Scanlon on Equality of Opportunity:

- B complains about an unequal outcome: that A has some good G that B does not have. E.g., A is a doctor, B is not.
- The person or institution responsible for the unequal outcome replies that A and B had equal opportunity for G.

1. **Institutional Justification**: a system that gives G to some but not others is justified.
   - a. We’ll suppose that G is some specialized job.
   - b. We’ll also suppose that the system is justified just insofar as it benefits people in society, giving priority to benefitting the worst off, as Rawls’s difference principle suggests.
   - c. Distinguish two kinds of benefits of a system of specialized jobs:
     i. Benefits to people who enjoy the goods and services that the jobs produce: e.g., benefits to patients treated by doctors.
     ii. Benefits to people who perform the jobs: e.g., a medical career.
   - d. We can restate Institutional Justification as: A system that distributes jobs to qualified people benefits society, where to be “qualified” is just to have traits such that it benefits society to have a system where people with those traits get those jobs. E.g., we are all better off if only some people, who have the qualifications that make for a good doctor, specialize as doctors. But that means that some people, like A, will be doctors and others, like B, won’t.

2. **Procedural Fairness**: the fact that A but not B has the job arose from a process that was sufficiently sensitive to qualifications.
   - a. “Sufficiently sensitive” means, perhaps: greater sensitivity would have cost too much.

3. **Substantive Opportunity**: B cannot complain about B’s opportunity to acquire qualifications.
   - a. Effects of absolute poverty: inadequate nutrition, high lead levels in drinking water.
   - b. Family culture: limited horizons, esp. for girls.
   - c. Suppose that A and B have same cultural milieu, same access to public services. It might still be the case that A’s parents give A additional education, but B’s parents do not.
   - d. If so, it may be hard to see what we can do about it.

Comparison with Rawls:

*Fair Equality of Opportunity* (very roughly!): If A and B have same genes at birth, then A and B should have the same chances of getting the job as adults.

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a “Substantive Opportunity” half: If A and B have same genes at birth, then A and B should have the same chances of acquiring qualifications as adults.

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a “Procedural Fairness” half: If A and B have acquired the same qualifications as adults, then A and B should have the same chances of getting the job.

Possible violations of equality of opportunity:

Case 1: Nepotism, being too lazy to read applications, etc.
- Violates Procedural Fairness.

Case 2: Discriminating against “protected classes”: races, ethnicities, genders, etc.
- Violates Procedural Fairness.
- But it seems wrong for a further reason. Scanlon suggests that this is because it somehow expresses a judgment of inferiority. (We will return to this with Hellman.)
Objection: “Isn’t it also procedurally unfair if B doesn’t get to be a doctor because he never had the innate talents that, when properly developed, make one qualified to be a doctor?”

- No, because society benefits when qualified people (and only qualified people) are doctors.

Objection: “But one doesn’t choose one’s innate talents any more than one chooses one’s race or gender! It’s arbitrary from a moral point of view!”

- X “is arbitrary from a moral point of view” doesn’t mean X “is unchosen,” but instead X “does not, in itself, justify giving someone G.” Giving G to someone who has X can be justified on other grounds: e.g., that it benefits society to have a system that does this.

Case 3: Affirmative action

A. “Based on race, gender, etc., and so racist, sexist, etc.! Reverse discrimination!”
   a. Not necessarily. Does it express that, e.g., white men, are inferior?
B. “Doesn’t treat people as individuals! Sees them only as members of a group!”
   a. A complaint that we will return to later.
C. “Race, gender, etc. have nothing to do with qualifications!”
   a. In this context, qualifications are “just those characteristics, whatever they may be, possession of which makes a person likely to perform in the position in question in a way that promotes the aims that provide the institutional justification for having that position.”
   b. So race, gender, etc. may well count as qualifications.

Case 4: Proxies

Scanlon seems to suggest that there is an objection to using proxies in hiring, even if they are highly predictive. Draw a distinction that he doesn’t between two senses of “qualifications”:

- To be qualified in the post-appointment sense: to have traits such that it benefits society when people with those traits have those jobs, ignoring the process by which people came to be selected for them.
- To be qualified in the pre-appointment sense: to have traits such that it benefits society when there is a process of selecting people with those traits for those jobs.

Scanlon suggests that proxies may objectionably deny an applicant some absolute minimum of attentive review of their post-appointment qualifications. This is so, he seems to suggest, even if:

- the use of proxies does not worsen applicants’ opportunities for the position (by, say, raising the false-negative rate) and
- the use of proxies is cheaper: i.e., having the proxy traits is a pre-appointment qualification.

The grounds for the objection is that “people have... reason to want to be taken seriously as candidates for these positions, and considered on their (institutionally determined) merits” (51). Is this right?

Case 5: Gaming the system:

- Suppose that the additional education, while helping A get into the university, does not actually make A more qualified for admission.
- In that case, Scanlon points out, the problem is not a violation of Substantive Opportunity, but instead a violation of Procedural Fairness. The admissions process wasn’t sufficiently sensitive to actual qualifications—how well A and B would make use of the university education—but instead to what is actually an irrelevant factor—whether or not they had taken the summer programs.

Review questions:
1. “You don’t deserve a place at university just because of your chromosomes! Therefore, admissions decisions may not take gender into account.” Would Scanlon agree with the premise? Would he agree with the conclusion?
2. Suppose a hiring algorithm is sensitive to applicants’ credit scores. Would that be a violation of Procedural Fairness? What does your answer assume?
3. I nag my kids to do their homework. How might Scanlon argue that this violates equal opportunity?