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**Justice in Hiring: Why the Most Qualified Should Not (Necessarily) Get the Job**

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## **ABSTRACT**

In this article I argue that justice often requires that candidates who are sufficiently qualified for jobs be hired via lottery on the basis that this is the best way to recognise each candidate's equal moral claim to access meaningful work. In reaching this conclusion I consider a variety of potential objections from the perspectives of the employer, of the most qualified candidate, and of third parties, but ultimately reject the idea that a person's status as the most qualified candidate can explain why they ought to be appointed over other sufficiently qualified candidates.

## **1 Introduction**

Most people believe that justice requires that employers hire the applicant who is most qualified for the job, if there is at least one qualified applicant, all else being equal.<sup>1</sup> If appointment of the most qualified is not strictly required as a matter of justice, we may think it is at the very least permissible for employers to choose to hire an applicant on the basis that they are the most qualified for the job. In this article, however, I argue

that employers' preferences for the most qualified candidate are usually impermissible as a matter of justice, although employers remain entitled to distinguish between sufficiently qualified and insufficiently qualified candidates.<sup>2</sup>

In order to show that what matters is whether a candidate is sufficiently qualified (rather than being the most qualified) I will need to show that a prohibition against hiring the most qualified candidate because they are the most qualified does not violate the moral rights of candidates, employers, or third parties.<sup>3</sup> I begin in Section [2](#) by considering the rights of the most qualified applicant. Here I will argue that we should adopt a 'moralised' conception of qualifications, such that to be sufficiently qualified for a job is not only to possess certain abilities relevant to the performance of the job itself, but also to possess a certain kind of moral entitlement to be considered for the job on an equal basis with other sufficiently qualified candidates. This renders my view distinct from other anti-meritocratic approaches such as those of Shlomi Segall, who rejects a distinction between sufficiently and insufficiently qualified candidates, and Matt Cavanagh, who rejects equality of opportunity along with meritocratic principles and argues that discrimination in hiring practices should aim to avoid treating candidates with unwarranted contempt.<sup>4</sup> In contrast, the view I will develop here endorses equality of opportunity while insisting that relevant differences in qualification (among those sufficiently qualified) should not make a difference in the equal distribution of those opportunities. Discrimination in hiring is unjust, I will argue, when it undermines equality of opportunity to access meaningful work. If I am correct in this, the onus then shifts to the employer to find a sufficiently weighty reason to discriminate in favour of the most qualified, despite each candidate's strong interest in having access to employment opportunities.

In Section [3](#) I argue that such reasons are rarely if ever available to employers. While Segall's work offers convincing reasons to reject complaints from unsuccessful applicants, this section enters the comparatively unexplored territory of employers' rights to appoint the most qualified. Here I consider two potential formulations of such a right. The first holds that employers have a right to choose whom to employ for whatever reasons they like, provided that they do not violate the rights of their employees. The second holds that employers have a right to appoint the most qualified on the basis that this will maximise the expected value of the employee to the employer, or minimise the potential risk, all else being equal. This will bring us to Section [4](#), where I consider employers' duties to third parties. Here I will argue that employers' duties are fully discharged at the division between sufficiently and insufficiently qualified candidates, beyond which point the interests of third parties are (usually) defeated by the candidates' interests in having a better chance at employment.

I explore some implications and limitations of this view in Section [5](#). Here I note that eliminating relative qualifications as a consideration among sufficiently qualified candidates does not exhaust the ability of employers to discriminate among such candidates. However, I also identify circumstances where these forms of discrimination are unfeasible or undesirable, in which case the best option may be to allocate jobs among sufficiently qualified candidates via lottery. I suggest that such circumstances will be quite common, which means that the approach argued for here is likely to have radical implications for hiring practices in general. Section [6](#) concludes.

## **2 The Rights of the Most Qualified**

The strength of the rights to be considered in this section depend on the value of work, and the interest that each person has in securing the benefits that come with employment. While remuneration is the most

obvious benefit of employment, it is important to note that this is not the only one. For example, Anca Gheaus and Lisa Herzog identify four goods of work that are independent from remuneration.<sup>5</sup> These include the opportunities that work provides to develop our skills, to contribute to society, to work with others and among others in order to attain and strengthen social bonds, and to achieve a kind of recognition of all of the above. Others such as Arneson and Walsh have written about the concept of 'meaningful work' and its importance as a distributive good.<sup>6</sup> In what follows, I will assume that individuals have a strong interest in being able to access these goods, but I leave open the possibility that we may wish to distinguish between different kinds of work depending on whether we think it more or less likely to count as 'meaningful work' or to provide the kinds of goods identified by Gheaus and Herzog. I take it that the meritocratic view that I shall argue against dominates right across the spectrum from more to less meaningful forms of work, however, so I will be happy to claim even a partial victory if I can convince the reader that the arguments herein apply only to more meaningful forms of work, whatever we take those to be.

For our present purposes, the features of meaningful work that matter most are those that cannot easily be compensated for by other means. It is precisely the importance of these features that establishes the strength of the right not to be discriminated against in the allocation of job opportunities. One might be sceptical that there are in fact any such features: to take Gheaus and Herzog's account as an example, we can easily imagine cases where a person is able to secure the relevant goods (developing their skills, for example, or fostering a sense of community) in contexts other than those involving employment activities, and the purely financial benefits of employment can obviously be compensated for in principle. Furthermore, we would not want an account of meaningful work that implies that those who are unable to work (for example,

because of age or disability) cannot lead lives that are just as valuable as anyone else's.

However, we need not assume that these goods cannot be accessed in other contexts in principle, merely that in practice it is much easier to access them in the context of traditional forms of employment. The societies in which we live are arranged according to the assumption that people who are able to work will work or ought to work. While the very privileged or very lucky can flourish outside of these constraints, this does not change the fact that access to employment opportunities is by far the easiest route to attain the kinds of goods outlined above. Organising society according to these expectations, with all of the institutional arrangements and pressures that implies, gives strength to the claim candidates have against discrimination in the provision of employment opportunities: for these candidates employment represents the least burdensome way of accessing important goods. Since employment opportunities are limited, employers need very good reasons to discriminate among candidates, and candidates have a strong moral claim that appointment decisions reflect any morally significant differences between them (and discount morally irrelevant differences).

One may object at this point that access to meaningful work is best considered in the context of job markets in general, rather than competition for particular jobs.<sup>2</sup> In well-functioning job markets we may assume that qualified candidates will be hired sooner or later, even if the most qualified will tend to be hired sooner. If this is so, candidates' interest in access to meaningful work may not be significantly undermined, one might argue, except in the case of malfunctioning job markets or in cases where they have special reasons to want a particular job. The strength of this objection depends in part on the extent to which we think existing job markets are well-functioning (bearing in mind that readers working in academia may have particular intuitions about our

profession that do not necessarily generalise). However, even in cases where there are plenty of jobs to go around, it seems that the temporal aspect is still significant – in well-functioning job markets it still matters a lot whether one gets a job sooner rather than later. Applying for jobs requires significant time and (material, psychological, and social) resources, so if we care about fair access to meaningful work, we should care not just about whether one has a chance of being hired, but when.

Given the importance of (timely) access to meaningful work, employers should have good reasons for turning down one candidate in favour of another – reasons that reflect the significance of meaningful work and which do not discriminate between candidates on irrelevant bases. The view that the most qualified candidate for a position ought to be appointed *because they are the most qualified* is one that many people find intuitive, especially if we stipulate that their status as the most qualified is not the result of any unfair advantage over other (actual or potential) candidates. Those who share this intuition believe that it is unfair to hire a less qualified candidate over a more qualified candidate (while accepting that employers are entitled – having surveyed the field – to hire no candidates at all, or to alter the specifications of the post).<sup>8</sup>

Suppose that the most qualified candidate for some particular position finds herself overlooked in favour of a less qualified candidate and that there are no other morally relevant characteristics to distinguish between the candidates in this case. If she has been treated unfairly, as meritocrats believe, what is the most plausible way to understand her complaint?<sup>9</sup>

One possibility is that her status as the most qualified means that she has worked harder than the other candidates – she has spent more time studying, or working, or made more sacrifices, and so on. As Segall rightly notes, the problem with this approach is that there is no necessary connection between the person who is most qualified and the person who

has worked hardest to acquire their qualifications.<sup>10</sup> A candidate may find herself the most qualified despite not having put very much effort at all into attaining that status. Alternatively, she may find herself the least qualified despite having put in far more effort than the most qualified.<sup>11</sup>

Instead, one might look to the idea of legitimate expectations as a way of grounding a right to be appointed. Roughly, the thought here is that a candidate who has worked to become the most qualified has a legitimate expectation that she be appointed on that basis. Again, Segall identifies the chief problem with such a strategy – while it is plausible to say that employers should meet candidates' legitimate expectations, this does not require hiring the most qualified. Rather, it requires only that candidates be informed in advance of the rules that will determine which of them is hired. If these rules call for sufficiently qualified candidates to be appointed by an alternative process (as I will argue they should) and if these rules are made clear to the candidates, then candidates who fail to be appointed cannot claim that their legitimate expectations have not been met without identifying some further unjust feature of the alternative appointment process.<sup>12</sup>

Another possibility suggested by George Sher is that hiring a person based on her qualifications respects her status as an agent because it is sensitive to her autonomous actions, in contrast to hiring her 'merely' on the basis of her needs, for example.<sup>13</sup> However, it does not follow from this that it is necessarily disrespectful to fail to appoint the most qualified person: we can acknowledge a person's agency insofar as we recognise that their actions have led them to become a sufficiently qualified candidate.<sup>14</sup> More importantly, if we are guided by the need to respect a person's agency, this must surely include not just a 'backward-looking' perspective on their qualifications, but also a 'forward-looking' concern for the ways in which a candidate may exercise their agency in future – and the potential of meaningful work to contribute to such exercises in



agency. Appointing based on need rather than merit may in fact track such a concern (if we conceptualise a person's 'need' for a job in terms of that job's potential to contribute to their agency), or where relevant information would be infeasible to use as the basis for discriminating among candidates, a lottery procedure could reflect the fact that each candidate has an equal moral claim to have their potential future agency promoted by accessing meaningful work.<sup>15</sup>

More recently, David Miller has argued that the most qualified candidate can be said to deserve appointment to the extent that there is an appropriate 'fit' between the remuneration they receive and the value they create for their employer and that a system of 'hiring by merit' is more likely to ensure a close correspondence between the value of the work that individuals will produce and the remuneration they receive.<sup>16</sup> If we set aside (as Miller does) the practical difficulties associated with measuring and matching the value of labour to remuneration, there are reasons to resist the conclusion that we violate the rights of the most qualified candidate if we fail to hire them in favour of some alternative (sufficiently qualified) candidate.

First, we might accept Miller's claim that employers have reasons of justice to properly reward candidates for the value they create for a company while nevertheless holding that these reasons may be outweighed by others. It is not obvious, for example, that the most qualified candidate's claim to have their contributions fit with their remuneration is of more moral significance than another candidate's claim to be able to afford the healthcare that a less fitting level of remuneration might provide.

Alternatively, we might accept that employers have strong reasons to fit remunerations to the value of the employee's labour, but deny that a system of appointing the most qualified is necessarily the best way to secure this. Miller's principle of desert implies only that the successful

candidate should be awarded a level of remuneration that matches the value that they are likely to produce for the company in the future. This is compatible with, for example, hiring a candidate who is less qualified, reducing their pay accordingly, and making future pay rises contingent on particular performance targets.<sup>17</sup> From Miller's meritocratic perspective, the employer could be said to have lowered the initial specification of the job, appointed the person best qualified for the respecified job, and then given the appointee the opportunity for an upgrade later on.<sup>18</sup> The question would then become: under what circumstances might an employer have a duty to lower the initial specification? The arguments I offer here can be translated into such terms, thereby rendering them compatible with Miller's principle of desert if we take such a principle to require only that a candidate's remuneration should fit their qualifications, but not necessarily that the most qualified be appointed.<sup>19</sup>

If none of these explanations succeeds in establishing a right for the most qualified to be appointed, two possibilities remain. First, we might think that an employer is entitled to prefer the most qualified candidate, such that it would be a violation of the employer's rights to require them to hire a candidate other than the most qualified if that is the employer's preference. Second, we may think that a duty on the part of the employer to appoint the most qualified is entailed by the rights of third parties. In the next two sections I consider each of these possibilities in turn.

### **3 The Rights of the Employer**

Perhaps an employer is always entitled to appoint the most qualified, because an employer is always entitled to appoint for any reason at all. Few<sup>20</sup> would defend such an extreme position, however, given that it would permit, for example, an employer to prefer to discriminate against applicants on the basis of their race, religion, sexual orientation, or other features that ought not to be the basis of such decisions. Any plausible defence of the right to appoint the most qualified must therefore accept

that there are at least some preferences that employers may not use when appointing applicants. An argument in defence of the right to appoint the most qualified must be able to distinguish between permissible and impermissible preferences and explain why a preference for the most qualified should be counted among the former rather than the latter.

For a start, the most qualified employee may be least likely to make costly mistakes, or work inefficiently, and so on, such that we can understand the employer's preference for the most qualified simply as a preference to protect their own interests. We might understand this in terms of an employer's desire to maximise the benefits that will be generated by the successful candidate and/or to minimise the risk that the successful candidate presents. So, an employer might argue (i) that the candidate's status as the most qualified is morally significant to the employer since appointing such a candidate is the best way for the employer to advance their interests, (ii) that the employer is entitled to advance their interests provided that they do not violate any of their moral obligations, and (iii) that appointing the most qualified does not violate any of their moral obligations, all else being equal. Clearly, it is the third claim that stands in need of defence if an employer is to establish a right to appoint the most qualified.

It is implausible to think that an employer's right to maximise benefits or minimise risks would be unlimited in scope. This would permit employers to consider only the costs and benefits to their own interests while ignoring any and all consequences of their hiring decisions for the interests of others. In addition to permitting discriminatory hiring practices that are clearly unjustifiable (such as the employer who panders to their racist customers by only hiring white staff, for example)<sup>21</sup> it would permit employers to weigh the most trivial benefits to their own interests more heavily than the most serious consequences for their potential

employees. Wherever we draw the line, there seems to be a point at which the interests of an employer cannot override the rights of potential employees against discrimination or other similarly serious forms of harm.

Nevertheless, it is also implausible to think that an employer is *never* entitled to consider the effect that hiring a particular applicant will have upon their own interests, or the interests of other relevant parties. It would not be reasonable, for example, to expect an employer to make no distinction between an applicant who is blatantly unqualified for a particular role, and one who is well-qualified. In some cases, doing so may violate an employer's obligations to their other employees or members of the public. Hiring one incompetent office worker at a large corporation may make no appreciable difference to the company's bottom line or its customers' experiences, but knowingly hiring an incompetent police officer or surgeon would be a clear violation of an employer's duties.

There is a stronger response available to the employer, however. They may argue that setting the bar of permissible discrimination at the point between competency and incompetency does not go far enough to insulate an employer from unduly burdensome forms of harm. At least three reasons might be offered in support of this. First, employers may appeal to epistemological constraints inherent in determining competency – if they are allowed to prefer more qualified candidates, this may act as a kind of 'buffer' such that employers are less likely to accidentally hire incompetent candidates, thereby reducing the risk to their profits and the risk that they will fail in their duties to third parties. Second, employers may appeal to the competitive nature of their industry – a duty not to discriminate above a minimum competency threshold is likely to significantly disadvantage them against competitors who do not abide by the same standards. Third, setting aside concerns about general patterns of hiring, there are some jobs where individual hiring decisions may make

a massive difference (for example, a fashion company's decision to hire a particular lead designer, or a school's decision to hire a teacher who is particularly good at inspiring disadvantaged students).<sup>22</sup>

These worries are significant, but not decisive. Epistemic issues concerning the ability to discern competency can usually be 'baked in' to the determination of the relevant threshold, by raising the bar at which a candidate counts as sufficiently qualified. Collective action problems concerning cases where some employers do not discriminate but others do can be solved in many cases with anti-discrimination regulations. Cases such as those of the fashion designer and the inspiring teacher, which we might call cases of 'exceptional talent', are likely to be just that – exceptional. My account in this article allows for such cases where there is no practical way for an employer to avoid discriminating above the bar of competency without significantly undermining their interests or risking the violation of their duties to third parties. My aim is to show that this will usually not be the case, and that most employers are unlikely to be able to appeal to these kinds of considerations, provided that hiring decisions are consistently regulated across their sector. Given that the status quo is one in which employers discriminate on the basis of qualifications, if I can shift the reader's intuitions on some significant chunk of these cases, or convince you that the onus is on the employer to justify such discrimination instead of taking it for granted, I will consider that a success – these exceptional cases notwithstanding.

#### **4 The Rights of Third Parties**

One might object that this account only gets off the ground if we ignore duties that employers have toward third parties.

Consumers may seem to have an obvious interest in meritocratic hiring practices if we assume that this will lead to greater efficiency, faster economic growth, and better-quality goods and services, for example.

While utilitarian forms of this worry can be dismissed for the same reasons one might dismiss utilitarianism in general,<sup>23</sup> a non-utilitarian form might suggest, for example, meritocratic hiring practices are just because they are the ones that would be chosen by deliberators behind a Rawlsian veil of ignorance who are unaware of their actual qualifications or the distribution of qualification-related talents in society. However, if access to meaningful work is understood as a social primary good, then it is far from obvious that Rawlsian deliberators would opt for meritocratic hiring (which maximises efficiency) over the kind of sufficiency-based approach I am arguing for in this article (which minimises one's chances of being unable to access meaningful work). At best, we may wish to set the qualification threshold higher for certain jobs that we regard as producing particularly important public goods, but there are many jobs where marginal increases in productivity for the consumer seem less significant than the goods provided to the employee.<sup>24</sup> For example, it may be that small differences in skill between sufficiently qualified surgeons will deliver very significant differences in outcomes for patients but that the same may not be true of, for example, small differences in skill among mortgage brokers or car salespeople (indeed, in some cases, consumers may even benefit by not dealing with the most competent employee).<sup>25</sup>

None of this suggests that employers lack the right to distinguish between sufficiently and insufficiently qualified candidates. To that end, employers specify minimum qualifications and/or conduct assessments that establish a threshold that any candidate must pass in order to be considered suitable for the role. We can infer that any candidate who meets this threshold is considered by the employer to be capable of doing the job to at least an acceptable standard. Where such thresholds are reasonable, let us say that any candidate who meets this threshold is a sufficiently qualified candidate.<sup>26</sup>

Suppose that the need to protect the rights of others sometimes requires an employer to distinguish between sufficiently qualified candidates and insufficiently qualified candidates. If an employer has a right not to expose themselves to unnecessary risk (or a duty not to expose others to unnecessary risk), does this entitle (or require) them to appoint the most qualified candidate of those who pass a reasonable threshold?

To answer this question, we can begin by considering the role that minimum qualification specifications play in hiring decisions, from the perspective of the employer. Such specifications are most plausibly understood as an attempt by the employer to define a threshold beneath which hiring an applicant would be excessively costly or risky for the employer or other relevant stakeholders such as customers or shareholders, for example.<sup>27</sup> Of course, in practice, employers may be more or less successful in setting this threshold, but let us proceed by imagining cases where an employer sets the minimum qualifications for a job in a way that is entirely reasonable under the circumstances. This means that they have successfully determined the point beneath which hiring a candidate would constitute a violation of their moral obligations or would represent an unreasonably demanding burden for the employer.<sup>28</sup>

Now, an employer may insist that setting a threshold for sufficient qualifications establishes the point at which it would be impermissible for them to hire a candidate whose qualifications do not meet the specified threshold, but that they are still entitled to prefer the most qualified candidate on the basis that doing so further minimises risk. This would be a mistake, however – an employer's duty to minimise risk, while undoubtedly weighty, is still one duty among many, including their duties of fairness to candidates.<sup>29</sup> At some point in the moral calculation, a candidate's interest in having a chance to access meaningful work must outweigh the increase of risk that hiring them might represent. It is

precisely this point, I suggest, that should mark the line between sufficient and insufficient qualifications.<sup>30</sup>

I am assuming for the sake of simplicity that employers make reasonable and accurate judgements when setting the threshold at which a candidate is to be considered sufficiently qualified. Obviously this assumption may not hold in practice – sometimes an employer may be overly cautious or reckless, and set a threshold that is too high or too low. These complications need not concern us here, however – my focus is only on how a preference to hire the most qualified might be justified, not the related but distinct question of how we might judge the reasonableness of particular thresholds.

This suggests that employers may permissibly exclude applicants from consideration by appealing to one of two moral principles (or a combination of both). The first of these may be invoked in cases where exclusion of insufficiently qualified candidates is necessary to discharge an employer's duties to others (for example, members of the public in general, the employer's customers in particular, or other employees). The second may be invoked in cases where requiring the employer to appoint insufficiently qualified candidates would represent an overly demanding burden for the employer. While the first of these imposes requirements on the employer to exclude insufficiently qualified candidates, the second generates an entitlement to exclude, but not a requirement (since an employer may always choose to accept an excessively demanding burden). Taken together, these principles can be understood as establishing a type of threshold such that employers are never required to hire candidates whose qualifications place those candidates below the threshold, but that employers are never entitled to discriminate among candidates who fall above the threshold on the basis of their qualifications. This is because the threshold itself is defined with reference to the employer's duties and interests – they are 'baked in' to the



distinction between sufficient and insufficient qualifications, thereby exhausting any further justifications an employer might try to rely on above the threshold. In the absence of appeals to some other morally weighty consideration (beyond risk-minimisation duties and demandingness), employers are left with no further room to discriminate among sufficiently qualified candidates.

It is important to note that this view still allows substantial room for employers to promote their own interests. In order for my argument to succeed, it need only be the case that there comes some point where the employer's interests in promoting their organisation's welfare does not override the candidates' interests in having a chance to secure the job. As I note above, the idea here is that this point should itself be built into the concept of the threshold that marks the difference between a sufficiently and insufficiently qualified candidate. This yields a conception of qualifications that is moralised, rather than technical, in the sense that it is determined ultimately by an all-things-considered view about the balance between the interests and duties of the parties involved, rather than being purely an account of a candidate's technical ability to do the job (though this is usually a morally relevant factor that must form part of our all-things-considered judgements).

## **5 A Sufficiency-Based Approach**

To summarise the arguments thus far, I have suggested that employers are entitled (and sometimes required) to distinguish between sufficiently qualified candidates and insufficiently qualified candidates, but not to distinguish between the relative qualifications of candidates above that threshold, and that sufficiently qualified candidates themselves have no right to be appointed on the basis that they are more qualified than any other sufficiently qualified candidate.

If this is correct, then an employer who discriminates among sufficiently qualified candidates because of their relative levels of qualification treats those candidates unjustly, by failing to attribute proper weight to each candidate's interest in accessing employment. When all other morally relevant factors are equal, the only fair way for an employer to decide among sufficiently qualified candidates may be to appoint one at random.

While the aim of this article is not to enumerate every possible legitimate source of discrimination among sufficiently qualified candidates, there are at least two distinct cases worth highlighting here insofar as each represents a different type of justification for discrimination. The first involves discrimination as a response to broader facts of structural injustice, such as a decision by an employer to hire a member of a group that has historically been underrepresented within the company or profession for reasons of injustice. In this or similar cases, these reasons may serve as legitimate bases for discrimination by adding additional moral claims on behalf of the employee (or others, depending on how such claims are construed). In practice, however, the inclusion of such reasons is unlikely to solve the employer's problem of who to hire, however, except perhaps in cases where only one sufficiently qualified candidate can rely upon the relevant sorts of claims (though such a scenario is likely indicative of deeper problems within the employer's hiring practices). In cases where multiple candidates can make such claims, the employer will need to find some further basis of legitimate discrimination if they are to avoid resorting to allocating the job at random among the relevant sufficiently qualified candidates.

A second type of case may help to provide this further basis, however. Thus far I have been considering employment in the context of benefits to the employees (and costs to failed candidates) and in the context of benefits to employers and their customers (and costs to some third parties). In order to find a legitimate basis of discrimination among

sufficiently qualified candidates, we could expand this picture to consider the general value of the profession in question, and recognise a (defeasible) moral reason for employers to hire whichever sufficiently qualified candidate they reasonably believe will best promote this value. This amounts to an appeal to the all-things-considered consequences of hiring the most qualified for a particular kind of job, though it need not collapse into the kind of brute utilitarian perspective I dismissed earlier. Rather, think of such appeals as a weightier variety of those considered earlier in the context of employers' duties to third parties, where the scope of the relevant third parties is so wide that it may include entire societies, or even humanity as a whole.

For example, consider an employer who is deciding which sufficiently qualified candidate to hire among a panel of prospective heart surgeons. In order to avoid allocating the job at random among the sufficiently qualified candidates, an employer might appeal to the general good that heart surgeons produce, and the further claim that relative levels of qualification serve as a good indicator as to which sufficiently qualified candidate is likely to do the most good. This, the employer might argue, provides a justification for hiring the most qualified that is immune to the arguments presented in this article thus far, if we accept that the value of saving extra lives (for example) will always trump the value of securing equal opportunity to access meaningful work.

The first point to note in response is that we are already dealing with a fairly limited category of jobs where the value generated might be enough to trump the value of equal opportunity to access meaningful work.<sup>31</sup> Second, among this limited set of jobs, such an objection concedes that relative qualifications themselves are not sufficient to justify appointment – rather they serve as a kind of proxy for the total value that will be produced by hiring the more qualified over the less qualified, and it is these facts that provide the justification for hiring. This

will matter in circumstances where it is not clear whether hiring the most qualified really will produce the most good, since the strength of the objection depends on the assumption that relative qualification levels are a reliable proxy for value-production. We can identify at least three types of cases where this assumption will not necessarily hold, further limiting the scope of these especially weighty reasons.

First, there will be cases where the difference in relative qualifications is measurable, but not to the extent that it will likely make a significant difference to the overall good produced (perhaps the second-best heart surgeon in the world is capable of saving just as many lives as the best). Second, there will be some cases where it is infeasible or impossible to compare the good that will likely be produced by one candidate compared to another relatively less qualified candidate (suppose that a committee must choose between a senior hire who is well-established in their field of expertise, or a junior hire who has yet to establish themselves but seems to have great potential in the future).

One may insist that even if we grant that relative qualification levels do not always serve as a reliable proxy for the amount of good that a particular appointment will produce, there will be many cases where it will be reasonable to assume that hiring the most qualified will produce the most good. I do not wish to deny this – that would be far too strong a claim. Instead, I would insist that even if we permit the use of relative qualification levels in this limited set of cases, this would still represent a potentially radical departure from typical hiring practices.

Most significantly, it would no longer be sufficient to hire someone merely on the basis that they are the most qualified, unless the employer also has reasonable grounds to treat this fact as a reliable proxy for the value that would be generated by their appointment. While there may be some cases where this is clear-cut (for instance, where there are fewer sufficiently qualified candidates for a role that produces value that is

relatively easy to measure), there will be many where it would be infeasible if not impossible for employers to make the case. Heart surgeons (or whalers) may be exceptional in this regard, given the nature of the role. For a large number of jobs, however, there are many kinds of value produced that are often incommensurable, and even if employers could find a way to quantify or compare these values, it may be extremely demanding to do so. If the reader does not share my intuitions regarding the proportion of jobs that would fit into each category, it remains significant that relative qualification levels should be thought of as (at best) a proxy for the real justification for appointments where the relevant epistemic standards are met, rather than being considered sufficient in themselves to justify appointment.

In most cases, where the case for appointing the most qualified candidate cannot be made (or would be too costly to make), I suggest that a random allocation by lottery is appropriate. This view does not depend on a justification of the fairness of lottery systems under more ideal circumstances in general, but rather on the usefulness of lotteries under non-ideal conditions where we are required to treat each candidate as if each has equal interest in attaining the job in question. This might be because we lack the resources to make more accurate judgements about candidates' circumstances or the extent to which they would benefit by being given the job, but it might also be a response to worries about the intrusiveness involved in making such assessments, about the implicit biases of those making the evaluations which are minimised by a lottery procedure, or similar considerations.<sup>32</sup>

In more ideal circumstances, a lottery may be appropriate when we are unable to rank candidates in terms of the benefits that they would receive because the benefits in question are incommensurable. For example, suppose that hiring one particular candidate would benefit them because it would allow them to move to the same city as their partner and start a

family, while hiring a different candidate would allow that candidate to access more affordable healthcare. Even under reasonably ideal circumstances, it is not obvious that there is any fact of the matter as to which candidate would benefit more from the job.

Alternatives to a lottery procedure may thus be overly invasive, not to mention costly, if they would necessitate employers making judgements about whose lives would go better, all-things-considered, if they were to get the job. Such assessments would likely involve controversial assumptions that fail to respect reasonable disagreement about conceptions of the good. It would be better for all concerned to hold a lottery on the assumption that each candidate has an equal or roughly equal interest in the job, rather than have an interview panel attempt to determine which sufficiently qualified candidate's life would go best if they were to be offered the job.

## **6 Conclusion**

I have argued that we should reject two commonly-held views about the rights and responsibilities of employers and employees which hold that employers are either permitted or required to hire the most qualified candidate for the post. I began by considering and rejecting several arguments for thinking that a person's rights are violated if they are not appointed despite being the most qualified for the position. I then considered and rejected the idea that an employer is entitled to discriminate in favour of the most qualified candidate. Instead, I proposed an account of justice in employment whereby employers are entitled (and sometimes required) to distinguish between sufficiently and insufficiently qualified candidates, but not to further distinguish on the basis of qualification among those candidates who can reasonably be considered sufficiently qualified. In order to avoid the problem of setting a morally arbitrary threshold, I proposed linking our understanding of the minimum

threshold of competency to an employer's obligations toward third parties and the employer's right not to be exposed to excessive costs or risks.

## **Acknowledgements**

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## **NOTES**

- 1 For a general analysis of this view, see Dobos, "Duty," 353. For defences, see Miller, "Deserving Jobs"; Miller, *Principles*; Mulligan, *Justice*, chap. 5. For criticism, see Kershnar, "Duty."
- 2 By 'qualified' here I refer to reasonably discernible aptitudes in the broadest sense, as opposed to the narrower sense of 'article' qualifications.
- 3 My approach here is similar to that of Ned Dobos in "Duty," where he divides arguments in favour of meritocratic hiring practices into those that are 'candidate centred' and those that are 'stakeholder centred'.
- 4 Segall, "Should the Best Qualified Be Appointed?"; Cavanagh, *Against Equality of Opportunity*.
- 5 Gheaus and Herzog, "Goods."
- 6 Arneson, "Meaningful Work"; Walsh, "Meaningful Work." In sect. 4, I will suggest that access to work can be understood as a Rawlsian (social) primary good, given the kinds of goods identified by these authors (see Rawls, *Theory of Justice*, chap. 7).
- 7 I am grateful to an anonymous reviewer for raising this point.
- 8 I thank an anonymous reviewer for helping me to clarify this point.
- 9 The three possibilities that follow are identified by Shlomi Segall, "Should the Best Qualified Be Appointed?," 33–38.
- 10 *Ibid.*, 33.

- 11 A similar possibility is discussed by Miller, *Principles*, 159–61, rejecting the idea that the most qualified might deserve new jobs or promotions as a reward for past performance. Miller notes, for example, that the most qualified candidate may be the one who demonstrates the greatest degree of future potential, in which case it makes little sense to conceive of the job as some kind of prize or reward for past behaviour.
- 12 See also *ibid.*, 159. More recently, Thomas Mulligan, *Justice*, has argued that meritocratic hiring practices help to minimise resentment – though Mulligan regards this as a beneficial side-effect of such practices rather than a primary reason to endorse them.
- 13 Sher, “Qualifications.”
- 14 Furthermore, as Segall (“Should the Best Qualified Be Appointed?” 36) notes, in order for the self-respect argument to justify hiring the most qualified, one would have to demonstrate that the need to show respect for candidates in this way trumps any other reasons of distributive justice that we might have to appoint some alternative candidate.
- 15 For an alternative response to Sher's challenge, as suggested by Ned Dobos, see Lippert-Rasmussen, *Born Free and Equal?*, 258–60.
- 16 Miller, *Principles*, 163–4. This is a ‘forward-looking’ approach to desert. For a defence of a ‘backwards-looking’ approach, see Mulligan, *Justice*, 66–67. I take it that the solution I suggest here (modifying the rate of remuneration depending on which successful candidate is hired) should work regardless of which approach one adopts.
- 17 One interesting implication of Miller's view is that it may suggest a duty for employers *not* to hire a candidate who they consider to be overqualified for the post, for example in favour of a candidate whose expected future productivity more closely aligns with the remuneration on offer.
- 18 I thank an anonymous reviewer for pressing me to clarify this point.
- 19 For example, suppose in some particular case an employer is required to hire at random among all sufficiently qualified candidates. If



the chosen candidate is not the most qualified, and if we endorse Miller's desert principle, this would be the point at which the employer ought to lower the initial specification (procedures for determining such an outcome could be defined explicitly in the terms of the initial offer of employment, to avoid any nasty surprises for the lucky candidate).

□ 20 Libertarians, for example, may oppose any form of regulation of hiring beyond that which could plausibly be construed as necessary to protect property rights. The arguments in this article depend on the assumption that at least some further restrictions are justifiable, particularly those that aim to protect applicants against discrimination on the basis of their morally arbitrary characteristics.

□ 21 To make my intuitions clear, I think we should expect an employer to go out of business if that is the only alternative to discriminating on the basis of race, all else being equal. Readers who do not share this intuition may instead consider the obligation not to discriminate as a strong *pro tanto* reason that can only be overridden in extreme circumstances. On either approach, it seems clear that the employer must consider interests beyond their own.

□ 22 I am grateful to an anonymous reviewer for pressing me on these points.

□ 23 I take it that a strict utilitarian approach suggests that employers are obliged to hire those employees who would produce the greatest good for the greatest number, that employees are obliged to take utility-maximising jobs, and that any form of employment discrimination is morally permissible provided that it serves the utilitarian maxim. The kinds of problems I discuss here only arise if one rejects this form of utilitarianism, so I focus on the non-utilitarian form of the objection above.

□ 24 Rawls contrasts his conception of fair equality of opportunity with the 'meritocratic' approach of 'careers open to talents', and says that 'the reasons for requiring open positions are not solely, or even primarily, those of efficiency'; Rawls, *Theory of Justice*, 73. This suggests that

meritocratic hiring principles would violate the first part of Rawls's second principle if (as I argue) relative qualification levels are morally arbitrary bases of discrimination.

□ 25 I do not have the space in this article to consider consumers' duties to employees, but an anonymous reviewer has observed that the account I develop here may imply that consumers are obliged to distribute their consumption in ways similar to how I argue employers should distribute their job opportunities (for example, by sometimes choosing to forgo their favourite coffee shop in favour of an alternative, in order to help an otherwise struggling business).

□ 26 Dobos, "Duty," 358, provides an example of the kinds of complications that can arise when a company's understanding of minimum qualifications for a role conflicts with that of an applicant (and subsequently, a judge). I shall set aside these complications for the sake of argument, and assume that employers are able to set reasonable thresholds for minimum qualifications.

□ 27 This can include the cost to employers of training candidates to increase their productivity (which may be higher for less qualified candidates) and the cost of lower productivity or lower-quality work associated with hiring less qualified candidates.

□ 28 Such a threshold need not be fixed over time, but can change as the circumstances change. For example, a school may require that sufficiently qualified candidates demonstrate the ability to teach a minimum number of subjects, where this number or the specific subjects changes over time, depending on the school's budget, the expertise of other members of staff, student numbers and demand, etc.

□ 29 Consider, for example, the fact that workers typically have an expectation that they won't be liable to lose their jobs the moment a more qualified candidate can be found. We would regard this as impermissible precisely because we recognise the importance of other aims besides risk minimisation (in this case, job security).

□ 30 There may also be cases in which the connection between qualifications and risk minimisation does not necessarily hold (for example, suppose that the most talented surgeon available is also known to be more reckless than a less talented but more risk-averse alternative).

□ 31 Indeed, there are some jobs where we may think the moral force applies in the opposite direction – if I am tasked with hiring a captain for a whaling vessel, for example, perhaps I am morally obliged to choose the least qualified candidate.

□ 32 Such considerations are part of John Broome's influential defence of lotteries, but his case is based primarily on the idea that fairness involves the proportional satisfaction of claims and that lotteries are sometimes the best way to achieve this (Broome, "Fairness"). In the specific context of employment opportunities, I suspect the kinds of non-ideal worries mentioned here (especially with regard to incommensurability, cost, and intrusiveness) are sufficient to justify a lottery procedure without needing to defend a more substantive view on the fairness of lotteries. For criticism of Broome's view, see Tomlin, "On Fairness."

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