

Fair Equality of Opportunity Re-Examined

Philosophy/Faculty of Social Sciences

Master's thesis

Author(s):

Oskari Maunuksela

28.12.2025

Turku

Master's thesis**Subject:** Philosophy**Author(s):** Oskari Maunuksela**Title:** Fair Equality of Opportunity Re-Examined**Supervisor(s):** Professor Juha Räikkä**Number of pages:** 48 pages**Date:** 28.12.2025

Abstract: Equality of Opportunity is a field of ethical study concerned with the processes through which citizens acquire important abilities and social positions within a society. Several potential theories in the field exist and the theoretical discussion on the subject has been varied and vivid especially from the second half of the 20th century onwards. One of those theories is that of “Fair Equality of Opportunity” by John Rawls, which is the subject of this thesis. While Fair Equality of Opportunity is only a component part of John Rawls’s wider theory of “Justice as Fairness”, the principle has found a new life as a freestanding theory on equality of opportunity.

In this thesis Fair Equality of Opportunity is analyzed and critically assessed. It is found that even though the theory can be criticized in many ways and it has flaws some might find even fatal, Fair Equality of Opportunity remains an important paradigmatic argument in the field, mainly due to its distinct theoretical contribution and its robust relevance as a statement on distributive justice. The theory is especially potent when discussing class-based social cleavages, but not as effective in analyzing more purely moral issues.

Due to the posthumous nature of much discussion on Fair Equality of Opportunity some of the critique remains unrefuted. Fair Equality of Opportunity has also been superseded by some other recent theoretical advances, such as the Capabilities Approach and Opportunity Pluralism. Discussion concerning issues such as harmful discrimination and rigid opportunity structures have also evolved in a way that surpasses the older methodology of the Fair Equality of Opportunity paradigm.

In a world of rapidly increasing income differences and growing socioeconomic disparities (in many western societies), Fair Equality of Opportunity is far from becoming irrelevant. Instead, it invites us to study social justice in an elegant, efficient and enticing way. The ensuing decades might see class-based inequalities resurfacing in political and academic discussion. The theory of Fair Equality of Opportunity gives us useful insights into an ideal society with just distribution of opportunities and prospects.

Keywords: political philosophy, equality of opportunity, fair equality of opportunity, social justice, applied Ethics, theory of justice, justice as fairness, John Rawls, ideal theory

Pro gradu -tutkielma

Oppiaine: Filosofia

Tekijä: Oskari Maunuksela

Otsikko: Fair Equality of Opportunity-teoria uudelleentarkastelussa

Ohjaaja: Professori Juha Räikkä

Sivumäärä: 48 sivua

Päivämäärä: 28.12.2025

Tiivistelmä: Mahdollisuuksien tasa-arvo koskee ja käsittelee niitä prosesseja joiden kautta kansalaiset pääsevät käsiksi keskeisiin resursseihin ja sosiaalisiin asemiin yhteiskunnassa. Aihetta käsittelevällä kirjallisuudella on useita merkittäviä teoreettisia lähtökohtia, ja keskustelu on ollut aktiivista erityisesti 1900-luvun lopulta lähtien. Yksi keskeisistä teorioista on John Rawlsin “Fair Equality of Opportunity”-teoria, jota tämä *pro gradu*-tutkielma käsittelee. Vaikka Fair Equality of Opportunity-teoria on osa Rawlsin laajempaa “Justice as Fairness”-teoriaa, on sille löydetty monia sovelluskohteita myös itsenäisenä mahdollisuuksien tasa-arvon teoriana.

Tässä tutkielmassa Fair Equality of Opportunity-teoriaa analysoidaan ja käsitellään kriittisesti. Vaikka teoriaa voidaan kritisoida monin merkittävinkin tavoin, se jatkaa olemassaoloaan eräänä keskeisistä näkemyksistä. Teoria on hyvin perusteltu ja laaja esitys. Fair Equality of Opportunity-teoria on erityisen käytännöllinen arvioitaessa luokkapohjaista sosiaalista eriarvoisuutta, mutta se ei ole niin ansiokas monien puhtaasti moraalisten kysymysten kohdalla.

Monet Fair Equality of Opportunity-teorian kritiikit on esitetty vasta John Rawlsin kuoleman (2002) jälkeen. Lisäksi on myös esitetty monia kokonaan uusia näkemyksiä mahdollisuuksien tasa-arvon alueella, kuten Capabilities Approach-teoria ja Opportunity Pluralism-teoria. Keskustelu diskriminaation ja mahdollisuusrakenteiden osalta on myös kehittynyt merkittävästi tavoilla Rawlsin argumentin jälkeen.

Kasvavien tuloerojen ja sosioekonomisten eriarvoisuuksien maailmassa Fair Equality of Opportunity-teoria on yhä tärkeä ja hyödyllinen. Teoria tarjoaa käytännöllisen ja edelleen relevantin lähtökohdan aiheen tarkasteluun. Mikäli keskustelu kasvavista sosioekonomisista eroista piristyy tulevina vuosikymmeninä, antaa Fair Equality of Opportunity-teoria valmiin pohjan mahdollisuuksien oikeudenmukaisuuden hahmottamiselle myös tulevaisuudessa.

Avainsanat: poliittinen filosofia, mahdollisuuksien tasa-arvo, fair equality of opportunity, sosiaalinen oikeudenmukaisuus, sovellettu etiikka, oikeudenmukaisuusteoria, justice as fairness, John Rawls, ideaaliteoria

Table of Contents

1. Introduction	5
2. Defining Equality of Opportunity	7
2.1 The Formal Definition of Equality of Opportunity	7
2.2 The General Field of Equality of Opportunity	9
2.3 Formal and Meritocratic Equalities of Opportunity	10
2.4 Fair Equality of Opportunity	12
2.5 Utilitarianism and Opportunities	14
2.6 Equality of Opportunity and the Family	14
2.7 Luck Egalitarian Equality of Opportunity	15
2.8 Some Philosophical Background on Equality of Opportunity	16
3. John Rawls and Fair Equality of Opportunity	17
3.1 Defining the Principles of Justice as Fairness	17
3.2 Rawls's Conception of the FEO in the Justice as Fairness: a Restatement	20
3.3 Fair Equality of Opportunity and the Political System	22
3.4 Rawls and the Institution of Family	23
3.5 Joseph Fishkin: Another Take on the Rawlsian FEO	24
3.6 Two Readings of the Rawlsian FEO	25
4. In Critique of Fair Equality of Opportunity	27
4.1 In Critique of the Rawlsian Fair Equality of Opportunity	27
4.2 Arneson: Against Rawlsian Equality of Opportunity	28
4.3 Lindblom: In Defense of Rawlsian FEO	31
4.4 Fair Equality of Opportunity: John Rawls's Best Forgotten Principle	33
4.5 Challenges of Rawlsian Opportunity	35
4.6 On Rawls's Dubious Sociology	37
4.7 Rawls and His Critics	39
5. Beyond Rawls	39
5.1 Theoretical developments after Rawlsian FEO	39
5.2 Capabilities and Opportunities	40
5.3 Joseph Fishkin: Opportunity Pluralism	42
6. Conclusions	45
7. References	47

List of abbreviations used in the thesis

EOO = Equality of Opportunity

FEO = Fair Equality of Opportunity

JFR = John Rawls (2001) Justice as Fairness: a Restatement

DP = Difference Principle

CA = Capabilities Approach

1. Introduction

When discussing social justice, some intention is inevitably directed towards the processes through which citizens acquire assets, whether physical or mental in nature, in the society. Several theories have developed on the subject and the issue has arisen as an important and even central part of the various discussions on social justice and political theories of fairness in general. Whereas theories emphasizing outcomes have been popular in the past, theories of opportunities have become progressively more popular over time. The theories of acquiring assets through opportunities has evolved into a field of ethical study known as Equality of Opportunity (EOO).

Out of the several theories of EOO in existence, one of the most prominent is that of “Fair Equality of Opportunity” (FEO) by John Rawls, which is the main subject of this thesis. For Rawls, the FEO is only one component of his larger theory, that of “Justice as Fairness”. Justice as fairness also consists of many other famous theoretical tools (in addition to the FEO) such as the “equal liberties” principle, veil of ignorance and the difference principle. FEO, however, has taken on a life of its own as a moral theory and point of access to the wider discussion on EOO.

During his tenure in philosophy Rawls’s theories remained in many ways cohesive, but were also extended and revised upon in some significant ways. Important revisions stretching from the 1971 “a Theory of Justice” to the late “Justice as Fairness: a Restatement” (2001) include the changed lexical priority of the second principle and the new formulation of the first principle (the “equal liberties” clause). The importance of FEO in Rawls’s thinking only grew over the years. Rawls’s works have induced a number of theoretical discussions, both during their launch and in the years posthumous of Rawls himself (he passed away in 2002). Even in

the modern post-Rawls discourse FEO is seen as a freestanding and important entry to the discussion on EOO.

The structure of the thesis is as follows: in this introduction some research related information is presented. The mainstay of the thesis consists of four chapters, delving on different aspects of the discussion on FEO and EOO in general. In the first of these main chapters a formal definition of EOO is given, and the position of the FEO in the larger field is presented. In the second chapter the details and composition of the FEO are discovered. The main focus of the chapter is on the 2001 Restatement, with some other sources, most notably Joseph Fishkin's arguments, also included. In the third chapter some critiques of the Rawlsian FEO are presented. Although many authors are critical, their respect for the Rawlsian effort is pervasive as well. In the fourth chapter, "beyond Rawls" some post-Rawls developments are presented, most notably that of "the Capabilities Approach" and "Opportunity Pluralism". In the conclusion chapter a general assessment of the relevance of the FEO in the 2020's is given. At the end are found references and a list of abbreviations.

The method of this thesis is philosophical analysis. As a work of applied ethics, this thesis is based on a realistic ontology and epistemology and requires no additional knowledge of metaphysics. As far as theoretical suppositions are concerned, the two most important distinctions come from John Rawls and the critical discussion surrounding his work. Rawlsian theories, such as the FEO, are categorically pieces of "ideal theory". That is, they are based on theoretical abstractions and cohere only partially with the "real" institutions of existing societies. The thesis is also a part of the paradigm of "analytical philosophy": that is, its argumentation aims at logical coherence and clear formulations.

The literature of the thesis consists of several books by John Rawls (most notably the 1971 and 1999 versions of "a Theory of Justice", 1993 Political Liberalism and the 2001 Justice as Fairness: a Restatement), and some others, most notably Nussbaum's seminal 2011 "Creating Capabilities" and Joseph Fishkin's 2014 "Bottlenecks: a New Theory of Equality of Opportunity". Several academic articles are also utilized, both for more general purposes (such as defining and mapping EOO) and also to enhance the analysis of the FEO through critique and discussion. The articles have been chosen with their relevance, clarification and ease of access in mind. In many ways they form an ideal approach to the subject, highlighting major views on the subject of the FEO. The chosen articles are also focused directly on the

theoretical foundations of Rawls's thought instead of various policy issues and practical applications of the Rawlsian framework, often found in the FEO space.

The main research question in this thesis is, how relevant to the theoretical discussion on EOO is the Rawlsian FEO after more than three decades of theoretical debate? In this thesis several rivals to the theory, theoretical contexts and the formulation of the theory itself are represented to further assess the relevance of Rawlsian FEO. The freestanding nature of the theory in the modern debate is found paramount, if slightly conflicted.

2. Defining Equality of Opportunity

2.1 The Formal Definition of Equality of Opportunity

In his 2004 article "What are opportunities and why should they be equal?" (Hansson 2004) Swedish philosopher Sven Hansson explores the theory and definition of the notion and concept of "equality of opportunities". Both the concepts "equality" and "opportunity" are deeply embedded in modern political philosophy. According to Hansson equality in this context refers to an equal distribution of resources, rights and other such entities. Opportunity then refers to the human capacity to enjoy these rights and duties, often through direct participation. Hansson laments that equality of opportunities can be starkly contrasted with equality of outcomes. In his view true equality of opportunities also parts ways with the less ambitious idea of "open opportunities and procedural justice" (Hansson 2004, 305).

Opportunities can be seen as open-ended capabilities. Hansson emphasizes that not only must an opportunity be procedurally realizable, but people should also have real agency in choosing their own responses to the opportunities in question (a view corroborated by Thomas Nagel). The towering presence of choice (of the social variety) remains a key element throughout Hansson's analysis. His paper has been published in a social choice journal, and the presence of choice in his definition of equality of opportunity is crucial.

In understanding opportunities, an important distinction should be made between certain and probable outcomes. This point is vividly made by Hansson - absolutely certain outcomes include no opportunities. In defense of agency in opportunities the simple definition of

probabilities can also be criticized - crudely probability-based procedures, such as lotteries (Hansson uses the example of draft lotteries), often enough encroach upon people's preferred opportunities, limiting them. (Hansson 2004, 306.) True opportunities cannot be substituted by chance.

The article then proceeds to formalize propositions for the definition of equality of opportunities. The discussion relates to wider ideals of moral agency and especially moral desert as well. Through a five-pronged process of formulation, Hansson eventually ends up with a definition he finds adequate. He's (Hansson 2004, 309) definition of opportunity reads:

i has opportunity-to-Y if and only if: There is a reliable mechanism such that for some action-type X that i can perform: If i performs X, then through this mechanism i achieves Y. Otherwise, it does not necessarily achieve Y. Furthermore, i knows that this is the case.

With the presence of his definition of opportunity, Hansson takes upon a second endeavor, that of defining equality of opportunity, with an emphasis on equality. Through some further evaluation, mostly directed towards eliminating/taking to account some very improbable and thus exceedingly irrelevant opportunities, Hansson (Hansson 2004, 312) ends up with the following formulation, which he dubs as “a reasonably accurate definition of equal opportunity”:

i has at least as much opportunity to Y as j if and only if: it holds for each action-type X that if j has an opportunity to Y via X, then (1) i has an opportunity to Y via X, and (2) if i has less ability than j to perform X, then this difference is due to factors for which i should be held responsible. i and j have equal opportunities to Y if and only if i has at least as much opportunity to Y as i, and j has at least as much opportunity to Y as i.

In relation to this definition, Hansson admits to have included a fair bit of vagueness. He claims this to be primarily due to (political, institutional) differences in people's view on agency and desert. Indeed, several motives may exist to fuel the drive for greater equality and the structure and existence of opportunities in general. The article proceeds to mark out four

such categories of motivation: preference, deservingness, functionality and usefulness. Fitting for this thesis, Hansson caps off his article noting that “Open opportunities and procedural justice are important enough aspects of social justice, and they are often far from easily achieved. They should be appreciated for what they are, rather than being falsely represented as equal opportunities.” (Hansson 2004, 315).

2.2 The General Field of Equality of Opportunity

Unlike the formal definition of Hansson (2004), Gideon Elford’s Stanford encyclopedia entry on equality of opportunity takes a more procedural/institutional approach to the question. Through its eleven short chapters different takes on equality of opportunity are presented, John Rawls’ Fair Equality of Opportunity (FEO) being just one of them. Published on Aug 3, 2023 the Gideon Elford entry provides a wide analysis of the issue of equality and opportunities.

Similarly to Hansson, Elford begins by emphasizing the difference between opportunities and outcomes. Whilst some theorists (such as many utilitarians) have defended the idea of equal outcomes, for many theoreticians and commentators alike, the idea of opportunities proves a better fit for the modern discussion. On a note (not found in Elford 2023) the difference between opportunities and outcomes also has interesting allegories and analogies in the political philosophy of ideologies, with communism and many forms of socialism preferring similar outcomes (such as limits on incentives and private property) and the discourse on liberalism and libertarianism preferring opportunities (often times also in places and arrangements where none truly exist). In the liberal ideal, focus on opportunities can enhance political liberties and freedom. The powerful ideal of having both liberties and opportunities is a lively part of current discussions on politics and social justice. Opportunities can also be seen having a competitive and agency enhancing nature (Elford 2023, 1).

Equality can also be seen as a multidimensional phenomenon out of the gate. Multiple variables can affect a person's possibilities for truly equal opportunities, including (but not limited to) economic and moral issues. Inequalities can also be intersectional, with several overlapping inequalities affecting actors simultaneously. Elford also brings forward the looming agenda aspects of opportunities; the moral, political and economic determinants of opportunities have changed during active developmental processes in the societies. In his first

chapter he reiterates the idea of equality of opportunity as a general field defined by social choices and agency. (Elford 2023, 1.)

In the chapter 2 of Elford 2023, an emphasis is put on the heterodoxy of the different possible criterions of the deciding actor when facing appeals to equal opportunity. The emphasis on institutional actors is important, since many of the key opportunities are closely tied to institutional positions and thus concurring incidences (Rawls also focuses on these in a major way). Institutional opportunities can be viewed in a multitude of frameworks, such as socioeconomic, racial, gender, legal, academic etc. Due in large part to this, the concept of equality of opportunity is often seen as essentially contested. According to some contenders, the contested nature of equality of opportunities allows others to abuse the term - the actual possibility to reach certain social outcomes can be dismal, due to a lack of equality of access. (Elford 2023, 2.)

2.3 Formal and Meritocratic Equalities of Opportunity

The basic idea of formal equality of opportunity (Equality of opportunity referred to as EOO) is simple: its basic tenet is that the members of the chosen polity should have a similar formal possibility to partake in a chosen process, for example a recruitment process. Despite this formal equality, they can nonetheless be required to have other key resources that are not equally distributed, such as degrees, certificates and even physical traits. The formal EOO comes close to the common idea of democratic equality and equal political rights, freedoms and liberties. Indeed, Elford goes on to state the formal EOO as abolishing “restrictions on freedom, beyond legal restriction, formal exclusion, and overt coercion” (Elford 2023, 3). Formal EOO also places importance on publicity of formal opportunities. In Finland for example, public sector procurement is by law declared public information. Formal EOO also comes close to the democratic ideal of procedural equality.

Meritocracy is a famous ideal deeply embedded in the academic and practical discussions on equality of opportunity and social justice. As a view on equality of opportunity, the meritocratic EOO builds on the basis of formal EOO in regard to the formal availability and publicity conditions, but puts special emphasis on merits. The focus on merits means that in the ideal social choice situation of the meritocratic EOO, the choice should lead to the victory of the most gifted applicant. The meritocratic tradition often puts large emphasis on formal

qualifications, such as degrees. According to Elford the meritocratic method has several problems including poor correlation with markets, poor efficiency and insensibility towards moral issues, such as racism. (Elford 2023, 4.)

I would also bring forth two additional problems of the meritocratic model. Firstly, although a meritocratic system treats different applicants/actors with formal equality in relation to their merits and degrees, those merits and degrees themselves are not always fairly acquired. Let us consider a basic example: most of the citizens rank in the middle of a gauss-curve for intelligence and are thus intellectually eligible for (and capable of operating in) most social positions. In reality though, a variety of social conditions external to intelligence affect the choice of education and careers. Clearly such social conditions and determinants are not chosen meritocratically (or even rationally, in many cases). Some social conditions also affect citizens over generations - another avenue of opportunities outside of the meritocratic EOO. Solving this problem of unequal social conditions lies at the heart of the Rawlsian FEO.

Another critique could be directed against the market dynamics of meritocratic EOO: merits often accrue in a compound interest scheme throughout careers. Even with formal equal access, those who acquire merits early on often benefit disproportionately in the meritocratic competitions later on. Meritocratic EOO could thus be seen as a procedurally just method, but it cannot help solving many important social justice problems such as income and socioeconomic inequality. In societies as loaded with inequality as ours (in many modern western polities) meritocracy, however, still remains a prime mechanism to order society and its institutions. Perhaps the best way to enhance meritocratic EOO in a society is to invest in (especially basic) education and aim to guarantee maximum motivation and resources to the masses.

Some of these critiques have been addressed in the creed of substantive EOO which rightfully places more weight on people's actual, substantial resources and the ensuing opportunities. Thus the substantive view takes a wider gauge on the issue of EOO than the meritocratic scheme. According to Elford a prime asset in substantive EOO is education. By enhancing the education of the population, people's substantive opportunities can be extended. The importance of education is a recurring theme in the discussion on Equality of opportunity. (Elford 2023, 5.)

2.4 Fair Equality of Opportunity

The idea, notion, and concept of “Fair equality of opportunity” (thus on FEO) is a prominent theory of equality of opportunities famously proclaimed by John Rawls, and the center piece of this thesis. Whilst EOO has been an important part of Rawls’s theoretical productions since before the days of the 1971 “A Theory of Justice”, the most common modern iteration of the principle, Fair Equality of Opportunity, is found definitively stated in the 2001 “Justice as Fairness: a Restatement”. In fact, the claims of FEO form an especially important part of Rawls’s restatement/revision of his earlier work. In the Elford Stanford encyclopedia of philosophy entry a major chapter is utilized to discuss both Rawls and his critiques. In turn, four different sources of criticism emerge. In the Elford entry FEO is seen as one form of substantive EOO. Rawls’s writings (and especially those found in the 2001 Justice as Fairness: a Restatement - thus on JFR) on EOO are strongly tied to his wider and more comprehensive egalitarian theory of social justice, that of “Justice as Fairness”. The theorizing in JFR is also complemented by key takes from Rawls second magnum opus, the 1993 Political Liberalism. Whilst Rawls’s seminal findings on EOO and social justice of opportunities will be addressed in its own chapter in this thesis, the Elford entry can still contribute to the discussion at hand.

Elford draws attention to the fact that Rawls extensively discusses class and social justice. In his view this leads to at least five objections. First off, the focus on class may be too narrow; many non-class-based methods of social division could also be just as corrosive as class is. Secondly, even native talents need nurturing and measuring the relation of native and acquired talents can be complex and in some cases nigh impossible. Fixing class division without exact knowledge of the framing and measurement of the class bases complicates issues further. Thirdly, (extending Elford's idea a bit) some social stratifications cannot be corrected by social and financial policies. In Elford's example, people with high native capabilities (and perhaps wealth as well?) mate together, producing talented offspring. As the reach of policies (in modern Western societies) is restricted from the private sphere of mating, marrying and some aspects of childrearing, this birth of talented offspring cannot be majorly intervened upon by the state. (Elford 2023, 6.)

As a fourth theoretical objection to FEO Elford refers to the same process I (above, on meritocracy) dubbed the compound interest factor of the EOO. According to Elford, Rawls’s

theory does badly on this metric and may lead to severe segregation of end results down the path of social choices, due to compound effects. This is not entirely surprising, since Rawls's earlier (pre-JFR) formulations on EOO relied heavily on the meritocratic method and ethos. The fifth of Elford's objections relates to the common idea of various moral and social cleavages affecting opportunities. These are important, since many such issues as race, gender, nationality and other qualities often affect social choices and opportunities, despite them being non-class-based. Despite his profound work on moral tolerance (e.g. in 1993 *Political Liberalism*), John Rawls has not provided a full account on the effects of moral issues on the EOO and the political theory of social classes in general.

Elford (Elford 2023, 6) brings forth four different mechanisms of moral issues affecting class politics, including:

Societal factors related to racialized group membership and gender might influence the development of the talents relevant for selection under the meritocratic conception.

Societal factors other than social class might be thought to affect the development of ambition and the disposition to make an effort.

There might be certain social constraints on participation in the competition for socially advantageous positions that are non-developmental but reflect more general norms and expectations concerning who should apply for jobs and what a person has to sacrifice to do so.

[And]

Because FEO leaves open what constitutes a talent, a scheme of FEO might, in principle, leave in place systematic disadvantages for members of certain groups.

2.5 Utilitarianism and Opportunities

John Rawls's self-proclaimed main theoretical rival for his wide formulation of social justice, justice as fairness, is the creed of utilitarianism. If Rawls is more procedural, utilitarianism is more outcome oriented and teleological. Rawls's focus on egalitarianism is in almost direct opposition to the utilitarian idea of advancing gross wellbeing (or utility). While several strands of utilitarianism exist, the theory is usually seen as focusing more on maximizing welfare, instead of distributing welfare equally. Focusing narrowly on utility also leads to other problems; as the philosopher and economist Amartya Sen has argued, people often have adaptive preferences, making the idea of independently measurable utility false and often misleading. Focusing on economic indicators also narrows the subject of social justice down too much. Due to the excess focus on measurable gauges of utilitarian welfare, Amartya Sen has named this orientation "welfarism" (Ng, 1981, 527). In chapter 5 a theoretical alternative more akin to what Sen has in mind is presented.

As a theory of social opportunity, utilitarian welfarism would most naturally fit to the category of Equality of Outcomes theory, instead of EOO, making it distinct from the other theories analyzed in this thesis. Due to its importance as Rawls's most notable self-proclaimed rival, utilitarian welfarism warrants attention. Some of Rawls's most important critiques have come from the utilitarian camp, most notably from John Harsanyi (Harsanyi 1975). Refuting the Rawlsian maximin rule as Harsanyi does, would drastically alter the DP, the original position and ultimately the FEO as well. Without the strict aim of lowering social differences, the FEO would no longer be operationable. The welfarist goal of maximum gross utility is then a very crude theory of opportunities. Perhaps for this reason, although utilitarianism is among the major moral theories in the western tradition, it hasn't warranted a place in Elford's 2023 Stanford entry (for example).

2.6 Equality of Opportunity and the Family

One of the major social institutions affecting EOO is the institution of family. Some attention should then be paid to the role of family relations in EOO. The related issues are well known, with John Rawls giving clear acknowledgement of them in his remarks to the theory of FEO. Different families differ in major ways in their relation to the methods of rearing children. Some families invest remarkably in the raising of their children, guiding them to become

active and successful participants in careers and social activities in the society, while others have to contend with less. Cultural differences and social resources dedicated to rearing vary in impactful ways. Tackling the issue of relative advantages/disadvantages resulting from these family choices and capabilities is a complicated business, central to EOO.

Few have suggested the radical solution of dissolving the entire family institutions although such voices have also been heard, with Plato's "Republic" taking the lead (Elford 2023, 7) and some radical forms of socialism continuing the assault e.g. in the 19th century (with thinkers such as Marx and Fourier). Given that the formation of the nuclear family can be seen as species specific biological activity of homo sapiens, the dissolution of family can be seen as a radical proposition. This does not, however, mean that the family as an institution should remain out of scope for remarkable criticisms. In many instances the family as a social institution promotes patriarchal and social injustice. The biological-theoretical backing of the family should not act as an excuse for unequal social traditions. Politically, a middle-ground approach to the family can be both planned and executed. Past radical political attempts at eradicating the family institution have often failed and aroused serious political resistance. Similarly, the patriarchal-traditionalist approach has been largely seen as unequal. In modern western societies instruments such as (equal) parental leave, free or substituted kindergarten, mandatory basic education, and women entering both education and workforce, have equaled the EOO playing field for both parents and children as well.

2.7 Luck Egalitarian Equality of Opportunity

Standing at the epicenter of the multidisciplinary discussion on EOO is the novel theory known as "Luck Egalitarianism". The basic idea embedded in luck egalitarianism is that luck should not be a significant determinant of a person's success. Instead, the social choices faced by the person should be primarily based on her own deliberate decisions. In many instances a key difference (attributed to the famous philosopher Ronald Dworkin) is made between "brute luck" and "option luck", with option luck seen as the deliberate and conscious motivation and outcome of an alternative, and brute luck seen as a probability option outside the person choice (Dworkin example being to be hit by a meteorite). (Elford 2023, 8.)

Things become a bit more complicated, however, when testing this dichotomy in action. Often persons opt to social actions or choices more or less coerced. They therefore make a

deliberate gamble of the Dworkin's "option luck"- type, but are led to the outcome because of circumstances of the "brute" kind. This kind of complication is endemic to the discussion on EOO and is reminiscent to the discussion on meritocracy - the dilemma is that whilst certain social choices are executed as deliberated and well-founded "option luck" choices, they are then conducted in a theoretically, institutionally or pragmatically arbitrary or "brute" frameworks, contexts or circumstances. Although the idea of luck-egalitarianism remains contested, it is a beautiful ideal for liberal polities. The idea that social desert should be based on rational choices, and the arbitrary role of "brute luck" should be minimized from the equation, is in line with the liberal ethos of individual agency and personal liberties. On the other hand, minimizing the effect of "brute" factors often requires active social policies.

2.8 Some Philosophical Background on Equality of Opportunity

One of the basic philosophical distinctions relevant for the discussion on EOO is the divide between the deontic and the teleological. Familiar to philosophers, this divide equates to the difference between (deontic) procedures and (teleologic) outcomes. One of the basic applications of this thinking is in education. Elford (Elford 2023, 9) goes on to argue that:

Rawls' conception of FEO, for example, explicitly combines both deontic and telic elements. It includes a deontic requirement that offices and positions are to be distributed according to the talents and willingness to work of those competing for such positions (a meritocratic conception, or, as Rawls calls it, formal equality of opportunity), and it includes a telic principle that persons ought to enjoy conditions which provide them with a fair chance to compete under those terms.

[and later on]

A quota system requiring that a greater proportion of students be admitted from less prosperous backgrounds would thereby involve compromising the deontic, meritocratic element of FEO in order to better satisfy the telic, fair chances element.

Another theoretical question is who should be the subject (or polity) of EOO. Several different strands of thought in this space exist (Elford 2023, 10). We should be reminded that Rawls already presents a distinct view of this: the subjects of legislation, social contract and

EOO are the citizens of a closed system of a nation or state. The closed nature of the polity comes from Rawls's theoretical conception that men can only really enter the society through birth and exit through death. Membership of the society is, in this Rawls's formulation, thus involuntary. Rawls's idea of societies as closed systems can be criticized from multiple viewpoints. In this global age of cooperation and commerce limiting the scope of justice to born citizens seems outdated. A large proportion of citizens in many modern states have been born in another state or region altogether. Schemes of global justice (e.g. by Pogge, Beitz) have further mapped the need and realities of global interdependence. A parallel view on the scope question could be instead to focus on seeing the moral subjects of EOO to be those impacted by the ensuing social choices and opportunities. Thus, the issues could easily transcend national boundaries. An apparent problem with this view is that means of political decisionmaking remain largely national or intranational. Rawls clearly saw this and ended up with his starkly nationalistic view because of seeing it as the sole viable means of producing the power and impetus to execute efficient social policies and income transfers to maintain his "justice as fairness". Major policy sectors affecting EOO, such as education and health policies, remain the bedrock of local, aerial and national policies.

3. John Rawls and the Fair Equality of Opportunity

3.1 Defining the Principles of Justice as Fairness

The focus of the ensuing chapter is to explain and represent the backgrounds and development of the Rawlsian FEO. As previously noted, the FEO was originally born out of a need for a scheme of EOO to go with Rawls's wider theory on social justice, that of "Justice as Fairness".

As the name "justice as fairness" already amply indicates, fairness is a key goal of the Rawlsian theoretical enterprise, and the fairness of equal opportunities is no exception. The idea of EOO is indeed already strongly visible in the basic Rawlsian tenets of the 1971 "a Theory of Justice". The original formulation of the Rawlsian principles, found in the 1971 opus (Rawls 1971, 60) is stated as follows:

1. Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.

2. Social and economic inequalities are to be arranged so that they are both
 - (a) reasonably expected to be to everyone's advantage, and
 - (b) attached to positions and offices open to all.

In the original formulation EOO is already visible, most transparently in the principle 2b. EOO is also, however, majorly influenced by the principle 2a, as the principle 2a, entailing the basic idea of the "Difference principle" (DP), affects both the procedures and structure of the EOO playing field. The relevance of the DP on EOO is further analyzed later on in this thesis. It is important to note that the Rawlsian principles (of both the original and latter versions) are ordered lexically, meaning that the higher principles are given theoretical privilege over the latter: for example, the first principle, that of liberal freedoms, is given precedence over both 2a and 2b principles. As we will see, the lexical nature of Rawls's principles has aroused multiple instances of debate. Rawls was later led to significantly alter the structure, formulations and priorities of his principles of justice as fairness. Most of this was due to both advances in his own thinking and to replying to the vibrant critiques found in the rapidly expanding secondary literature on his writings. The final and thus definitive formulation of the Rawlsian principles is found in the 2001 "Justice as Fairness: a Restatement" (JFR, 42–43). It reads:

1. Each person has the same infeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all;

- and

2. Social and economic inequalities are to satisfy two conditions:
 - a. They are to be attached to offices and positions open to all under conditions of fair equality of opportunity;
 - b. They are to be to the greatest benefit of the least-advantaged members of society (the difference principle).

For an analysis on EOO, the differences between the first and the latter definitive formulations of justice as fairness is significant. There are two glaring and theoretically important differences. Firstly, the broadly meritocratic condition of having major positions “open to all” is now replaced by the far wider and theoretically robust theoretical conception of “fair equality of opportunity” (FEO). The new concept of FEO deepens the call for fair opportunities in an important way, since the actual chances of e.g. attaining a high office are now extended to cover determinants far beyond pure procedural meritocracy.

The second vital difference is that the FEO is now stated as principle 2a instead of principle 2b. Given the lexical mechanisms of the formulation, the FEO is now given precedence over the difference principle (JFR, 43). There may exist a number of reasons for Rawls to move towards this new direction. Perhaps the new lexical priority now better reflects the need to guarantee the actual center field importance of fair opportunities and social choices for all citizens under the theory. In this view, the FEO guarantees a procedural fairness of cooperation for all citizens, and the income transfers and institutional arrangements implicit in the difference principle remain a secondary source of equality.

Should the FEO work properly and truly, the need for the 2b principle of difference could be radically curtailed. Here Rawls moves a fair bit closer to a luck egalitarian conception. Should a luck egalitarian situation with FEO hold, all differences in (at least) social class and income would be the result of personal life choices. Although the income transfers of the difference principle would still kick in at a certain threshold, the justifications of actual differences in living standards, incentives and entitlements would remain far more acceptable. It thus makes perfect sense that FEO would be given primacy over the difference principle.

The new formulation also reinforces the synergies between the three principles (1, 2a and 2b). Ensuring the as flawless as possible execution of the FEO also enhances the first principle (of liberties): when citizens have the true capability of achieving a multitude of social positions, their freedom is enhanced: their liberties are no longer limited or defined by their class. The execution of the 2a principle of FEO also enables the 2b principle to work better. When barriers to EOO are reduced to a minimum, the efficacy of the society and the economic system are enhanced. Incentives, such as wages and taxation levels, can now be more clearly optimized to form a society where the difference principle is in full effect. In an ideal

situation, the experience of procedural justice through FEO can also strengthen the social fabric of the society and increase the stability and efficiency of the liberal institutions.

3.2 Rawls's Conception of the FEO in the Justice as Fairness: a Restatement

Despite the remarkable significance of the FEO principle (principle 2a) the concept warrants surprisingly little attention in the JFR. The main focus of Rawls in the book is his wider moral theory and Rawls also spends a lot of time and effort in reinforcing his earlier findings. JFR ties together the two major Rawlsian theories of "Justice as Fairness" and "Political Liberalism". In the wider Rawlsian scheme of things FEO seems almost just a detour - just one of the several institutional and theoretical instruments to guarantee the functioning of an ideal society, one governed by a shared "sense of justice and conception of the good". (JFR, 1-32.)

Rawls describes his FEO quite extensively immediately after presenting his two revised principles (JFR 43,44). According to Rawls, the main function of the FEO, as a scheme of EOO, is to guarantee a true chance to citizens of attaining social positions, thus going beyond just formal openness of said positions. Rawls emphasizes that "Fair equality of opportunity here means liberal equality" (JFR, 44), thus tying FEO to his wider liberal scheme. In an interesting following sentence Rawls declares that under such a scheme, a liberal market economy must be put in place, with safeguards against excessive wealth concentrations. Here Rawls seems to go beyond the claims in his earlier work, the 1971 *A Theory of Justice*, since in it Rawls still advocates for a possibility of a just society based on a socialist economy as well. If the JFR page 44 sentences are seen as a definitive statement of the late Rawlsian view, the liberal market economy seems to now be the default setting of the Rawlsian "well-ordered society" giving little room for alternative systems. Instead of an equality focused economic system, Rawls's efforts are seen shifted to alternative, secondary institutions of social justice such as schooling and healthcare.

According to the Rawlsian analysis in JFR, the three greatest sources of social inequalities and differences are: social class, native endowments and good or ill fortune (JFR, 55). Later Rawls reiterates that in the FEO efforts should be directed especially towards leveling these three inequalities, even instead of focusing on the racial and gender biases found widely in western societies (JFR 65-66). In Rawls's view, although gender and racial biases do affect

societies adversely, they belong to the domain of the wider difference principle, instead of FEO. Theoretically this can lead to e.g. a strange situation where gender-based differences between men and women can be justified if they are to the advantage of the less privileged sex (JFR, 65). The actual distribution constituted by the difference principle is a major topic of JFR. Rawls goes on to argue that in a just scheme, different societies and states would diverge each other, when subjected with the Rawlsian doctrines of the difference principle, equal liberties and the FEO. In the endstate, total equality would not arise, but instead all societies would contain a certain, tolerable and optimized amount of inequalities. The optimized amounts of inequality are further explored in the context of the Rawlsian idea of a society using pareto-efficient incentive structure. (JFR, 71.)

The radical nature of the Rawlsian enterprise is also present in his separation of native endowments and moral desert. Rawls seems to think that only valid moral desert derives (in some ways) from the Kantian maxim of treating people as ends; all people possess this desert. At the societal level, deservingness (of income, status, etc.) is to be based on the efficient incentive structure, defined by the three revised Rawlsian principles: equal liberties, the DP and FEO. Education is here seen as a prime venue to achieve these efficiency goals. (JFR, 75, 78.)

The FEO reappears again in the JFR when discussing the utilitarian doctrine, the main opposing theory and alternative to Rawls's justice as fairness. Rawls seems to indicate that the FEO is quite compatible with the utilitarian view as well - in fact, both the equal liberties and FEO can easily be adapted by utilitarian views, whereas the mainstay of the Rawlsian assault on utilitarianism is focused on the difference principle. The active income transfers of the DP are drastically different from the utilitarian solution of social minimum. (JFR 120.) In JFR Rawls also argues for his own specific type of preferred society against some theoretical alternatives. Rawls ends up promoting a "property-owning democracy", a term not too dissimilar from Rousseau's ideal of a society with wide-spread and equal property ownership among the citizens. Most of the other options for the basic structure of society are disqualified due to being in conflict with at least one of the three Rawlsian principles of equal liberties, FEO and DP. Laissez-faire capitalism, for example, cannot entail a full-blown FEO principle, due to its focus on formal equality and effective markets instead of social egalitarianism. (JFR, 137.) On the other end of the spectrum, welfare state capitalism can

guarantee FEO but encroaches upon the equal liberties clause. A similar but even more radical departure from liberal equal liberties is visible in the various forms of state socialism.

According to Rawls the only viable option to the property-owning democracy is “liberal socialism”, but property-owning democracy still wins overall (JFR, 138). In line with his earlier statements (in Rawls 1971) however, Rawls reiterates that the ownership of the means of production, whether private or state owned, is not remarkable or normative per se, but he does indicate that his idea of liberal socialism does entail a free market mechanism of economic efficiency; only the ownership of the means of production is altered (to a public form). Both liberal socialism and property-owning democracy can include the strong institutions of Rawlsian FEO and social egalitarianism, whilst guaranteeing equal liberties (JFR, 139). As seen, in the Rawlsian scheme FEO can be seen as a key mechanism of addressing social and economic disparities. This is at least one of the main reasons why FEO has such a towering presence in Rawls’s idea of property-owning democracy: through institutions of FEO, such as the educational system, a wide spread distribution of capital and other assets important of the property-owning setting can be achieved, and even relatively easily. An equal and incentivizing educational system should in the ideal case lead to low income differences quite naturally through its operations. (JFR, 139.)

3.3 Fair Equality of Opportunity and the Political System

As we have seen, the principle of the FEO has drastic impacts on social and economic distributions, institutions and justifications. The FEO does, however, also affect the political rights of the citizens. In (JFR, 149) Rawls highlights just this connection. In addition to the traditional EOO fields of education, nurture and job market access, the FEO also warrants a goal of equal access to important political positions and places of influence. If we extend the idea of FEO to cover the democratic system as well, various institutional tools and mechanisms can be attached to the system, in order to better enable a fair equality of political opportunities for the citizens. This is not in any way irrelevant, since the (JFR, 42) principle reads “... to be attached to offices and positions open to all under conditions of fair equality of opportunity...”. It is easy to see that many positions and seats of democratic systems of governance (and many forms of executive power) fit well within this category of “offices and positions open to all”.

A further question then, and one Rawls seemingly leaves a fair bit unclear, is, what forms could this democratic FEO take? In the language of actual policies this might (for example) be seen as taking the forms of several positive freedom policies, actively enhancing the real life chances of many citizens to affect the political systems. In a society with rampant racial or other social discrimination this could take the forms of quota's, various forms of legal guarantees, public election funding, equal or preferential media coverage and campaigns on social awareness. In many modern western polities, there are disproportional disparities between the political participation of different classes and demographics of voters. In the light of the active nature of the Rawlsian FEO principle, these disparities should be actively mediated. Many modern democratic systems offer a textbook example of procedural EOO: all citizens have the procedural rights and capabilities to attend and influence the political system, but in reality, the de facto participation is unequally distributed. In a democratic form of FEO voting, candidate selection and campaigning should be reformed to actively level the political playing field.

In the philosophy of the later Rawls, an important emphasis is put on the moral toleration of different sects in the society. The most definitive statement of this is found in Rawls's 1993 book "Political Liberalism". In the book Rawls uses many of the ideas already visible in his theory of "justice as fairness" in order to sketch a model of institutions for such a society. In his theory, multiple different "comprehensive doctrines", that is, competing moral views, may co-exist in a society, as long as a common political system of "political liberalism" is maintained. In (JFR, 155) Rawls ties the faith of these differing doctrines to their "fair opportunity to maintain themselves and to gain adherents over generations". In political liberalism then, a certain connection to EOO exists as well. The idea of FEO, on the other hand, is not as easily adapted to moral phenomena such as those of the comprehensive doctrines.

3.4 Rawls and the Institution of Family

Although most of Rawls's theoretical work relates to institutions of the political, social and economic systems, he does not deny the idea of the family as a basic unit and a crucial social institution of society. Families of course, are a key unit of realizing the FEO as well. This is because many of the variables visible in the FEO derive from the family, such as native endowments, nurture and inheritances of several types. The most important Rawlsian

discussion regarding the family is the question of whether Rawls's Difference principle (DP) can be applied to families. Here Rawls is a little arbitrary. On the one hand he argues that the DP should not be applied to what he calls "private affairs". In another passing he essentially states that the power balance of the family should reflect the findings in his principles (JFR, 163). Considering that family is often seen as part of a "private sphere" it would then seem that there lies a slight conflict in Rawls's thinking.

One area where the FEO and DP cross each other in a particularly critical way, is the question of taxing inheritances (inheritances being most usually tied to the operation of families). It is clear that inheritances, as an institution, quickly lead to increases of disparities in life chances of citizens, often adversely. Inheritances of varying forms and sums affect quite straightforwardly the starting positions of citizens in the wider context of life, hindering the FEO. In a similar vein, the principle of DP is also offended, since inheritances often conflict with its tenets: inheritances are in most cases not earned by the work of the inheritors themselves, so their DP justification is lacking - remember, according to the DP, all differences in living standards and incentive structures should be to the advantage of the poorest. It is unclear whether inheritance satisfies this principle in any ways whatsoever. Rawls does then advocate for a progressive program of inheritance taxation, although he does not demand the abolishment of the inheritance regime altogether (a politically unpopular feat possibly only available in staunchly socialistic regimes). (JFR, 161.)

3.5 Joseph Fishkin: Another Take on the Rawlsian FEO

In addition to Rawls's own writings on FEO, most remarkably found in JFR, there also exists a wide variety of third-party analysis directly analyzing and explaining the FEO. Whilst straightforward critiques of the FEO (and many forms of theoretical discussion on the subject) are reserved for the next chapter, it would be advantageous to present at least one another (third party) analysis of the FEO to complement the one found in JFR. Here we adhere to what Joseph Fishkin has to say on the FEO in his book "Bottlenecks: a New Theory of Equal Opportunity" (2014).

Several strands of theories on EOO are represented and analyzed upon in Fishkin's book. Rawls's FEO is featured in a number of chapters, beginning as early as in the introduction sequence. Fishkin draws attention to the abilities aspect of FEO mentioned in the JFR (and

elsewhere). Rawls assumes that prospects of success are based both on abilities and opportunities - a point Fishkin categorically opposes. The critique of Rawls's stance that some abilities are hereditary and naturally unequally distributed is a recurring theme in the critical assessments of Rawls's FEO - as we shall see in more detail in chapter 4 of this thesis. Fishkin concludes in a major way that in his view abilities and opportunities are not in any reasonable way separable. (Fishkin 2014, 7).

The importance of this play of natural abilities and social opportunities in the Rawlsian FEO cannot be overemphasized. In fact, this idea of innate inequality (the unequal distribution of natural assets and abilities) separates Rawls's theory from many of its rivals. While there can be several reasons for this distinction, the idea of natural talent as an important factor in social allocation is a staple of Rawls's FEO and justice as fairness in general. After the events of the early 2000's (the publishing of JFR, for example) the idea of innate assets and abilities determining a person's position in the society and social hierarchies has been more questioned (think of in terms of e.g. racial discrimination). Rawls notes in his 1999 *A Theory of Justice* Revised edition: "...assuming that there is a distribution of natural assets, those who are at the same level of talent and ability... should have the same prospects of success..." (Rawls 1999, 63). It is the idea of "levels" that is concerning here. At the epicenter of the Rawlsian FEO, then, is according to Fishkin the fact that "life chances should not depend on circumstances of birth. Instead, they should depend only on talent and effort" (Fishkin 2014, 29). The disputed Rawlsian idea that natural talents exist and are to be accounted for is forcefully presented here.

3.6 Two Readings of the Rawlsian FEO

Fishkin argues that there are in fact two remarkably different readings of the FEO present in Rawls's theoretical construction. The first reading implies that Rawlsian FEO is in fact also a "starting-gate" theory. This refers to the common idea (present in multiple forms of EEO theories) that up to a certain point in a citizen's life opportunities and the necessary abilities should be treated in an egalitarian manner, trying to level differences. This leveling could be applied both to Rawls's primary target, class and socioeconomic issues, and also to other cleavages, such as race and gender. The caveat is that after a certain "starting-gate" is exceeded (matriculation examination, coming of age etc.) disparities in living standards would no longer be equalized, but seen as arising from people's own decisions and life

choices. Such a reading could help a society to marry together an egalitarian basis and personal autonomy (as people are responsible for their choices after the “starting-gate”). The view that FEO acts as a starting-gate theory is reinforced in JFR where Rawls states “[people with opportunities] are born and develop until the age of reason” (JFR, 44). The second reading of the FEO is a bit more concerning. In this view, a procedurally righteous FEO can originate from “natural talent plus effort”. Whilst this reading does remove the unjust benefits/hindrances of class positions, it also justifies many forms of disparities based on natural assets, such as genes, physical attributes and many innate abilities. (Fishkin 2014, 30-32.)

While a society based on such divisions might truly be more just than one basically ruled by inherited and class-based power, I would argue that it would still lead to potentially disturbing effects. If the social system was truly based on “natural talent” would we then rank two meritorious job applicants ultimately based on their natural assets such as genome? If most citizens had a similar drive for “effort” and the drive was for “natural talent plus effort” would that not lead to this arbitrary result? Surely societies key institutions and general functioning’s cannot be based on “natural” features such as (eventually) genetic formulations. And wouldn’t this lead to another form of a hierarchical society, one based on genetic traits - and considering that genetic traits are inherited, wouldn’t we just switch from one class society to another, far more rigid and questionable than at almost any society today? Rawls’s infatuation with natural traits as the determinant of social position remains one of the most questionable aspects of his FEO. Elsewhere (Rawls 1999, 14) Rawls does argue that “accidents of natural endowments” should not affect opportunities. But questions remain. Which traits are accidental and which are structural? Overall, the idea of “natural talent plus effort” remains one of the weaker aspects of the Rawlsian FEO.

Fishkin also assesses Rawls' take on the family as a vehicle of EOO. Citing Rawls’s earlier writings he quotes: “the principle of fair opportunity can be only imperfectly carried out, at least as long as some form of the family exists” (Rawls 1999, 64). The issue of the family institution is a recurring theme in theories of EOO. By presenting a series of challenges to the FEO, Fishkin only laments the role of the family as “wrench in the machinery” of Rawls - one that would still require solving even in the unlikely full adaption of a Rawlsian well-ordered society (Fishkin 2014, 54).

Related only partially to the FEO are the wider issues of the consequences of Rawlsian initial agreement under the veil of ignorance. Although Rawls did move to slightly different themes in his later works (for example in the 1993 *Political Liberalism*, and to a lesser extent, the *JFR*) there is no indication that he would have distanced himself from his seminal theoretical tool of the veil of ignorance. To recall, the veil of ignorance is used to demonstrate what kinds of choices people would take and what kind of institutions they would build up in a society, if unaware of their place in the said society. The significance of the veil is huge when considering the FEO: under the veil people (the contractors) would not know their families, schools, cultures, job market positions, class positions, disabilities and possibly not even their geographic location within a region. Fishkin argues that “Rawlsian merit cuts away all of those factors and their effects” (Fishkin 2014, 56). Were we to follow the Rawlsian framework to the fullest, we would argue that the contractors under the veil would choose FEO as their preferred approach to EOO. At a first glance that would at least seem possible and perhaps likely.

In line with his wider argument in the 2014 *Bottlenecks*, Fishkin sees the disaggregation of natural and social attributes, as a harmful practice in the understanding of themes in EOO. And the FEO is just as guilty of this as many other takes on EOO. Without this theoretical “disaggregation” the differentiation of natural talent, effort and other social and socioeconomic factors could not be carried out in a meaningful way. According to Fishkin, however, “the trouble is that this premise is simply incorrect”. Separating the natural from the social might then be theoretically uninviting. (Fishkin 2014, 87.)

4. In Critique of Fair Equality of Opportunity

4.1 In Critique of the Rawlsian Fair Equality of Opportunity

Considering that the Rawlsian Fair Equality of Opportunity is one of the most prominent theoretical takes on the Equality of Opportunity topic, it is not surprising that the theory has attracted a fair bit of criticism and revisions from other theorists and commentators in the EOO space. Some of the criticisms are quite profound and the lively theoretical discussion has continued well into the post-Rawls age of opportunities theorizing (John Rawls passed away in 2002). Although Rawls himself cannot defend FEO posthumously, his theory has

found new champions in the 21st century discussion. In this chapter some opposing, defending and revisionist takes on the FEO are addressed.

4.2 Arneson: Against Rawlsian Equality of Opportunity

Richard Arneson has been one of the most vocal commentators on the topic of FEO and EOO in general, a fact corroborated by a number of cross-referencing in the wider literature. In his 1999 article in the *Journal Philosophical Studies* (Arneson 1999) named “Against Rawlsian Equality of Opportunity” Arneson makes two broad strikes against FEO: namely that it faces problems both due to being both too strong and too weak in its theoretical confines.

According to Arneson, the FEO “has radical implications for the design of social policy and legislation in modern democracies.” but that his article “assesses Fair Equality of Opportunity and offers reasons for rejecting it.” (Arneson 1999, 1.)

Arneson’s first strike comes in the form of a claim that the FEO reacts poorly in relation to ambitions and differences affecting people's preferences. His idea comes close to Amartya Sen’s problem of adaptive preferences (e.g. in Sen’s *The Idea of Justice* 2009); people may come to direct their ambitions in ways that conflict with the actual realization of the FEO. For example, women might be socialized to attend care roles (both in families and the job market), and according to Arneson this would be in line with the FEO whilst in fact unfair. He therefore advocates the addition of a distinct discrimination clause. (Arneson 1999, 2.)

Arneson goes on to argue against the new lexical ranking of the principles found in the 2001 *Justice as Fairness: A Restatement* (JFR). His critique is simple but effective: placing FEO over the difference principle can lead to a situation where the poor are left suffering whilst the learning scores of the upper middle class are marginally improved; after all, in the FEO lexical system, increasing opportunities is prioritized over increasing both equality and welfare (found in the DP). This refutation certainly appears quite dire, but in the name of fairness Arneson does add that the FEO and DP often intersect in ways that improve both; often improving equal opportunities, as in the case of social policies and education, for example, also narrows social inequalities and betters the position of the worst-off as well. (Arneson 1999, 4.)

Arneson also criticizes some of the other broadly theoretical suppositions. A familiar criticism is wielded against the DP: Arneson can be counted among those that oppose the strict clause that even major gains for the rich can be forfeited to achieve minor gains for the poor. He also criticizes Rawls of “fetishizing meritocracy”. The claim of Rawls fetishizing meritocracy is a valid claim shared by many EOO thinkers, as Rawls does advocate the meritocratic principles in quite an open way. Rawls is thus also vulnerable to the many forms of criticisms that can be raised against meritocracy. Arneson also draws attention to the broad theoretical fact that many of the glaring injustices found in modern societies (such as gender and racial discrimination) can be dealt with without a reference to FEO whatsoever. (Arneson 1999, 7.)

In Arneson’s view, there seems to be a general discrepancy between the FEO and themes of discrimination. Here we see his critique that FEO is too strong: in addition to harmful forms of discrimination it also forbids many forms of what Arneson calls “innocent discrimination”. His textbook example of these are several forms of associations with rules of composition; e.g. a common enterprise only hiring people of the gay sexual orientation (Arneson 1999, 8). Arneson argues that the FEO would ban that kind of enterprise, even if most see such enterprises unharmed or even to be guaranteed by an appeal to equal liberty. Other forms of discrimination Arneson explores include: ambition-affecting socialization, statistical discrimination and discrimination that imposes significant costs on members of a better-off group. Each of these appear to have both positive (or at least neutral) and negative forms. They cannot thus be seen as having a decisively positive or negative character, even if the FEO would lead to their categorical ban.

One of Arneson’s key arguments against Rawls’s FEO also seems to be that in his view it allows various harmful forms of discrimination in the case that they just so happen to correlate with cleavages such as those between genders or race; in Arneson’s view Rawls’s FEO is blind to such intersectional problems of discrimination on the one hand and meritorious efficiency on the other. This problem can also perhaps be seen as a following from the fact that for Rawls the most important social cleavages result from differences of class and the possession of “primary goods” (primary goods for Rawls meaning important resources to realise life plans, as mentioned in his Theory of Justice (Rawls 1971)) including both material resources as well as mental ones, such as status and dignity. (Arneson 1999, 12.)

At least some people now view Rawls's cold war era rhetoric of social class and material cleavages as outdated, as the modern discourse puts such an important emphasis on more moral types of cleavages (such as those visible in various forms of discrimination). This does not mean that issues related to class, such as access to educational and job-market assets are not important; rather just that as Arneson notes "exactly what goods are necessary for a good life probably varies from individual to individual." (Arneson 1999, 13).

Another one of Arneson's grave challenges to the Rawlsian paradigm, as found in JFR (and Theory of Justice as well) is that he argues that the FEO does not straightforwardly follow from the Rawlsian original position, nor from Rawls's supposed maximin principle. According to Arneson, the FEO is thus not secured in the social contract situation in the same way as the DP is (in his view, the DP has a far more solid backing than the FEO in the original contract). Nor does the FEO follow from its lexical master, the equal liberties principle. In fact, Arneson even goes as far as basically stating that he does not see the FEO as remarkable for justice at all. (Arneson 1999, 15,16.)

In conclusion, Arneson's (Arneson 1999, 19) main claims are that:

1. Rawls's Fair Equality of Opportunity Principle should be rejected because it is too weak, insofar as it fails to condemn wrongful discrimination that operates through ambition-affecting socialization.
2. Rawls's Fair Equality Principle is also too strong, in that it condemns discrimination that should be deemed innocent rather than wrongful.
3. Fair Equality should be rejected because it represents a compromise with meritocracy, and wrongly constrains the wholehearted pursuit of that part of justice that seeks to maximize a function of the opportunities and liberties available to the members of society that gives priority to improvements for the worse-off. (Whether Priority for the Worse-Off should itself be constrained by a principle that limits Wrongful Discrimination is left undecided.)

4.3 Lindblom: In Defense of Rawlsian FEO

As profound as Arneson's criticisms of the Rawlsian FEO principle are, some have tried to refute his claims. Lars Lindblom's 2018 article "In Defense of Rawlsian Fair Equality of Opportunity" (Published in the journal *Philosophical Papers*) straightforwardly attempts to defend the Rawlsian FEO against Arneson and his ilk. As Lindblom explains in his abstract; "Richard Arneson argues that Fair Equality of Opportunity (FEO) should be rejected, since it is not only too weak and too strong, but also problematically meritocratic. The [Lindblom] paper aims to defend FEO[...]" Lindblom does however give credit to the fact that Arneson has contributed to the analysis on FEO in general. In Lindblom's view the subject of FEO has not achieved the study and attention it would deserve. (Lindblom 2018, 235.)

According to Lindblom then, Arneson's analysis is both flawed and based on a questionable reading of Rawls. In line with the earlier findings of this thesis, Lindblom quotes philosopher Freeman as saying: "Freeman identifies the three major arguments for FEO in Rawls's works as (1) The Aristotelian Principle, (2) the fact that it is needed to make sense of the difference principle, and (3) the ideal of free and equal citizens." (Lindblom 2018, 238). Whilst claims 2 and 3 are already known to us, the Aristotelian principle requires some clarification. The Aristotelian principle, attributed to the ancient Greek philosopher Aristotle, states that people prefer both forms of work and joy that are intellectually more challenging, when compared to easier and more crude alternatives. The Aristotelian principle is more of a heuristic than a theory and faces challenges when empirically studied; for example, many intelligent and civilized citizens prefer crude forms of entertainment in their freetimes. That being said, the principle does hold some sway, especially when it comes to various workpositions.

Compared to some other commentators, Lindblom puts more emphasis on liberties and the principle of equal liberties in the specific. In his view, it is the connection to freedoms that further reinforces the FEO as well. Lindblom goes on to argue: "The core of justice as fairness is the ideal of relational equality, which is given by the account of free and equal citizenship. FEO must be interpreted as having the aim of giving expression to this ideal of relational equality." (Lindblom 2018, 240). Without the FEO equal liberties could not be reinforced either. The bundle of Rawlsian principles of equal liberties, FEO and DP, as found in justice as fairness remains indivisible. Lindblom states that the bulk of Arneson's "too weak" argument against the FEO comes from the claim that the FEO and justice as fairness in

general are too focused on institutions and thus allow for corrosive effects of differentiated ambitions. Whilst it is true that the Rawlsian enterprise is first and foremost focused on institutional arrangements, Lindblom argues that Rawls's principles do not let ambitions go unnoticed. Lindblom concludes that the FEO can be interpreted as covering the development of ambitions, thus refuting the "too weak" argument. (Lindblom 2018, 244.)

As we have seen earlier in this thesis, the claim of meritocracy is a staple of the discussion on EOO. While some argue for meritocracy explicitly, there remains dispute over the relation of meritocracy and the FEO. In Lindblom's view the claim that FEO would in fact be meritocratic would seriously undermine the project of the Rawlsian principles. Lindblom states: "A meritocratic FEO would disregard the argument from the two lotteries, undermine the emphasis on equal status and undercut the difference principle." (Lindblom 2018, 245). Even if the realization of various talents and the existence of open positions could be arranged in a meritocratic way, Lindblom sees FEO as having a far wider application; fortunes themselves should not be meritocratic. Lindblom argues that Rawls could not actually be truthfully seen as a meritocratic thinker, since strict meritocracy conflicts with the DP in various ways. The FEO is compatible with a number of normative leanings, but remains independent and distinct in its arguments. Lindblom laments that the FEO is still more useful and frugal than many of the theoretical alternatives. (Lindblom 2018, 248, 252.)

The final half of the Lindblom defense of FEO concerns Arneson's claim that the FEO is too strong, namely, that it restricts forms of discrimination that are non-harmful. The easiest way to circumvent the dilemma is just to put some weight on the intensity of the discrimination, and this seems to be quite exactly the path that Lindblom takes. Analyzing one of the Arneson examples, that of an all gay workplace, one could then simply argue that the intensity of gay discrimination on heterosexuals is less discriminating than that of heterosexuals on gays. Although this is a bit different than what Lindblom explicitly says, an idea of this type is visible. (Lindblom 2018, 255.)

A similar approach can be taken in the case of statistical discrimination. Although not all of statistical discrimination can be weeded out, the weighted FEO can still help render such discrepancies less relevant. In most cases then, statistical discrimination is a relevant challenge to the FEO only in cases where it endangers citizens moral standing and equality in a major way. Lindblom proves that Arneson's alternative, a form of prioritarianism, is at least

as faulty as that of FEO's. Lindblom seems to think that both in the cases of FEO being too weak or too strong, challenges can be overcome by focusing on the fact that properly applied the FEO produces reasonable results. He goes on to note: "In all of the examples presented - the gay workplace, statistical discrimination, and something in the culture - FEO seems to give intuitively reasonable answers." (Lindblom 2018, 261.)

4.4 Fair Equality of Opportunity: John Rawls's Best Forgotten Principle

Joining the ranks of Arneson in criticizing the lexical priority of FEO over DP is the philosopher Larry Alexander in his early 1986 article "Fair Equality of Opportunity: John Rawls's Best Forgotten Principle". Alexander's article is dated in March 1986, thus preceding the publishing of *Justice as Fairness: a Restatement* (2001). Thus, his criticism is based to a great extent on Rawls's earlier works, such as *A Theory of Justice* (1971) and some journal papers by Rawls. The early criticism of 1987 goes to prove that Rawls felt confident in his theory even in the face of critique, as his stance in the 2001 JFR remains unscathed.

Alexander follows Arneson in the critique that "...that no loss of equality of opportunity, no matter how slight, can ever be justified by increases in income and wealth, no matter how great! As we shall see, given the way Rawls defines fair equality of opportunity, which equalizes the position of those with equal natural talents but does not compensate for inequalities of natural talents, then suggestion is totally implausible." (Alexander 1986, 199). This seems to refer to the same argument that was presented by Arneson: if the FEO is truly lexically prior to the DP, no funds should be directed to the poor in the case that even marginal benefits could be increased in educational results, no matter how affluent the students. Alexander laments: "[Given the lexical priority of the FEO] Equality of opportunity may not be traded for increases in income and wealth, no matter how insignificant the inequality of opportunity and how great the gains in income and wealth..." (Alexander 1986, 200). Here Alexander asks an important question: is it certain that the contractors in the Rawlsian original position (and under the veil of ignorance) would choose an option (the lexical priority of the FEO over DP) with such potentially obtuse results? Alexander expresses his doubts.

Alexander presents many of the similar counterexamples to the Rawlsian lexical ordering than have already been seen in the case of Arneson. One of his examples is quite especially

interesting, however. Alexander represents a situation in which two job candidates have similar credentials, but one of them lives far further from the location of the job opportunity. Here although the candidates are equal in credentials, one of them is greatly privileged by the place of his residence. In the scheme of equalising opportunities (as in the FEO) should this difference in residence be addressed? Alexander thinks it should not be. The significance of the residence example is greatly amplified by the fact of how common problems relating to the geography of job/educational opportunities are. Geographic mismatches in the job/educational markets remain stark in almost all modern polities. The geographic problem of opportunities is an important reminder that not even comprehensive programs, such as FEO or DP, can root out all sources of inequality. (Alexander 1986, 201.)

Alexander sees in Rawls's FEO an interesting mechanic he brands "internal difference principle." In this term of his he refers to (what he sketches) as a kind of compromise between FEO and DP; the goal being to increase the opportunities of the least well-off (instead of the living standard of the least well-off, as in the classic DP). He goes on to argue that "Rawls' idea is that "fair" equality of opportunity is not strict equality of opportunity. It is, rather, a "difference principle" notion of equality of opportunity, one that requires maximizing the opportunities of the worst-off class (defined in terms of opportunities)." (Alexander 1986, 203). Thinking in the terms of this economics of opportunities of his, Alexander sees problems, largest of which seems to be that to guarantee opportunities to the least well-off could, as a matter of fact, actually decrease the number of promising opportunities overall. Some mechanisms could even have adverse effects and backfire on the poor. The idea of increasing the opportunities of the least well-off itself seems quite viable, making the concept of the internal difference principle an enticing one.

One additional problem in this "internal difference principle" scheme that Rawls allegedly imposes, is the fact that the number of opportunities (such as job market offerings, the number of school places, research grants etc.) might be fixed. Alexander explains: "...For with a fixed number of positions, inequalities of opportunities never improve the opportunities of the least advantaged numerically as much as equality of opportunity for all persons, and equality of opportunity for all would have such drastic effects on the quality of the opportunities and on income that rational contractors would surely reject it." (Alexander 1986, 204). The idea of the rigidity of opportunity structures is an important critique of the FEO in and of itself. Even in large scale societies the opportunity structures might only

partially cohere to a pareto-organized and efficient model (the kind of which Rawls seems to suppose).

Quite tellingly, Alexander ends his harrowing critique of the Rawlsian lexical priority of FEO by stating that: “Rawls has advanced no good argument for the lexical priority of his fair equality of opportunity principle or its internal difference principle. Indeed, he has given no reason why his rational contractors would even choose such a principle as a principle independent of, much less prior to, the general difference principle.” (Alexander 1986, 206).

4.5 Challenges of Rawlsian Opportunity

Paul Gomberg's analysis (Gomberg 2010) is yet another strike against Rawlsian FEO and its presuppositions. Gomberg sees the Rawlsian enterprise as being based on “some dubious sociology” . He sees an innate controversy in the fact that “Rawls writes that the basic structure of any society affects the life prospects of those growing up in different ‘starting places,’ yet his conception of equal opportunity seems to require that one’s opportunities not be affected by the class position of one’s birth.” (Gomberg 2010, 1). Gomberg aims to “explicate this apparent contradiction and reconcile these assertions.” Special attention in the Gomberg paper is placed on the fact that the FEO itself does not do much to refute class division inherent in modern societies division of labor.

Perhaps the most important finding of Gomberg (and one which is extensively documented in his citations of Rawls) is that class differences, and other large disparities in living conditions, and the ensuing prospects and opportunities in the society do vary quite considerably, even in the confines of the Rawlsian enterprise (Gomberg 2010, 1-3). Whilst this is concerning, and certainly seems to lead to unfair outcomes, Rawls’s thinking in this area seems (to me anyhow) rational after all. Rawls, for the most part, is not just an egalitarian thinker, but also a liberal. Should the initial agreement, based on Rawlsian justice as fairness, be brought to action, inequalities (in the Gomberg case differences in living standards) would not be abolished altogether. They would simply be arranged, as per the DP, in an arrangement which would most benefit the least well-off. A total equalization of living standards, and the eradication of all class, status and wealth differences would lead to a form of ideal socialism very distant from the Rawlsian doctrine. The emphasis that incentive differences would persist in the Rawlsian theory is not a mistake or a deficiency but a

calculated procedure aiming to enhance the general functioning of the society. These kinds of considerations do not seem to be taken into account to their fullest by Gomberg, although he seems aware of the idea that for Rawls, social contingencies meet certain social purposes. (Gomberg 2010, 3,5.)

Rawls (JFR, 55) does also mention the effects of social conditions in his FEO:

Justice as fairness focuses on inequalities in citizens' life-prospects — their prospects over a complete life... — as these prospects are affected by three contingencies:

(a) their social class of origin: the class into which they are born and develop before the age of reason;

(b) their native endowments...; and their opportunities to develop these endowments as affected by their social class of origin;

(c) their good or ill fortune, or good or bad luck... (...illness and accident...involuntary unemployment...).

Even in a well-ordered society, then, our prospects over life are deeply affected by social, natural, and fortuitous contingencies, and by the way the basic structure, by setting up inequalities, uses those contingencies to meet certain social purposes.”

On this reading Rawls then seems to believe that unjust or arbitrary effects on EOO, from as early as childhood onwards are, at least to some extent, inevitable. Gomberg compresses this to a claim that in the FEO theory “differences in life-prospects arising from the basic structure are inevitable”. He sees this as arbitrary to the claims (that Rawls makes elsewhere) that “an inequality of opportunity must enhance the opportunities of those with the lesser opportunity”. (Gomberg 2010, 4-5). Although the disparity seems daunting, at least some of it can be mediated through the aforementioned institutional circumvention of incentives and redistributive tools, such as the DP. As explained earlier by Fishkin (in chapter 3) the Rawlsian focuses on “natural talents and effort” are well documented.

Overall, Rawls seems to think of his theory as an ideal one - a claim visible in his theoretical suppositions. The focus on ideal theory means that Rawls does not expect his theory to fully correspond with actual societies, but rather that it be an ideal proposition upon which real societies can be modelled. It does then seem interesting (a point Gomberg emphasizes) that he admits of harsh differences in social starting positions in a way we have seen (above). As an ideal theory, could we not just wish away all differences in the social class starting positions of the citizens? Rawls's own works seem to entail that such a radical upheaval (which would likely lead to wide redistributive efforts, such as the wholesale abolition of inheritances etc.) is outside both the realistic operations of a well-ordered society and the limits of his own thought; Rawls's own institutions, such as wide personal liberties (which radical redistribution would encroach upon) and viewing the society as a "property-owning democracy" (JFR, 138) are in clear opposition of the radical equalization procedure. Rawls's theory is then a moderate theory, in many ways aimed against opponents on both sides of the isle, libertarians on the one end and radical communism on the other.

Another critique of Gomberg's is waged towards the Rawlsian habit of using resource baskets (primary goods) as the measure of opportunity. This again can be seen as somewhat controversial, as Rawls also emphasizes to a great extent the relevance of motivation - although in a wide perspective, motivation can be seen as a primary resource as well. According to Gomberg, Rawls sees disparity of motivations between families as one of the prime causes leading to inequalities in children's opportunities. Motivation is also just one of the non-monetary forms of advantages that often accrue on the wealthier strata. Gomberg concludes that there are no viable ways to prevent these "investments" without encroaching upon the equal liberties principle. The abolition of such forms of social action would also be against the general efficiency and DP in the society; many forms of incentive worthy action would cease to exist. (Gomberg 2010, 10, 12.)

4.6 On Rawls's Dubious Sociology

Gomberg (Gomberg 2010, 15) readily attacks some of what he claims are Rawls's "dubious sociological assumptions". According to him, among these three are quite profound:

1. Rawls believes that efficiency requires that social positions be organized so that some require scarce developed abilities while others require only more easily acquired

abilities (for example, we need more construction workers than architects); that is, there is a division between complex and simple labour.

2. He assumes (I [Gomberg] will argue) that the distribution of native potential at least roughly approximates the distribution of positions requiring greater or less training and highly developed skill in modern societies (as described in 1).

3. He assumes that at least some people with relatively scarce developed abilities needed for efficient production will contribute their abilities only given an extra incentive - additional income, wealth, or power; this is the assumption that inequalities allowed by the difference principle really do benefit everyone.

In this view, the two first assumptions are especially fallacious. What Gomberg calls “the meritocrats dream”, is false. The sheer measurement of many abilities is hard or even impossible in a meaningful way; and abilities may correlate poorly with the division of labor. And division of labor itself is not a stable pyramid with many low-skilled positions at the bottom and progressively more complicated (and better compensated) positions nearing the top, as Rawls would have imagined it. Complex abilities are also not tied only to the labor market, as sophisticated abilities can exist in all quarters of the populus. Rawls’s aged view of a society stratified by social classes is again called into question in this context. (Gomberg 2010, 16.)

Taking cues from what actually expires in many modern societies, Rawls also relies on the idea that reserves of labor, even with developed labor, readily exist in the society. Gomberg sees this as potentially unjust, but fails to entail why even developed abilities would demand guarantees in relation to the ebb and flow of modern job markets. Perhaps the largest driver of the Gomberg critique (which I fully advocate) is that if we assume that most people can hold most offices and develop most abilities if given their fair chance, the differences inherent in the modern division of labor become a force of inequality. As Gomberg puts it: “...If, as I think plausible, the potential to master complexity is widespread in human populations, then socialization for routine labor requires blunting the development of human abilities in many children. This is unjust.” (Gomberg 2010, 18.)

To the defense of the Rawlsian doctrine, this apparent flaw in FEO is somewhat compensated by the DP; the DP redistributes resources in a manner that does at least a little to unsettle the apparent injustices. It does not, however, affect the deeper sociology of the labor market and its contours. Nor is Gomberg's solution viable in the grander scheme of things: he advocates the sharing of dull tasks such as manual labor among the citizens (Gomberg 2010, 19). Whilst more just, this would be in clear violation of any adherence to (economic etc.) efficiency. Highly skilled labor contributing to low skilled tasks repeatedly would be a waste of their skill and abilities, leading to grave efficiency loss. Bear in mind that in the greater Rawlsian theory (of justice as fairness) considerable weight is given to efficiency, especially in the “pareto principle”.

4.7 Rawls and His Critics

In this chapter we have been presented several critiques of the Rawlsian FEO and have analysed their strengths and flaws. Letting others complement Rawls's own voice and even challenge his FEO in major ways aims to enrich our views and provide a sturdier framework for the general analysis of the viability of the Rawlsian FEO. Whilst not comprehensive, this chapter has addressed some of the most pressing conflicts visible in the Rawlsian theoretic paradigm of FEO. These remarks will come in handy at the end of the thesis, where we assess the general viability and significance of the Rawlsian Fair Equality of Opportunity.

5. Beyond Rawls

5.1 Theoretical Developments After Rawlsian FEO

Having been born in 1921, the great author and philosopher John Rawls passed away on 24th of November 2002. After Rawls's death, his bibliography can be seen as canonised and standardised into a very certain and resolute argument for his main ideas, whether referring to the FEO, DP, equal liberties or justice as fairness in general. Since Rawls is gone, no major revisions to his wide production can be expected (although forms of posthumous revisions sometimes pop up from some authors in the philosophy space). Thus it can be concluded that the Rawlsian theory is finished.

Philosophy of social justice however, still keeps evolving actively. After Rawls's passing, several new theoretical developments have taken place. In what follows two of such strands will be given prominence: Martha Nussbaum's (and to a lesser extent Amartya Sen's) Capabilities Approach and Joseph Fishkin's Opportunity Pluralism.

5.2 Capabilities and Opportunities

One of the most important paradigmatic theories of justice in the post-Rawls space has been Amartya Sen's and Martha Nussbaum's capabilities approach (CA). While not a proprietary theory of EOO, the CA can give us several clues on how to arrange institutions of opportunity. Whilst Sen's theorising is more practical and involves more comparative elements, Nussbaum's theory is more procedural, and thus a better fit for an analysis involving Rawls. The most definitive iteration of the Nussbaum CA is found in the 2011 "Creating capabilities" (Nussbaum 2011).

In the paradigm of CA more emphasis (compared to Rawls) is put on the actual realisation of people's goals. It is thus a good fit for an analysis of EOO; capabilities can be seen as opportunities. In the CA a theoretical divide is made between abstract rights and liberties and real (actual) opportunities. In the Rawlsian theory this critique would be leveled against the equal liberties principle and the ideal theory nature of justice as fairness in general - instead of equal liberties, the focus should be on actual liberties; and instead of ideal theory the focus should be on actual societies. Although the assault can be seen as one of procedural justice being attacked by these new "realisable opportunities" (capabilities), Nussbaum (Nussbaum 2011, 33-34) in fact provides a compromise in his theory, most visibly in his "central capabilities" including:

Life: To live to the end of a human life of normal length.

Bodily Health: To have good health, including reproductive health, nourishment, and shelter.

Bodily Integrity: To be able to move freely, be secure from violence and assault, and have choice in matters of reproduction.

Senses, Imagination, and Thought: To use the senses, imagine, and think, and to do so in a way that is informed by education.

Emotions: To have attachments to others, including the ability to love, grieve, and feel justified anger.

Practical Reason: To be able to form a conception of the good and critically reflect on one's life choices.

Affiliation: To live with others, have social bases for self-respect, and be able to participate in political life.

Other Species: To be able to live with and express concern for other species and the natural world.

Play: To be able to laugh, enjoy recreational activities, and engage in imaginative play.

Control over One's Environment: To be able to participate in political choices and have control over one's social and physical environment.

The procedural compromise is then that the Nussbaum approach to the CA is still based on a relatively strict theoretical basis. This differentiates it from e.g. Sen's more open ended and comparative approach, with Nussbaum retaining a procedural basis (due to her theory being based on principles/rules, the ten central capabilities).

One of the most important differences between Rawls's justice as fairness (FEO included) and the later CA theories is that the CA formulations put more emphasis on thresholds, in contrast to achieving general equality. Most notably, the classic CA formulations do not involve the Difference principle (DP) or anything like it. Another difference quite visible in the ten central capabilities is the wider and more moral focus, that can be contrasted with Rawls's class-based and more socioeconomically focused understanding of social justice. In the modern world of large and widening gaps in living standards and financial equity, the lack of anything like the DP is concerning. Although Rawls's philosophy (in a quite novel way) combines elements of negative freedom (the equal liberties principle) and positive freedom (DP and FEO) the CA represents a clear drive towards the realm of positive freedoms. This shift was however already to some extent visible in Rawls, most notably in his Restatement, where he makes the FEO lexically prior to the DP.

One strand of thought well in line with our analysis of EOO found in Nussbaum's work is the idea of internal abilities, combined abilities and innate equipment. Innate equipment might here be interpreted as coming close to what Rawls called "natural talent"; people's innate

attributes. Internal abilities are skills citizens can learn but which are not alone a guarantee of successfully applying them. Combined abilities then are the process through which innate and internal capabilities come to fruition. Together these form the basic capabilities. (Nussbaum 2011, 21, 23.)

To lament the connection between abilities and EOO style opportunities: “Vasanti’s [an example character Nussbaum introduces] combined capabilities are the totality of the opportunities she has for choice and action in her specific political, social, and economic situation” (Nussbaum 2011, 21). The other side of the equation is what Nussbaum calls “functionings”, the actual realisations of the procedures ignited by the basic capabilities. Nussbaum continues: “the distinction between internal and combined capabilities is not sharp, since one typically acquires an internal capability by some kind of functioning and one may lose it in the absence of the opportunity to function.” Nussbaum 2011, 23). In essence, as Nussbaum argues “... capability means opportunity to select.” (Nussbaum 2011, 25). On this reading then, enhancing capabilities means enhancing opportunities.

Nussbaum’s version of the CA has its merits but has also received a fair bit of criticism (as often happens in academic debates). Some have criticised the list of the ten capabilities as too rigid, or too narrow. The apparent lack of addressing distributive justice is another shortcoming. What the theory does well, however, is to present justice as a multidimensional phenomenon. Its focus on basic capabilities and social opportunities in a multidimensional framework goes far beyond what even the Rawlsian FEO can achieve. Overall, the insights of the CA can at least complement other strands of EOO, such as the FEO.

5.3 Joseph Fishkin: Opportunity Pluralism

Joseph Fishkin’s “Opportunity Pluralism” is another more recent development in the field of social justice and EOO. His argument is presented in his 2014 Oxford University Press published book “Bottlenecks: a New Theory of Equality of Opportunity”. The main argument in the book is that the “opportunity structure” of a society should be pluralistic, avoiding bottlenecks. In practice this means creating social institutions with a plurality of entry points, thus eliminating harmful bottlenecks.

Although Fishkin does refer extensively to Rawls and the FEO (as we have seen in chapter 3) and also other avenues of theoretical access, such as luck egalitarianism and forms of utilitarianism, his own theory does deviate quite distinctly from alternatives, also including the CA. One of the more important differences is that Fishkin's opportunity pluralism leans more heavily on practical institutional arrangements and empirical evidence - although it does retain a theoretical core argument. In this sense it comes closer to the Amartya Sen iteration of CA than the other models. Deviating from the strictures of ideal theory allows, however, more accurate and effective formulation of actual institutions entailing opportunity pluralism. Important access bottlenecks include access to basic and higher education, job market access, various forms of skill accumulation and different forms of harmful discrimination. As Fishkin acknowledges, "The opportunity structure in any real society is vast and complex". (Fishkin 2014, 130.)

The most immediate goal of Fishkin's theory is to carve out a model that allows a plurality of entry points to important social institutions relevant to EOO. His theory is also pluralistic in a wider way, as he sees great importance in people having plural paths and values in the society. Many positions should also be non-positional and non-competitive. Fishkin's source of criticism is a society arranged in opposite of this, a society he calls "unitary". Fishkin's argument against unitarism and in defence of pluralism is robust and well in line with wider modern discussion on social justice and EOO in general. (Fishkin 2014, 132.)

As mentioned in chapter 3, Fishkin does see Rawls to some extent as a "starting-gate" theorist, meaning that in his view Rawls does not wholeheartedly oppose major bottlenecks in the operation of the society. That is, when people reach a certain stage, usually adulthood, the most authoritative forms of FEO and even DP can cease to apply as the citizen becomes a fully entitled maker of rational choices. Such turning points do not only often include important institutional bottlenecks, such as matriculation exams and university admissions, but also act as bottlenecks themselves, as they present an important change in the person's liabilities, duties and prospects (e.g. Fishkin 2014, 144). The essence of Fishkin's effort is seen in his "condition three": "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." (Fishkin 2014, 146).

One apparent goal or possibility of Opportunity Pluralism is that when effective, ameliorating bottlenecks in the manner guided by the theory can increase living standards and meaningfulness and satisfaction for the citizens. Less effort might then be put in single important tests (which form bottlenecks) in the education system and actors in the space can more easily focus on honing their skills of choice or even just engage in free time and relaxation. There does remain a discussion on the efficiency aspect of removing such big tests and improving long term access to education and job market positions (through retraining for example). Costs and benefits play an important role, even in Opportunity Pluralism. (Fishkin 2014, 169.)

The question of efficiency is a tricky one for the doctrine of Opportunity Pluralism as it has both positive and negative effects on efficacy. Giving wider access to citizens from differing inheritance and output, instead of just those with the best nurture and greatest results in the “big tests” can actually be beneficial or at least value neutral to various institutions, especially in education, a fact corroborated in several studies. Similarly giving multiple paths to jobs can increase both productivity and labour market access and employment in general. Eliminating such arbitrary obstacles as discriminating or otherwise trivially limiting forms of job applications can allow more talented workers a chance to show and hone their skills. Overly strict sets of criteria both in education and in job market positions is not only discriminatory but also inefficient. (Fishkin 2014, 179.)

One example of a serious bottleneck in a society could be the hyper-competitive “big test” heavy educational system found in many East-Asian countries. In these societies children spend a disproportionate amount of time and effort to prepare for various tests and evaluations. In those societies failure in a big test can be seen as a dire failure in life itself, as many social positions require good grades. Here the seriously bottlenecked system starts to affect the Rawlsian principle of “positions open to all” adversely. It also enacts a very harsh form of meritocracy.

Fishkin sees the United States model of many students acquiring relatively generalistic degrees as a step in the right direction. Even in the US however, elite institutions of advanced education, such as prestigious universities, provide their students with clear advantages of opportunities in job markets and prospects. University education itself is also a major gatekeeper for many enticing occupations (Fishkin 2014, 148). The rising burden of student

loans also weakens equality of opportunity. Students from poor backgrounds often fear taking out loans and are thus left out of the education investment entirely. In lower levels of education “school shopping” has been on the rise.

6. Conclusions

Equality of opportunity (EOO) remains one of the important fields of study in the wider subject of social justice. Several strands of study have sprung, among them the Rawlsian “Fair Equality of Opportunity” (FEO). While the FEO is just a component part of Rawls’s wider theory of justice as fairness, it has taken on a wider role as a freestanding view on the subject of equal opportunity. In this thesis the FEO has been analysed in several ways: the theoretical context has been uncovered; the general contours of the theory have been analysed; some critiques have been presented and evaluated; and some modern developments in the post-Rawls EOO-space have been presented. In this final sequence some of the findings will be recapped.

On a basic level there are things that the Rawlsian theory does well, and other things that prove more problematic to it. As an analysis of distributive justice, especially due to the DP and the class-focus of the FEO, the Rawlsian enterprise is almost unbeatable. On moral issues, not so much. In the 21st century, the focus of many debates of social justice have shifted from class struggle to various forms of moral problems, such as discrimination based on race, gender, culture or sexual orientation. The debate on these issues has resulted in political movements and a clearer acknowledgement of the issues. Several analyses have uncovered forms of discrimination and bias previously unseen. Rawls himself did see this paradigm shift taking place and indeed expanded his thinking into a more moral direction in his 1993 “Political Liberalism”. Despite this, his 2001 *Justice as Fairness: a Restatement* (JFR) and especially its depiction of FEO remained more inclined towards the traditional forms of redistributive social justice.

These kinds of macro issues aside, Rawls’s FEO has attracted a lot of critical analysis inside the distributive paradigm itself. As we have seen the FEO has been criticized for being too weak on some aspects and too strong in others; the lexical priority of FEO has been seen as obtuse; the meritocratic and natural talent-based premises have been criticized, as have

Rawls's "dubious sociology" and the possibility of achieving relevant EOO in general. Despite the criticism, Rawls's FEO seems more bruised than defeated. Whilst there may be several reasons for the persistence of FEO, the main reason for the theory's stability is that it is still a useful heuristic. Nothing quite like it exists in the EOO theoretical space. Unfortunately, Rawls himself has long since passed away, so we may never hear a definitive defense of many criticisms waged after his passing. In this absence some have taken up both pro and against stances on the issue (see in chapter 4 Arneson versus Lindblom).

Another wider question is whether we should aim at strict EOO anyways. As has been demonstrated, social institutions such as the family, school system and job markets contain many forms of legitimate divergences in opportunity structures and at least in the existence of today's societal institutions, these opportunity inequalities cannot be fully rooted out. Rawls's answer in FEO is simple but strict: we should aim at correcting as many of these divergences as possible - either through eliminating class and other privileges in the societies incentive systems, or equally as radically through wide redistribution using proprietarily the Rawlsian "difference principle".

The FEO operates in a theoretical space with several other, even rival theories. Some rivals are cruder and perhaps more easily outwitted, those including at least utilitarianism and pure forms of meritocracy. Some lines of thought, such as luck egalitarianism, are more subtle. In the last main chapter Capabilities theory and Opportunity Pluralism were revealed to be somewhat sufficient in their theoretical confines. As a viable mainline theory of social justice of equal opportunities, the FEO would have to fare well against both these external competitors and be innately coherent as well. As the FEO has many lively competitors, it is clear that the theory is at least not unbeatable, or even hegemonic. In fact, as we have seen in chapter 4, some discriminating challenges have also been waged against the general internal coherence of the theory whatsoever. According to some, the theory is simply not especially viable, even on its own.

Moral issues have enveloped distributive issues in discussions on social justice in many ways especially since the turn of the 21st century. Perhaps for this reason the teachings of John Rawls's FEO have become somewhat disconnected from the more current debate. Should the issues of distributive social justice resurface in the wider discussion and political discourse in the future, the Rawlsian theory of FEO remains a viable tool in the theoretical debate on such

themes. In a world of rapidly rising income and asset disparities a take on distributive justice, such as the FEO, remains surprisingly capable.

7. References:

Alexander, L. A. (1985). Fair Equality of Opportunity: John Rawls' (Best) Forgotten Principle. *Philosophy research archives*, 11, 197-208.

Arneson, R. J. (1999). Against Rawlsian Equality of Opportunity. *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition*, 93(1), 77-112.

Elford, G. (2023). Equality of Opportunity. *Stanford Encyclopedia of Philosophy*. First published Thu Aug 3, 2023.

Fishkin, J. (2014). *Bottlenecks: a New Theory of Equality of Opportunity*. Oxford University Press.

Gomberg, P. (2010). Dilemmas of Rawlsian Opportunity. *Canadian Journal of Philosophy*, 40(1), 1-24.

Hansson, S. O. (2004). What Are Opportunities and Why Should They Be Equal?. *Social Choice and Welfare*, 22(2), 305-316.

Harsanyi, J. C. (1975). Can the Maximin Principle Serve as a Basis for Morality? A critique of John Rawls's theory. *American political science review*, 69(2), 594-606.

Lindblom, L. (2018). In Defense of Rawlsian Fair Equality of Opportunity. *Philosophical Papers*, 47(2), 235-263.

Ng, Yew-Kwang (1981). Welfarism: A Defence Against Sen's Attack. *The Economic Journal*, 91(362), 527-530.

Nussbaum, M. C. (2011). *Creating Capabilities : the Human Development Approach*. Cambridge, Mass: Belknap Press of Harvard University Press.

Rawls, J. (1971). *A Theory of Justice: Original Edition*. 1st edition. Cambridge: Harvard University Press.

Rawls, J. (1999). *A Theory of Justice (Revised Edition)*. Cambridge, Mass: Belknap Press of Harvard University Press.

Rawls, J. & Freeman, S. R. (1999b). *Collected Papers*. Cambridge, MA: Harvard University Press.

Rawls, J. & Kelly, E. (2001). *Justice as Fairness: a Restatement*. Cambridge (Mass.): Belknap Press of Harvard University Press.

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

Shiffrin, S. V. (2003). Race, Labor, and the Fair Equality of Opportunity Principle. *Fordham L. Rev.*, 72, 1643.

Sen, A. (2009). *The Idea of Justice*. London: Allen Lane an imprint of Penguin Books.

Taylor, R. (2004). Self-Realization and the Priority of Fair Equality of Opportunity. *Journal of moral philosophy*, 1(3), 333-347.