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THE ILLUSORY DISTINCTION BETWEEN EQUALITY OF OPPORTUNITY AND EQUALITY OF RESULT

DAVID A. STRAUSS*

I. INTRODUCTION

“Our society should guarantee equality of opportunity, but not equality of result.” One hears that refrain or its equivalent with increasing frequency. Usually it is part of a general attack on government measures that redistribute wealth, or specifically on affirmative action, that is, race- and gender-conscious efforts to improve the status of minorities and women. The idea appears to be that the government’s role is to ensure that everyone starts off from the same point, not that everyone ends up in the same condition. If people have equal opportunities, what they make of those opportunities is their responsibility. If they end up worse off, the government should not intervene to help them.¹

In this Article, I challenge the usefulness of the distinction between equality of opportunity and equality of result. I do not suggest that the notion of equality of opportunity is an empty one; on the contrary, it is a powerful and important ideal. It is, however, much more complex than the proponents of the distinction between “opportunity” and “result” acknowledge.

The most natural conception of equality of opportunity, which I discuss in Part II, is that equality of opportunity requires the elimination of barriers to advancement that are in some sense arbitrary. I will try to show that this conception of equality of opportunity requires large-scale redistributions of resources—perhaps not literal equality of results, in the sense that every person must have

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1. See sources cited *infra* note 5. Arguments of this kind were frequently made, for example, by opponents of versions of the Civil Rights Act of 1991. See, e.g., 137 CONG. REC. S7247 (daily ed. June 6, 1991) (statement of Sen. Dole).

the same resources, but a much closer approximation to that state than the advocates of "equality of opportunity, not result" would ever suspect (and probably much closer than anyone would desire). The central idea is a simple and familiar one: talents and abilities, the qualities that (ideally) are responsible for inequalities in results, are in an important sense no less arbitrary than the barriers that any advocate of equality of opportunity would want to eliminate.

In Part III, I will discuss a different conception of equality of opportunity, one that is perhaps closer to what the advocates of "equality of opportunity, not result" have in mind. This conception sees equality of opportunity as a meritocratic principle that allows, roughly speaking, the free operation of the market. According to this view, government actions that alter outcomes produced by the market derogate from equality of opportunity and can be viewed only as efforts to promote equality of result.

My argument in Part III is that the market-oriented meritocratic conception of equality of opportunity, although a coherent view, is an ideal of *equality* only in a limited and somewhat counter-intuitive sense. More important, the form of equality that characterizes well-functioning market processes also characterizes well-functioning democratic processes. Therefore, in principle, there is no difference between the equality manifested in market-oriented meritocracy (so-called equality of opportunity) and the equality characteristic of a well-functioning democracy that alters market outcomes (so-called equality of result). The distinction between opportunity and result is an unhelpful and misleading way to categorize social institutions.

II. EQUALITY OF OPPORTUNITY AS THE ELIMINATION OF ARBITRARY BARRIERS TO ADVANCEMENT

A. *Formal Equality of Opportunity*

I begin with what I consider an indisputable aspect of equality of opportunity, what one might call formal equality of opportunity.² I believe that those who rely on the distinction between equality of

2. For an account of this principle, see HENRY SIDGWICK, *THE METHODS OF ETHICS* 285 n.1 (7th ed. 1907).

opportunity and equality of result have this principle in mind as the minimum content of equality of opportunity.

The principle of formal equality of opportunity holds, in the classic formulation, that careers should be open to talents.³ The law should not bar a person from an occupation or a position of prestige just because—as the principle would have been stated at a time when it was more controversial than today—that person was born into a family that does not belong to the aristocracy.⁴ Today the equivalent example would probably not be birth into a non-aristocratic family but birth into a certain racial group. Any law that bars members of a racial minority from certain jobs, for example, denies them equality of opportunity.

Why are formal barriers to opportunity unacceptable? Perhaps the most obvious reason is the intuition that a person's fortunes should not depend on such arbitrary circumstances as race or family background. These are accidents of birth that are beyond an individual's control. It is therefore unfair to the individual to allow these factors to be so influential. There are other plausible arguments against formal barriers, of course. For example, one might say that formal equality of opportunity is desirable not because it is fairer to the individual but because it maximizes social well-being. I will consider those arguments below. The most obvious and immediate argument for equality of opportunity, I believe, is based on the idea that it is unfair to allow arbitrary factors to have a dramatic effect on a person's life.

This argument for equality of opportunity, however, quickly leads to arguments for much more than the elimination of formal barriers. The call for "equality of opportunity, not equality of result" is sometimes offered as a reason for opposing welfare state measures.⁵ But if the basis of equality of opportunity is the unfairness of allowing arbitrary factors to affect a person's chances in life, it is immediately apparent that equality of opportunity might

3. *See id.*

4. For a well-known account of the historical development of this principle, see RICHARD H. TAWNEY, *EQUALITY* ch. III, § 2 (4th ed. 1964).

5. *See, e.g.,* MICHAEL NOVAK, *THE SPIRIT OF DEMOCRATIC CAPITALISM* 123-25 (1982); THOMAS SOWELL, *CIVIL RIGHTS: RHETORIC OR REALITY?* 37-60 (1984).

require extensive government welfare and redistribution programs.⁶

Even without formal barriers, a person with as much talent and initiative as another may not do as well if he or she has had, for example, an inferior education or inferior health care. Indeed, because family background has such a powerful influence on people's fortunes, true equality of opportunity probably would require a degree of intervention into the family that we would find unacceptable.⁷ For example, parents' willingness to play an active role in their children's education surely affects the children's prospects in life. But having parents interested in one's welfare is as much an arbitrary factor as having parents descended from King Arthur. Therefore the idea of equality of opportunity as elimination of arbitrary barriers, if extended logically, would require that the interests and abilities of parents be equalized among families. No one would accept that conclusion.

The government might, however, do many things short of that to equalize opportunity. It could ensure, for example, equal schooling and equal access to health care without unacceptably interfering in the family. The notion of equal schooling is more complex than it might appear at first: some might dispute, for example, whether the government should provide the same resources to all or special educational benefits to those with special needs.⁸ In any event, this conception of equality of opportunity would still require substantial government activity, in the nature of welfare state measures.

It does not follow that the distinction between equality of opportunity and equality of result is useless. It is plausible and coherent to say that the government should ensure that no one's fortunes in life will suffer because he or she did not have access to health care or education as good as anyone else's, but that if opportunities are equalized in that way, the government must not correct any differences in results. Those differences, it might be said, are caused by differences in talent or initiative, not differences in opportunities.

6. This is a familiar point. See, e.g., ROBERT HAVEMAN, *STARTING EVEN* (1988); see also ROBERT NOZICK, *ANARCHY, STATE, AND UTOPIA* 235-38 (1974) (criticizing equality of opportunity on the ground that it requires redistribution).

7. This is a principal theme of JAMES FISHKIN, *JUSTICE, EQUAL OPPORTUNITY, AND THE FAMILY* (1983). See especially *id.* at 1-10.

8. See *infra* text accompanying notes 14-16.

B. Talents and Abilities as Accidents of Birth

The difference between equality of opportunity and equality of result begins to collapse when one recognizes that differences in talent are as much an accident of birth as skin color or aristocratic pedigree.⁹ Of course, people can develop their talents through initiative and determination. But it is not obvious that such qualities as initiative and determination should be considered to be within an individual's control. Even assuming that those qualities are not considered accidents of birth, and even taking the most expansive view of how much people can develop, there is undeniably a substantial component of ability that a person cannot, on any view, control.¹⁰ It is the result not just of heredity but of childhood and other environmental influences that cannot be plausibly attributed to the individual any more than race can be.

If equality of opportunity means that a person's fortunes should not be determined by factors over which he or she has no control, then allowing people's talents to affect their fortunes violates equality of opportunity. "There is no more reason to permit the distribution of income and wealth to be settled by the distribution of natural assets than by historical and social fortune From a moral standpoint the two seem equally arbitrary."¹¹ Once we take this step, however, the difference between equality of opportunity and equality of result begins to disappear. Differences in talent and ability, to the considerable extent that they are not within a person's control, should no more be permitted to affect a person's fortunes than differences in race or social class.

Three related objections might be made to this argument.

1. Formal Versus Informal Barriers

First, it might be said that distinctions based on race or family status create explicit formal barriers. By contrast, no law says that untalented people may not seek certain positions. People with lesser talents, unlike the victims of formal barriers, are free to seek

9. See JOHN RAWLS, *A THEORY OF JUSTICE* 73-74 (1971); see also DOUGLAS RAE, *EQUALITIES* 64-81 (1981).

10. See RAE, *supra* note 9, at 70; SIDGWICK, *supra* note 2, at 285 n.1.

11. RAWLS, *supra* note 9, at 74-75; see also BERNARD WILLIAMS, *The Idea of Equality*, in *PROBLEMS OF THE SELF* 230, 239-49 (1973).

their fortunes as best they can. They will not do as well, not because of barriers erected by the government, but because of a multitude of decisions made by private individuals in the market.

This distinction is an important one for many purposes. Indeed, there must be some difference between a market system that rewards the untalented less than the talented and a system of formal barriers that excludes, for example, racial minorities: there is strong public consensus against the latter,¹² but few people entirely oppose the former.

But this difference between the formal barriers of racially exclusionary laws and the market barriers to those lacking certain talents has nothing to do with whether the influential factor is an accident of birth. The only difference is that one appears as a "formal" barrier and the other seems to be an incident of the operation of a market economy. In both instances, society has made a decision to allow an arbitrary factor to affect a person's fortunes. A market, no less than a formal barrier, is created and maintained by the government: the government defines and maintains property rights, punishes theft and fraud, and so on. The government can do those things in a way that rewards talents (as it does, in a sense, when it maintains a market economy); or it can do those things in a way that rewards some other characteristics, of a kind we do not think should be rewarded.¹³ Those two kinds of action by the government are obviously not equally justifiable. But they are both actions by the government, even if only one consists of what we would call a formal barrier. In either case, the government's action results in a person's fortune being determined by an accident of birth.

2. *The Supposed Inevitability of Inequality in Talents*

The second objection is that talents, unlike such things as education or health care, cannot be distributed equally. Talents have already been distributed unequally by nature. (Indeed, I have in-

12. Even opponents of the antidiscrimination laws acknowledge this point. See, e.g., RICHARD A. EPSTEIN, *FORBIDDEN GROUNDS* 1-9 (1992).

13. See, e.g., Robert L. Hale, *Coercion and Distribution in a Supposedly Non-Coercive State*, 38 *POL. SCI. Q.* 470, 470-74 (1923); Cass R. Sunstein, *Lochner's Legacy*, 86 *COLUM. L. REV.* 873, 880-81, 896-97 (1987).

sisted on that point in saying that foreclosing opportunities on the basis of talents is no less arbitrary than foreclosing them on the basis of race or family background.) Barriers resulting from formal exclusionary laws can be eliminated by the stroke of a pen. Barriers resulting from unequal education, health care, and the like, are more difficult to eliminate, but the government can at least ameliorate them. Talents cannot be equalized even in theory. Indeed, the objection would continue, the government cannot even reduce the differences in talent. Therefore the barrier to equal opportunity resulting from unequal talents cannot be compared to either formal barriers or unequal education.

To be sure, the objection would conclude, some day we might be able to engineer people genetically so as to equalize talents. Then we would have to face the question whether it would be worth doing so in order to equalize opportunity. The answer would surely be no, but at least we would be aware that we were overriding the interest in equality of opportunity in favor of more fundamental values. But until we can do such things, it might be said, inequalities of talent simply do not raise the question of equality of opportunity because there is nothing we can do about them.

This argument, too, is mistaken, for two reasons. First, although we cannot transplant talents, it does not follow that nothing can be done to equalize them. People might be educated differentially so as to minimize disparities in talent.¹⁴ Equality in education does not necessarily mean that everyone receives the same education; it might mean that educations should be tailored for those with special needs (as is required in certain cases by the Individuals with Disabilities Education Act).¹⁵ Or the idea of "special needs" might be generalized: equal education might mean that education is tailored for the talents of each person (or, more realistically, each category of people) so as to minimize the effects of inequalities of talent. There are many possible arguments against such an approach to education.¹⁶ But for present purposes, it is enough that such a form of education is theoretically possible. That shows the error of

14. See Amy Gutmann, *Distributing Public Education in a Democracy*, in *DEMOCRACY AND THE WELFARE STATE* 107, 110-11 (Amy Gutmann ed., 1988) (discussing FISHKIN, *supra* note 7).

15. 20 U.S.C. §§ 1400-1485 (Supp. II 1990).

16. See, e.g., Gutmann, *supra* note 14, at 111-12.

saying that inequalities in talent are simply a given that cannot be altered.

The notion that nothing can be done about inequalities of talent is mistaken for a further reason. Equality of opportunity, according to the conception I am discussing, requires that people's fortunes in life not be affected by arbitrary factors over which they have no control. One way to achieve this is to eliminate or equalize the arbitrary factors. But if those factors cannot be eliminated, another way of providing equality of opportunity is to ensure that those factors do not affect people's chances in life. Racial differences, like differences in talent, cannot be eliminated: the way we insure equality of opportunity in the face of racial differences is to have institutions that eliminate the influence of race.

At this point, however, equality of opportunity collapses more or less completely into equality of result. Talent is an arbitrary factor; nature distributes it unequally and, let us assume, education cannot equalize it. But equality of opportunity requires that arbitrary factors not determine people's fortunes. The only way to satisfy equality of opportunity, therefore, is to equalize people's fortunes so that they do not reflect the irreducible inequalities of talent—that is, to bring about equality of result. If we do not take major steps toward equality of result, then the arbitrary difference in talents will produce a difference in fortunes. Therefore equality of opportunity, faithfully pursued, requires substantial equalization of results.

This argument does not establish that equality of opportunity requires complete equality of result: the difference in fortunes is partly the result of what individuals have done with their talents, and there might be a sense in which that is under their control. Even so, equality of opportunity, understood as the requirement that fortunes not be determined by arbitrary factors, requires a great equalization of results, even if not complete equality. Indeed, even assuming that the objective of a regime of equality of opportunity is to prevent only those factors that are unquestionably beyond people's control from affecting their fortunes in life, that regime would require the elimination of inequalities of fortunes on a massive scale. It would require something approaching equality of result.

If this argument is correct, distinguishing equality of opportunity from equality of result serves no purpose. Equality of opportunity entails, if not complete equality of result, substantial equality of result. The interesting question is not the choice between equality of opportunity and equality of result. It is how much equality of opportunity we want. To what extent do we want the levelling entailed by the proposition—which I am taking to be definitional of equality of opportunity—that fortunes should not depend on arbitrary circumstances? That is a difficult question in many ways. But the claim that equality of opportunity is superior to equality of result does not help resolve it.

3. *Essential Versus Inessential Attributes*

The third objection to the view that talents and abilities are factors just as arbitrary as race or aristocratic background is related to the quite different conception of equality of opportunity that I discuss in Part III below. The objection is that talents and abilities are different because they are essential, rather than incidental, to the individual. They are constitutive of an individual's identity in a way that race and social class are not.¹⁷ Genetic engineering to equalize talents and abilities is an unthinkable invasion of individual autonomy. Redistributing the fruits of those talents and abilities is obviously less invasive, but in principle suffers from a similar flaw: it amounts to depriving a person of something that is an essential aspect of his or her identity.

The difficulty with this argument lies in the justification offered for its central claim about the constituents of personal identity. Some societies regard race as the central constituent of a person's identity.¹⁸ (Some would say it is so regarded in our society.) Historically, some societies regarded social class as far more central to one's identity than talents or abilities as we define them.¹⁹ Race is

17. This position is suggested by writers as disparate in their ultimate views as MICHAEL SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE* (1982) (communitarian redistributivism), and ROBERT NOZICK, *supra* note 6 (libertarianism opposed to redistribution).

18. See, e.g., LOUIS DUMONT, *HOMO HIERARCHICUS* 33-200 (Mark Sainsbury et al. trans., 1970) (discussing the caste system in India); DONALD L. HOROWITZ, *ETHNIC GROUPS IN CONFLICT* 95-288 (1985) (discussing ethnic conflict generally).

19. STANLEY I. BENN & RICHARD S. PETERS, *THE PRINCIPLES OF POLITICAL THOUGHT* 132 (1965).

as unalterable as ability, and in some cultures, social class is no more easily alterable. Nothing inherent in any of these qualities suggests that one is more central to human identity than the other. Different societies define the constituents of human identity differently.

Again, there are good reasons for considering ability to be more central to a person's identity than family background. But those reasons concern the *consequences* of doing so. In particular, talents and abilities, at least in a market-oriented society, relate to the capacity to produce goods and services that satisfy others' desires. But talents and abilities remain arbitrary factors in the sense that they are beyond the individual's control, and allowing them to determine a person's fortunes remains inconsistent with equality of opportunity (as I have defined that term for now). There are good reasons for departing from equality of opportunity in this respect, but a departure from equality of opportunity is exactly what is involved. To the extent we do not depart from equality of opportunity, we are necessarily committed to trying to bring about a large measure of equality of result.

III. EQUALITY OF OPPORTUNITY AS A MERITOCRATIC PRINCIPLE

A. *The Meritocratic Conception*

Equality of opportunity might be understood in a fundamentally different way. The barriers that must be eliminated, according to this understanding, are arbitrary not in the sense that they are beyond people's control but in the sense that one cannot give adequate reasons for them.²⁰ There is no good reason to allow a person's fortunes to turn on race or social class. But talents and abilities are not arbitrary in the crucial sense because they correspond to the capacity to produce value in society. Rewarding them, therefore, is not inconsistent with equality of opportunity.

By contrast, barriers based on factors like race and social class diminish the amount of value produced in society and therefore should be eliminated. Those factors are arbitrary, in the sense that they are irrational; no good reason can be given for them, and a

20. On the connection between equality and the ability to give reasons for differences among people, see WILLIAMS, *supra* note 11, at 240-41.

good reason can be given for eliminating them. When such a formal barrier prevents talented people from reaching the positions for which they are best suited, society loses the benefits of their talents.²¹ Multiplied across a large number of people held back by formal barriers, the effects on the total well-being of society can be enormous. Formal barriers based on race or class are arbitrary in *this* sense, not in the sense that those factors are accidents of birth.

The point of equality of opportunity, on this view, is to guarantee that people go as far as their abilities, talents, initiative, and dedication take them. (I will refer simply to "merit" to denote that complex of characteristics; later I will discuss the complexities of the notion of merit.) So understood, equality of opportunity appears to be a principle that justifies, and perhaps requires, inequality of results. There should be equality among those with the same level of merit, but there is no reason for equality among those with different levels of merit. Because abilities differ, as do the willingness and capacity to use them, results will differ. Equality of result seems antithetical to this conception of equality of opportunity because equality of result seems to call for levelling the differences in condition that are produced by different levels of merit. I will refer to this conception of "equality of opportunity, not equality of result" as the meritocratic conception; those with the most merit ought to do better.

B. The Justification for the Meritocratic Conception

Part of the intuitive appeal of this conception of "equality of opportunity, not equality of result" stems from the analogy that can be drawn to a game.²² If a game is well designed and its rules are enforced, each of the competitors can be said to have an equal opportunity to win even though some will have more of the requisite abilities. To insist that the results be equalized to compensate

21. See *id.* at 242-45.

22. In the nontechnical sense of a game played for amusement, not in the more technical sense in which "game" is used in microeconomics to refer to certain kinds of interactions between people. See, e.g., DAVID M. KREPS, *GAME THEORY AND ECONOMIC MODELLING* (1990). The analogy between "equality of opportunity" and a game is found in many places. See, e.g., RAE, *supra* note 9, at 65-66.

for differences in ability among the competitors would be inconsistent with the whole idea of playing the game.

As the analogy suggests, however, one must justify the game that is being played. In our society, people who succeed in the marketplace, roughly speaking, are rewarded. But why should we play the market-oriented game to which we are accustomed instead of, for example, a game that rewards physical strength and courage, or hereditary ties to famous families? Those games would be lost by many people who win the market game and won by many people who do not succeed in the market.

Today the most common justification for the market game is consequentialist. On this view, "merit" is rewarded because it makes society better off. We reward people who produce things that other people value; people succeed according to their ability to satisfy others' desires. That is what "merit" is. There is no fixed catalogue of capacities that are rewarded, and no one is rewarded for the mere possession of an unexercised capacity. It all depends on what will benefit society. The "barriers" that face the untalented simply reflect their lack of the capacities that bring value to others in society.

According to the meritocratic conception, then, equality of opportunity exists when everyone is allowed to compete equally to satisfy others' desires, as those desires are revealed in the market. When the government alters the results of that competition, it promotes equality of result, not equality of opportunity.²³ There is much to say, of course, about the justification for the market game. Most would agree today, I believe, that market mechanisms should play an important role in distributing wealth; but few would say that market distributions are inviolate. My purpose here, however, is to analyze the conception of equality of opportunity that corresponds to this game and to determine its relationship to the notion of equality of result. My argument is that the kind of equality involved in the market-oriented meritocratic regime of equality of opportunity is not meaningfully distinguishable from the kind of equality involved in government actions to "equalize results" by altering the distributions produced by the market.

23. For this conception, see Daniel Bell, *On Meritocracy and Equality*, 29 PUB. INTEREST 29, 40-41 (1972).

C. *The Nature of Meritocratic Equality*

Leaving aside the distinction between opportunity and result, it is not clear why a market-oriented meritocracy should be characterized as one of *equality* at all—in anything but a Pickwickian sense. In a game, everyone has an equal opportunity to succeed only if “equality” is defined by the rules of the game. An uncoordinated person obviously does not have the same opportunity to succeed in sports as a superbly coordinated person. Why should not the market-oriented meritocratic regime be characterized as one of *inequality* of opportunity? People with certain talents have a much better chance to succeed than others. The inequality of opportunity may be justified by the way the market operates to satisfy desires. But inequality of opportunity remains a more accurate description.

Suppose, for example, there were a society that valued not the satisfaction of desires as revealed in the market, but the production of human specimens of great physical beauty and strength; suppose that society showered riches on the few people who had such characteristics because it thought that doing so would propitiate the gods. We would not regard such a society as one characterized by equality of opportunity. If we did so regard it, then any society could be so regarded. But in what sense does that society have less equality of opportunity than a market-oriented meritocratic society? Anyone who became extremely strong or beautiful could succeed spectacularly; in that sense there would be equality of opportunity. Of course, characteristics beyond anyone’s control would powerfully affect people’s chances of success. But that is true of the meritocratic conception as well. And, as in the meritocratic society, people who valued beauty and strength could do *something* to improve their chances.

In this light, there is something puzzling about the association of market regimes with any kind of equality. Nonetheless, there is a persistent intuition that a market-oriented meritocratic regime is characterized by equality of opportunity in a way that is not true of other regimes, such as the hypothetical one I just described or an aristocratic regime. Three related aspects of the market regime seem to account for this.

First, in the market regime many people have the impression that they have a significant degree of control over whether they

succeed. Perhaps I will in the end be blocked by my lack of talents, but chances are my fate is in my hands; it depends on how hard I work and how enterprising I am. Obviously not everyone holds this view, and in significant ways it is an illusion. Nevertheless it is a commonly held view and it accounts, I think, for the perception that a market-oriented regime is one of equality of opportunity.

Second and related, in a market regime there may be a sense, within certain classes, that almost anyone can succeed. All a person has to do is to figure out a way to appeal to large numbers of people—to build a better mousetrap—and she will succeed. In an aristocratic regime, by contrast, it will be clearer for many more people at an early point in their lives that they are destined not to succeed because they were born into the wrong family.

Third, in a market-oriented regime the specific criteria of value are fluid. The path to success is not obvious and it can change overnight. In addition, no single person has the power to determine which capacities will be rewarded. Value is the result of a multitude of private decisions. All of these factors contribute to the sense that few people are permanently closed out. Moreover, failure will seem, even to the person who failed, to be the result of her own shortcomings rather than the fiat of another individual person. In a regime of equality of opportunity, the explanation for failure is: "I had a chance, but I wasn't good enough." In a regime with unequal opportunity, the complaint is: "I never had a fair chance; so-and-so [a person or group] closed the door on me."

Of course, each of these intuitions about a market regime is to a significant extent incorrect. People often do not have control in any meaningful sense (leaving aside controversial questions about what "control" might mean) over whether they succeed in the market. While we cannot identify winners and losers at birth, as we might in other regimes, we do know from the outset that many people will be losers. (In fact, we probably can identify more market losers at birth than the official rhetoric would acknowledge, but that is a different issue.) And the criteria of value *are* dictated by others; the only reason we might think they are not is that the others are numerous, and they dictate through a large number of decisions that are often visible only in the aggregate.

At the same time, however, these intuitions reveal something significant about the notion of equality of opportunity—something

that begins to erase the distinction between equality of opportunity and equality of result. The apparent fluidity and unpredictability of markets is a result of what might be described as their democratic character. In a market-oriented meritocracy, the forces that determine success or failure are democratic in the sense that they are the product of a multitude of personal decisions. The intuition that this is a regime of equality derives from the sense that everyone is subject to these forces; no one person can control them, and no one is exempt from them.

In this sense, the market-oriented meritocratic regime can be said to be one of equality of opportunity. It is manifestly untrue that everyone has an equal chance to succeed, or that everyone has an equal chance to control his or her destiny. It is true, however, that no identifiable person or, if the markets are operating as they should, self-conscious group of persons, can dictate another's fate.²⁴

D. Democratic Equality in Markets and Governments

In reality, therefore, the so-called equality of opportunity in a market-oriented meritocratic regime is not that everyone has an equal chance to succeed, but that no one has a greater chance than anyone else *to determine who will succeed*. In practice, of course, this will often not be true; some individuals will have power in the market. But the meritocratic conception is an ideal: there is equality of opportunity when markets operate perfectly. To the extent that markets are imperfect, there is inequality.

The claim of those who use the rhetoric of equality of opportunity and result is that equality of opportunity, conceived as a market-oriented meritocratic principle, is different from equality of result, understood as a government action designed to offset the effects of the market. In fact, however, the kind of *equality* involved in the two cases is the same.

24. In fact, even if markets operate as they should, they reward people only for satisfying desires as those desires are revealed in the market. Many important kinds of desires are not adequately accounted for in the market. For a well-known discussion, see Amartya K. Sen, *Rational Fools: A Critique of the Behavioral Foundations of Economic Theory*, 6 PHIL. & PUB. AFF. 317 (1977).

Once we understand that the equality of a meritocracy is equality not in the chance to succeed, but in the chance to influence others' ability to succeed, there is nothing distinctive about meritocracy. The same democratic characteristics that arguably make a meritocracy a regime of equality are present elsewhere. Most notably, of course, these characteristics are present in a well-functioning democratic government. In a well-functioning democracy, as in a well-functioning market economy, decisions are impersonal in the sense that they are not the product of the will of an identifiable individual.

Specifically, in a well-functioning democracy, every person has an equal opportunity to succeed by persuading her fellow citizens to provide her with benefits—in the same sense that, in a well-functioning market economy, every person has an equal opportunity to create a new mousetrap. In both cases some will fail. But in both cases, success will be determined by apparently impersonal forces rather than by the will of an identifiable individual. This is the *only* sense in which markets provide equality of opportunity. Democratic decisionmaking provides equality in exactly the same sense. I do not make the converse claim; there is a kind of equality in democratic decisionmaking that is lacking in markets, because greater resources give an individual greater relative power in the market. Nonetheless, the equality of well-functioning markets is present in well-functioning democracies.

What does it mean to refer to a “well-functioning” democracy? Under either of two conceptions of democracy, democratic decisions equalizing results afford the same kind of equality as the so-called equality of opportunity that characterizes market-oriented meritocracy. It is not necessary to assume that a democratic system always pursues the public interest or to reject “public choice” accounts that treat political outcomes as the product of self-interested behavior.²⁵ If democracy is a pluralist struggle among self-interested groups, then democratic decisions will provide the same kind of equality as a market, so long as no one group or coalition

25. See generally DENNIS C. MUELLER, *PUBLIC CHOICE II* (1989).

can entrench itself in power.²⁶ Indeed, the pluralist view is deliberately modeled after the theory of the market.²⁷

Alternatively, if democratic politics is characterized by an effort to promote the public interest, conceived in a way that treats everyone fairly, then this form of equality of opportunity is again present.²⁸ Specifically, in either of these forms of democratic society, people will have an opportunity to persuade their fellow citizens to advance their interests—just as in the market, people have an opportunity to succeed by satisfying others' desires. Some efforts at persuasion will fail—some will be doomed from the start—but that is true of efforts in the market as well. In a well-functioning democracy, under either the pluralist or public interest model, outcomes are not dictated by individuals or cohesive groups of individuals. Outcomes are the result of forces that cannot be identified with any individual: either the market-mimicking dynamic of pluralist democracy, or the disinterested inquiry into the public interest. Of course, democracy can function badly in a variety of ways. "Equality of result" might be imposed by a dominant group. Then the kind of equality found in well-functioning markets will be absent. But markets can also be imperfect—not just when there is concentration in an industry, but in more routine cases of agency and information costs that allow, for example, a bureaucratic superior to exercise unwarranted power over a subordinate.

There is much room for debate (and of course much debate) over whether the market or democracy is more likely to malfunction, how often, and how badly. Those are complex questions that depend heavily on empirical knowledge. My point is only that the dichotomy—equality of opportunity is characteristic of market-oriented meritocracy; equality of result is characteristic of democratic decisionmaking—is misconceived. When markets function well, they are characterized by something that can plausibly be called equality of opportunity. But that same kind of equality is present in well-functioning democratic decisionmaking. When both mar-

26. A well-known description of this form of pluralist democracy is found in ROBERT A. DAHL, *A PREFACE TO DEMOCRATIC THEORY* (1956).

27. See, e.g., ANTHONY DOWNS, *AN ECONOMIC THEORY OF DEMOCRACY* (1957); JOSEPH A. SCHUMPETER, *CAPITALISM, SOCIALISM AND DEMOCRACY* chs. 21-23 (3d ed. 1950).

28. See, e.g., RAWLS, *supra* note 9, at 359-61.

kets and democratic governments function correctly, the kind of equality displayed in the markets is also present in the government.

IV. CONCLUSION

Equality of opportunity is a powerful ideal. It is, however, more complex than it first appears, and the contrast between equality of opportunity and equality of result is not a useful one. Understood in perhaps the most natural sense—as a requirement that a person's fortunes not be determined by accidents of birth or other factors over which he or she has no control—equality of opportunity has very powerful implications. It calls for massive equalization of results.

Understood in a different sense—as a characteristic of a market-oriented meritocratic regime—equality of opportunity does not necessarily call for such dramatic measures. But the meritocratic conception of equality of opportunity is a conception of equality only in a very specialized way. People have equal opportunities only in the sense that their chances for success are not dictated by identifiable others. The same kind of equality inheres in well-functioning democratic political arrangements that bring about equality of result by altering market outcomes. Arguments for equality of opportunity and equality of result rest on the same foundations, and the rhetoric that contrasts them is more misleading than valuable.