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Bottlenecks, Disability, and Preference-Formation: A Reply

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I am honored that the North American Society for Social Philosophy chose *Bottlenecks: A New Theory of Equal Opportunity* for its 2015 book award. It speaks well of the NAASP that for the second year running you have considered, and ultimately chosen, a book by an author whose academic home is somewhere other than a philosophy department. *Bottlenecks* is a book whose core is indeed an argument about social philosophy—specifically, an argument about human development and about how opportunities matter in our lives. Part of the book also gets fairly deep into questions about how to apply that argument in the world. Because my academic home is a law school, I often discuss the book with legal audiences; there the focus is consistently on those applications. The commentaries on *Bottlenecks* that are printed in this issue, from Jeffrey Brown, Barry DeCoster, and Jeffrey Gauthier, raise a number of excellent questions, and they are excellent in part because they trace the entire sweep of the argument, from its philosophical foundations to its applications. In this reply, I will respond to only a subset of these questions, focusing primarily on disability and preference formation.

First, disability. I do not discuss disability much in the book, but it is a source of rich examples for thinking about bottlenecks. As Brown suggests in his commentary,¹ the social model of disability is all about understanding how the interaction between a person and her environment gives rise to bottlenecks. If workplaces all have narrow hallways and other physical features that make them inaccessible by wheelchair, then people with wheelchairs are going to have a difficult time pursuing a lot of different paths in life. This example is well-worn, but I love it, and one reason I love it is that it depicts a *literal* bottleneck: when the hallways are too narrow you literally cannot physically pass through the narrow part, even if you would be perfectly capable of excelling at the work that takes place down the hall and pursuing the other paths that lead on from there.

Every metaphor has its benefits and shortcomings.² About “bottlenecks” I’ve been asked whether people are supposed to be trying to get into a bottle or out of a bottle; that question

* Professor of Law, University of Texas, Austin. I would like to thank the NASSP and its book award committee for choosing this book and for hosting a very stimulating and useful discussion at their annual conference in July 2015 at William Jewell College in Liberty, Missouri. This piece is a lightly edited and footnoted version of a response delivered as part of that panel discussion.

¹ [Insert a citation here to the commentary by Jeff Brown, this issue.]

² For a related discussion see [Insert a citation here to the commentary by Barry DeCoster, this issue.]

actually never occurred to me while writing the book. I visualize something much more like the hallway that is too narrow. But of course the metaphor is mainly intended to function at a higher level of abstraction. Part of its goal is to get us to visualize what I call the “opportunity structure” as if it were a map or set of pathways and nodes in physical space—to get us to think about the paths that we pursue over the course of our lives, how one leads to another, and the various decision points and gatekeepers that affect our trajectories. I hope this way of thinking leads us all to consider the question DeCoster raises at the end of his commentary, which is how we each shape that structure—particularly as educators, but also as voters and in many other ways.³

The bottleneck metaphor applies to questions of disability in several different ways. Problems of accessibility are perhaps the easiest to visualize. But accessibility is not the only bottleneck associated with disability. As Bradley Areheart and Michael Ashley Stein have argued elsewhere,⁴ when the legal system characterizes people in a binaristic way as either employable or disabled (but not both), this creates a related but different set of bottlenecks. As Brown discusses in his commentary in this issue, in our society disability is a source of stereotypes and stigma—and that, too, creates a kind of bottleneck. Stereotypes and stigma constrain people’s opportunities primarily (but not exclusively) because they lead to discrimination.⁵ This aspect of disability is a point of continuity between disability and other socially salient categories, such as race. So here it may be useful to start with a different question: in the race context, how should we deal with the problem of bottlenecks that are caused, or reinforced, by stereotypes and stigma?

My general starting point in the book for thinking about how to ameliorate bottlenecks has two parts: Look for ways to help people *through* the bottleneck, and make more paths *around* the bottleneck. But sometimes only one strategy or the other makes sense. That is the case here. The solution to discrimination based on racial stigma and stereotypes is not to make it easier for people to change race so that they can be the race that the discriminators prefer. The solution is to create more paths around the bottleneck by both reducing the amount of discrimination and limiting its reach—ideally to the point that the discrimination vanishes entirely. In other words, we create more and more paths around the bottleneck in the sense that we try to make it so that a greater and greater proportion of all opportunities are regulated by mechanisms *not* shaped by stereotype and stigma. This could involve efforts at debiasing or other changes in decision procedure; it could involve broader efforts to change social norms and stereotypes. Eventually the hope is to reach the point that the stigma or stereotype has no effect on anyone’s opportunities. That is not quite the same as the goal of eliminating the stigma or

³ *Id.*

⁴ Bradley A. Areheart & Michael Ashley Stein, *The Disability-Employability Divide: Bottlenecks to Equal Opportunity*, 113 MICHIGAN LAW REVIEW 877 (2014) (making this argument in a book review essay about *Bottlenecks*).

⁵ Stereotypes and stigma may also have other effects—for instance, when someone internalizes stereotypes about her own abilities, an effect that is the subject of a rich literature in social psychology. I will leave this issue aside in this reply.

stereotype from our social life, but as a practical matter, the further along you get, the more closely these two goals may converge.

As an aside, this point can also help us answer an interesting question Jeff Gauthier raises. Gauthier asks, as a general matter, whether creating paths around a bottleneck might take the focus away from (or even undermine efforts to) eliminate that bottleneck entirely.⁶ I understand the question; in general, there are often tradeoffs in life between different strategies for dealing with the same problem. Here, however, there is no sharp distinction between eliminating a bottleneck and creating paths around it. These are not two different strategies, but the same one; the difference is one of degree. As you create more and more paths around a bottleneck, at some point those paths are so robust and comprehensive that you can reach anything just as well *without* passing through the bottleneck as you could by passing through it. At that point, there isn't actually a bottleneck anymore. This is in most cases what it means to eliminate a bottleneck.

The disability examples raise some deeper questions. Some of the most interesting are related to the possibility of “curing” disabilities. Even to speak of a “cure” for a disability might seem to endorse a medical model in which the disability is located inside the person, instead of in the interaction between the person and society. That is not my view. Indeed I spend a good part of *Bottlenecks* making the argument that all abilities, as well as all disabilities, arise out of an iterative interaction between a person and her society and environment.⁷ As a practical matter, though, it is sometimes possible for medical technology to ameliorate or even eliminate a person's disability, making it far less (or not at all) disabling. I see such medical interventions as part of a continuum with other, non-medical interventions with similar purpose and effect. That is, there are structural changes and assistive technologies that make being blind or deaf or many other things *less disabling*—less constraining of a person's opportunities. There are also medical interventions, including, potentially, genetic interventions, that can do the same thing. But as Brown notes in his commentary, there are various objections to such medical interventions.⁸

It seems to me that there is a weak objection and a strong objection here. The weak objection is about stigma and numbers. The claim is that we shouldn't take some action that will make a given disability rarer, because this will mean a greater stigma for people who still have it. This is an empirical proposition, and I am not sure it holds in all cases. We have plenty of stigma and negative stereotypes about people with common disabilities as well as about people with rare ones—and for that matter, about things much more common than any disability, such as poverty. But granting the empirical proposition for the sake of argument, the objection still seems weak. I think it is usually parasitic on unstated objections to particular types of intervention such as genetic modification. To see this, flip the example around. Suppose there is some large-scale policy change that would result in a lot *more* people being born with a particular disability. For instance, we could stop putting folic acid supplements in wheat and rice

⁶ [Insert a citation here to Jeff Gauthier's commentary in this issue]

⁷ See JOSEPH FISHKIN, *BOTTLENECKS: A NEW THEORY OF EQUAL OPPORTUNITY* (2014), chapter 2.

⁸ See Brown, *supra* note 1.

flour. This would mean a lot more people born with spina bifida and other neural tube problems.⁹ Would this mean less stigma for those people? I don't think we know. But even supposing it did, that does not seem a sufficient justification, given that a greater number of people will then suffer what are, with our society's current technology, significant limitations on their capabilities. Now you see there that I have resorted to the language of capabilities, which is perfectionist language—more on that in a moment.

But first: what seems to me the strongest objection is not about stigma at all. Certain disabilities arguably open up opportunities that are not accessible to the nondisabled. Here I am thinking in particular of Deaf culture, which is a rich and interesting world with its own literature and art that is *partly* accessible to non-deaf people who learn sign language, but to take the strongest form of the objection let us grant the premise that it is *fully* accessible only to people who are deaf. Similarly, consider the claims of some people with (what was until recently called) Asperger's Syndrome: that they, by virtue of their disability, have access to a way of thinking and a way of being in the world that is different from what the rest of us have, that it's a good way of thinking and being in the world, and that it's inaccessible unless you have Asperger's.¹⁰ Unlike the claims about stigma and numbers, these claims involve a different sort of harm: the claim is that if you could "cure" all deafness or all Asperger's, something would really be lost from the lives of the people you cured, something valuable they could not get back. Thus on this view, the objection to, for instance, fitting all deaf infants with cochlear implants, is not that this will further stigmatize the smaller number of deaf people in society, but rather that doing this will take away those children's full access to the rich world of Deaf culture (and in the long run, that this may also greatly diminish Deaf culture itself).

This is a serious objection and I think it reveals part of why in the end I do not think it is possible to build a convincing argument about equal opportunity on non-perfectionist foundations. In order to weigh what is gained by a cochlear implant against what is lost, we need some sense—even if a relatively thin one—of what a good life for a human being looks like. The recipient of a cochlear implant stands to lose some substantial part of her access to Deaf

⁹ Conversely, we could begin putting folic acid supplements in corn flour, which might reduce the incidence of those same neural tube problems in populations where the staple is corn rather than wheat or rice. (Currently, the U.S. supplements wheat and rice flour, but not corn flour, with folic acid. See Jonel Aleccia, *Mystery Birth Defect Cluster: Is Diet to Blame?*, NBC News, June 19, 2014, available at <http://www.nbcnews.com/health/womens-health/mystery-birth-defect-cluster-diet-blame-n135026>.) Some argue that any policy attempting to reduce the incidence of a particular disability is stigmatizing to those who have it. But a wide range of policy choices affect the incidence of different disabilities and categories of disabilities, from folic acid supplementation to laws requiring seat belts and air bags in cars. It cannot possibly be right that the only non-stigmatizing choice would be to be indifferent to (or perhaps, to maximize) the number of people with each disability.

¹⁰ Indeed, some versions of this argument add that such "neurodiversity" might be good for society or the world, as well as for neuro-atypical individuals themselves. For a discussion see STEVE SILBERMAN, *NEUROTRIBES: THE LEGACY OF AUTISM AND THE FUTURE OF NEURODIVERSITY* (2015).

culture, while gaining some substantial degree of access to the aural, musical, and sonic dimensions of the hearing world and its culture. I tend to think that probably, on balance, the gains outweigh the losses so that there is a fairly strong argument in favor of “curing” a lot of deafness.¹¹ But I do not think it is an easy case. I find Asperger’s to be an even harder case.

Opportunity pluralism, by itself, does not resolve disputes of this kind. What it offers is a framework for how to resolve them. Different agents will plug different values into the framework, and they will often disagree about the bottom line answer. This indeterminacy is not a bug in opportunity pluralism, but a feature. In a pluralistic society, people *should* disagree about how to resolve hard cases. In a society with many different actors whose actions shape the opportunity structure, it is actually beneficial (aside from being almost inevitable) that they will not all weigh the tradeoffs in exactly the same way. With multiple actors in a pluralistic society involved in issues such as medical research and funding, there is room for debate, especially in hard cases, about which technological and medical interventions are worth developing and subsidizing and which are not.

I would note, though, that only some types of disabilities present such hard cases. For other types of disabilities, the argument about treatment and cure is more one-sided, with clear gains in capability on one side, and harms on the other side that are, at best, speculative and socially contingent. Even so, for all kinds of reasons, plenty of people with a given disability will opt not to take any “cure” that is on offer. Thus it remains important to help people *around* the bottlenecks disability gives rise to, and not to rely exclusively on helping people “through” the bottlenecks. In part this is because for some people, it is just asking too much to ask them to give up their disability; it part of who they are and it is asking too much to demand that they give it up to pursue a lot of paths in life. This is because for some people, having a particular disability defines an important identity category—not unlike race.

Part of the reason these questions are difficult is that very often the decisions are about children who are not yet able to decide for themselves. And this raises in an especially pointed way the more general problem Jeff Gauthier discusses, about the endogeneity of preferences. Gauthier asks: given that our preferences and goals are shaped by our opportunities and environment, how will opening up new opportunities “serve to motivate” an agent to take advantage of them?¹² To return to our disability example: Imagine a person who grows up deaf and is deeply involved with and attached to Deaf culture. She might find the idea of curing her deafness very problematic. This could be the case even if it were also the case that if, counterfactually, had she received a medical intervention at birth so that she were never deaf in the first place, she would be very involved with and attached to a completely different set of things, some of which might involve a lot of sound. And of course the problem is far more general than this. Our idea of what a flourishing life looks like for us comes from our

¹¹ Here I must bypass many important questions, of which the most important is: who decides? Another is: how do we weigh the possibility of the overall effect on human flourishing of potentially making Deaf culture itself less rich and vibrant (which returns us again to numbers)? I will (reluctantly) largely leave these issues aside here.

¹² See Gauthier, *supra* note 6.

experiences in the world, which in turn means it is dependent on our opportunities. Our motivations—that is, what we are motivated to pursue and seek in life—are endogenous to the process in which our selves and preferences are formed.

This leads to the problem Gauthier poses. Just because an opportunity is open to someone doesn't necessarily mean they will have any interest in it—or indeed any sense of why they might want to pursue it. If someone is going to develop a motivation for pursuing a particular path in life, they need a sense of what that path involves. They need a chance to either know someone or experience something that will give them the idea that this might be a path they would want to pursue. That, too, is a kind of opportunity, although usually not a job opportunity. It can be something much smaller, whether formal or informal. It's the reason some educators try to send their students on internships and externships and shadow-someone-for-a-day types of work experiences. It's part of why it matters so much who you know and who they know, when it comes to understanding which paths are even worth pursuing.

Once we take motivations to be at least partly endogenous to the opportunity structure, we need to consider not only the opportunity to pursue a particular path in life, but also the opportunity to find out, through experience or interaction of some kind, *why* that path might be valuable in the first place. Or not—and the “not” can be just as important. Not every path will seem appealing to everyone. Part of the *pluralism* in opportunity pluralism is that people ought to be exposed to a wide range of different paths and ways of living in the world; hopefully some will seem worthwhile. The paths that seem appealing are the ones that speak to something in you—but of course this is the “you” that was formed by prior experiences and opportunities.

Acknowledging that opportunities shape preferences is not the same as holding that our preferences and motivations are completely determined by environmental factors and experiences. The story I tell in the book is not necessarily a story of determinism, but a story of layered interaction: we develop our motivations the same way we develop everything else, which is, in a sedimentary way, as layers of interaction between ourselves and our environment gradually make us into who we are. Is there any such thing, then, as an authentic core of a person, unshaped by prior interactions and experiences? In *Bottlenecks* I argue that the answer, once we properly understand the question, is no. It's turtles all the way down. Interaction is built in from before we are born. But this doesn't mean the effects of all our experiences are predictable; it doesn't mean two people are affected by the same thing in the same way; and it certainly doesn't mean that when we're formed, we're formed once and for all and won't change. Quite the contrary; we can and do. That is part of why it is important for the first steps on a variety of paths to remain open to people throughout their lives.

This answer does not seem to get us very far in the case of the cochlear implant decision, however. That decision has a number of unusual features. It is a completely binary choice: there is no incremental step between having the implant and not having it. It is effectively irreversible: you can remove the implant later, but by then you may have already grown up habituated to it (and/or immersed in Deaf culture). The entire cochlear implant choice takes place long before the agent can in any way appreciate its consequences, even in the abstract. And so on. These features of this particular choice situation make it especially unamenable to the strategy of

keeping paths open throughout life so that as a person's preferences and values change, they can adjust their course.

Luckily, most choices in life are not like this. Most paths in life involve many incremental steps. It is usually possible to gain some appreciation of why a path might be worth pursuing by pursuing some of the first few steps on that path or by getting to know others who have followed it further. In most cases, decisions about which opportunities to pursue are not irreversible—or at least, they should not be. We sometimes structure opportunities so that if you miss the boat, it will never come around again. But we ought not to.



Finally, a very brief coda on the question of global opportunity pluralism.¹³ I think it is not a coincidence that almost every theory of distributive justice and equal opportunity has as a starting point the idea of a society and the idea of a state. The idea of a society helps ground arguments about equality and mutual obligation; a state means a government that could implement egalitarian policy. *Bottlenecks*, too, has these starting points. There are plenty of practical reasons for them, not least that if we try to think about the world rather than a particular state, we very quickly find ourselves mixed up in thorny questions about developmental economics, international relations, and so on.

But I don't think this should let us off the hook entirely. After all, every country has an immigration policy, and these unquestionably build and enforce a very powerful bottleneck—i.e. you need citizenship or legal status in a given country in order to pursue a vast array of different paths.

Although this work is yet to be done, I think it's possible that opportunity pluralism can add a useful element to this large and complex story. Thinking about *equal* opportunity on a global scale is even more wildly counterfactual than thinking about it on a single-country scale. It is so far from the world as we know it that it may not provide a very useful guide to action. So perhaps it may be helpful to move away from a focus on an equal opportunity goal that is so distant, and instead focus on loosening some bottlenecks. For instance, I can imagine that making some kinds of knowledge freely available globally, in many languages, might help make being born in the “wrong” nation slightly less of a bottleneck.¹⁴ There are many serious complexities involved in all questions of global justice. Opportunity pluralism is not a strategy for resolving them all, but a way of focusing on one aspect of the opportunity structure at a time, where it may just be possible to improve things.

¹³ Gauthier raises this issue. See Gauthier, *supra* note 6.

¹⁴ See Lea Shaver, *Bottlenecks and Copyright*, Concurring Opinions, March 14, 2014, available at <http://concurringopinions.com/archives/2014/03/bottlenecks-and-copyright.html>