What Defines Merit with Regards to Equality of Opportunity?

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A common justification for the selection of candidates to specific positions of advantage is based on concepts such as merit or desert. It is not uncommon to hear explanations such as: "we hired this candidate because they were the most deserving of the job," or "the particular student chosen for this scholarship was the worthiest candidate." However, there is little consensus as to what defines merit or desert in these contexts. In this essay, I will defend Tom Scanlon's argument for the view that for merit to be a valid basis of selection for positions of advantage, it must be defined in the 'institution-dependent sense'. This means that merit or talent must be based on how well an individual fits the goals or aims the institution plans to promote, provided that the institution's aims are normatively justified.

I will do this by first analysing how institutions generate inequalities in a just fashion. Then, I will move on to show that these inequalities must be distributed according to the institution-dependent definition of merit. After assessing the logical strength of Scanlon's argument, I will perform a real-world analysis of the implications of the institution-dependent definition of merit on equality of opportunity, in the context of affirmative action programs. Lastly, I will look at how Scanlon assesses potential problems with the institution-dependent definition of merit and provide some of my own potential solutions. All of this will cumulatively show that T.M. Scanlon is correct in asserting that for merit to be a valid basis of selection, it must be defined in the institution-dependent sense.

T.M. Scanlon views equality of opportunity as the effective response to a moral objection to inequalities found in society. This effective response incorporates three levels: institutional justification, procedural fairness, and substantive opportunity; each of which builds upon one another.[1] The goal of this paper is to effectively support the

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[1] Scanlon 54

justification for how individuals are justly selected for positions of advantage (falling under the level of procedural fairness). To achieve this goal, I will begin by first discussing, insofar as it is instrumental to the overarching goal of this essay, how an institution can be justified in creating inequalities.

The scope of this essay will deal primarily with positions of advantage created or provided by a society's institutions (e.g., a country's education system, or an employer's hiring policies). For an institution to generate inequalities in a morally permissible way, it must do so in a way that all members of the society would agree would produce a favourable outcome while stripped of their own personal biases. To do this, individuals would have to be oblivious to what their position[2] in society would be. This idea was first put forth by John Rawls with his conception of the hypothetical *original position.* According to Rawls, the principles of justice will be the principles chosen by any individual while behind the veil of ignorance, where "no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances."[3] In this hypothetical *original position*, individuals make a normative claim about what the principles of a just society *should* contain. From this, it follows that "since all are similarly situated and no one is able to design principles to favor his particular condition, the principles of justice are the result of a fair agreement or bargain."[4]

According to both Rawls and Scanlon, the basis for just institutions is derived from this *original position*. This provides a strong theoretical foundation for the claim that a just institution can generate inequalities, provided that this inequality would be agreed upon by the individuals of a society that are behind the veil of

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[2] "Position" in this sense deals with any sort of characteristic in which an individual's perception of justice is influenced. This includes, but is certainly not limited to economic standing, historical background, physical features/handicaps. This description is found in Rawls, J. *A Theory of Justice [Revised Edition]* P. 11

[3] Rawls J. P. 11

[4] Rawls J. P. 11

ignorance. If unbiased individuals can agree that the inequality created by an institutions goals or aims *should* be part of a just society due to the benefits that it provides, then from a standpoint of justice, this institutional inequality is justified.[5] This is rather intuitive and can be seen when looking at the following example, which will be referred to throughout the text as the *teacher's example*. If a society benefits when the education system employs adequately trained teachers (e.g., by having a more dependable and sophisticated education system resulting in a life prone to enlightenment, as well as improving the stock of human capital in an economy), then due to the benefits brought to society by the occupation, a teacher can be justifiably awarded a higher salary than other occupations which do not provide these benefits to the same extent or do not provide these benefits at all.

When looking deeper into this Rawlsian argument, a more implicit element comes to life. In addition to institutional inequalities being justified based on their benefit to society, inequalities are actually *needed* to incentivize individuals to complete the plethora of work needed to develop their talents and handle difficult and demanding occupations. For this reason, society must be constructed in such a way that provides rewards to these individuals for the work they have put in. If individuals were provided the same financial incentives (wages) for two jobs, one that is incredibly difficult and stressful, and one that is mundane and simplistic, intuitively it seems that the majority of individuals will choose the second option. Using the *teacher's example*: the profession of teaching is an art, which requires the cultivation and refinement of specific skills and talent. This requires a lot of effort and upfront financial costs. For these reasons, society must incentivize the teacher position (which is typically done through providing a financial advantage) to ensure that individuals will indeed develop these talents. Contrast teaching with delivering newspapers and this argument becomes clear. This provides another level of moral justification for unequal positions of advantage.

It therefore follows that if institutions creating certain inequalities are justified or even vital, given that they provide society

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[5] Although this claim is not explicitly stated, this idea is easily deduced from the statements made on Rawls J. P. 11-12 and Scanlon, T. M. P. 56

with particular benefits, then it must be the case that these unequal positions are filled in a way that actually results in these benefits.[6] This is the core concept for what Scanlon defines as *the institutional account of procedural fairness*.[7] This is seen intuitively as necessary conditions within an argument are transitive.[8] Using a continuation of the *teacher's example*, we can verify this concept. It has already been morally justified for a teacher to be provided an unequal (economic) benefit as a result of their specific position.[9] Now, according to Scanlon, for these positions of advantage to be justifiably fulfilled, society must actually reap the benefits (to the fullest extent possible) that provide the basis for the position of economic advantage to teachers. Without choosing teachers that provide society with the benefits of having a more dependable and sophisticated education system (along with the further benefits resulting from this), there is no justification for teachers to be awarded a position of unequal advantage.

Scanlon is then able to assert that if the unequal positions of advantage are only justified when individuals with the relevant talent fill these positions, then rejecting those who are untalented is completely justified.[10] This relies on the rationale provided in the previous three paragraphs. If an individual fails to possess the relevant talent necessary to fill a certain position of advantage, the benefits to creating this unequal position will not be realized, and thus there is no longer justification for the position of advantage. Returning to the *teacher's example*, if the educational institutions of a society were to select individuals without the talent or training to be an adequate teacher, then society would not benefit from the education being

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[6] Scanlon, T. M. P. 56

[7] Scanlon, T. M. P. 56

[8] This is the basis for the proof of the valid argument form "Hypothetical Symbolism" in formal logic. This argument's validity is proven with formal logic in the appendix at the end of the essay.

[9] There is much debate on whether both teachers in primary and secondary education, as well as post-secondary professors really do possess a position of economic advantage in current Western societies, but this goes beyond the scope of this essay.

[10] Scanlon, T. M. P. 58

provided, and teachers being awarded a position of advantage would no longer be justified.

Now that it has been proven that unequal positions of advantage are justified only if talented individuals are selected for these positions, all that is left is to define exactly what talent is in this context. An important corollary resulting from the previous paragraph is that talent in the relevant sense for selection does not only regard the specific goals of the institution, but also the ways in which the institution is organized with regards to its means of achieving these goals.[11] Without the dimension of institutional organization, the premise of talent is no longer effectively defined, and the argument justifying positions of advantage based on merit no longer holds. Using the *teacher's example* to further highlight this point, imagine a teaching position where one is required to teach the French language. For this position, talent would require an understanding and proficiency of French. However, if this course was only taught in English, then French proficiency or understanding are no longer relevant attributes of talent in this context. Without taking into account the means in which an institution achieves its goals, a position of advantage could be awarded to an individual who will systematically fail the goals of the institution, which then results in the position of advantage being unjustifiable.

By relying on the notion of Rawls' difference principle, Scanlon is able to create the institutional account of procedural fairness that is theoretically and intuitively valid. From this, Scanlon is able to conclude that "what counts as talent (i.e. a valid basis for selection) depends on the justification for the institution in question, and the nature of the position [of advantage] within it for which individuals are being selected."[12] This means that the definition of merit or talent that is relevant as a basis of selection for positions of advantage is dependent on how well an individual fits the aims that the institution plans to promote, given the way the institution is assembled to achieve its aims. All of this is only true provided that the institution's aims are justified from a normative perspective. This is

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[11] Scanlon, T. M. P. 60
[12] Scanlon T. M. 59

what Scanlon defines as the institution-dependent definition of merit.[13]

Although the conclusion above is justifiable on the grounds of both logic and intuition, the conclusion has very strong implications for the procedural fairness subsection of equality of opportunity. With commonly known applications of procedural fairness in today's society being university admissions or hiring procedures, there is a clear reason as to why this idea is not simply agreed upon by philosophers and non-philosophers alike. Given that Scanlon's account of institution-dependent procedural fairness coincides with the description of formal equality of opportunity[14], there exist few intuitive objections associated with it in much of Western thought; some of which will be discussed below.[15]

The first and most obvious objection to institution-dependent procedural fairness and thus to the institution-dependent notion of merit, in my opinion, is that both rely too heavily on the aims of the institution in question. This objection proposes that an institution with normatively justified goals could act in accordance with Scanlon's institutional-dependant notion of procedural fairness, while simultaneously disfavouring a group of people in a morally unjustifiable way. This idea is exemplified by Ronald Dworkin, with his example of a law school in the time of segregation. Dworkin states

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[13] Scanlon T. M. 59
[14] According to the Stanford Encyclopedia of Philosophy, "Formal equality of opportunity requires that positions and posts that confer superior advantages should be open to all applicants" (Arneson, R. *Equality of Opportunity* § 1 Paragraph 3). Given that "Applications are assessed on their merits, and the applicant deemed most qualified according to appropriate criteria is offered the position" (Arneson, R. *Equality of Opportunity* § 1 Paragraph 3), it is clear that Scanlon's account of institution-dependent procedural fairness is consistent with this definition.
[15] The concept of "all positions open to all applicants" and "careers open to talents" are ideals grounded in formal equality of opportunity (Arneson, R. *Equality of Opportunity* § 1 Paragraph 3). These ideals also underpin most of Western capitalist societies (Yang, Z. 2012. *Capitalism and Equal Opportunity)*. Therefore, it seems that there is not an abundance of intuitive refutations of the concept of formal equality of opportunity, and thus Scanlon's institution-dependent procedural fairness, in Western thought.

that a law school in the 1940s could have argued that "its purpose is to
provide lawyers who would contribute to the state's economy, and
that admitting black students would not contribute to this aim, since
no law firm would hire them."[16] This claim puts a lot of pressure on
the ramifications of Scanlon's theoretical framework for merit-based
selection as the aim of the institution. The law school providing
lawyers that will contribute to the American economy is justified and
choosing to only admit students that will fulfil this aim is also justified
according to Scanlon's institution-dependent notion of procedural
fairness. Dworkin then presses the argument that according to
Scanlon's definition of merit, all applicants of colour would be
justifiably rejected on the grounds that they do not possess the
relevant characteristics (talent) to contribute to the goals of the
institution. Goals which have been deemed to be normatively justified.

However, Scanlon points out that Dworkin seems to miss
the mark. According to the argument for institution-dependent
procedural fairness, the institution's aims *must* be justified from a
normative perspective. This means that a society must believe that the
institution's goals should be implemented, and this belief would be
derived from the *original position,* where no personal biases of any
kind exist to contaminate this normative judgement.[17] If this is not the
case, then a position of advantage cannot be justified.[18] Scanlon then
concludes that it is simply impossible to argue that an institution's
goals can justify exclusion based on the presumption of social
inferiority.[19]

After Scanlon refutes the idea that heavy reliance on the
aims of the institution in question provides a basis for unjust
discrimination, he goes further to provide a positive argument that the
institution-dependent account of procedural fairness can actually
"open up the possibility of some flexibility in the criteria for selection
that are compatible with formal equality of opportunity, pushing

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[16] Dworkin R. *Taking Rights Seriously* P. 230 Found in Scanlon T. M. P. 62.
[17] Refer back to page 4 of this essay for further discussion of the *original
position*.
[18] Scanlon, T. M. P. 62
[19] Scanlon, T. M. P. 63

beyond a narrow understanding of merit."[20] Scanlon is then able to show that certain affirmative action policies in hiring and education can actually help further the legitimate goals of these institutions in a just and effective way while following the institution-dependent notion of procedural fairness and merit. Take the example of hiring university teachers. The aim of the educational institution is to hire teachers which will foster the intellectual development of their students. Students are open to attend schools regardless of their race, gender, or origin, and thus schools are multicultural and gender diverse places of learning.[21] Beliefs about who can succeed in particular roles is heavily dependent on who typically occupies these roles.[22] It is clear that a multicultural and gender diverse school with only white male teachers will be failing to foster beliefs that all cultures and genders are indeed capable of succeeding in these positions of advantage. This will result in the inability to foster the intellectual development of the students at the school to their fullest extent. In situations like this, it is shown that affirmative action programs which put individuals from previously (or even still) excluded groups into certain positions of advantage will actually further justify institutional aims, using the institution-dependent notion of procedural fairness and merit.[23]

When deciding between hiring two teaching candidates: a white male (the historic majority placeholder for this position[24]) or a black woman (historically excluded group based on false presumptions of social inferiority[25]) with nearly identical resumés, Scanlon's account of institution-dependent procedural fairness would suggest that the most talented individual would be the one to succeed

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[20] Ibid

[21] This can be grounds for debate but lies beyond the scope of this essay. I use this as an assumption in the particular example.

[22] Scanlon, T. M. P. 63

[23] Howard, J. *The Value of Ethnic Diversity in the Teaching Profession: A New Zealand Case Study P.* 5

[24] University Affairs [Canada]. 2020. *A History of Canada's Full-time Faculty in Six Charts.*

[25] University Affairs [Canada]. 2010. *Racism in the Academy.*

most in fostering the intellectual development of the students at the school. It has been proven in numerous empirical case studies that teacher diversity fosters an environment more conducive to learning for all students.[26] Therefore, according to the institution-dependent notion of merit, the black woman should be the candidate hired for the teaching position.

However, there are limits to the reach of these affirmative-action policies. According to the institution-dependent notion of procedural fairness, affirmative action is only justified as a transitional measure.[27] This is shown through the hiring example above. If the school follows the hiring policy to systematically always hire women or individuals of racial minority groups, there becomes a point where no white or male teachers are employed at the school. When this point is reached, the affirmative action program has overshot its goal, and now the same issue that enacted the affirmative action in the first place (a lack of teacher diversity) has been caused by its overuse. There are also cases in which the affirmative action policy in fact does not help the institution better fulfil its aims. In either case, according to the institution-dependent notion of procedural fairness, the hiring policy is actually not justified.

This example shows not only that the institution-dependent notion of procedural fairness fails to contribute to the perpetuation of exclusion or presupposition of social inferiority for any given group, but as a matter of fact does the opposite. The institution-dependent notion of procedural fairness provides a valid foundation for affirmative action policies, proving further that T. M. Scanlon is correct in asserting that for merit to be a valid basis of selection, it must be defined in the institution-dependent sense.

The last objection to the institution-dependent definition of procedural fairness and merit discussed in this paper deals with pragmatics. The pragmatic objection asks what constitutes the adequate amount of effort in the selection process according to the institution-dependent definition of merit and procedural fairness. What

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[26] Howard, J. *The Value of Ethnic Diversity in the Teaching Profession: A New Zealand Case Study P.* 5

[27] Scanlon, T. M. P. 67

is the minimum amount of candidate research needed for the institution-dependent justifications to hold? This is a very difficult question to answer, and in fact Scanlon does not provide a definitive answer. Scanlon states that due consideration must not be determined on the grounds of economic efficiency alone.[28] The rationale that additional effort in the selection processes is justified up until the point where the marginal cost of more effort exceeds the marginal benefit that would be realized by the institution by providing this extra consideration is not enough for Scanlon. Where to draw the line, I believe cannot be an industry-standard, but instead a floating range dependent on how crucial the position is to furthering the institution's aims. My rationale for this is simple: there must be a direct correlation between the minimum level of consideration for a position of advantage and the amount of control the position has with regards to the institution's aims.

Using the hiring example applied many times in this essay, one of the main aims of the educational institution is to foster the intellectual development of the students at the school. The teachers hired by the school will have a very high level of control over this, and thus the level of effort in selection for teachers must be very high. However, for janitorial staff who will have little to no control over this aim, the level of acceptable consideration can be lowered proportionately to their level of control. Although I will not provide an equation to satisfy this proposal, I believe this argument can be used to spark further analysis and development of this topic.

An issue associated with this line of reasoning deals with the fact that in most institutions, each selected position fills a specific institutional aim, and thus it is very difficult to rank these varying goals of an institution, especially if they all work together to provide a common overarching goal. For example, there is much to argue that janitors indeed contribute greatly to the overarching institutional goal of fostering intellectual development of the students at the school, as students will be more successful in a clean and safe school environment. It seems that janitors then have quite a bit of control over the aims of the educational institution. Now it seems that the

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[28] Scanlon, T. M. P. 67

selection process for the janitorial position must be very thorough as well. The same can be said about the contribution of workplace organization that secretaries provide for schools. It is now very hard to assess exactly which position deserves more consideration and effort put forth in the selection process.

Another concern of this nature is the determination of the *ceteris paribus* effect of different positions on the overarching goals of the institution. It is almost impossible to determine the control secretaries alone have on the institutional goal of fostering intellectual development of the students at the school. An untalented secretary adversely affects the janitorial staff and teachers, who also contribute to how well the institution is able to fulfil its goals (the opposite also being true). All of this makes for a difficult description of what determines due consideration with regards to the institution-dependent notion of procedural fairness and merit.

By relying on the notion of Rawls' difference principle, Scanlon is able to create the institution-dependent definition of procedural fairness and merit which is both intuitively appealing and deductively valid from a position of sentential logic. After assessing potential objections, Scanlon is able to show that the institution-dependent notion of procedural fairness does not contribute to the perpetuation of exclusion or presupposition of social inferiority for groups, but indeed it does the opposite. All of this allows me to conclude that Scanlon is correct in asserting that for merit to be a valid basis of selection, it must be defined in the institution-dependent sense. The last section of this work is designed to spark further discussion and analysis to the unanswered question of what constitutes due consideration for selection when dealing with candidates for a position of advantage.

Appendix A:
Logical Form of the Argument for the Institutional-Account of Procedural Fairness

Based on the argument found on page 4 of the text, we can display the logical form using sentence constants.

I = Unequal positions of advantage (inequalities) are justified

B = Providing society with benefits

T = Selecting talented individuals for the positions of advantage

We can then symbolize the argument as follows:

Unequal positions of advantage are justified only if society is provided with benefits:

I ⊃ B

And, providing society with benefits occurs only if talented individuals are selected for these positions of advantage:

B ⊃ T

Therefore, the generation of unequal positions of advantage are justified only if talented individuals are selected for these positions:

I ⊃ T

Logically, then:

    1.   **I ⊃ B**
    2.   **B ⊃ T**⎯⎯⎯⎯⎯⎯⎯⎯
    ∴ I ⊃ T

This is further symbolized by the following logical form:

    3.   **p ⊃ q**
    4.   **q ⊃ r**⎯⎯⎯⎯⎯⎯⎯⎯
    ∴ p ⊃ r

This (and all arguments) can be set in the form of an if-then statement, named the *conditional form*. By assessing the truth-value of this conditional form, it is possible to determine the validity of the argument.

[(p ⊃ q) ·(q ⊃ r)] ⊃ (p ⊃ r)

Logical theory states that for an argument to be valid, it's conditional form must yield a tautology, which is defined as a statement that is

true, and will always be true on the basis of its logical form.[29] This means, when trying to set the conditional form to be false, a logical contradiction must arise. To test whether this is the case, the analysis of the conditional form is completed as follows:

The only way for a conditional argument form is false is when it follows the form $T \supset F$.[30] This means that the conditional form must have the following assigned truth values:

[(p ⊃ q) ·(q ⊃ r)] ⊃ (p ⊃ r)

|_____| |_____|
     T   **F**

This implies:

[(p ⊃ q) ·(q ⊃ r)] ⊃ (p ⊃ r)
                       T **F**

|_____| |_____|
     T   **F**

The truth-table for · states that a conjunction is only true if both component parts are true.[31] This implies:

[(p ⊃ q) ·(q ⊃ r)] ⊃ (p ⊃ r)
 T   **F**   **T** **F**
 |_____| |____|
   T   **T**
 |_____| |_____|
    T   **F**

For (q ⊃ r) to be true, it must follow the form $F \supset F$, therefore, q is false. However, this forces (p ⊃ q) to then be false. This proves that trying to make this argument's conditional form false forces a contradiction. Therefore, by the rules of formal logic, this argument is indeed valid.

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[29] Housman et al. *Logic and Philosophy: A Modern Introduction*. P. 73

[30] Housman et al. P. 55

[31] Ibid

[(p ⊃ q) ·(q ⊃ r)] ⊃ (p ⊃ r)
  T   F   F   F   T   F
 |_____| |____|
   T X   T
|_____| |_____|
        T X   F

It is also important to note that the argument form [(p ⊃ q) ·(q ⊃ r)] ⊃

(p ⊃ r) is a valid argument form defined as "hypothetical syllogism"
in the formal logic literature. This provides further evidence
supporting the validity of this argument (provided that the premises
are true).

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