

Steven Durlauf: Hello everyone, and welcome to the Inequality Podcast. I'm Steven Durlauf. One of the pleasures of doing a podcast—and I will say having the opportunity to direct a research center—is to meet scholars one has admired, even though I've never actually talked to them face to face.

Joseph Fishkin, who's a professor of law at UCLA, has written foundational works on issues involving inequality, and I can say honestly has influenced my direction as a scholar. Joey has written two books that have received, I think, particular attention. The first is called *Bottlenecks: A New Theory of Equal Opportunity*, and that's one where my own research, as I said, has been influenced by it. The second book, which is with William E. Forbath, is called *The Anti-Oligarchy Constitution: Reconstructing the Economic Foundations of American Democracy*, and that's so much farther from me, but as a citizen it's essential reading.

So Joey, it's really a delight to make your acquaintance, and a delight to have the opportunity to talk with you.

Joseph "Joey" Fishkin: Thanks so much for having me. I've long admired your work as well, so this is really a treat.

Steven: So I thought naturally we would start with *Bottlenecks*, and so the book really does provide a new vision of the nature of equality of opportunity. And so I thought the most important thing for you to start with is to describe the vision and how it challenges existing perspectives on equality of opportunity.

Joey: Sure, great. So where most theories of equal opportunity start, as the name suggests, is that we sort of bundle together all the opportunities, and we ask who has more of this and who has less. And because there's lots of inequality of opportunity, this seems like a reasonable enough way to start. But I think you quickly run into some problems which lead me to a different way of thinking.

So I'll just mention a couple of those problems. I mean, the first one is that families create huge inequalities of developmental opportunities before children even start school, and then throughout, just by speaking with children, parents create inequalities of opportunity. And then parents also give children different kinds of opportunities.

Law and public policy can restrain the inequalities of what parents give children in terms of opportunities, but we wouldn't actually want to eliminate the inequalities here because that would mean making everyone parent their children in a very similar way. Even in ideal theory, we wouldn't want that. So this is an initial major problem if equal opportunity is something we can't achieve, and the closer you look, I think the worse it gets.

So John Rawls has an important formulation of equal opportunity—fair equality of opportunity, he calls it—where he says everyone's outcomes should depend on talent and effort and not on the circumstances of your birth, which all seems very good. But the problem is that talent and effort turn out to be inseparable from circumstances of birth, and the various meritocratic processes

that try to sort people according to their talent and effort often end up reproducing what were their circumstances of birth.

So my argument in *Bottlenecks* is that instead of chasing the sort of impossible dream of actually making opportunities exactly equal for everyone, which I don't think even would be a good dream if it could be realized, instead what we ought to try to do is open up more opportunities for more people to have more paths genuinely open to them that lead to flourishing lives.

And so I want to turn our focus away from "are the bundles equal overall of opportunities" to the question of what are the—I call them bottlenecks—what are the hoops we're making people jump through in order to reach all the different paths in life that could lead them to some sort of human flourishing.

Steven: And I think that that perspective has, you know, clear relevance in the contemporary public policy debates. Debates about affirmative action are predicated on the idea that universities have fixed numbers of slots, and there's going to be some mechanism by which elite institutions in particular are rationing them. There's remarkably little discussion of the size of these universities. There's no reason why Yale or Chicago, to pick two non-random examples, can't be substantially larger than they are now.

And so this whole notion of treating the opportunity sets, the objects to which matching occurs—be it businesses, be it schools, be it universities—that really is a very different perspective. And I could say from the perspective of economic theory that opens up a lot of questions which haven't been answered yet. And so that's part of what I meant about being inspired to think differently, even if one is limited to the friendly confines of certain, you know, formal environments, etc. Those questions become essential.

Might you say a bit more about human flourishing and the conception you have of it?

Joey: Sure, yeah. This is a really interesting, I think a tricky problem, because liberalism is generally very agnostic about what a good life looks like, and I think that's extremely important and valuable. We shouldn't be designing public policy around one sort of prescriptive vision of "this is what a good life looks like" because in fact part of what makes human lives flourishing is where you get to decide what is a flourishing life for you.

But this is tricky because we still are going to need some sort of conception of human flourishing. I say we need a thin idea of human flourishing that's enough for us to distinguish between the kinds of opportunities that are going to help people lead what some of them are going to find to be flourishing lives versus the kinds of opportunities that just lead in directions that are going to involve a lot of human suffering if people pursue them or very limited lives.

There's going to be disagreement about this, but I rely a lot on John Stuart Mill, who I think offers a suitably thin form of perfectionism where it's not that there's one ideal of what a human life should be like, but it's also not true that we can't distinguish at all between a life of flourishing and a life of suffering. So I think that's the sweet spot to find, and I think there's interesting normative work to be done on figuring out where that is, which different people have

tried to do in terms of capabilities or in other relatively broad and neutral terms that nonetheless give us something to grab onto to tell what a good life looks like.

Steven: It seems to me that also links back to your observation that we really would not want to equalize parenting. And so it's one thing to say that—I don't think that it's just that I can purchase a house in Beverly Hills and have access to that school district. It's quite a different thing to say that parents who, conditional on the same resource opportunities, those that really value reading to their children or talking to them, should have society reverse that.

Joeey: Yeah, and you know, maybe we can do some leveling up in the areas that are like revolving around reading and language. But at some point it becomes—there's just many rich and incommensurable opportunities that parents give their children. Some parents give their children opportunities to, you know, be athletes in some particular sport that the parent likes, and that's why the opportunity is there, or music.

There's so much richness to what parents give children in terms of opportunities, some of which the children may grab onto and it becomes part of their sense of the flourishing life, and some of which the child may completely reject. But in any event, it would be a little ridiculous to try to equalize parenting in the sense of making it all the same. But what I think we can do through this sort of amazing institution that we have of schools is give children access to a greater range of the things that maybe their parents didn't emphasize.

Steven: You know, I think that's a very nice point, and it obviously has important implications for thinking about something such as vouchers and school choice. I mean, there's a set of efficiency arguments that are conventionally given, often by economists, but I don't think that they fully come to grips with the distinctions between the well-being of the child and what the perceptions are of a parent. And so the idea that schools are a mechanism to introduce a world that one isn't participating in, I think, is fundamental.

I suspect that that actually goes back to older arguments in the early parts of public school expansion, which is that it's both the presence of homogenization, but also it's an opportunity simply to enrich perspectives.

Joeey: Yeah, I mean, my college thesis was about John Dewey. I know there you are in Chicago. I mean, there's a lot of richness there in the early thinking about what could public schools do that I think has gotten a little bit lost as we focused more on how do these institutions do in terms of getting everyone into competitive colleges and how do they do in terms of test scores.

There's a lot to be said for the democratizing effect of exposing children from all different backgrounds to the kinds of professions of all different backgrounds, including the ones that don't involve going to college. I think schools can still do that.

Steven: So in the book you introduced the idea of opportunity pluralism, so I was hoping you could describe that for the audience.

Joey: There's an example that I make a lot of use of in the book—this is sort of what opportunity pluralism is not—that comes from the philosopher Bernard Williams of a warrior society in which all the children in this society are training for one big race, and the fastest will get to be the warriors who are sort of the society's elite and get all of the good stuff in the society. And, you know, he uses this example, and I use it to show there are some problems. What if all of the children of the warriors get to be the warriors? And how do we diagnose why that happened? And so on.

And I think those are helpful starting points for thinking about inequality of opportunity. But my question really in the book is, well, why is the society shaped like that? Why are the opportunities structured in that way? And I argue that it would be better if instead of everybody running in this one race and seeking this one prize, if we had a more pluralistic opportunity structure.

So what would that look like? You would start with people having diverse, different views of what a good life looks like, and then the question is, well, okay, but if people have different views of what a good life looks like, but they all kind of need to run the same race—like maybe getting into a fancy college to get there—then you still have a problem.

So I want fewer of the things that lead to a good life to run through competitive roles or positional goods where what matters is where you rank. And I want to argue that we should reduce as much as possible the constraining effects of bottlenecks, which are just the hoops that we make people jump through in order to reach lots of other opportunities on the other side.

So that could be speaking the dominant language in a society—major bottleneck. You can't get through to a lot of opportunities if you don't speak that language well. So okay, how can we help people learn to speak it? And also, how can we make more opportunities for people who don't speak it well? Or a college degree that I've already mentioned a couple times could be a bottleneck. Historically a high school diploma was an important bottleneck. Or having a clean criminal record. There are a lot of things that could function as bottlenecks where the question is, what can we do to help people either through or around them? And in that way make the structure of opportunities in a society more pluralistic.

The last dimension of opportunity pluralism is about who controls the opportunity structure. So if the government is setting up all the opportunities and all the competitions, that in itself is a problem because that one decision maker has too much control over the way the structure looks. Instead, we should try to enable multiple decision makers using different criteria for how they want to set up their little corner of the opportunity structure to do their part in their own way.

And this I didn't come into the book with, but one of the things that I ended up appreciating about the American higher education system is just how diverse and spread out it is with so many different institutions and different decision makers. And that creates the possibility of some pluralism if they don't all choose to adopt exactly the same goals and rules.

Steven: It's a very interesting observation, I think, because in California, if you think about the ecology of universities, it's really quite remarkable. I'm a native Californian, so it's something

that I still take pride in, which is you have, you know, the University of California system, which has the extraordinary research institutions such as UCLA and Berkeley. You have the state university system, and then you have the junior college system.

So my mother, you know, went to college when she was 25, and at least at the time you had to have one of two requirements: either you were 18 or you had a high school degree. And the point is that ecology actually has extraordinary opportunities available for people who wish to put in effort, have had different, you know, trajectories in terms of what previous opportunities they had. And so I think that's actually a very affirmative vision and consistent with what you articulate.

I wonder if you might talk a bit about specific policies that you've become, I'll say, passionate about because of the thinking from *Bottlenecks*.

Joe: Sure. One area that I've become especially passionate about is the question, often neglected, of what age or stage in life does one have to be to pursue particular higher education or a kind of career? Because it seems to me—and this has only been amplified actually now that I've been teaching for a while and I've seen some of my law students who come to law school after another career or after going in a different direction for the first part of their life and then deciding to pursue this one—there's no good reason for us to make everything a competition to see who can get to the starting line at 18 and then jump through the hoop sequentially.

That's often the time where people might be the most wrong about the kind of life they want in the future, as compared to a few years later. And we can make the opportunity structure much more open by allowing people to go from junior college, if they wish, to transfer to a different kind of institution, or to go from a career to further education. And this is something, another area where I think our system in the United States does a better job than some of our peer countries that are a little bit more focused on sorting people at 18 even than we are. And we are pretty focused on that.

On the other hand, an area where I feel like we could do a lot better by emulating some of our, you know, Western European peers like Germany, again still in education policy, is thinking about creating better pathways for education that are not aimed at traditional four-year institutions and that instead are aimed at careers that require considerable skill, but that in the US we have sort of denigrated over time as we have decided to funnel people more and more into the same four-year college track.

There are areas where we could emulate the kinds of education and technical training that is much more common and more prestigious and more sort of socially valued in Germany and in some other Western European countries than it is here.

Steven: So I think those are very important points, and they actually relate to this idea of endogenizing the opportunity structure. And I wanted to mention a recent paper—the ink is almost wet—it's by Zachary Bleemer and Sarah Quincy, and I apologize if I got the second author wrong. They basically were studying the evolution of the college wage premium across the 20th century, and what they documented was a diminution of it. And they have an argument

as to why it is, and that is that if you look at the allocation of resources to public institutions, they become increasingly skewed towards the most elite ones.

And so again, I don't have the numbers in front of me, but the qualitative argument would be that the University of California system was not as damaged by budgetary issues as the state university system. And so the finding in this paper I found was deeply troubling, which is that it said that the skewing of educational finance was done in such a way that it made the zero-sum aspect, the competitive aspect, what you call the positional aspect, all the more salient. So that seems to be a very important issue.

Joey: Yeah, no, that's plausible. And you know, one of the problems with inequality in our time is that you see that sort of effect across many different kinds of institutions where the richest sort of are pulling away more from the rest in terms of the resources that they have and then in terms of the opportunities that they give people. And I think that's sort of consistent with the trend in income and wealth inequality as well, and there's a relationship between those two things.

Steven: Yeah, I think that's exactly right. So one of the ideas in economics, and I would say more broadly in social sciences, is the so-called Great Gatsby curve, which is the observation that increasing inequality is also associated with increasing intergenerational persistence. And I think that a fair statement is that the evidence is really pretty strong for that, and that's this almost distribution instability that one finds in advanced industrialized societies.

Steven: So I thought we might step back a little if I could ask you some more assessments on philosophical questions. One of them is to sort of understand your judgments on the debates about the intrinsic versus instrumental injustices of inequality. I'm thinking to touch a bit on prioritarianism, relational inequality, and the like, because I think that the book obviously spoke quite deeply to these debates.

Joey: Yeah, so I mean, you just were mentioning the Great Gatsby curve, and I guess for me the starting point for thinking about inequality is that inequality, including inequality of wealth or income, but not limited to that, is inevitably also to at least some extent going to be producing inequality of opportunity. It may be the product of inequality of opportunity, but it will certainly produce inequality of opportunity because in any capitalist society, part of what money buys is opportunities for oneself, for one's children.

Now, I'm not, you know, opposed to the argument that there may be some intrinsic injustice in some people getting to consume a lot of fancy goods while others get very little. I find it perhaps more persuasive that what that's about is that we should give greater priority to the people who have the least. But, you know, I guess regardless of whether there is intrinsic injustice in the inequality itself, what I'm sure of is that when we focus on what people sort of end up with as our question, we are missing most of why inequality matters, which is the way that it shapes people's future trajectories and the way that inequality turns into inequality of opportunity.

And so to me, while I think it's a useful philosophical conversation about how do we think about just inequality full stop, we also miss a lot if that's where we end the conversation, because it's not as though wealth or income mostly just get consumed and then disappear. They get translated

through so many different mechanisms, mechanisms that it's important to investigate, into different opportunities for future generations.

Steven: Somewhat self-servingly, I'll say my own work on the Great Gatsby curve—the mechanism I focused on is segregation, which is of course a theme in your book. And that is that inequality today begets socioeconomic segregation along many dimensions, and so the children of the advantaged simply live in different environments. Their opportunity sets are qualitatively different than those that are disadvantaged. And so I think that the focus you have on the injustices of the mechanisms, of course, is central in both the intrinsic normative considerations but also in terms of creating political consensus for doing things.

Joeey: Yeah, and the thing about segregation that most interests me really is that apart from one's parents and family, the people who are going to be the most important in terms of what opportunities anybody has growing up are going to be their peers and their peers' families. When you have broad forms of economic or racial or other forms of segregation, what you're doing is you're separating out society so that some people's entire sense of what an adult could be growing up—because of their friends' parents, what they do, their sort of sense of what the different possible lives they might live in the future—they look really different across lines of geographic segregation, especially when that segregation is tied to broad inequalities like class or race.

And so to me, the effects of segregation run in this sort of sociological way through peers in a way that I think has been—people are starting to investigate this in a couple different disciplines actually, and I really appreciate the sort of flowering of work in this area, but we need more.

Steven: I think that's exactly right. I would say anecdotally a number of years ago I had a conversation with a professor at the University of North Dakota who had both an MD and a PhD in public health from Harvard, and he's dedicated to working with indigenous populations. And so his story to me was that he grew up on a reservation, he went to Arizona State, and he was doing very well in biochemistry. And a professor called him in and said, "You should think about medical school." And his answer was, "I didn't know Indians can be doctors." And of course the professor did a very wise thing—he had him meet with a Native American physician.

But the point is that, I think, there's a very deep question, which is that the aspirations that adolescents form, young adults, are so conditioned by the social structures in which they've developed that there really is an active imagination for many people that I would say, for let's say our children, don't have to experience. In other words, their parents are college professors, probably the parents of their friends are college professors in many cases, etc. So they live in a world in which college of course is absolutely expected.

Again, but the serious point is that that's fundamental to understanding persistent inequalities. And I think that it's, you know, it's one thing to talk about segregation in terms of differences in per capita school expenditures—that certainly matters given American political economy—but the fact that there are different social environments that have different norms, different capacities to think about, "Oh, there is a world elsewhere," to quote Shakespeare, that's easy for you and I

to do because of the worlds we live in. Very difficult for others. So I think that what you said is really quite important.

Steven: So I was hoping to ask you to talk a bit about—and you mentioned before—your thinking about meritocracy.

Joeey: Yeah, I mean, my view of meritocracy for a long time has been that of course some meritocracy is inevitable and needed, right? I mean, if I'm having surgery, I would like the surgeon to be as skilled as possible, and picking the strongest candidate who will be the most skilled surgeon would have been a good thing for the medical school to do, and so on and so on.

We also have to at the same time see that anytime you have a meritocratic competition, which are ubiquitous, especially in capitalist society, people are going to use whatever advantages, whatever opportunities they have to give themselves and their children a leg up in that competition. And so my conclusion from this is that we need to, first of all, be very careful about how we do meritocratic competitions to reduce the extent to which we're just reproducing the opportunities and advantages that some people had and others didn't.

But also we need to try to open up different pathways so that not everybody who grew up with fewer advantages can spend their whole life locked in various meritocratic zero-sum competitions with people who had a head start ahead of them. And that's a structural problem that I think we can work on by loosening the bottlenecks that are making those competitions so zero-sum.

I think you already mentioned earlier in the conversation having more openings at colleges that are offering particularly impressive education—that would be a good start, you know. That's just the direct loosening of that constraint. But I think there are a lot of different things to do. I mean, sometimes when you're evaluating candidates, some of the criteria that you could use are more laden with the effects of what opportunities some of your applicants had and others didn't than are other criteria.

And so that's something that you can evaluate when doing meritocratic evaluation of candidates without abandoning the idea of meritocracy and without necessarily even engaging in affirmative action, which I think also has a place to give people a shot whose developmental opportunities so far have not given them one. But even before you talk about affirmative action, I think it's important to talk about, well, which criteria are we using? And have we even studied the question of which of these criteria might be more selecting for the children of already highly educated people, etc., than others?

Steven: Yeah, so I think that there's really two distinct points I would extract from that. One of them is a measurement question, and that is we have some notion of potential—it's probably a vector that we have—we have another set of things we use to measure it, such as test scores, and the relationship between them is very complicated. And so thinking about how to reduce the dependence on—this, okay, in my jargon, this dimension reduction of this complicated thing called potential into these simple numbers—that's early in its infancy. Actually very interesting

work being done in computer science in the area of algorithmic fairness that's related to that. So I think that's, you know, on the theory side, an exciting area.

The second thing I would extract is that many of the arguments for meritocracy are about efficiency. There's some objective function or some objective, and somehow matching the person who will do best at it is functionally defined as meritocratic. There's much justification for thinking that way, but what is certainly lost is what is meritocratic and efficient at one point in time may be dynamically inefficient. And this is really the issue of role models, connections, parents, etc., which is that it's one thing to ask about the mix of colleges today, but what about the effect that the future parents are going to have on their children, etc. So that seems to me—if it's a little bit self-serving, I'm actually working on that problem—I think it's essential.

Joe: Yeah, no, it's great. I think it's great. And, you know, I mean, I guess one of the ways to look at this is a simple model of what talent we're leaving on the table is to say, well, the people who already fully have all the talents, they're ready to go, and we're just somehow not connecting the opportunities to them. And that is, that's actually true. I mean, Caroline Hoxby's great study—there's been some great work on, you know, people who actually are already totally qualified for competitive colleges just not applying for them.

But beyond that, I feel like the bigger question is the talent that we're leaving on the table by not even giving people the opportunity to develop their talents earlier. And that's a harder problem. It's a harder problem for each institution to figure out how to solve because it's partly, as you say, a measurement issue, and it's not exclusively a measurement issue. I mean, partly people who have more developmental opportunities and advantages—this is the Daniel Markovits story—really do have more developed talents. But if you just keep saying that at every institution at every stage, you're just going to keep allowing advantages to sort of snowball into greater advantages. And so you have to look for places along the way to disrupt that process.

Steven: So I thought we might turn now to your second book, *The Anti-Oligarchy Constitution*. And so what I'm going to do actually is I want to start by quoting the book, where you say that "we cannot keep our constitutional democracy, our republican form of government, without (1) restraints against oligarchy and (2) a political economy that sustains a robust middle class, open and broad enough to accommodate everyone. The most important and compelling arguments in this tradition hold further that (3) a principle of inclusion across lines such as race and sex is inseparable from the first two requirements and equally necessary for sustaining the political economy the republican government demands."

And so I thought this was a beautiful summary that you and your co-author gave early on in the book, and so I wanted to put that on the table. So I think in talking about the book, I was hoping you could describe your vision of what you referred to as a democracy of opportunity vision of the constitution.

Joe: Sure. So this book, unlike my first book, which was really political theory, this book, partly because my co-author Will E. Forbath is a wonderful historian and also my longtime colleague at the University of Texas before I moved to UCLA, this book is tracing a tradition in American argument about the constitution. And this tradition holds that—well, it's all those three

principles that you just quoted, starting with the idea that in a republic we can't have too much concentrated power in too few hands. That looks like oligarchy, not a republic. And, you know, that idea has continued to resonate.

But this tradition of argument that we are focused on is a tradition that says this is not just sort of a good idea but a constitutional essential—that we're setting up the constitution of a republic, not some sort of system like an aristocracy or an oligarchy. Those were words they used a lot around the beginning and actually through the whole 19th century. And so you're going to need to build a political economy with a broad middle class.

And at least once you come to Reconstruction, the advocates of this tradition realized that this system is not going to work and it's not going to be able to sustain itself unless you do this in a racially inclusive way. So that's the story—that we need in order to maintain a republic, we need to make sure that our political economy, which is to say both our politics and our economic life and the connections between them, work in a democratic rather than an oligarchic way.

Steven: So might you describe some of the deep historical roots in a bit more detail and also how it got lost?

Joeey: Yeah, sure. I mean, so one thing that really was interesting to me as I got deeper into this book, into the research for it, was how much the founders in the early republic period, and even before the beginning of the United States when they were designing state constitutions pre-1787, how much they were concerned about this problem of concentrated power and about the need to build a middle class.

You see it in efforts to create early systems of education, like in Thomas Jefferson's plan for Virginia. And you see it in efforts to subdivide land. One of Thomas Jefferson's most important contributions to this is just the idea that you can't invent enough ways to subdivide land, to break up the big estates, and to try to give more small landholders some land instead of just having, as in England, you know, the first son inherit everything and create these giant estates and plantations.

And when you get to Reconstruction, this tradition really comes into its own, I think, with the idea that the Radical Republicans had—that what they were trying to do was build a multiracial democracy on what they had in front of them, which was basically a feudal plantation society. And they saw that it wasn't going to work to just say, "Okay, the formerly enslaved people now have voting rights and, you know, the rights to make contracts. Good luck."

They were going to have to eliminate the entire white planter oligarchy by revising the whole political economy of southern life. And they would have to build schools, which the Freedmen's Bureau began to do across the South for Black people and also for poor white people, none of whom had received schooling. They would have to—you know, this is where 40 acres and a mule comes from. There was a sense that we weren't going to be able to build a constitutional republic if we didn't change the way the political economy, especially of the South, worked.

And then this idea also played an important role in the New Deal, where FDR thought, along with a couple of generations of populists and progressives who had come before him, that if we were going to have a republic that survived, we needed to have a new, much more robust federal government that was going to be able to respond to the broad economic dislocation needs of the people. And that, in line with the arguments of various populists and progressives, would be able to restrain the economic power of the wealthiest corporations and individuals who were trying to control the political economy for themselves.

So this tradition has a long history. The book is a little long because we thought, "Wow, there's so much here that people don't know. We have to illustrate how much these arguments about constitutional political economy really were part of our tradition." But then something mysterious does happen. You alluded to this question of how this tradition goes away.

In the post-war 20th century world, this tradition really recedes for reasons we can talk about, but that I think have to do both with the demise of political economy and also with the rise of the Supreme Court as everyone's sort of favorite institution for deciding questions that are constitutional questions. The tradition that I'm describing in most of the book is not really a tradition of arguments in the Supreme Court—a little bit, but mostly not. Mostly it's arguments in Congress and in state legislatures and out in the public sphere.

And once you get the idea, in the late 20th century, especially after *Brown v. Board*, that it's the Supreme Court that's going to be deciding major constitutional questions and that's really what any constitutional argument is addressed to, then the tradition that we're talking about in the book starts to seem less relevant.

Steven: Yeah, that's very interesting because, of course, in my generation, which is, you know, my childhood is the second half of the Warren Court and, you know, going through the 70s and 80s, I have always had a perspective—not that it was well thought out—that the court was the guarantor of this whole range of rights and that they were removed from the political domain. And so part of what I'm taking from your observations is that constitutional interpretation doesn't just matter for decisions the court makes—it matters for how legislators, how the government makes decisions, and by implication how public opinion evolves to think about questions of oligarchy, etc.

Joeey: Yes, there's no way out of major questions of political economy being political. And, you know, they are essential to what we want politicians—what at least I would want politicians to be debating openly. And this was the way that it went, you know, through the whole 19th century. Fights about tariffs and should there be an income tax and antitrust and labor law—all of this stuff was understood as constitutional fights, and they were taking place mostly in legislatures.

But the more recent understanding, really from the era that you are talking about from the late Warren Court, I think part of what happened is southerners opposed desegregation so forcefully and with such arguments about how they don't have to follow the court that liberals and northerners started to say, "No, you do have to follow the court. The Supreme Court is the only one who gets to say anything about what the constitution means." And that argument, I think, has

somewhat impoverished a whole set of rich traditions of argument that we all used to make on all sides—I mean, on all sides of major questions about political economy—that now, I think, today are starting to reappear.

Steven: So while you focus a bit away from the Supreme Court, I think the listeners would be interested in how your arguments interact with sort of the conventional debates about originalism, for example.

Joe: When we think about how courts should do constitutional interpretation, our answers are often methodological, and the success of originalism as a political movement and as a force within American law over the last 40-50 years has been to say, "Here are methodological commitments. They spit out a variety of interpretive conclusions, and if you want to argue with us, you have to do so on the level of interpretive methodology."

But in reality, the conservative political fight against the Warren Court, and indeed the fight that gave rise to originalism itself, always had strong political economy roots. There was a view that the court had become too friendly to unions and too friendly to individual rights and insufficiently protecting the rights of corporations and too friendly to broad taxation. And, you know, there's a whole raft of things that animated the successful conservative political revolution against the Warren Court.

And I think today, because that side has been so successful, we can all begin to see that it was all political economy all the way down on all sides the whole time, and that originalism is an interesting tool. Everybody agrees that the original meaning of text is one part of interpretation, whatever—you can get to a lot of different conclusions with it, and there's a lot of other important sources of meaning as well and strategies for interpreting the constitution.

We're actually all in practice, I think, pluralists about interpretation, including the conservative justices. But what I hope that we can increasingly see in the 21st century is that there are underlying views about political economy that animate what the political parties are arguing about the constitution and that affect who they're putting on the court. And those views, I hope, because they're more exposed now, because the conservative ones have been so successful lately, can help us have a debate that looks a little more like the debates we used to have for most of American history, in which we can all argue about, well, what would be the kind of constitutional interpretation that we want? And this is in part a question for politics, not just a question for nine people in robes.

Steven: So might you highlight some of the ways you're discussing in the book for operationalizing the democracy of opportunity?

Joe: Absolutely. Some of it is about building a stronger constitutional foundation for a lot of public policies that you may find familiar—and sort of these are good policy arguments anyway. Like let's have robust social insurance. This is FDR's constitutional vision. Let's break up concentrated power through more robust antitrust. Let's think about how the conversion of economic into political power works and try to disrupt the mechanisms that allow concentrated economic power to become concentrated political power and vice versa.

We should think differently about the constitutionality of how we tax wealth. There's a lot of debates now about if Congress enacted a wealth tax, would that even be within their constitutional powers? I would argue that in the democracy of opportunity tradition, it's not just a question of power—Congress has an obligation to do that sort of enactment in order to build in the long run a democracy of opportunity.

We can change how we think about corporate law and corporate governance, you know. In earlier iterations of American history, debates about constitutional political economy included a lot of arguments about how we should govern corporations whose charters come ultimately from the people through politics. This idea that we should have exclusively shareholder value-maximizing corporations—that's a very novel idea whose roots in American constitutional history are very weak.

And anyway, there's a lot—as you can see, I'm just touching in like one sentence on a lot of different areas—because there's a ton that we could do differently. And I think the big theme is that in a lot of these areas, most people viewing these debates today think about them in relation to the constitution only in terms of does the constitution restrain Congress's ability to do some of these egalitarian things. But I think a better way to think about it, that's more consistent with the way this has been argued about before in our history, is the question: what is Congress obligated to do in order to maintain a republic? And that can cut against some of the arguments on the other side about constraint.

Steven: One of the themes in your writing involves the importance of resurrecting political economy, and dare I say it, as opposed to economics. It's a framework for both positive and normative considerations of inequality. So I just hope that you can elaborate.

Joe: Yeah, I mean, as you can probably guess, I'm not actually opposed to economics.

Steven: You're right, I know.

Joe: But you're right that there is something important that got lost in the sort of mid-20th century shift that I think was very related to the ideological currents of the time and the Cold War shift within economic thinking toward a more, you know, more scientific-looking, more math, less institutional, less focused on the interaction between economics and politics type of science. And also that was less interested until quite recently in inequality.

And economics itself is now changing and picking back up some of the old themes that are part of this, I think, incredibly rich, interesting, important science of political economy that is sort of the, you know, the Pangea of social sciences before we split it all up into "this is sociology" and "this is economics" and so on, and "this is political science."

Because to me, the part that we most need to recover is the part where political science and economics intersect. The basic insight of political economy is that our economic life and our political life are deeply intertwined in both directions. There are causal arrows pointing all over the place between the ways that we structure things politically and how we structure things economically.

And so I think as a kind of future research agenda, all of those connections are particularly helpful areas for us to think about as we deal with what is—I think many people have described it this way persuasively—as a new Gilded Age, where once again we have concentrations of economic power that are clearly giving some people quite outsized political power. And the way to analyze that is to think of frameworks that incorporate both the economic and the political. So I hope to see more of that.

Steven: So let me at least do a pitch for the Harris School of Public Policy, which has a very vibrant and distinguished political economy group, and in fact, with political science, established a political economy PhD a couple of years ago. So I think the objective, at least, is proceeding.

Joey: Yes, that is exciting.

Steven: Joey, I can't thank you enough. This is just a delightful conversation.

Joey: Thank you. This was great.

Steven: The Inequality Podcast is a production of the Stone Center for Research on Wealth Inequality and Mobility at the University of Chicago. I want to end the podcast with thanks to the people who really make it happen. First, I want to express deep appreciation to our producer and engineer, Shane McKeon, who oversees every aspect of the process of creating these podcasts and really does just a splendid job. Second, I'd like to thank our Assistant Director, Nina Gray, for production oversight and the role she plays in bringing the podcast to fruition. And finally, I'd like to thank Grace Kolovo, who's the executive director of the Stone Center, who basically does everything in terms of making the center work. You may get in touch with us at StoneCenter@uchicago.edu. Thank you so much for listening.

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