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Each Outcome is Another Opportunity

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The Villa Serbelloni proved to be a noble and luxurious house built on the sheltered slope of a promontory that divided two lakes, Como and Lecco, with magnificent views to east, south and west from its balconies and extensive gardens.

[Professor] Morris [Zapp] was shown into a well-appointed suite on the second floor, and stepped out on to his balcony to inhale the air, scented with the perfume of various spring blossoms, and to enjoy the prospect. Down on the terrace, the other resident scholars were gathering for the pre-lunch aperitif - he had glimpsed the table laid for lunch in the dining-room on his way up: starched white napery, crystal glass, menu cards. He surveyed the scene with complacency. He felt sure he was going to enjoy his stay here. Not the least of its attractions was that it was entirely free. All you had to do, to come and stay in this idyllic retreat, pampered by servants and lavishly provided with food and drink, given every facility for reflection and creation, was to apply.

Of course, you had to be distinguished – by, for instance, having applied successfully for other, similar handouts, grants, fellowships and so on, in the past. That was the beauty of the academic life, as Morris saw it. To them that had had, more would be given.²

It has become commonplace for liberal egalitarians to interrogate the question of how people come to acquire certain skills and talents in childhood. Many, perhaps most, liberals argue that equality of opportunity cannot be realised unless advantages secured and disadvantages suffered during childhood are analysed and compensated for.³ In this paper, I ask whether those arguments for regulating education and upbringing that rely on equality of opportunity can coherently stop on adulthood. In other words, why is it that egalitarians are so concerned to ensure that certain aspects of family or educational life do not affect individuals' prospects, but seem relatively unconcerned about the different levels of advantage that individuals secure later in life? Egalitarian arguments of this sort often seem to be engaged in a genealogical project, tracing back the source of an

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individual's advantage through their educational, family and even genetic history. It is less common to encounter an egalitarian concern with the future, with what happens after the moment when equality of opportunity is secured. Rather than starting with an eighteen-year-old, whose first job or place at university must be secured according to equality of opportunity, and working backwards, I want to start with that same person and work forwards. If equality of opportunity is secured on reaching adulthood, may egalitarians sit back and relax?

1. The Moment of Equal Opportunity

The idea that equality of opportunity involves looking backwards is found explicitly in Rawls, who states: "fairness depends on underlying social conditions, such as fair opportunity, extending backward in time".⁴ An example of this backwards-looking reasoning can be found in Janet Radcliffe Richards' article "Equality of Opportunity". Richards parodies the literature on equality of opportunity by considering the headmaster of a sought-after boys' private school who is newly committed to the concept. After a moment's reflection, however, the headmaster finds himself inexorably sliding down a slippery slope into straightforward equality of outcome. Richards describes the slide in four phases. In the first phase, the headmaster realises that it is inconsistent with equality of opportunity to prevent girls from attending the school. In the second phase, he notes that he must also ensure that he selects only on academic ability, such that a particular cultural background is not a requirement of entry. In the third phase, he realises that applicants face an inequality of opportunity as a result of the unequal backgrounds they have experienced; so "the headmaster, although now rather puzzled, wonders about offering remedial classes, and starts to wrestle with counterfactuals about what the children would have been like if they had had each other's backgrounds."⁵ Fourth and finally, the hapless head is stymied:

He will not be left with this particular puzzle for long, however, since the critic will already have moved on to matters still more perplexing. Even equality of background could not give genuine equality of opportunity, since the children's different genetic endowments would still leave them with unequal chances of success. This seems to imply that genuine equality of opportunity requires

the admission of everybody – the equality of outcome to which the headmaster always thought equality of opportunity was opposed – or, since this is impossible, either closing down the school or admitting pupils by lot. Neither of these is anything like what he had in mind when he started off in pursuit of equal opportunities, but he can now see no escape.⁶

A similar *reductio ad absurdum* argument is set forward in Bernard Williams' earlier article "The Idea of Equality". "One might speculate," Williams notes,

about how far this movement of thought might go. The most conservative user of the notion of equality of opportunity is, if sincere, prepared to abstract the individual from some effects of his environment. We have seen that there is good reason to press this further, and to allow that the individuals whose opportunities are to be equal should be abstracted from more features of social and family background. Where should this stop? Should it even stop at the boundaries of heredity?⁷

Perhaps the first thing to note about these two *reductios* is that the supposedly absurd resting-place at the end of each is in fact precisely what is argued for in much of the relevant literature. The headmaster is asked to "wrestle with counterfactuals about what the children would have been like if they had had each other's backgrounds", to notice that "the children's different genetic endowments would still leave them with unequal chances of success", and to conclude as a result that either places must be allocated by lot or the school must be closed. These requirements do not seem so absurd in the light of contemporary egalitarian philosophy. For example, Ronald Dworkin states: "Unfair differences are those traceable to genetic luck, to talents that make some people prosperous but are denied to others",⁸ and advocates distribution not by lot but by clamshell. "We must not allow the distribution of resources *at any moment* to be endowment-sensitive, that is, to be affected by differences in ability",⁹ he cautions. To take another example, Swift moves from the premise of equality of opportunity to the conclusion that "'Family values' set limits on how far opportunities should be equalised,

but respecting those values does not require us to permit private or selective schools."¹⁰ It seems that, if the headmaster is not to distribute places by lot, he must indeed close down his school.

My aim in this paper is not to convince readers that the scenario at the end of each *reductio* either is or is not absurd. Instead, I argue that this kind of approach to equality of opportunity, one that reaches ever backwards into people's histories, investigating their backgrounds, the advantages they have previously enjoyed, and even their genetic endowments, obscures the fact that chains of equality-of-opportunity-upsetting events reach into the future as well as the past. The impression one gets when considering these accounts of equality of opportunity is of lives severed into two halves, with what I call a Moment of Equal Opportunity, or MEO, separating one from the other. In the first half of an individual's life, many things happen to her that *unjustly* make her different from her peers. As a foetus, she is unfairly formed with a particular set of genes, giving her particular propensities for particular talents. As a child, she is unfairly subjected to the influence of her parents, who add unjustly-varying degrees of advantage to her genetic endowments according to their inclination for, and skill at, such activities as reading bedtime stories, playing Mozart in the home, taking her to Shakespeare plays and asking her to count and name various everyday objects. As a schoolchild, she is unfairly benefited or harmed by the skills of her teachers, the resources of her school (which may be unfairly determined by the resources of her parents) and the influence of her peers. These benefits or harms repeat themselves as she develops an unfair advantage or disadvantage as regards attaining places in other schools, or perhaps at university.¹¹

At some point in this process, equality of opportunity occurs. It is common to argue that this point should occur at age 18, when applications for universities or jobs are submitted. Brighouse, for example, argues that education must give individuals equal opportunities at "the age of majority".¹² Progressive admissions tutors at elite universities such as Oxford tend to think that their decisions should take into account the unfairly different advantages that their applicants have enjoyed up until that point. So a public school boy whose use of the subjunctive is not quite perfect should be assessed more harshly than a boy from a state comprehensive who has never heard of the subjunctive.

Beyond this point, the individual's life goes very differently. At the end of her university degree, she applies for jobs or for postgraduate study. At this stage, there is much less of an expectation that prospective employers or admissions tutors will or should disregard the different advantages that she and her peers enjoyed. It is not generally expected that the recruitment staff at investment banks or management consultancies will or should look more harshly on someone with a degree from Oxbridge than on someone with a degree from a former polytechnic, since the Oxbridge graduate has had more chances to develop the relevant skills. Indeed, the opposite is the case. Even when comparing two applicants with the same class of degree, the presumption is that the candidate from the more elite university is preferable *precisely since* that person is more likely to have been educated in the relevant skills. This presumption only intensifies the further in life people progress. If new recruits at investment banks or management consultancies are not selected on the basis of full historical equality of opportunity, senior staff certainly are not. An individual is *more* likely to be promoted, or appointed at senior level, if she has enjoyed great success in her previous career and has had (and used) many opportunities to develop her talents.

Consider, for example, two people with similar merit (in the Rawlsian sense, where merit means talent plus effort plus inclination), similar family backgrounds and similar educations at eighteen years old: Jeremy and Jason. Both apply to an elite university, such as Oxford, whose admissions tutors are (we assume) making decisions based on equality of opportunity. As places are scarce, only Jeremy is accepted. Jason studies a similar course at another university, one which is less prestigious and which devotes less time to undergraduate tuition. Both work equally hard (in other words, both display the same amount of effort and inclination to work). Both achieve 2:1 degrees, and both apply for graduate jobs at leading companies in a particular field. Jeremy is more successful. Employers are impressed by his Oxford degree – not because they are wrongly prejudiced in favour of Oxford through something such as an old boy network, but because they believe that Oxford selects the best students in the first place, that it provides its students with a better education than other universities, and that its culture means that its students develop important skills such as confidence and initiative. In other words, employers prefer Oxford graduates because they believe that Oxford graduates are more likely to

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have qualities which *legitimately and genuinely* make better employees.¹³

So, Jeremy gets a top graduate job at a leading company, while Jason gets a less prestigious position at a less prestigious company. Both work equally hard. Jeremy's job develops his skills quickly. He is given important clients to work with, encouraged to try new things, sent on expensive training courses. Jason is also given opportunities to develop and sent on training courses, but his position and his company mean that he does not develop such impressive skills as Jeremy. In five years, each applies for a more senior position at another company. By this stage, Jeremy is the far better candidate. Not only does he have the advantages that his Oxford degree conferred upon him, he also now has a further advantage in terms of career experience, skills and the good name of a prestigious first employer. As a result, Jeremy gets the job. Jason has to wait until he is offered a less significant promotion at a less prestigious company. And here the process repeats itself. By the time they apply for their third jobs, Jason has no hope of competing with Jeremy: Jeremy's CV is far more impressive, and the experience he has enjoyed and skills he has developed make him clearly the more competent candidate. By retirement, Jeremy has achieved a much higher position in their industry than has Jason, and has earned much more money. Jason is neither poor nor unsuccessful, but his career has not reached the stellar heights of Jeremy's.

This story is by no means unusual. It is the general pattern of career development that we see in many industries - including academia, as Morris Zapp notes with glee. But the point is not merely that this severance of a life into two halves, one before and one after the Moment of Equal Opportunity, does in fact occur. The point is that most advocates of equality of opportunity accept that it should occur. Despite the detailed burrowing into every aspect of an individual's history that might undermine equality of opportunity (the bedtime stories, the trips to the theatre, the piano lessons), the assumption prevails that at some point the attempt to compensate for previous advantage should stop.¹⁴ We must ask, then, whether the final outcome and progress of Jeremy and Jason's lives are consistent with justice and with equality of opportunity.

In the remainder of the paper, I consider two sorts of response to the Jeremy and Jason example. The first says that the course of their lives is entirely compatible with equality of opportunity and is in that respect

unproblematic from the point of view of justice. I criticise these responses by arguing that Jeremy and Jason's lives contain many features usually accepted as constitutive of, or contributing to, injustice. The responses in the second category agree that Jeremy and Jason's lives violate equality of opportunity and are, in that respect, unjust. However, the problem with these responses is that equality of opportunity becomes extremely difficult to implement, since it fundamentally conflicts with other important values.

Whether a theory fits into response type 1 or response type 2 depends on two things: the version of equality of opportunity it employs, and whether or not it endorses a Moment of Equal Opportunity.¹⁵ On some theories of equality of opportunity, namely non-discrimination and careers open to talents, the increasing inequalities between Jeremy and Jason are unproblematic. In the next section I briefly outline the response of these theories. However, most liberal egalitarian theorists advocate some more extensive version of equality of opportunity. According to more extensive theories, I argue, the progress of Jeremy and Jason's lives is incompatible with equality of opportunity. In other words, equality of opportunity cannot consistently be restricted to an MEO, but must be applied throughout a person's life. However, it is not at all clear how equality of opportunity *can* be applied throughout a person's life, since doing so poses serious problems of epistemology, efficiency and incentives, and leads to counter-intuitive results. Overall, my argument is that liberal egalitarian theories of equality of opportunity are inconsistent if they support an MEO and unrealisable if they do not.

2: Defending the MEO

The first set of responses to the case of Jeremy and Jason state that it is unproblematic since it is entirely compatible with equality of opportunity and, in that respect, with justice. One reason for this response that does not invoke an MEO is that a minimal version of equality of opportunity is being used. The most basic type of equality of opportunity concerns the absence of discrimination for certain ascriptive characteristics, most notably sex, race and disability, and sometimes also age, religion and sexuality. This is the version of equality of opportunity that concerns Richards' headmaster at the first stage of his reasoning. Although not without problems (such as those that arise when ascriptive characteristics are somehow relevant to the opportunity in question), this version of equality

of opportunity is relatively uncontested as an ideal. It is also the version of equality of opportunity that is most likely to be thought necessary throughout a person's life. Equality of opportunity as non-discrimination should apply to every educational or career opportunity that an individual faces, regardless of her age or the seniority of the position. An advocate of non-discrimination as the sole measure of equality of opportunity would look at Jeremy and Jason and conclude that the growing inequality between them is fair, provided that Jeremy's success is not the result of racism or similar prejudice. In the rest of this paper I assume that equality of opportunity as non-discrimination is maintained and do not discuss it further.

A somewhat less minimal version of equality of opportunity is what Rawls terms careers open to talents, illustrated by the second stage of the headmaster's reasoning. This version holds that cultural background should also not be permitted to count, and focuses instead on the idea of academic ability as the sole criterion for admissions. Whereas the first stage placed merely negative limits on the sorts of characteristics that may not count as criteria for selection, this second stage introduces a positive normative requirement that only academic merit may count. This step invites us to consider the question of which social endowments may count when allocating positions.

It is familiar to distinguish between natural and social endowments. Natural endowments can be understood as features such as innate intelligence, IQ or ability to learn: things that remain constant throughout a person's life. Social endowments encompass things such as social class and wealth, along with the benefits that those can bring, such as private schooling. Some social endowments give an individual an advantage in securing a position *without* enhancing that person's ability to perform well in that position. For example, a private education may give an individual better advice about which Oxford college to apply to, or contacts in a management consultancy who will offer an automatic interview, or friends who can lend an expensive suit for the interview. These social endowments give advantages without affecting the ability to perform once in the role. However, other social endowments (or other aspects of the same endowments) *do* affect an individual's ability to do the job or role in question. A public school boy who has learnt Latin and Greek will be better at a Classics

degree than an equally intelligent state school boy who has not. Contacts made at private school may make one better at a job in consultancy, if one can use those contacts to get new clients.

We then need to ask which sorts of social endowments may legitimately count when distributing positions. If we endorse equality of opportunity merely in the sense of non-discrimination, then any social endowment that is not discriminatory may count. So, employers may prefer candidates with expensive suits or good contacts even if those things in no way contribute to the candidates' ability to do the job. Once we move to careers open to talents, however, it is clear that social endowments can count only if they contribute to an individual's ability to perform. On the simplest version of careers open to talents, this necessary condition is also sufficient: any social endowment that does make someone better at the job is a legitimate reason for awarding them that job. The "talent" of "careers open to talents" would therefore be *acquired* talent at any given moment, not innate talent or natural endowments. Adherents of this form of equality of opportunity can easily advocate its implementation at every stage of life. According to this view, school places, university places, job appointments and promotions should all be given to the individual whose performance over the course of opportunity is expected to be best.¹⁶ However, this sort of equal opportunity will not delve into a person's background and upbringing. For any opportunity, the only relevant factors are the candidates' current abilities. The case of Jeremy and Jason, as it has been told, is compatible with this version of equality of opportunity.

However, David Miller advocates a version of equality of opportunity which resembles careers open to talents but is not of this simple kind. Miller terms his approach "meritocracy", defined as "the ideal of a society in which each person's chance to acquire positions of advantage and the rewards that go with them will depend entirely on his or her talent and effort."¹⁷ Notice that it makes a great difference here whether "talents" are interpreted to mean innate natural endowments, or talents as they have been shaped by social factors. If the latter, then meritocracy is reducible to the simple version of careers open to talents just described. "Effort" merely serves as one possible way in which talent may be developed, and its specification is unnecessary. If the former, however, a far more radical theory emerges: positions may be

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allocated only according to natural innate endowments and the effort that individuals put in. The talents that individuals develop through *social* endowment, such as a better education or more stretching job, may not count.

On this second reading of meritocracy, the case of Jeremy and Jason is unjust *unless* an MEO approach is taken; unless, in other words, natural talent and effort are the sole permitted criteria *only at a particular point in time*, after which socially-endowed talent may count. Miller does indeed advocate this strategy. He writes:

A person's opportunities have to be judged at some suitably chosen starting point, since each decision that is made to avail oneself of an opportunity, or not to do so, is likely to affect the opportunity set at a later point. For example, a person who decides to leave school at sixteen cannot later complain that she was denied the opportunity to go to university, if by staying on at school she could have achieved that goal. ... The liberal ideal, then, is that *initial* opportunity sets should be equal, not necessarily opportunity sets at some later time when choices have already been made.¹⁸

Here, Miller seems to be advocating that the sixteen-year-old school-leaver should be judged according to simple careers open to talents as an adult, in the sense that the talents she has actually developed should be those that count, rather than those she could have developed had she gone to university. In other words, what Miller here terms "equality of opportunity" should apply at one particular moment, "some suitably chosen starting point", after which its demands need not be met (though the minimal versions of non-discrimination and simple careers open to talents may remain necessary). On this view, then, the case of Jeremy and Jason is compatible with equality of opportunity. At the MEO (their application to Oxford), only their innate talent and effort was permitted to count. Beyond the MEO, it is perfectly acceptable to prefer Jeremy since he has greater merit, even though his increased merit is the result of more fortunate *social* endowments and not more fortunate *natural* endowments, or greater *effort*.

In places it seems as though Rawls, like Miller, supports the MEO approach. Like the contemporary liberal egalitarians who follow him, Rawls is not content with either of the first two stages of equal opportunity: both non-discrimination and unembellished careers open to talents are insufficiently egalitarian. Thus Rawls introduces the concept of “fair equality of opportunity”. The concept aims to:

correct the defects of formal equality of opportunity – careers open to talents – in the system of natural liberty, so-called. To this end, fair equality of opportunity is said to require not merely that public offices and social positions be open in the formal sense, but that all should have a fair chance to attain them. To specify the idea of a fair chance we say: supposing that there is a distribution of native endowments, those who have the same level of talent and ability and the same willingness to use these gifts should have the same prospects of success regardless of their social class of origin, the class into which they are born and develop until the age of reason. In all parts of society there are to be roughly the same prospects of culture and achievement for those similarly motivated and endowed.¹⁹

This passage supports the idea that Rawlsian fair equality of opportunity must be judged at a key Moment in a person’s life. The MEO to which Rawls refers is “the age of reason”. His claim is that prospects of success must not depend on the class within which people develop “until” this point, a claim that invites the question: ‘what happens afterwards?’ Rawls’ formulation does not suggest that class is immaterial to a person’s life after she has reached the age of reason. His argument is compatible with the extremely plausible view that class continues to have an effect throughout the whole of an individual’s life. It is even compatible with the notion that differences akin to class can develop over the course of an adult working life, as occurs with Jeremy and Jason. Rawls does, however, imply that the relevantly unjust influences are those that occur in childhood, such that certain aspects of a person’s talents that are developed in adulthood may justly be taken into account when selecting employees.

At this stage, then, we need to consider whether this division of a person’s life, into time before and time

after the MEO, is justified. Let us consider what an advocate of the MEO might say in defence of this approach by looking at her possible defence of the growing inequalities between Jeremy and Jason.

First, she would want to look at the MEO embodied in the Oxford admissions process. If equality of opportunity really had been practised by the admissions tutors, she might say, then Jeremy must have been *better* than Jason. Although they had *similar* levels of merit, the fact that Jeremy and not Jason was allocated a place demonstrates that they were not *equal* in that regard. Jeremy had more merit, and so the subsequent inequalities that develop are entirely consistent with equality of opportunity. Alternatively, if the admissions tutors made a mistake and Jeremy was not the better candidate, we can criticise the unequal outcome simply by noting that equality of opportunity was not implemented at the start.

This first defence relies on a number of implausible claims. Most simply, it relies on the idea that equality of opportunity can be perfectly implemented. A number of epistemological problems make this unlikely. Simply assessing which of two candidates has more merit can be difficult enough. Moreover, it is *extremely* difficult for anyone accurately to judge which portion of an individual’s ability results from merit and which from class or background. It is certainly unrealistic to suggest that this judgment can be perfectly made in all cases, particularly if candidates are fairly evenly matched (as is the case with Jason and Jeremy). In other words, we cannot assume that any MEO is perfect.

This fact alone might be sufficient for us to question the MEO approach, and suggest that fair equality of opportunity should apply throughout a person’s life if it is to apply at all. But let us set this objection aside, and assume for a moment that assessors can make accurate judgements about two individuals’ relative merits. Even this assumption will only ensure equality of opportunity between candidates if we assume a strictly hierarchical ranking of candidates, with no two candidates on an equal footing. This too is very unlikely, unless the differences between candidates are so minute that the epistemological difficulties would be utterly overwhelming. It is implausible to think that no two candidates can ever be equally able, particularly when considering opportunities for which there are many applicants. Moreover, if a good is scarce such that it cannot be provided to all qualified

persons, it follows that some qualified individuals will be denied it.²⁰ When dealing with a good such as an elite education or a prestigious job, it is highly plausible that some unsuccessful applicants will be as good as some successful ones.

Consider, for example, the recent case of Laura Spence. Spence was a British state school pupil who applied to study medicine at Magdalen College, Oxford in 2000. She was rejected by Oxford but accepted by Harvard. Her case was publicised by her headmaster and a media frenzy ensued, based on the question of whether Oxford discriminated against state school pupils. The Chancellor of the Exchequer, Gordon Brown, was among those who castigated Oxford for not implementing equality of opportunity. However, several Oxford dons wrote in their university's defence. One of those was Alan Ryan, who argued:

Laura Spence's headteacher made a great to-do about her having 10 A and A* grades in GCSE; but every candidate for admission has 10 or more A and A* grades in GCSE and almost all of them will go on to get a minimum of three A grades at A level. ... Short of offering places by lottery to anyone who shows up with 10 A or A* grades at GCSE, it is not obvious what the critics suppose we might try. (There is, in fact, something to be said for a lottery for half the places; the top 10 or 15% of applicants would walk in under any system, and the bottom 15% are, for all sorts of reasons, not going to thrive at Oxford. What happens to the middle 70% is already closer to a lottery than most of us like to acknowledge.)²¹

If Ryan is right, then there are candidates for whom merit does not explain their success or failure. So, no matter how good the admissions tutors are at their task of implementing equality of opportunity, it simply will not be the case that the MEO is perfect and thus can render all subsequent inequalities irrelevant. Even an accurate ranking of candidates may result in many candidates at equal ranks. If this was the case with Jeremy and Jason, we cannot justify the inequality at the end of their careers simply by referring back to the MEO at the start.

It seems, then, that the first defence of the inequality between Jason and Jeremy will not work. We cannot

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plausibly argue that the MEO was perfect and thus renders all subsequent inequalities just, for two reasons: the difficulty of assessing merit, and the possibility that there may be several candidates with equal merit but not enough opportunities for all of them. We must therefore look elsewhere if we are to justify refusing to assess Jason and Jeremy's applications for senior posts according to full equality of opportunity.

A second possible answer appeals to efficiency, and runs as follows. It would be highly inefficient to allocate jobs, particularly senior jobs, on the basis of fair equality of opportunity, since that would require giving jobs to those less able to perform them. The more senior the post, the more disastrous the consequences. If Jeremy and Jason are in investment banking, for example, and Jason is less skilled than Jeremy as the result of his worse opportunities, then appointing Jason as Chief Executive of an investment bank will mean that the bank will not do so well as it would have done with Jeremy as its head. Profits will be down, management will be less competent, clients will be damaged. And the same goes for all other industries. University professors must be those with the best research and teaching records, surgeons must be those with the best medical experience and skills, permanent secretaries must be those with the most experience of working in government departments. We cannot use fair equality of opportunity to allocate senior positions because the costs of having less-qualified people in those positions are too high. At the very least, lifelong fair equality of opportunity would require that employers sometimes take on those who will need more training and will take longer to perform well in their post than alternative candidates. More likely, continuous fair equality of opportunity will require *enormous* expenditure on adult education, on-the-job training and so on, for mitigating the cumulative effects of a lifetime's disadvantage will be extremely difficult. Indeed, if employers truly are to disregard the effects of cumulative disadvantage, they may well have to appoint candidates who simply lack the basic skills and experience needed to do the job.

Secondly, the ongoing use of fair equality of opportunity could have some bizarre incentive effects. Until the time that an individual had reached her ultimate or major career goal it would be in her interests to fail in competitions and miss opportunities. For, if fair equality of opportunity were implemented throughout life, a privileged background and useful experience could be handicaps. Under ideal conditions, this

would not be the case: assessors would accurately identify the effort and talent put in by all candidates regardless of background. In practice, however, this is unlikely. Imagine two extremely clever pupils, Melanie and Margaret, both of whom are able to gain high marks with little effort, and both of whom do actually achieve ten A*s at GCSE. Margaret attends a private school where most of her peers also gain ten A*s at GCSE, usually as a result of the intensive tuition they receive. Margaret's results, however, are the result of her superior merit: even if she had not attended the private school, she would have performed to the same standard. Melanie attends a state school, where ten A*s are extremely rare. Melanie outperforms her peers as a result of *her* superior merit; like Margaret, she is able to excel regardless of the standard of her schooling. A truly accurate system of fair equality of opportunity would judge Melanie and Margaret to be equal, but it seems likely that most university admissions tutors or employers attempting to implement fair equality of opportunity would judge Melanie's achievements more highly since they would not have access to the relevant counterfactual information. If this is true, then attending private school is a handicap for some (the best) pupils, since it is harder for a private school pupil to prove that she has merit of the sort that is rewarded by fair equality of opportunity. Similarly, if undergraduates from non-elite universities are given greater allowances when applying for postgraduate work, then a degree from Oxford is not so desirable after all. Until the point at which further career advancement is not a priority (tenure or a professorship in academia, or partnership in law, for example), fair equality of opportunity could create an incentive for individuals to avoid, or fail to win, opportunities to develop their skills. In turn, this would mean that the most talented people in society were not performing to their full potential, but were deliberately holding themselves back. Such a situation would certainly be wasteful and inefficient. Efficiency concerns do, then, seem to require that fair equality of opportunity applies only at some initial starting-point (the MEO) and not beyond it.

3: Rejecting the MEO

This defence of the MEO approach has left us with two immediate problems. The first is that the value of equality of opportunity has been diluted. I have suggested that we should not appoint senior posts according to fair equality of opportunity since it would be inefficient to do so. But, if the MEO approach is

justified by concerns for efficiency rather than fairness, it follows that it will not adequately secure justice for those concerned. If fair equality of opportunity is an important component of justice, then abandoning it in the name of efficiency means sacrificing justice to efficiency. Of course, if justice is the first virtue of social institutions, this is a grave problem. Even if we are willing to sacrifice some justice for huge efficiency gains, it is important to be clear that there is indeed a sacrifice being made.

The second residual problem concerning the appeal to efficiency is that such an appeal could also be used to justify abandoning fair equality of opportunity for children. If efficiency trade-offs are justified, why should we not make them when allocating school or university places? If private schools really do create better pupils it might be far more efficient for universities to develop the superior talents of private school pupils, rather than waste resources trying to bring state school pupils up to scratch. Efficiency gains could justify selection at every stage of the educational process. But it is precisely this sort of selection that fair equality of opportunity is supposed to prevent, as Swift and Brighouse argue. In other words, efficiency considerations lead us to question not only the application of fair equality of opportunity *after* the MEO, but its application *tout court*. As such, they prove too much.

Indeed, looking elsewhere in Rawls' work gives the impression that he would not be content to endorse the MEO approach. It is difficult to discern precisely how Rawls envisages the implementation of the equal opportunity principle, but there are several considerations that are compatible with the conclusion that Rawls either does reject the MEO approach, or at least recognises reasons that *ought to* lead him to reject it. First, Rawls explicitly rejects sacrificing fair equality of opportunity to efficiency.²² Second, fair equality of opportunity is the second principle of justice full stop, not only at some initial starting-point. Indeed, Rawls is deeply suspicious of what he calls an "ideal historical process view", such as Robert Nozick's, that proceeds from an initially fair starting-point.²³ Third, the following passage criticising the injustice of the system of natural liberty is precisely directed against the cumulative effects of advantage such as that illustrated in the case of Jeremy and Jason:

The existing distribution of income and wealth, say, is the cumulative

effect of prior distributions of natural assets – that is, natural talents and abilities – as these have been developed or left unrealized, and their use favored or disfavored over time by social circumstances and such chance contingencies as accident and good fortune. Intuitively, the most obvious injustice of the system of natural liberty is that it permits distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view.

The liberal interpretation, as I shall refer to it, tries to correct for this by adding to the requirement of careers open to talents the further condition of the principle of fair equality of opportunity.²⁴

This passage clearly indicates that equality of opportunity is meant to *remedy*, not legitimate, inequalities arising from “chance contingencies” that develop the talents of some while leaving those of others unrealized. Here Rawls does not limit the scope of equality of opportunity to the time before an MEO, but heralds it as a tool to mitigate the ongoing injustices of chance and “social circumstances”, such as winning or losing in early competitions.

Rawls extends his idea that the principles of justice, including equality of opportunity, exist to adjust the unfair outcomes of social processes in *Political Liberalism*. Social processes, he notes, favour “an oligopolistic configuration of accumulations that succeeds in maintaining unjustified inequalities and restrictions on fair opportunity.”²⁵ These accumulations must be remedied by the principles of justice:

What the theory of justice must regulate is the inequalities in life prospects between citizens that arise from social starting positions, natural advantages, and historical contingencies. Even if these inequalities are not in some cases very great, their effect may be great enough so that over time they have significant cumulative consequences.²⁶

Implementing fair equality of opportunity before but not after an MEO is not adequate, then. For historical contingencies of the sort that radically determine Jeremy and Jason’s divergent lives occur at every stage

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in life, and have ramifications that, as Rawls notes, are significantly cumulative. Regardless of Rawls’ actual intentions, we can at least say that the arguments of justice that favour Rawlsian fair equality of opportunity against careers open to talents also reject the MEO. And yet, if we wish to abandon the MEO and apply fair equality of opportunity throughout people’s lives we have to confront the practical problems outlined earlier. Can we really endorse awarding senior posts to those who are less qualified, perhaps even unqualified, to perform them?

At this point Rawlsians might wish to remind us that the principles of justice are intended to apply only to the basic structure of society. It might be thought that this fact excuses advocates of fair equality of opportunity from having to deal with practical problems of hiring and firing, since employers do not have to act with the principles of justice foremost in their minds. Instead, equality of opportunity is secured by the basic structure. As long as they obey the law, citizens may go about their business freely, secure in the knowledge that justice is secured by the overall structure of society. And yet we still need to think about how the basic structure might be organised so as to ensure equality of opportunity overall.

One strategy is to think that the role of the basic structure is to adjust social conditions in general, such that employers may appoint on merit and yet retain fair equality of opportunity. This seems to be the strategy of those theorists such as Swift and Brighouse who criticise familial and educational advantages. Their idea is that, if the advantages conferred by individuals’ upbringing and education are equalised, fair equality of opportunity will almost be ‘built in’ to individuals and does not need to be considered by those who assess them. In other words, if private education and certain ‘illegitimate’ forms of parental partiality are banned, all children will reach adulthood as perfect embodiments of equal opportunity. The employer or admissions tutor will not have to ask herself whether to accept the high-achieving private school pupil with pushy parents or the average state school pupil with neglectful parents, since all schools will be the same and parents will be permitted neither to neglect nor to push.

There are two problems with this strategy for building equality of opportunity into the basic structure. The first is that it is not obviously desirable to make everyone the same in all aspects relevant to equal

opportunity. We need only appeal to values such as privacy, liberty and diversity to see that these sorts of extensive regulations of family life are likely to be unappealing. The second problem is that the strategy of equalising people rather than opportunities has even less chance of working for adults than it does for children. Unless all jobs and educational opportunities are identical, individuals will always develop different skills and talents as the result of their differential success in earlier competitions. Even the resource equality offered by the difference principle would not change the course of Jeremy and Jason's lives.²⁷

An alternative strategy for building equality of opportunity into the basic structure rather than the minds of employers is to enact legislation restricting the criteria which employers may use when appointing staff.²⁸ Rawls explicitly endorses this strategy to ensure non-discrimination,²⁹ and so it seems plausible that among those laws might be specific instructions for employers to take into account the requirements of fair equality of opportunity. For example, the law might lay down a points system to be used when comparing candidates for a job, with specific instructions on how many points should be added or subtracted for particular advantages or disadvantages that candidates have experienced. However, it should be clear that this option is identical in outcome to the idea that employers must have in their minds the full requirements of equality of opportunity, and is subject to the same objections. Even if such a scheme could be devised and implemented, it would still require inefficient and counter-intuitive hiring of those with less merit in the here-and-now. It would also exacerbate the problematic incentive effects, since candidates would have a clear incentive to manipulate the points system by refusing those advantages (such as an Oxford education) that carried a heavy points subtraction.

So far, we have seen that Rawlsian fair equality of opportunity is incompatible with the MEO, so that fair equality of opportunity must be applied at each and every stage in a person's life.³⁰ However, we have not yet found a solution to the problems of bizarre incentive effects (people will have an incentive to fail early in their lives), epistemological problems (the older people become, the harder it is to isolate the causes of their abilities) and efficiency problems (senior posts may have to be filled by drastically under-qualified candidates). An alternative is the hybrid strategy.

4: The hybrid strategy

The hybrid strategy uses the MEO approach (applying fair equality of opportunity only at one or more key starting points³¹) but supplements it with some other form of egalitarianism. According to this option, fair equality of opportunity should be applied only at an MEO, but any unjust inequalities that develop must be rectified at a later stage. This rectification is done not by further use of fair equality of opportunity, but by an egalitarian compensation scheme. So, Jason and Jeremy's lives would run as they have been described, with Jeremy being more successful than Jason. However, the resulting inequalities would somehow be rectified, perhaps by a tax on Jeremy's higher salary that would be redistributed to Jason. Such redistribution would be justified by an alternative egalitarian principle, such as luck egalitarianism or the difference principle.

This sort of approach is advocated by Richard Arneson. Arneson's concept, "equality of opportunity for welfare", explicitly relies on an MEO. He defines it as follows:

when an age cohort reaches the onset of responsible adulthood, they enjoy equal opportunity for welfare when, for each of them, the best sequence of choices that it would be reasonable to expect the person to follow would yield the same expected welfare for all, the second-best sequence of choices would also yield the same expected welfare for all, and so on through the array of lifetime choice sequences each faces.³²

So far we have a straightforward MEO approach, with no additional egalitarian principle. However, Arneson recognises the force of an objection set out by Kasper Lippert-Rasmussen, an objection that echoes the case of Jeremy and Jason.³³ Lippert-Rasmussen points out that two people who have equal opportunity for welfare at the onset of adulthood might be rendered unequal when only one of them suffers unavoidable misfortune at a later date. Lippert-Rasmussen's example is two people who each live close to a different active volcano; only one of them actually experiences and suffers from an eruption. We can liken this example to Jeremy and Jason, who both choose to apply to Oxford and for high-powered jobs; only Jason experiences and suffers from rejection. Arneson notes that such situations are problematic for his approach.

"[W]hy," he asks himself, "does sheer bad luck that befalls an individual after this canonical moment [of] redistribution demand no redress, while similar sheer bad luck that befalls an individual prior to the canonical moment demands full redress?"³⁴ Arneson chooses to "avoid having to answer this question"³⁵ by introducing an alternative concept: "equal opportunity for welfare in the strict sense". According to this new concept, any windfall gains or losses occurring after the MEO must be compensated. Arneson's thought is that "strict equal opportunity can be fulfilled so long as the unavoidable misfortune that befalls people is fully compensable."³⁶ In other words, we are left with a combination of equality of opportunity at an MEO and a further luck egalitarian redistributive principle.

However, Arneson recognises a further problem: the principle that sheer bad luck should be compensated seems to imply that, if two people engage in high stakes gambling (thus both making the same choices) and only one wins, we must compensate the loser (who has suffered sheer bad luck) with the winnings of the former. However, this contradicts our intuition that people must take responsibility for the outcomes of choices such as gambling. In order to accommodate this intuition, Arneson shifts to a third refinement of his position: the revised equal opportunity principle. This version combines the key elements of the first two versions, but adds the caveat that "when individuals face an array that includes risky and satisfactory nonrisky alternatives (so that the choice of a risky alternative may be voluntary), the best risky life choice for each individual offers the same expected welfare."³⁷ This revision takes account of the gambling example, Arneson claims, since it "distinguishes between sheer good or bad luck that rains on a person in ways that are beyond his power to control and good or bad luck that individuals enjoy as they voluntarily pursue life choices that include lotteries."³⁸

The gambling example is interesting since it could also be made to mirror the case of Jeremy and Jason. Rather than likening Jeremy and Jason to the volcano dwellers, we could say that they both *gamble* when applying for Oxford. We then need to ask whether this gamble is voluntary, and the answer is by no means clear. Jeremy and Jason do voluntarily choose to enter the particular competitions that concern us. They do not need to apply to Oxford or for high-powered graduate jobs: less competitive options are available. On the other hand, they cannot avoid all

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competition for jobs and qualifications, and in this sense they involuntarily take on risk. It is thus unclear whether they should be likened to the compensable volcano case or the non-compensable gambling case.

This problem notwithstanding, Arneson's approach poses a prior question. Can we even say that Jeremy and Jason enjoy equal opportunity for welfare in Arneson's most basic sense, according to which their first-best preferences must yield the same amount of welfare, and their second-best, and so on? In other words, regardless of whether their final inequalities are compensable, did they ever enjoy an MEO? In one sense they did: both had precisely the same ordering of preferences and so, if each were to secure their first-best option (or second-best, and so on), each would have achieved the same level of welfare. But in another, crucial sense, Jeremy and Jason never did have equal opportunity for welfare, since the fact that they are in competition with each other means that it would always have been impossible for both to achieve their favourite preferences at the same time.³⁹ In other words, whereas the first best available option for Jeremy is "attend Oxford", the first best available option for Jason *given the fact that he is in competition with Jeremy* is "attend a less prestigious university than Oxford", and these two options do not yield the same expected welfare. The fact of competition for scarce resources means that two individuals who have the same preference and make the same choices simply cannot enjoy equal opportunity for welfare. Arneson's version of equal opportunity is incompatible with the fact of competition.

The redistributive principle accompanying equal opportunity does not have to be choice-based. It would be possible to supplement Arneson's compensation mechanism with the difference principle, for example. Jobs would be allocated according to equality of opportunity at an MEO, but any inequalities that developed subsequently would have to benefit the worst off. However, this option would not work for Rawls, for several reasons. First, it contradicts the actual wording of the principles of justice. In their most recent formulation, they state that social and economic inequalities must be "attached to offices and positions open to all under conditions of fair equality of opportunity". In other words, it is the offices and positions themselves that must be governed by equal opportunity, not merely the rewards that flow from them.

Second, Rawls explicitly gives non-resource-based reasons for fair equality of opportunity. He states that those in Jason's position "would be justified in their complaint not merely because they were excluded from certain external rewards of office such as wealth and privilege but because they were debarred from experiencing the realization of self which comes from a skilful and devoted exercise of social duties. They would be deprived of one of the main forms of human good."⁴⁰ In other words, there is a need to distribute positions *themselves* according to equality of opportunity, not merely the resources that flow from them. Social primary goods, such as status and self-respect, are not determined merely by how much money a person has; Rawls seems to be arguing that one's job plays an important part.

Arneson states that this position contradicts Rawls' principle that there should be no social evaluation of competing conceptions of the good, since not everyone will find career success so crucial.⁴¹ We can make two points in response. First, Rawls does not state that career success is in fact crucial for everyone. He states merely that it is unjust if people are deprived of the *opportunity* to develop themselves through their careers, since such development will be an important part of the good for many people. Think of the analogy of religion: one does not have to assert that religion is a crucial component of the good life for everybody in order to maintain that it would be a grave injustice to deny some people the opportunity to practise it. Second, recognising the intrinsic (non resource-based) value of career success and fulfilment seems necessary for Rawls' position as a whole. Without it, fair equality of opportunity would be merely a job-allocation mechanism, but there would be no reason to care about the allocation of jobs. Since the difference principle takes care of distributive justice, fair equality of opportunity only has a role if there is more to one's career *that is relevant to justice* than money. Thus there are reasons to support Rawls' claim that equality of opportunity is not premised on resource considerations. But if equality of opportunity is important to justice in a way that is not exhausted by resource distribution, then the hybrid strategy with its MEO approach will not work.

The third reason for rejecting the hybrid strategy for Rawls is that equality of opportunity is lexically prior to the difference principle, meaning that no amount of the former can be sacrificed for any amount of the latter. It does not seem quite right, then, to abandon

equality of opportunity at one point in time so that the difference principle may take over. Indeed, it is not clear what the justification for such a move could be. Rawls could not state that it is necessary to implement an MEO so as to benefit the worst off (the concern from efficiency), since the lack of equal opportunity after the MEO could not be justified by recourse to the lower-ranked difference principle. Indeed, using the difference principle as the egalitarian compensation mechanism would not rectify the inequality between Jeremy and Jason, since Jason is by no means a member of the worst-off group in society. Only a very few violations of fair equality of opportunity will be affected by subsequent application of the difference principle.

Finally, if the difference principle could supplant fair equality of opportunity, there is no clear reason why the difference principle could not sufficiently compensate for inequalities suffered in childhood and through education. If the difference principle is adequate for adults, why not for children? This question suggests one final chance to justify the MEO approach: a strong normative distinction between childhood and adulthood.

5: Childhood and choice

If equality of opportunity is to apply only at key starting-points in a person's life, it follows that it will most apply when that person is at the early stages of her life. In other words, equality of opportunity will be particularly relevant to the young. Miller puts this point explicitly, re-iterating the sense in which equality of opportunity or, in this case, meritocracy divides a person's life into two. We should, he argues:

see meritocracy as having two parts. One has to do with the formation of individuals' capacities and abilities in the early years of life, through the family and education system. The other part takes these abilities and capacities as given, and looks at the opportunities that are available to people from young adulthood onward, in higher education, in the job market, and in social life generally.⁴²

This passage introduces the idea that abilities and capacities should be taken as given in adulthood. But it is not clear why this idea should have any moral force. As an empirical claim it is surely false.

While once people might normally have had careers, and the corresponding skills, for life, the norm now is for far more fluidity. It is common for people to shift the emphasis of their career, or even their entire profession, later in life. The concept of “lifelong learning” has gained currency, and is a key government priority: adults are encouraged to develop their skills throughout their lives. It is no longer the case, if ever it was, that individuals acquire the experience and expertise that determine the shape of their lives only in formal education and only while children. Adults can re-enter formal education, perhaps gaining university degrees, long after their childhood education has finished.⁴³ Alternatively, specific formal qualifications are not required for many careers: people can shift jobs using the experience they have built up while working.⁴⁴ In other words, although childhood education plays a crucial role in affecting an individual’s career progression and life chances, many factors in adulthood can be equally significant.

If capabilities and skills are not in fact set in stone early on but can develop throughout adulthood just as in childhood, what distinguishes the two phases of life? The idea that equality of opportunity is most important when considering young people might alternatively be motivated by a commitment to *choice* as necessary to legitimate inequality. As liberals tend to accept the idea that choice is necessary to justice, the absence of choice during childhood would be a relevant reason for more stringent monitoring and equalisation of the conditions of childhood.

Choice plays an important role in the luck egalitarian arguments offered by Arneson and theorists such as G.A. Cohen and Dworkin. But it is clear, first, that choice cannot legitimate the inequalities between Jeremy and Jason. After all, it would be inaccurate to describe any of the inequalities that befall them as the result of choices that either makes, since both make the same choices throughout their lives. Both choose to apply to Oxford, both choose the same degree, both choose the same industry and apply for the same jobs. Both choose (if choice it is) to apply the same level of effort to their work. At no point in their lives are the differences between them attributable to choice. As a result, if choice is the only legitimator of inequality, the resulting inequality between Jeremy and Jason is unjust, and luck egalitarians must also face the challenge of how to compensate. Andrew Mason notes that it is extremely difficult to allow only inequalities that result from choice, since “selecting people on the

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basis of their qualifications will entail rewarding them for their fortunate genetic endowments as well as their choice to make use of those endowments.”⁴⁵ Mason is correct, but he understates the extent of the problem. It is not merely the unchosen genetic endowments that play a role in developing people’s qualifications, but the experience they gain as the result of being successful or unsuccessful – lucky or unlucky – in previous competitions.

Advocates of the MEO approach must use the concept of choice in a different way, then: they cannot claim that the distinction between adulthood and childhood is justified because only chosen inequalities are just. For, firstly, children may make choices and, secondly, if an adult fails to win a job competition fought under conditions of fair equality of opportunity, it will not be true to say that she chose the resulting disadvantage. If choice is to motivate a distinction between adulthood and childhood, a different sort of argument is required. It might run as follows:

1. Children are absolutely unable to make choices about their lives, since either they are unable to make choices at all, or the choices that they do make cannot be considered as responsible or rational.
2. Inequalities cannot be legitimate if the disadvantaged individuals are absolutely unable to make choices about their lives.

Therefore, inequalities that result from childhood are unjust.

3. The best way to rectify inequalities resulting from childhood is through fair equality of opportunity.
4. If, after a starting position of fair equality of opportunity, individuals have some ability to make choices about their lives, the inequalities that result are just, subject to certain conditions.⁴⁶

Therefore, fair equality of opportunity should be used to rectify an inequality if and only if that inequality results from childhood.

This argument focuses not on whether an individual

has chosen this particular inequality, but rather on whether she is able to make choices in her life more generally. Premise 2 captures this idea and it is, I suggest, appealing. The idea that justice requires that individuals have *some* control over their lives, rather than complete control, is deeply plausible.⁴⁷ Overall, this sort of argument may be the kind of thing that Rawls has in mind when he states, as quoted above: “those who have the same level of talent and ability and the same willingness to use these gifts should have the same prospects of success regardless of their social class of origin, the class into which they are born and develop until the age of reason.” As we noted before, the use of the idea that social class is relevant “until the age of reason” suggests that it is inequalities that result from childhood that must be rectified by equality of opportunity, not all inequalities arising later in life. This argument would also justify the focus on educational opportunities made by Swift and Brighouse.

One problem with the argument, however, is Premise 1. It is widely accepted, but it is called into question by some of the claims made by theorists of fair equality of opportunity (in support of whom the argument is made). Consider Miller’s claim that “a person who decides to leave school at sixteen cannot later complain that she was denied the opportunity to go to university, if by staying on at school she could have achieved that goal.”⁴⁸ This claim is made in support of the MEO approach, and yet it uses the example of an individual who would often be considered too young to be described as an adult, since many conceptions of adulthood start at age eighteen. This might seem like a trivial issue. After all, we can always say that adulthood starts at sixteen rather than eighteen. However, if we do say that then we will be unable to use fair equality of opportunity for university admissions, which take place at eighteen in Britain. And university admissions, as has already been noted, are often considered paradigmatically suitable for fair equality of opportunity. So it seems as though we do need to raise the age of adulthood to eighteen; but then Miller’s sixteen-year-old can indeed complain of her lack of opportunity and seek remedy for it. Similarly, anyone will be able to complain that they lacked the opportunity to seek careers that require A Levels other than those they chose to pursue, since choices of A Level subjects are made before the age of adulthood. So a political theorist could justly complain that she lacked the opportunity to become a surgeon if, at sixteen, she chose to take no science A Levels. In general, since a great many important decisions

are made by individuals between the ages of sixteen and eighteen, all adults will be able to complain of a great many denials of opportunity. One option would be to prevent people from making any choices that affect the course of their lives until they reach the decreed age of adulthood. However, even if this were desirable, it would be impossible: children will always be able to devote more effort to some subjects than others, or to devote less attention to their schooling than they could. Once again, the MEO approach is unsustainable.

This problem is exacerbated by the ambiguity of the concept of inequalities that ‘result from’ childhood. An inequality that results from childhood does not necessarily need to have emerged during childhood. In other words, childhood could set conditions that cause an inequality to emerge much later in life. Fair equality of opportunity could be used to allocate first jobs on reaching adulthood, but attributes which are irrelevant to those first jobs could prove to be important later. For example, an employee who learned a particular foreign language while a child would be at a considerable advantage against a colleague who did not when, at middle management level, the opportunity for promotion overseas arose. If language proficiency had not been important until that point then differences in childhood language learning would not have figured in calculations of initial fair equality of opportunity. What this example shows is that, if we are concerned to remedy inequalities that result from childhood, it will not be enough to provide an MEO at the age of majority, since some inequalities will not reveal themselves until later. The overseas promotion should be awarded according to fair equality of opportunity, meaning that individuals who were denied the opportunity to learn the relevant language while a child must be considered on equal terms with those who are proficient in it. Again, we reach the counter-intuitive conclusion that someone’s basic lack of qualifications or experience for a job cannot be taken into account.

It is not, therefore, straightforward to justify the MEO approach by an appeal to the unchosen nature of inequalities that develop through childhood. Even if we can agree on a clear point at which adulthood commences, it does not follow that all childhood-related inequalities will have cashed themselves out by that point. So, once again, we are returned to the conclusion that fair equality of opportunity will have to be assessed repeatedly, throughout a person’s life,

with all the problematic consequences that entails; or, that fair equality of opportunity will have to give way to efficiency, with a concurrent sacrifice of justice.

5: Conclusions

The argument of the paper has been mainly critical, with few constructive suggestions. I do not promise to offer much by way of constructive theory in this conclusion, but I shall outline what I take to be the key implications of my argument for the idea of equality of opportunity.

The first conclusion is that it does not make sense to divide a person's life into two halves with a Moment of Equal Opportunity. If there are good reasons to implement equality of opportunity at all, then there are good reasons to implement it throughout a person's life. That is to say, the injustice that equality of opportunity aims to prevent or remedy can occur at any time. This conclusion may be unproblematic for the more minimal forms of equality of opportunity: non-discrimination and careers open to talents. It is, however, problematic for more egalitarian forms of equality of opportunity, since the concern to ensure that each person has an equal chance of developing the talents necessary for success will entail many counterfactual and counter-intuitive decisions.

This conclusion leads to the second implication of my argument: there is a need to be very clear about what equality of opportunity is trying to achieve. What is the strength and role of the concept? I have suggested that fair equality of opportunity cannot be strong enough adequately to remedy the injustice of certain forms of inequality unless it is so strong that it requires radical changes in accepted practice, changes that compromise meritocratic and efficiency-based concerns. Since each outcome is another opportunity, such that successful candidates accrue skills while less successful individuals fall behind, equality of opportunity must be repeatedly re-applied if it is to take account of changing circumstances and potentially unjust differences. This repeated application means that best candidates very often will not be the right ones to appoint. Moreover, the gap between the competence of the best candidate (in a narrowly meritocratic sense) and the competence of the candidate that should be appointed (according to fair equality of opportunity) will only increase as positions become more senior and, presumably, more

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important. For the later in life an appointment is made, the more experiences and skills will have been developed by the most fortunate candidates, and the greater the contrast will be with those who have not enjoyed equivalent opportunities.

There will need to be a significant trade-off, then, between justice as secured by equality of opportunity, and meritocracy or efficiency. Advocates of either option must be open about the costs involved. So, advocates of the MEO approach need to acknowledge and account for the loss of justice, and advocates of the radical strategy of reapplying fair equality of opportunity throughout a person's life need to make similar concessions concerning efficiency and merit.

An alternative, perhaps more attractive option is to reject the idea of fair equality of opportunity altogether. Egalitarians taking this option would clearly need to find some other way to take account of egalitarian concerns. This task is perhaps not as daunting as it might appear. Other forms of equality of opportunity, such as non-discrimination and careers open to talents, remain available. Alternatively, we might wish to rethink the commitment to equality of opportunity in favour of other forms of egalitarianism.⁴⁹ The desire to compensate for past disadvantage, and to critically assess how individuals came to acquire their talents, remains worthy. However, this paper has suggested that fair equality of opportunity may not be able to satisfy it.

Footnotes

¹ The first draft of this paper was presented at the workshop on Equality of Opportunity at the ECPR Joint Sessions in Granada in April 2005. I am extremely grateful to all the participants and particularly the workshop directors, Ian Carter and David Miller. Later drafts were presented to the Nuffield Political Theory Workshop, Oxford's Centre for the Study of Social Justice, the Political Theory Research Seminar at UCL and the *British Journal of Political Science* one-day conference at the British Academy. I received very useful feedback at each event. I should also like to thank Chris Armstrong, Cécile Fabre, Marc Fleurbaey, Cécile Laborde, Phil Parvin, Avia Pasternak, Zofia Stemplowska, Adam Swift and Adam Tebble for written comments.

² David Lodge, *Small World* (London: Penguin, 1985): 151.

³ See, for example, Adam Swift, *How not to be a hypocrite: school choice for the morally perplexed parent* (London: Routledge, 2003); Harry Brighouse, *School Choice and Social Justice* (Oxford: Oxford University Press, 2000); David Miller, paper for ECPR Joint Sessions Equality of Opportunity workshop (2005); Susan Moller Okin, *Justice, Gender and the Family* (New York, NY: Basic Books, 1989); John Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press, 2001): 44, 167; James S. Fishkin, *Justice, Equal Opportunity, and the Family* (New Haven: Yale University Press, 1983).

⁴ Rawls, *Political Liberalism* (New York, NY: Columbia University Press, 1993): 267.

⁵ Janet Radcliffe Richards, "Equality of Opportunity" in Andrew Mason (ed.), *Ideals of Equality* (Oxford: Blackwell, 1998): 56.

⁶ Richards, "Equality of Opportunity": 56.

⁷ Bernard Williams, "The Idea of Equality" in Louis P. Pojman and Robert Westmoreland, *Equality: Selected Readings* (Oxford: Oxford University Press, 1997): 100-1.

⁸ Ronald Dworkin, *Sovereign Virtue* (Cambridge, MA: Harvard University Press, 2000): 92.

⁹ Dworkin, *Sovereign Virtue*: 89. Emphasis added.

¹⁰ Swift, *How not to be a hypocrite*: 81.

¹¹ These phenomena can be described in a variety of different ways. One could argue that the very differences in upbringing and genes are unjust, or at least morally arbitrary (as Rawls would say). Alternatively, one could say that the differences in upbringing are compatible with justice but the ensuing (material) advantages are not. Or, one could take the approach of Brighouse and Swift (in their paper for the ECPR Joint Sessions, 2005), arguing that some differences in upbringing such as bedtime stories do violate equality of opportunity but that this problem is outweighed by the benefits of family life. All methods of describing the issue share the idea that differences in upbringing in some way bring about injustice.

¹² Brighouse, *School Choice and Social Justice*: 115.

¹³ It might be asked here whether, for the purposes of this example, employers are correct in their beliefs. This question cannot be answered definitively without begging the questions that follow, but for now we may assume that at least some of their beliefs have at least some grounding. Certainly the beliefs are neither obviously wrong nor merely the result of prejudice.

¹⁴ Examples are given throughout the paper, but see also Brighouse, *School Choice and Social Justice*: 114-5.

¹⁵ Note that it is not necessary that any given version of equality of opportunity either does or does not employ an MEO. Take, for example, the idea that positions should be allocated to those who are best equipped to perform them – the version of equal opportunity that Rawls calls careers open to talents. One could hold this view either with or without endorsing an MEO approach. Without an MEO, careers open to talents would have to apply throughout a person's life. Jeremy and Jason's lives would be just only if every appointment decision had been made solely on the basis of merit. With an MEO approach, the requirements of justice are lower. Certain appointments would have to rely solely on merit – for example, admission to university – but future appointments (say to jobs) could legitimately be made on the basis of the employer's preference, even if that preference did not relate strictly to merit alone.

¹⁶ We need to be careful to distinguish between the candidate who is best at the point of selection and the candidate who can reasonably be expected to perform best over the course of the opportunity. It is possible that a less qualified candidate might improve so much while in the relevant role that their overall performance exceeds that of a higher-qualified candidate with less potential for improvement.

¹⁷ David Miller, *Principles of Social Justice* (Harvard, MA: Harvard University Press, 1999): 177.

¹⁸ David Miller, "Liberalism, Equal Opportunities and Cultural Commitments" in Paul Kelly (ed.), *Multiculturalism Reconsidered: Culture and Equality and its critics* (Polity Press, 2002): 47. Emphasis in the original.

¹⁹ Rawls, *Justice as Fairness*: 43-4.

²⁰ Indeed, Williams suggests that equality of opportunity is relevant only when distributing "goods which not all the people who desire them can have." (Williams, "The Idea of Equality": 99).

²¹ Alan Ryan, "Oxford Blues" in *The Guardian* 24th May 2000. GCSE stands for General Certificate of Secondary Education, and GCSEs are usually taken at age sixteen. An average pupil would take nine GCSEs, with the most talented pupils taking ten or eleven. The government's "threshold indicator", the minimum deemed necessary for a decent education, is five GCSEs at grade A* to C (or equivalent vocational qualifications). The top grade for GCSE is A*, a grade that was introduced fairly recently as an attempt to discriminate between the growing numbers of pupils gaining A grades, and the lowest is G. A ("Advanced") Levels are usually taken

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at age eighteen, and the top grade is A. Most pupils would take three A Levels, with the best taking four.

²² Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1973): 84.

²³ Rawls, *Justice as Fairness*: 53.

²⁴ Rawls, *A Theory of Justice*: 72-3.

²⁵ Rawls, *Political Liberalism*: 267

²⁶ Rawls, *Political Liberalism*: 271. One source of accumulation is over the course of several generations, a source which Rawls undoubtedly wishes to criticise; but another is over the course of a single life. The passage just quoted immediately follows a discussion of inequality occurring through the course of individual lives, so it is not far-fetched to interpret Rawls in this way.

²⁷ Rawls recognises this fact, noting: “not only our final ends and hopes for ourselves but also our realized abilities and talents reflect, to a large degree, our personal history, opportunities, and social position.” (*Political Liberalism*: 270.)

²⁸ Richard Arneson notes these two understandings of Rawlsian fair equality of opportunity in “Against Rawlsian Equality of Opportunity” in *Philosophical Studies* 93 (1999). He understands the first option as a combination of careers open to talents and what he calls “Fair Background”. The second violates careers open to talents since “candidates’ merit scores are adjusted according to the [sic] social background” (81).

²⁹ Rawls, *Political Liberalism*: 363.

³⁰ Fleurbaey seems to have something of this sort in mind when he tries to imagine a “non-starting-gate-theory of equal resources”, in which “every morning is a fresh start”. He notes that such a theory “may obviously raise incentive problems”. (Fleurbaey, “Equality of Resources Revisited” 86.)

³¹ I say “one or more” because it might be appropriate to have a separate MEO for different endeavours. The fact that Miller refers to a variety of different starting-places for equality of opportunity suggests that he has something of this sort in mind. The key feature of an MEO is that, once it has been designated for a particular endeavour, it is not repeated for that same endeavour.

³² Richard Arneson, “Equality of Opportunity for Welfare Defended and Recanted” in *The Journal of Political Philosophy* 7 (1999): 488.

³³ Kasper Lippert-Rasmussen, “Arneson on Equality of Opportunity for Welfare” in *The Journal of Political Philosophy* 7 (1999).

³⁴ Arneson, “Equality of Opportunity for Welfare Defended and Recanted”: 490.

³⁵ Arneson, “Equality of Opportunity for Welfare Defended and Recanted”: 490.

³⁶ Arneson, “Equality of Opportunity for Welfare Defended and Recanted”: 490.

³⁷ Arneson, “Equality of Opportunity for Welfare Defended and Recanted”: 491.

³⁸ Arneson, “Equality of Opportunity for Welfare Defended and Recanted”: 492.

³⁹ It might be objected that it would be possible for both Jeremy and Jason to secure a place at Oxford, and a job with a major graduate employer, since there are more than two places and jobs available. This may be true, but of course the relevant group for consideration is all those people who have the same preferences (in other words, all those people who want to go to Oxford, and all those people who seek a job with a particular prestigious employer). Once this group is considered it becomes clear that it is impossible for all its members to secure their first-best (or second-best, and so on) preferences at the same time. In the following discussion the question of whether Jeremy and Jason have equality of opportunity should be taken as a shorthand way of talking about all those people who share their choice rankings.

⁴⁰ Rawls, *A Theory of Justice*: 84.

⁴¹ Arneson, “Against Rawlsian Equality of Opportunity”: 98.

⁴² Miller, *Principles of Social Justice*: 181.

⁴³ For a discussion of the proper egalitarian funding of adult education see Alexander Brown, “Access to Educational Opportunities – One-off or Lifelong?” in *Journal of Philosophy of Education* Vol. 40 No. 1 (2006).

⁴⁴ I have personal experience of several of these phenomena. My mother changed her career in her forties and became a university professor (without having a doctorate) at the age of sixty. My partner’s father left school with few formal qualifications to follow the family career of shipbuilding. He changed career as an adult, eventually become a teacher in Further Education and gaining a university degree as a mature student in the same year as his son. My own career change, from civil servant to academic, occurred right at the start of my working life. Nonetheless, as a civil servant under the 1997 Blair government my first task was to research and develop the government’s lifelong learning strategy.

⁴⁵ Mason, “Equality of Opportunity, Old and New”: 765-6

⁴⁶ I insert the phrase “subject to certain conditions” since advocates of the MEO approach are unlikely to accept the justice of *all* inequalities. Constraints on legitimate inequalities might include non-discrimination, careers open to talents, minimum levels of income, and so on.

⁴⁷ For a defence see Matt Cavanagh, *Against Equality of Opportunity*: 30.

⁴⁸ Miller, “Liberalism, Equal Opportunities and Cultural Commitments”: 47.

⁴⁹ Theorists who have recently argued in favour of alternative forms of egalitarianism include Iris Marion Young, *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press, 1990) and Andersen, “What Is the Point of Equality?”. Arneson also concludes, after battling with the problems discussed in section 4 of this paper, that “the best interpretation of the ideal of distributive

equality is not equal opportunity for welfare. ... what matters fundamentally from the moral standpoint is not the opportunities one gets but the outcomes one's opportunities generate." (Arneson, "Equality of Opportunity for Welfare Defended and Recanted": 497.)



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