Rawlsian Fair Equality of Opportunity and Developmental Opportunities

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Abstract

This paper discusses the Rawlsian principle of Fair Equality of Opportunity in the context of Fishkin’s recent theory of opportunity pluralism, and shows why these are conceptually incompatible. Although the substantive dimension of FEO (in contrast with “careers open to talents”) has invited reflection on how “merit” and “talent” should be defined from the perspective of social justice, opportunity pluralism requires a theoretical step further that would entail abandoning the Rawlsian principle altogether. Therefore, if we agree with Fishkin, the egalitarian focus of FEO should be replaced with the concern for broadening the range of developmental opportunities open to individuals at various moments of their lives. This, according to opportunity pluralism, would serve justice better than guaranteeing equality of opportunity in the absence of a safety net supposed to correct the myriad of natural and social contingencies affecting individuals’ life chances.

Keywords: justice as fairness, Fair Equality of Opportunity, opportunity pluralism, merit, native endowment.

1. Introduction

One of the views of social justice having engaged philosophers’ attention over the past decades, and regarded as one of the great political issues of our time is equality of opportunity. Both as a

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theoretical construction, and as a goal of public policymaking, equality of opportunity has established itself as one of the fundamental topics which a society concerned with justice should include in the debate regarding the moral values and social priorities it upholds.

It has also become one of the favourite topics of public discourse, and its popularity is largely due to its being perceived as a view that would somehow do justice to most of us, without aiming at illegitimate levelling-down and without coming into major conflict with other moral values.

In the words of American political theorist John H. Schaar:

> It is as though all parties have agreed that certain other conceptions of equality, and notably the radical democratic conception, are just too troublesome to deal with because they have too many complex implications, too broad a scope perhaps, and a long history resonant of violence and revolutionary fervor. Equal opportunity, on the other hand, seems a more modest proposal. It promises that the doors to success and prosperity will be opened to us all yet does not imply that we are all equally valuable or that all men are really created equal. (Schaar 1967, 137)

Doubtless, opportunities constitute a significant portion of our environment – in the course of our daily lives, we are all affected, more visibly or subtly, by how advantages are distributed, and how the criteria governing competition for the various paths we pursue are established. The intuition that, somehow, some people were not granted the right opportunities at the right moments, although they would have met the same set of criteria (educational qualifications, job requirements) which worked to the advantage of others is powerful in inviting reflection on which opportunities and why should they actually be equal among individuals and why.

This paper compares the Rawlsian principle of *Fair Equality of Opportunity* with the recently developed theory of *opportunity pluralism*, in order to give an overview of some moral dilemmas which the language of opportunities often obscures: (i) the legitimacy of relying on desert and talent as criteria that should help assessing individual performance, and (ii) the implicit assumption that the conditions for equality of opportunity already exist when individual talent or desert are measured. Although expressing concern for substantive equality, the
Rawlsian principle would seem to be incomplete in protecting individuals from the results of some morally arbitrary social and natural conditions, and, as Thomas Pogge argued, this may be too important to be left for the Difference Principle alone to remedy.

2. Rawlsian Fair Equality of Opportunity

The general equal opportunities view rejects the idea of a fixed or inherited hierarchy of social positions and privileges and, in its most popular version, aspires to equalize the possibilities of individual access to social roles and positions in the public sphere. It thus has a double dimension: formal and substantive.

The focus of formal equality of opportunity is on the procedurally fair framework in which the (competitive) interaction of individuals will take place, and what matters most is that all those meeting the relevant criteria are equally eligible to participate in the selection process.

Although, by definition, opportunities refer to possibilities, not guarantees of reaching various goals (Westen 1985), various authors distinguished between formal opportunities (the absence of formal/legal barriers) and real or substantive opportunities, showing that the mere requirement of non-discrimination cannot by itself offset the effects of deep-rooted and pervasive inequalities (Williams 1962, Sen 1992, Van Parijs 1995, Gomberg 2007). Such authors pleaded for a substantive reading of equal opportunities that would entail remedying or limiting the effects of some contingencies operating prior to the moment when the “gates towards success” were opened.

In *A Theory of Justice*, and later, in *Justice as Fairness*, Rawls advanced a set of three principles that should govern the basic structure of society seen as a fair system of cooperation. At the same time, they should give a normative account of when and how the differences in individuals’ life prospects are legitimate and consistent with their status of morally equal beings.

According to Rawls, these principles require the following:
(a) Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and

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

(Rawls 2001, 42-43)

The principles are arranged in lexical priority, which means that the first one, referring to fundamental liberties – *constitutional essentials* – has priority in application over the following. Conversely, before applying the Difference Principle, the Liberty Principle and the Fair Opportunity Principle should have been completely applied, which means that the application of the Difference Principle should always presuppose the existence of a basic structure guaranteeing respect for fundamental liberties, as well as access to social goods and positions of advantage under conditions of Fair Equality of Opportunity (henceforth *FEO*).

*FEO* aims to limit the effects of morally arbitrary factors on the distribution of social advantages and it is placed between a formal version of equality of opportunity, concerned with the procedural fairness of specific selection mechanisms and a radically substantive one, committed to fixing the effects of the myriad circumstances which negatively affect individuals, besides socio-economic disadvantages.

It is important to note that the principle does not aim to eliminate the effects which accidental situations and one’s luck – factors outside one’s direct responsibility – have on individuals’ lives. Chances of being born in a happy family, to be born healthy and in affluence, in times of peace, in a wealthy country with just and functional institutions should be regarded simply as “such chance contingencies as accident and good fortune” (Rawls 1999, 63), and measures that would be necessary to level down all such contingencies, do not fall within the scope of *FEO*.

In the end, its goal is not “releasing men’s energies in the pursuit of economic prosperity and political dominion” (Rawls 1999, 91), but rather to “view persons independently from the influences of their social position.” (Rawls 1999, 447-448).
As noted by Freeman, in fact, there are only two institutional duties which Rawls defined in association with FEO, namely: preventing excessive accumulation of property and wealth and ensuring equal educational opportunities. (Freeman 2007, 90).

3. *FEO vs. Careers Open to Talents*

The Rawlsian principle can be interpreted as a response to the widely endorsed view that equality of opportunity would be adequately and sufficiently ensured by the existence of a procedurally fair competitive framework regulating selection mechanisms.

This view, often captured by the slogan *careers open to talents*, advocates a kind of formal, procedural equality that should, in the end, be conducive to meritocracy. Thus, once the procedurally fair framework has been established, the (competitive) interaction of individuals should (naturally) place them in the positions of advantages they are entitled to occupy if they meet the (sectorial) merit/performance requirements specific to each of them.

*Careers open to talents* describes a conception of equal opportunity that does not include the concern to remediate the effects of the accumulation and combination of a great number of morally arbitrary inequalities, but rather only that of opening the access of all to the first stage of the competition, that is, without formally preventing participation.

Beyond this starting point, the view does not suggest that there would be a moral duty to offset the effects of other present and past contingencies. It rather entails that, once the rules of the game are duly set, they will allow individuals to go as far as their natural qualities, competence, and merit take them to.

In the end, this would only be beneficial for society at large, as it would warrant that each position will be occupied by the best in that specific field.

Although acknowledging some merits of *careers open to talents*, Rawls has deemed this view insufficient from the perspective of justice as fairness in a liberal society (Rawls 1999, 63). It fails to encompass a broader concern for social justice, as it seems to overlook the influence of
variables such as one’s family or one’s inherited social status. These are contingencies related to one’s luck, thus falling outside one’s responsibility, and, therefore, including them in the definition of desert would be problematic.

Moreover, the ideal view of careers open to talents is, in fact, compatible with the existence of polarized societies, where very rich and very poor groups coexist – for the latter, the mere fact of participating in a competition is a cost likely to generate additional disadvantages.

Consequently, careers open to talents is vulnerable to two main objections: (i) the formal design of the competitive framework does not address previous inequalities which affect one’s performance, and (ii) the conception does not respond to the problem of social polarization, in the sense that some very deep differences between individuals are transferred into the competition – although everyone gets an “entrance ticket”, some are unable to use it out of reasons for which they are not directly responsible.

The Rawlsian Fair Equality of Opportunity can be seen as an extension of the ideal of non-discrimination by combining two requirements: Careers Open to Talents and Fair Background (Arneson 1999, 80), aiming to reconcile meritocracy in occupying the most advantageous social positions2 by the best qualified with concern for social equity, so that no individual, irrespective of her social circumstances, should enter the competition with a (morally arbitrary) disadvantage.

The differences between careers open to talents and FEO are significant in three major areas.

Firstly, FEO is not confined to safeguarding the fairness of selection procedures regarded independently, but rather consistently governs the basic structure, i.e. the main social and economic

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2 Some criteria advanced by Andrew Mason for the definition of socially advantageous positions in the context of equal opportunities are: correlation with material benefits, social status or prestige; fulfilling the duties entailed by such positions is, in itself, rewarding or pleasant; such positions are means to securing others providing advantages such as the abovementioned. See Andrew Mason (2006). Levelling the Playing Field. The Idea of Equal Opportunity and its Place in Egalitarian Though. OUP, p. 16.
arrangements distributing the goods and advantages developed through social cooperation.

This entails acknowledging the way in which, in reality, social advantages and disadvantages generated by the morally arbitrary inequalities present at some initial point combine and accumulate, thus influencing the possession of social primary goods and the life prospects of the individuals. Essentially, given that FEO refers to the access to social primary goods and positions of authority and responsibility, its goal is to ensure that their distribution will not be influenced by morally arbitrary factors, be these more or less identifiable at first glance.

Secondly, the combination between procedural fairness and background justice generates a specific notion of desert relevant for the application of FEO.

In the terms of justice as fairness, the premise that those better endowed do not deserve their endowments or a better initial social position does not determine channelling the efforts of social institutions to offset or level down such differences. What matters here is that no one should win or lose as a result of her natural endowments without giving or receiving compensation.

The notion of desert is understood, therefore, not as a moral value of one’s character or particular actions (Rawls 2001, 73), but, given the reasonable pluralism leading to a variety of views of the good life, rather like a political concept, integrated to a system of public rules built on the contract from the original position, when the parties agreed to regard the distribution of natural assets as a common good and share its benefits among them.

In other words, the desert for which the more talented can be rewarded consists in educating and developing their native endowments, with the goal of helping others too by means of “mutually beneficial complementarities” (Rawls 2001, 76). Thus, social cooperation should be understood by analogy with the formation of an orchestra, whose members could have in principle played equally well as the others any instrument, but nevertheless chose to study a different one for the benefit of the joint performance.

Nested in justice as fairness, desert is defined as “entitlement earned under fair conditions” (Rawls 2001, 78), and natural talents are
potential, rather than fixed assets, whose realization depends on social conditions, including social attitudes related to which are worth developing and encouraging (Rawls 2001, 158).

In the third place, FEO works with an understanding of social contingencies which is more comprehensive than that entailed by careers open to talents. For the latter, the fact that individuals wishing to obtain a desirable social position enter the competition already affected by various disadvantages outside their own direct responsibility, and outside that of the competition’s organizers should not be regarded as an obstacle.

On the contrary, for FEO, which is concerned not only with the specific opportunities that individuals obtain at some moments, but also with their life prospects, limiting the effect of morally arbitrary factors is, in principle, a moral duty.

FEO also acknowledges that what may come across as desert (the development of native endowments through one’s motivation, effort and ambition) is, in fact, much dependent on such contingencies, as “the willingness to make an effort, to try, and so to be deserving in the ordinary sense is itself dependent upon happy family and social circumstances” (Rawls 1999, 64).

According to Rawls, FEO requires that:

Those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system. In all sectors of society there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed. The expectations of those with the same abilities and aspirations should not be affected by their social class. (Rawls 1999, 63).

Therefore, FEO indicates two goals that should be pursued by the institutions of the basic structure: (i) the impartiality of the selection process whereby individuals obtain social primary goods and positions of advantage, that is impartiality regarding social circumstances, and (ii) confining individual selection criteria to talents/skills and motivation/effort.
The Rawlsian formulation of equality of opportunity has informed greatly egalitarian thought, and stimulated much commentary. Among the best-known objections raised to FEO are Pogge’s inclusion of the equal bases of social respect within the scope of the opportunity principle (Pogge 1989), and Arneson’s presentation of the “stunted ambition” and morally innocent versus wrongful discrimination problems (Arneson 1999).

At the same time, both objections seem to indicate a tension between, on one hand, the lexical ordering of the Rawlsian principles of justice, and, on the other, the substantive implications these have on distribution.

Thus, Pogge’s critique invites reflection on a potential hierarchy of the sectors in which opportunities are distributed, acknowledging that some of them may be essential for structuring life chances (i.e. education, employment, and healthcare).

In fact, the particular goods distributed in such sectors meet basic needs and facilitate the fulfilment of social roles that are essential for the consolidation of self-respect, which is, in Rawlsian terms, “perhaps the most important primary good” (Rawls 1999, 348). In other words, whereas some opportunities can be understood as secondary, opportunities to education, employment and healthcare should be regarded as fundamental, as they decisively orient individuals’ paths in life.

However, the definition of FEO, emphasizing on the combination between talents and motivation/effort as a legitimate criterion for access to opportunities does not provide, in Pogge’s view, enough guarantees that the outcomes it will generate in fundamental sectors of life will actually contribute to equalizing the social bases of self-respect. In fact, it is particularly in the field of education that this prescription is likely to produce inequalities that will affect the less gifted as a result of the natural lottery. Such inequalities, in turn, could concatenate in ways that would come to impact on these individuals’ social and economic status.

This argument targets the core of FEO, showing that, although it acknowledges that the effects of natural lottery are morally arbitrary, it does not commit to offset them, even if, by failing to do so, the self-respect and confidence in one’s worth are likely to be affected. In fact, when
selecting talent and effort as the criteria that legitimize the access of individuals to desirable goods distributed in relevant sectors, Rawls refers to natural endowments, not to those already developed by social interaction or education.

In fact, much as the contrast between careers open to talents and FEO has been emphasized in the Rawlsian theory of justice, Pogge’s argument is that granting a status of moral significance to the distinction between natural and social contingencies is, in the end, counterintuitive. In the case of education, for instance, inequalities derived from natural contingencies produce the same negative effects as those derived from social contingencies, and perhaps carry an even greater symbolic weight than the latter.

Thus, being deprived of quality education because one’s talents are not deemed worthy of developing in a formal context – to much extent competitive – is likely to have a devastating effect on one’s sense of self-respect, even more so than being deprived of or excluded from education because one’s parents are not able to pay tuition fees. (Pogge 1989, 173)

Whereas Pogge’s objection primarily targets the fact that FEO fails to provide a safety net against disadvantage originating in natural lottery, as well as against disadvantage originating in random selection, Arneson’s criticism builds on the contingent nature of motivation and ambition.

Although Rawls himself acknowledged that even the motivation to make an effort and engage oneself in hard work to bring one’s potential to fruition is dependent on happy family and social circumstances, Arneson further develops the argument to show that, in some cases, individuals’ ambitions are “influenced unfairly by socialization.” (Arneson 1999)

This amounts to acknowledging that values and preferences are not formed in a social laboratory where the moral capacities that allow individuals to conclude the agreement in the original position are adequately present in each of them and not vulnerable to being distorted by pressure, domination or bigotry. Not only are patterns of motivation and ambition transmitted from parents to children (and thus less quantifiable inequalities are developed under the umbrella of parental autonomy), but they are also very much dependent on the general
structure of values a society upholds at a certain moment, and which is, in itself, a variable.

Being risk-prone or risk-averse, with a happy or dull disposition, lazy or hardworking are examples of individual attributes inherited and developed in the course of early socialization. If, for instance, one’s family adheres to the values of entrepreneurship and hard work, and instils these in a child since his first years of life, it is plausible that, at the age of adulthood, her motivation and ambition are already structured along these lines. On the contrary, if one’s family adheres to the values of a contemplative life, not encouraging the formation of self-made persons, and not instilling in a child the idea that personal value should be proven by hard work, the motivation and ambition of an individual with – supposedly – very high potential are to some extent predetermined and likely to generate disadvantage in a competitive framework.

Therefore, one problem apparently not remediable by FEO is that of isolating the effects of early socialization from the formation of motivation and development of talents, which may lead individuals to adjust their goals to the means they have been granted, instead of aiming at the human flourishing that would be compatible with their status of individuals possessing a secure sense of their worth.

Moreover, Arneson argues that FEO cannot provide guarantees against wrongful discrimination reflecting how ambition is formed through socialization, in the sense that group loyalties, social polarization, idiosyncratic behaviours that lead to the exclusion of some individuals from social advantages are not adequately dealt with by the Rawlsian opportunity principle.3

3 “Consider the example of statistical discrimination. Suppose Norwegians as a group are especially gifted at cold-weather sports, and employers who need some minimal level of cold-weather sports ability in their employees find it most efficient simply to give preference to Norwegians in their hiring practices, because the average winter sports ability of this group is higher than the average ability of other easily identifiable groups. Suppose that this efficient hiring practice gives an edge to Norwegians of below-average winter sports ability, and in the absence of some offsetting practice elsewhere in the economy, by itself suffices to ensure that society fails to satisfy Fair Equality of Opportunity. A person of Asian ancestry who is very skilled at winter sports and just as desirous
Both Pogge’s and Arneson’s reading of fair equality of opportunity seem to suggest that the principle is incomplete and inadequate in providing guarantees that the attributes that could legitimately be used to assess individual performance are not in some deeper sense predetermined by socialization and the general value structure of a given society.

A third line of criticism inviting at a covert rejection of the Rawlsian principle comes from the recently developed theory of “opportunity pluralism”.

In his 2014 book, Bottlenecks. A New Theory of Equal Opportunity, Joseph Fishkin advances the thesis that the Rawlsian theory, as well as other views of social justice that discuss opportunities in a “starting-gate” framework are conceptually inadequate, precisely because they presuppose that “conditions of equal opportunity exist when each individual can rise to the level that his or her own talents and efforts permit.” (Fishkin 2014, 7).

Thus, following Fishkin, it would not be enough that Rawls acknowledges the complex interdependence between natural and social factors in the formation of what come across as endowments, ambition, motivation and skills. His two-stage solution to limit the effects of the natural lottery on the distribution of social advantages (that is: distributing opportunities according to a principle that allows natural talents to matter, and, secondly, giving compensation to those whose natural talents did not allow them to draw advantages from social cooperation) would be inadequate in the light of opportunity pluralism, which advances the strong claim that it may be meaningless to talk about natural talents:

But what if there are no natural or innate talents at all? What if there are only different individuals with different combinations of characteristics and potentialities every one of which is the product of layers of past interaction between a person and her environment, with her developmental opportunities playing a central role in this interaction? (Fishkin 2014, 99).

of gaining wintry jobs as a comparably skilled Norwegian will have lesser prospects of gaining these positions of advantage, given the statistical discrimination.” (Arneson 1999, 102).
In Fishkin’s view, this strong claim can be supported by showing that talents and ambitions/aspirations influence themselves mutually and the choice of a personal or professional path for development is, most often, the result of adjusting one’s capacities to the various opportunities one is offered over the course of one’s life.

Thus, the idea that we are the result of the interactions between our potentialities and our environment and that, in fact, the major differences between us stem from the different developmental opportunities we had is an objection not only to strong genetic determinism, but also to versions of equal opportunity that separate a “merit” component from the “contingencies” or “luck” component.

If we interpret Fishkin’s claim as not denying individual excellence and leave aside the case of the outliers, those who stand out in virtue of an extraordinary capacity which owes much, if not all, to native endowments, we may reflect on the ways in which individuals actually develop their capacities. Most often, they do so guided by beliefs on what is good for them or what would secure them a good life. However, it would be highly problematic to separate these aspirations from social and cultural standards that prevail in a given society at a given time, as well as from the attitudes and capacities that are most valued by the labour market.

Moreover, the assumption that differences between individuals can actually be separated into a natural and a social component is, according to opportunity pluralism, mistaken not only because, in practice, we do not possess the tools allowing us to identify exactly the relative weight of these components and the effects they produce on one’s performance. It is equally mistaken because it interprets equality of opportunity as a mechanism of selecting individuals (for their access to social goods and positions of advantage), instead of operating as a mechanism for their development.

Therefore, the Rawlsian concern for structuring institutions so that two individuals possessing the same combination of talent and effort should have the same prospects for success, should be preceded by the concern for designing the opportunities structure across society. It matters a great deal how opportunities are defined, who controls their distribution and, most importantly, how individuals are supposed to go
through a “bottleneck”, that is “a narrow place in the opportunity structure through which one must pass in order to successfully pursue a wide range of valued goals.” (Fishkin 2014, 13).

If we agree that the differences between the developmental opportunities of individuals are those which, in the end, have a decisive impact of their life chances, we should also admit that, from one generation to another, we are actually creating or rather limiting a range of opportunities open to individuals. Under these circumstances, with the benefit of the “big picture” that an intergenerational perspective allows, the focus should not be on fair selection for access to goods and position of advantages, but rather on a fair account of human development:

An oversimplified, unduly narrow conception of human development tends to yield an oversimplified, unduly narrow conception on how and why opportunities matter and what is at stake in their distribution. […] Opportunities matter not only because they affect how high each person reaches on some scale of success, but also because they affect the different kinds of mental and physical capacities and talents a person develops, the ambitions she forms, and the kinds of success she seeks. (Fishkin 2014, 87-88).

5. Conclusions

There is no doubt that, despite some specific objections, the influential Rawlsian principle of Fair Equality of Opportunity has continued to invite reflection on why opportunities matter and how they should be distributed. As the comparison with careers open to talents aimed to show, extending the scope of opportunities so that they should also account for morally arbitrary differences between individuals may be particularly useful for bringing to the forefront the moral presuppositions of the Rawlsian theory of justice and its distributive implications.

One significant contribution of FEO in this respect is that it added layers of complexity to the debate, showing that pure meritocracy grounded in formal equality is often misleading, as it fails to address the problem of social contingencies and the morally arbitrary effects of the natural lottery, thus presenting a distorted image of individual merit.
However, the theoretical step suggested by the recently developed conception of opportunity pluralism, and preceded by the careful analysis of FEO by authors such as Pogge and Arneson, seems to propose a framework that is conceptually incompatible with the Rawlsian principle.

In Fishkin’s terms, equality of opportunity should not be regarded as one currency of justice allowing the fair selection of individuals for the possession of social goods and positions of advantage which enable them to live their lives according with their conceptions of the good. Rather, it should be regarded as a process allowing individuals to develop their potential and exercise their capacities, which are merely the result of a complex interaction between their own characteristics and what their environment has offered them.

Consequently, this criticism of starting-gate theories (justice as fairness included) is grounded not only in the idea that individual merits and talents cannot be actually measured due to the complex and less quantifiable factors that affect their life courses. It is also based on the claim that merit, social success, and, to much extent, talent, are dependent on what is deemed socially valuable or a social priority at a given moment.

It is also worth noting, in the end, that Fishkin’s strong claim should not be taken as altogether rejecting the idea of individual excellence, but rather that neither merit, nor natural endowments can be used as operational criteria which could legitimately assess individual performance in various life sectors. Here, Fishkin’s claim can be supported by Pogge’s argument in favour of a distributive hierarchy of opportunities, in the sense that those areas of life which are fundamental for helping individuals develop a secure sense of their worth and allowing them to participate with full rights in social cooperation (i.e. education) should be governed by opportunity pluralism, and not by Fair Equality of Opportunity.

Therefore, in contrast with the Rawlsian view, opportunity pluralism would lead to (i) discarding the notions of “merit” and “talent” from the language of opportunity and (ii) re-interpreting the core egalitarian dimension of FEO by replacing the idea of equal access to goods and positions under conditions of fairness with the idea of...
broadening opportunities. In the end, the range of possible paths open to each individual should do justice to the diversity of human attributes and inclinations whose fulfilment would contribute to human flourishing.

As noted by John H. Schaar more than half a century ago, the difficulties of securing a fair value for equality of opportunity, and not converting a slogan into a conservative and deeply inegalitarian doctrine, need to be addressed by deeply restructuring institutions and the structure of social values, and Fishkin’s opportunity pluralism may indicate some possibilities for such a change.

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