recognizable enough that customers or clients can understand its value. If successful the new idea becomes part of the material out of which others can construct their own innovations.

It would be too simple to argue that free markets always instantiate Condition Four, in which control over the opportunity structure is widely dispersed among individuals are free to create new paths.⁵¹ Real markets may or may not work out that way. Still, business innovation is more than just an analogy in this story. Creating new kinds of enterprises and new kinds of jobs that did not exist before is one important way to create new paths, enabling people to build their careers and lives around the development and use of previously unheard-of capacities and combinations of capacities. In a world before computer programming, where that distinctive path did not exist, there was no way for a person to develop her latent potential in that field—or to form any ambition to pursue such a career with all its distinctive features and challenges. Creating a new field or a new kind of enterprise widens the range of paths that people might pursue and the goals to which people might aspire. A modern, complex society offers many paths; over time, more are created and some are lost. The freedom to add new paths is important for building and sustaining Mills’s “plurality of paths” and “variety of situations.”

Even when society is able to create wonderful and distinctive new paths and goals, these are generally not accessible to everyone. Wherever this is the case, something is preventing individuals from proceeding along these paths. That something—whatever it may be and however it may result from the interactions of different institutions and social forces—is, in structural terms, a bottleneck. Let us turn now to a more serious examination of the dynamics of bottlenecks and the question of which ones, given finite resources and other constraints, we ought to concentrate on ameliorating.

⁴⁹ JOHN STUART MILL, *ON LIBERTY* 12 (Elizabeth Rapaport ed., Hackett 1978) (1859). This analogy is basic to the structure of the book, which focuses first on liberty of thought and discussion in chapter 2 before turning to tastes, pursuits, and “plans of life” in chapters 3–5.

⁵⁰ MILL, *ON LIBERTY*, at 79, 53.

⁵¹ The question of who controls the shape of the opportunity structure is usually far from the surface of debates about equal opportunity. One important exception is an essay by David Strauss, who argues that the real promise and appeal of market-based, meritocratic conceptions of equal opportunity is “not that everyone has an equal chance to succeed but that no one has a greater chance than anyone else to determine who will succeed.” David A. Strauss, *The Illusory Distinction Between Equality of Opportunity and Equality of Result*, in *REDEFINING EQUALITY* 51, 61 (Neal Devins & Davison M. Douglas eds., 1998). As Strauss explains, because authority in a market is dispersed widely, “the specific criteria of value are fluid”; “[t]he path to success is not obvious and can change overnight.” *Id.* at 60. Of course, as Strauss argues, real markets often fail to live up to these aspirations. But the aspirations themselves capture a pluralistic dimension of equal opportunity that is too rarely discussed.