

ARGUMENT

On Merit

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"[A]ll men agree that what is just in distribution must be according to merit . . . ," Aristotle said.¹ Conceding that "merit" was ambiguous,² he said it involved excellence, an individual's intellectual and moral virtue.³ Justice required the distribution of honors, wealth, and safety in proportion to excellence.⁴ Today, merit is still considered a preferable, if not unquestionably ideal, method of regulating the distribution of opportunities.⁵ For purposes of this discussion, merit refers to that combination of qualities, experiences, and achievements which, in the eyes of those in American society who set the standards, constitutes excellence and thus makes one deserving of access and advancement in employment and education. Despite its perennial endorsement, the distribution of opportunities on the basis of merit is unfair. Merit is not a socially neutral concept. Distribution on its basis is therefore inherently biased, procedurally and substantively.

Merit is considered an appropriate method of distribution because it is thought to be fair.⁶ This is best illustrated by comparing our meritocratic method of distribution with two other methods that are considered unfair. Despite actions to the contrary, our society regards the

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1. Aristotle, *Nicomachean Ethics*, Book V., at 112 (W.D. Ross trans. rev. ed. 1980).
2. In his discussion of merit, Aristotle noted that "[men] do not all specify the same sort of merit, but democrats identify it with the status of freeman, supporters of oligarchy with wealth (or with noble birth), and supporters of aristocracy with excellence." *Id.*, at 112-13.
3. *Id.*
4. *Id.*
5. See, e.g., *Regents of University of California v. Bakke*, 438 U.S. 265, 360-61 (1978) (Brennan, J., White, J., Marshall, J., and Blackmun, J., concurring in part and dissenting in part) (classification on the basis of immutable characteristics is "contrary to our deep belief . . . that advancement sanctioned, sponsored, or approved by the State should ideally be based on individual merit or achievement. . . ."); Equal Pay Act of 1963, 29 U.S.C. § 206(d)(1)(ii) (1976) (Forbids employers from paying men and women unequal wages for equal work, except if such payment is made pursuant to a "merit system").
6. Meritocracy is also considered an efficient method of distribution. It selects and advances those who can do what is to be done. The *value* of what is done is not questioned.

distribution of opportunities in proportion to a person's wealth or on the basis of a person's race or sex as unfair. The former is considered unfair because it restricts access to educational and employment opportunities on the basis of something that presupposes individual or familial access. In other words, the oligarchical theory of distribution is based on something that has been previously distributed, perhaps unfairly, by social policies. Particularly in a society that requires a certain level of poverty, wealth is structural, not individual. The latter is considered unfair because race and sex are immutable characteristics, for which individuals are not responsible. Treating people differently on the basis of something they can do nothing about is considered unfair. Sex, race, and wealth also have nothing to do with individual capacity. Distribution on the basis of merit, its advocates contend, does not suffer from these deficiencies. Merit is not distributed by existing social institutions like wealth or randomly by nature like race or sex, but instead is something that is achieved by individuals themselves according to their capacities.

I reject this conclusion. The meritocratic method of distribution, as it exists today, suffers from all of the deficiencies identified in the alternative methods of distribution discussed above. Indeed, it is these methods, stripped of their substantive identifiers. Merit is a standard for distribution that presupposes access to the conditions for achieving merit, access which is systematically denied on the basis of sex, race, and class. More deeply, merit as this society defines it has nothing to do with individual capacity generally; it has to do with the capacities developed in and valued by white men. The meritocratic method of distribution is even more heinous than those previously discussed because it masquerades as fair, neutral, and socially unspecific, and is therefore resistant to attack.

Accept, for a moment, this existing concept of merit as given. Access to the conditions for achieving this merit is systematically denied to women and people of color. Those who say this is not true narrowly define such access as the permission to participate in merit-gathering activities. In other words, if women and people of color are not forbidden from seeking merit, they have access! According to those who embrace this position, that access is not only present, but is increasingly protected by laws forbidding its denial on the basis of sex or race. This conclusion is unrealistic. Rules prohibiting the denial of access on the basis of sex or race do not preclude those regulating such access from exercising their discretion consonant with their values. In addition, truly equal access has to mean more than simply the opportunity to be a white man. Access necessarily includes not only the permission to participate, but the liberty and the ability to do so *as* women and people of color.

Women and people of color lack the ability to participate because they have been denied a validated opportunity to develop and illustrate their capacities as women and people of color, hence as individuals. This denial has been effectuated in a number of different ways. Women and people of color are denied an equal chance to develop merit as a result of attendance at elementary and secondary schools that erase their cultures and heritage and ignore their realities, thus delegitimizing their life experiences. They are excluded from information systems that encourage and support participation in merit-gathering activities. As the poorest members of society, they lack the resources to participate. Their participation is limited by a socialization process that creates a class that does not seek to participate because they identify such participation with white men.⁷ Their lack of participation is virtually assured by a society that not only denies these groups the respect that builds self-image and nourishes capacities, but also generates and perpetuates self-hatred and a belief in their own inferiority.

More fundamentally unfair is the inherent bias in the concept of merit itself. This is a result of what Andrea Dworkin calls the power of naming; "[t]his power of naming enables men to define experience, to articulate boundaries and values, to designate to each thing its realm and qualities, to determine what can and cannot be expressed, to control perception itself."⁸ Merit is defined by white men to reward what white men become. Merit, as we know it, explicitly values particular experiences and abilities—the ones developed by white upper class men—and therefore implicitly devalues others. They define the content of the standard according to capacities their situation finds valuable and name it "excellence." Meritocracy calls those who conform to this standard "equal." Those who are different, it names "unqualified." The relative worth of particular experiences is not my issue; the ability of white men to control the determination of their relative worth is. The content of the notion of merit, in and of itself, excludes and devalues women and people of color. The distribution of opportunities on that basis necessarily excludes and devalues them also.

Proponents of the merit system consider its abrogation or modification equivalent to the creation of a preference for those less-qualified individuals. They cannot see that the standard is tautologous with a particular outlook—that of white men. In short, they believe white men are superior. Preferential treatment, they argue, creates and maintains a stigma that certain groups are unable to achieve success on the basis of

7. K. Powers, *Sex Segregation and the Ambivalent Directions of Sex Discrimination Law*, 1979 Wis. L. Rev. 55, 98.

8. A. Dworkin, *Pornography: Men Possessing Women* 17 (1981).

their individual merit. In addition, they contend, such a preference is unfair to "innocent people" (white men) who are excluded because of the preference, even though they are qualified. These arguments are based on the assumption that any qualification on the merit system distorts its gleaming neutrality. They ignore the fact that the content of the standard of merit itself prefers white maleness; its abrogation or modification is necessary to eliminate that preference. The elimination of that preference is not unfair simply because those people who were disproportionately successful under the merit system are no longer preferred. A truly neutral method of distributing employment and educational opportunities will not sacrifice quality, simply homogeneity. Quality, it will redefine.

Distribution of employment and educational opportunities on the basis of merit continues to enjoy a reputation of impartiality. The near-exclusive selection of white men as possessors of merit and therefore as appropriate beneficiaries of such opportunities is not consistent with that reputation. The existing meritocracy is obviously biased. Until women and people of color have complete access to the conditions for achieving merit and to contribute to the definition of the content of merit itself, the meritocratic method of distribution will continue to favor white men, in spite of all intentions to be fair.