1. For Scanlon, claims of equality of opportunity are part of a complex, three-part reply to a complaint provoked by some particular inequality: that A has some good that B does not.

The first part of the reply is *Institutional Justification*. To answer the complaint, we need to show that a system that distributes that good to some but not to others is itself justified. For Scanlon, the justification will be, in particular, that the system benefits society. To be even more concrete, let’s say that this amounts to benefitting those worst-off in society. So we can restate the condition as: a system that distributes that good to *qualified* people benefits society. To be qualified is just to have traits (e.g. skill, ability to serve as a role model, willingness to accept undesirable posts, etc.) such that it benefits society to have a system that distributes that good to people with those traits. It is *not* to merit the good as a kind of “deserved reward.”

The second part of the reply is *Procedural Fairness*. We need to show that the fact that A but not B has the good arose from a process that was *sufficiently sensitive to qualifications* (sufficiently, that is, as balanced against the costs of greater sensitivity).

- What does “sufficiently sensitive” amount to when there are more qualified people than goods? Although Scanlon does not commit himself to this, let’s suppose for simplicity and concreteness that it requires a lottery: each qualified person should have equal (maximal) chances for the good.

- As Scanlon observes, violations of Procedural Fairness *can also* involve further wrongs. Not only may the process be insufficiently sensitive to qualifications, but moreover it may be *discriminatory*, participating in a pattern of social inferiority and exclusion. Or the process may *fail to follow the announced procedure*, in which case it is wrong in the way breaking a promise is wrong. But a violation of Procedural Fairness need not

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1 This point sweeps away piles of bad arguments. Consider:

We’ll also see a lot more of some of the hypocrisies common today. For instance, it’s pretty common to hear tenured economics professors at establishment schools espouse the relevance of liberal democratic policies—such as the social safety net. These same individuals, if asked to explain their choice of academic hires, or their choice of which students to push in the job market, often respond in rather harshly meritocratic terms. If a graduating PhD student does not have his job market paper ready by this fifth year of study, it’s because ‘that student didn’t have a strong enough work ethic,’ or something like that. That same professor will be very shy to apply the same kind of rhetoric to discourse about the safety net, for fear of sounding like a non-liberal critic such as, say, Charles Murray. When it comes to a lot of values issue—what people really believe in their daily lives—the gap between conservatives and liberals isn’t nearly as large as it might seem (Tyler Cowen, *Average is Over*, p. 231).

The “qualification” for being caught by the social safety net is, well, just being a citizen in free fall. It “benefits society” (constitutively, rather than instrumentally) for every such citizen to be caught. The “qualification” for an academic position is (among other things) capacity for teaching and research (which has at least as much to do with “work ethic” as with raw intelligence). It benefits society for only those with that capacity to hold those positions. There’s no hypocrisy.
involve these further wrongs. The process may simply be insufficiently sensitive to qualifications.

The final part of the reply is Substantive Opportunity. It needs to be shown that B cannot complain about the conditions he was given to acquire qualifications.

2. In the literature on “equality of opportunity” and in Scanlon’s paper, the good in question tends to be, roughly, a job (and the extrinsic and intrinsic rewards associated with a job). And indeed, some of considerations that Scanlon raises—e.g., about adequate education, specialized training—seem specific to cases where the good is a job.

However, there are many other inequalities that call for justification. Scanlon mentions economic inequalities deriving from entrepreneurship—patents and incorporation—and one might include in this category loans and government contracts. But there are also the economic inequalities deriving from more “passive” forms of economic “activity”: such as returns to inherited capital.²

Furthermore, there are also non-economic inequalities. There are exemptions from civic duties like jury service and the draft. There are the inequalities constitutive of criminal punishment: that some are incarcerated, while others are not. And there are the inequalities involved in representative government and other forms of political hierarchy: e.g., legislator vs. constituent.

Do all of these cases raise the same sorts of issues? Can they all be handled in the same way? In particular, can they be handled with the resources that Scanlon marshals in the case of jobs?

3. An important, although perhaps somewhat understated, theme of Scanlon’s paper is how far the concerns that underlie the three-part justification are matters of comparison or of competition.

My complaint about not getting some good is comparative, as I’ll understand it, when the complaint depends on the fact someone else got the good. Suppose I did not receive the medical treatment that you received. My complaint is provoked by a comparison, but it need not be based on one. I may not care that you got it. I might have raised the same complaint even if you had never fallen ill. I may just be upset that I could have been treated, but wasn’t.

² Indeed, if Thomas Piketty, Capital in the 21st Century (Harvard: 2014) is right, then differences in income and wealth from sources other than wages—especially inherited wealth—have been, in most historical periods, much more significant than differences from wages. That is, the gap between those who have to work and those who don’t has usually loomed much larger than the smaller differences among those who do have to work. (If you needed education to get ahead, then you were already too far behind to ever catch up.) It’s perhaps worth noting that, according to Piketty, the chief historical exception—a period in which such differences in income and wealth as there were could be more significantly attributed to differences in wages (at least of a sort that could be influenced by education)—was the three-decade period that ended shortly after A Theory of Justice was written.
My complaint about not getting the good has to do with *competition*, when my complaint depends not only on fact that someone else has the good, but also on the fact someone else’s having it *prevented* me from having it.

One kind of competition results from *mere scarcity*: there are more people seeking the good than there goods to go around.

- For an example of procedurally fair mere scarcity, suppose the job requires only a driver’s license, you and I both have licenses, and you are awarded the job on the basis of a coin toss.

Another kind of competition, which is suggested by Scanlon’s discussion of civil litigation, is what we might call *thresholdless* competition. Here, not only is there scarcity, but also there is no threshold of relevant factors such that the distribution of the good is insensitive to imbalances in those factors above the threshold. In short, it *always* pays to have more than the other guy.

- For a case of procedurally fair thresholdless competition, suppose that the job will be given to the person with the greatest skill (since any increase in the job-holder’s skill increases the benefit to society). Then, no matter how high our skills are in absolute terms, the job will go to whoever’s skills are better than the other’s.

4.

It’s natural to think that if I am not given a job, because of procedural unfairness, then I have a personal complaint about this, a complaint that others don’t have. On the view that jobs are deserved rewards, the complaint is straightforward. I didn’t get what I deserved. But what is my personal complaint on Scanlon’s account, in which procedural unfairness is nothing more or less than insensitivity to qualifications?

Suppose all of us do the same job, but you are better off than the rest of us in other respects. It’s known that if one of us, provided he had the right skills, were to take on a supervisory role, then the supervisor would be *much* better off and everyone else a little better off. We have a process in place meant to identify someone with the right skills, should he or she come along. You alone have the right skills. But the process is insufficiently sensitive to qualifications, and so it doesn’t give you the job.

It’s hard to see what your personal complaint is here. Granted, you could have been made better off, in a way about which no one could complain. But the rest of us can make the same complaint, and arguably with more force: you’re already better off than we are.

Someone might press this as a problem for Scanlon’s account (especially someone attracted to a desert-based view). But I don’t think that it is a problem. In such a case, I would say, you simply don’t have a special complaint.

By contrast, suppose there are two supervisory positions and two qualified people, you and I. I get one, but the other position goes unfilled, because the process is insufficiently sensitive to your qualifications. Here you do seem to have a personal complaint.
It would be troubling if Scanlon’s account could not explain this complaint. But it seems that it can. The complaint flows from a more general principle of equal treatment. No one is “noncomparatively” entitled to the benefit of holding the position (as one might be entitled to adequate medical care). However, if A is going to be given the benefit on certain grounds—namely, those stemming from the institutional justification—and if those grounds apply equally to B, then B should be given the benefit too. (Compare: Neither child is entitled to dessert, but if you give one child dessert, you had better give the other.) This would mean that, in contrast, say, to a desert-based view, the complaint about procedural fairness is essentially comparative. You don’t have a complaint about not getting the unfilled position. But you do have a complaint about not getting it when someone else, no more qualified, got such a position.

A similar idea might explain what I assumed for simplicity earlier: that, in cases in which there are more qualified parties than goods, the goods should be distributed among them by lottery. To fail to give equal chances might similarly be a failure of equal treatment.

5.
I turn now to Substantive Opportunity, which may be the most challenging part. Consider a stylized case. White and Blue have, as children, equal potential. By “equal potential,” I mean that at any moment in time we can counterfactually roll back the clock and say: If both had enjoyed similar conditions up until now, they would be performing similarly now. Suppose White’s parents give White additional education. Since White got additional education, White has better skills than Blue later in life. And since White had better skills, White gets a better job.

**Note that “Blue v. White” need not be a case of competition. It might simply be that, because Blue does not acquire the sort of qualification that White does, a job for which Blue would have been qualified just goes unfilled.**

Now Blue v. White appears to satisfy Institutional Justification and Procedural Fairness. Society benefits from giving a better job to White. But still it seems objectionable. And the objection might seem best explained by a principle like:

*Equal Potential*: Children with equal potential should have equal chances at a given job later in life.

This is a *Cliff’s Notes* version of Rawls’s principle of Fair Equality of Opportunity.

6.
Equal Potential poses practical problems. In order to ensure that Blue has the same chances as White, it seems that we must either match or limit much of what the Whites do for White. Worse, if this is a case of *thresholdless* competition, then we must match or limit *everything* the Whites do.

This may simply be impossible. It may be intolerable, given the interference it would involve in the family. And it may also be socially costly. Richard Arneson (ever focused on the bottom
line) presses this last point. The resources devoted to equalizing Blue’s chances might have instead been devoted to making someone even worse off than Blue—call him “Bottom”—better off.

There is also a theoretical problem. I’m not sure how far it troubles Scanlon. But it troubles me. What justifies Equal Potential? The principle can seem oddly fixated on one kind of deprivation or inequality—having to do with not getting a job for which one had the potential—to the neglect of other kinds.

First, there is the deprivation that may be price of satisfying Equal Potential. Recall Bottom, who is worse off because of the efforts to give Blue equal chances with White.

Second, Equal Potential has no problem with a child, Unlucky, who doesn’t get the better job simply because he lacks potential.

Finally, Equal Potential has no problem with other advantages that parents might give their children. For example, suppose the Hausers don’t send Jr. to private school, but save the money (it’s a lot of money, after all) and give Jr. the down payment for a house. Later in life, Hauser has no better job than Blue, but Hauser owns, whereas Blue has to rent. Why should it be less concerning (or at least differently concerning), if Hauser’s parents just give him the financial advantage directly, without laundering it, as the Whites do, through a diploma?

The inequality in Unlucky v. White clearly satisfies Institutional Justification and Procedural Fairness. Unlucky is not qualified for the job. But the same might be said for Blue v. Hauser. The institutional justification for permitting parents to give such gifts to their children, let us imagine, is that it gives them an incentive to save, in a context in which saving is chronically too low. Parents would not have the same incentive if they could only give gifts to randomly selected contemporaries of their children. So Blue is not, in the relevant sense, “qualified” for the gift from Hauser’s parents.

So this is what puzzles me: In the cases of Unlucky v. White and Blue v. Hauser, we’re content (or at least not as troubled or at very least not troubled in the same way) if Institutional Justification and Procedural Fairness are satisfied. But in the case of Blue v. White, we aren’t content. We feel that’s not enough. We feel that Equal Potential, or something like it, must also be satisfied. Why?

The answer is not, I think, that not getting a job has unique importance, say, because a job is a unique opportunity for self-realization. Hauser’s house-pride can also be a kind of self-realization. And in any event Hauser’s parents might have spent the money on spiritual retreats for Hauser instead. Blue doesn’t get those either.

Thus, it can seem as though the only way to explain Equal Potential is to view the chance to acquire qualifications as somehow something deserved on the basis of potential. While Blue doesn’t deserve Hauser’s house (no one does), and while Unlucky does not deserve White’s job, Blue does deserve the same chance to acquire qualifications.

8. Enter Scanlon’s different approach to Equal Potential, or to the line of thought that seems to drive us to it.

Scanlon turns our attention from jobs to earlier stages in the careers of Blue and White. There is the specialized training that qualifies people for better jobs. And before this specialized training comes what I’ll call “prior education.” This prior education serves two functions:

- A formative function: it develops skills on which that specialized training will build.
- An informational function: it provides evidence about what benefits society can expect from giving the student specialized training.

On the one hand, Scanlon suggests that just as there is a certain level of health care to which each citizen is entitled, there is a certain level of prior education to which each citizen is entitled. What this level is will depend, of course, on the importance of more or less education to those who receive it. But, presumably, the level will also depend on other factors, such as the resources that society can expect to summon for the purpose.

On the other hand, Scanlon suggests that if this same level of prior education is provided to everyone, then nothing else that might be done for a student can affect her absolute or relative qualifications for specialized training: that is, how much society can expect to benefit from training her.

We can thus speak of a level of prior education that is “adequate” in two senses. It is “adequate” in the sense that it suffices to avoid wronging the student; it meets her entitlement. And it is “adequate” in the sense that, if she receives it, then nothing else can affect her absolute or relative qualifications for specialized training.

9. With this, we avoid the theoretical problem. We don’t need to say that jobs are a reward for potential, or to rely on the idea that Blue’s denial of a job is special, because it robs him of a special route to self-realization.

Instead, we can derive Equal Potential from the universal entitlement to adequate prior education plus Procedural Fairness (at least with our simplifying assumption that, in cases with more qualified applicants than goods, equal qualifications have equal chances). We can say that if two children with the same potential don’t have the same chances at the same job later in life, then either one was not given adequate prior education, or there was procedural unfairness (either in selection for specialized education, or in selection for jobs). For if they both had prior education that was adequate in the second sense, then, given that they have the same potential, they would both have the same qualifications. And if they had the same qualifications, then, so long as there
was *procedural fairness*, they would have the *same chances* of getting what they are qualified for (specialized training or, later, a job).

In an anatomical spirit, it’s worth noting that the complaint about being deprived of an adequate prior education *may itself* be a complaint of procedural unfairness. To the extent that one has not received the * informational* benefits of an adequate prior education, “society,” as it were, has not done enough to inform itself of one’s qualifications. “Society” is like the lazy committee member who doesn’t read the application. And “society” can’t object that it was *sufficiently* sensitive, on the grounds that learning more about one would have been too costly. This is because “society” *already* independently owed one an adequate education.

10. Scanlon’s approach also promises to avoid the practical problems. We answer the relevant complaints so long as we do two things. First, we give everyone adequate prior education, which we ought to be doing anyway. Second, we ensure Procedural Fairness: that equal qualifications enjoy equal chances.

“But”—one might protest—“ensuring Procedural Fairness itself *involves* the practical problems. As we all know, the selection process for specialized training is sensitive to factors other than qualifications: in particular, the efforts of White’s parents to give White ‘polish’ or ‘connections.’ So to ensure Procedural Fairness we need to match or limit those efforts. And if this is thresholdless competition—if additional polish can *always* give one an edge—then the demands are going to be severe.”

However, Scanlon observes, this overlooks an alternative. We might make the selection procedure *insensitive to the efforts of White’s parents*. It’s only in the “non-ideal” case, Scanlon suggests, where we take it as given that the procedure *will be* sensitive to factors other than qualifications, that we would need to match or limit those efforts.

Happily, these steps are not obviously infeasible. They don’t require any interference in the family. And if we take them, then we can answer Bottom’s protest: “If you hadn’t devoted all those resources to equalizing Blue’s chances, there would have been more for me.” We reply: “What did we do for Blue? First, we gave him an adequate prior education, just as we gave you and everyone else. Second, we made the system proof from the Whites’ gaming. That hardly cost you anything.”

11. I find Scanlon’s approach to Substantive Opportunity attractive, and I hope it’s right.

A major question, though, is whether there is a threshold of prior education such that it will be plausible to say *both* that everyone is entitled to an education up to that threshold *and* that no education above that threshold can affect one’s qualifications for specialized training. Why think that there is a level that is “adequate” in both senses?

Suppose that Blue and White are given the prior education to which they are entitled, but White’s parents then give him additional education. Set aside the informational effects of this
additional education, which might invite charges of procedural unfairness. Why can’t White’s additional education have *formative* effects that better qualify White for specialized training: e.g., that make it the case that giving that specialized training to White will produce someone with more socially beneficial skills than giving it to Blue? In that case, there’s no *procedural* unfairness in giving the training to White.

It might be replied that what one is entitled to just is an education that cannot be improved in this way. In that case, Blue wasn’t given the education to which Blue was entitled. But why is that the definition, unless we are building Equal Potential into our notion of entitlement? That would land us back with the puzzle of how we justify Equal Potential. And how can we be sure that everyone is entitled to that, if what everyone is entitled to depends on a broader range of factors, including what society can muster through mandatory contributions, rather than voluntary contributions like those of the Whites? In any event, if giving Blue an adequate education requires matching whatever the Whites may do, then that doesn’t escape the practical problems.

So, if it’s not only possible, but also actual, that parental efforts can improve genuine qualifications for specialized training, and if we continue to be worried by the inequality between Blue and White, then we are stuck with the *practical* problems of ensuring equal chances. Again, that may be impossible or intolerable. And it would be, by hypothesis, costly. Self-serving though it may sound for the Whites to say so, the fact is that in giving White additional education, they are voluntarily contributing to making the worst off better off.

And even if is only possible that parental efforts can improve qualifications in this way, and if we continue to be worried by the inequality between Blue and White in such cases, then we are stuck with at least the *theoretical* problem. Why should the case of Blue v. White must be regulated by some further principle of justice, beyond those that apply to Blue v. Hauser and Unlucky v. White?

Perhaps the difference has to do with special principles governing competition. Hauser’s getting the house doesn’t prevent Blue from getting it. Blue wouldn’t have gotten it anyway. Similarly, White’s getting the job doesn’t prevent Unlucky from getting it. He wouldn’t have gotten the job anyway. By contrast, the efforts of White’s parents may prevent Blue from getting specialized training or a job that Blue would otherwise have gotten. And perhaps such competition must be regulated by additional principles, such as Equal Potential. I’m not sure I can explain why competition should call for additional regulation. (Is it because competition, in effect, licenses harming others?) But the element of competition at least distinguishes the cases.

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4 There’s another worry. Why can’t parents just cut out the middleman? Why can’t direct parental contributions to *specialized training itself* affect one’s qualifications for a job? Suppose White’s parents pay his rent while he studies for the bar. One might reply that if parental contributions can improve qualifications in this way, then the system lacks an Institutional Justification. It could be replaced by a better system: namely, one in which any specialized training that might be socially beneficial is publicly provided, and leaves nothing to voluntary, private contributions. But I don’t see why such a system will necessarily be better, overall, than the alternative.
If competition is key, though, then Equal Potential is overbroad. For, as we noted earlier, Equal Potential condemns non-competitive cases, in which White’s getting the job doesn’t come at Blue’s expense. Suppose there are two unfilled spots for anyone who meets the threshold of qualification. White’s no superstar, but with some unusually intensive extra coaching, he can be pushed over the threshold. Equally middling Blue, without the same boost, remains below it. But perhaps something like Equal Potential is true, when restricted to cases of competition.

And perhaps that’s the right thing to say: in the non-competitive case just discussed, assuming that Blue got an adequate education, and assuming that there is no procedural unfairness, Blue has no more objection about not having a job like White’s than Blue has about not having Hauser’s house. It’s unlucky to be Blue—not to have wealthier or more generous parents—but then again it’s also unlucky to be Unlucky—not to have potential. Moreover, perhaps such non-competitive cases are very unlikely to occur, if Blue is getting an adequate education, although, as I say, I don’t think we can rule such cases out as a conceptual matter.