

# REACTION QUALIFICATIONS, DISCRIMINATION, AND PATERNALISM



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# 1) REACTION QUALIFICATIONS

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According to Wertheimer (1983), reaction qualifications “refer to those abilities or characteristics which contribute to job effectiveness by causing or serving as the basis of the appropriate reactions in the recipients. Technical qualifications refer to all other qualifications (of an ordinary sort).”



## 2) PUZZLE

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- On a first approximation, there's a tight connection between meritocracy (i.e. a basic norm of "hiring the best qualified candidate") and anti-discrimination
- Yet, if we count reaction qualifications this connection becomes tenuous

To exemplify. Michael Blake mentions the case of "the Jacksonville Beach Chamber of Commerce that voted in 1953 to officially ban integrated baseball within the confines of the city." In defense of the decision the spokesman stated, for example, that "It's just that the patrons of the team felt they would rather have an all-white team."

(Michael Blake, "The Discriminating Shopper," *San Diego Law Review*, 43, 4 (2006): 1017-1034, 1023; "Immigration, Association, and Antidiscrimination," *Ethics*, 122, 4 (2012): 748–762, 756-757.

# 3) STRATEGIES

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- 1) Don't count any reaction qualifications
- 2) Count every reaction qualification (yet be open to the fact that other principles and concerns may outweigh the meritocratic norm) – the non-moralized view
- 3) Count *some* reaction qualifications – the moralized view

(cf. Lippert-Rasmussen, 2014; Wertheimer 1983).

# 4) THEORY AND SITUATION OF MY ARGUMENT

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- Following Wertheimer, a number of scholars – including Kasper Lippert-Rasmussen, Andy Mason and David Miller - have developed theories about which reaction qualifications to count and which not.
- I rely on the third, moralized, strategy. I also, echoing David Miller and Kasper Lippert-Rasmussen, adopt a so-called *symmetrical* stance on which reaction qualifications to count. In brief the idea is that negative reactions to candidates that are based on antimeritocratic attitudes ought not to count. Antimeritocratic attitudes are defined through antimeritocratic choices in the hand of selectors: “An attitude is antimeritocratic ... if, and only if ... it is such that if a selector decides between candidates influenced by it, the decision is not based solely on merit.”

# 4) THEORY AND SITUATION OF MY ARGUMENT

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- I understand my argument as a *supplement* to the symmetrical view. In a nutshell I aim to show that - perhaps somewhat surprisingly – there's a compelling *paternalistic argument* for not counting reaction qualifications that are based on antimeritocratic attitudes. Surprising, that is, because one would think that people often have an interest exactly in such attitudes being counted. However, as I shall go on to show in the next section, people have what I shall refer to as important *moral interests*.
- Motivation/relevance of the argument: key agents within the realm of reaction qualifications (e.g. selectors/employers and recipients) are often regarded as having strong, and in part legitimate, interests in certain reaction qualification being counted (even if they reflect antimeritocratic attitudes). Such interests may sometimes outweigh meritocratic norms. (E.g. X-Phi studies suggest that respondents tend to look with leniency on employers that count reaction qualifications (even when the qualifications reflect recipients' bigoted attitudes) (Bunel and Tovar, 2021).) If my argument is correct, this relaxes the tension between prudential interests and acting in accordance with meritocratic norm, and hence bolsters the argument for not counting reaction qualifications that rest on anti-meritocratic norms.
- Brings *paternalism* to bear on reaction qualification (and relates it to perfectionism that has been invoked by others in this realm (esp. Yuracko).

# 5) THE ARGUMENT

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## *The General Argument*

*Premise 1* If X has reasonable beliefs to the effect that interfering in Y's affairs is likely to promote Y's **interests** considerably, and **the interference in question is limited** (or proportional considering the interests at stake), then X has a (defeasible) reason for undertaking the intervention in question.

*Premise 2* X sometimes has reasonable beliefs to the effect that interfering in the affairs of Y is likely to promote important moral interests of Y, and that some such interferences may be limited or proportional.

*Conclusion:* X sometimes has (defeasible) reasons for interfering in the affairs of Y.

# 5) THE ARGUMENT I: THE IMPLIED PATERNALISTIC FRAMEWORK

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- Paternalism: (i) interference/meddling (coercion, shaping, even persuasion); (ii) Intention to benefit; (iii) absent of consent
- Perfectionist paternalism: paternalism (i-iii) based on a certain conception of the good
- The wrongness of paternalism: my "it is not for you to intervene in X" view (In contrast: the disrespect view, or disrespect revolving around mistrust of the capacities of the paternalized agent.)
- Moral and prudential paternalism. My view is a hybrid view: following Dworkin, I understand moral norms as parameters for a good life
- Balancing conception of the *justification* of paternalism



# 5) THE ARGUMENT II: THE INTERESTS

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## 1) Candidates' interests

- Self-realization (cf. Rawls); Integrity interest (White) (cf. R. Dworkin: Critical interests)
- Fairness-interests
- Interests in acting in accordance with an “*end-state norm*” that requires of each of us “to do our bit to bring about a state of affairs in which, first, selectors fill positions with someone who is no less well qualified for that position than any other candidate [‘qualified’ here understood in the moralized sense], and second, recipients do not respond to candidates on antimeritocratic grounds.” Lippert-Rasmussen, *Born Free and Equal?* 251-251.



# 5) THE ARGUMENT II: THE INTERESTS

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## 2) Selectors' interests

- First, Meritocratic end-state norm (cf. Candidates' interests)
- Second, related, selectors ought not (contribute to) “cause additional harm to people who are already unjustly worse off.”

Kasper Lippert-Rasmussen, “Is there a duty not to compound justice,” *Law and Philosophy* 42 (2023): 93-113, p. 93, 104. Cf. *Born Free and Equal?* ch. 6.

- Third, an agent-relative *duty of noncollaboration* arguably applies to selectors. In Lippert-Rasmussen’s words, this duty “enjoins selectors to offer positions to candidates who are best qualified when reactions rooted in antimeritocratic attitudes are disregarded” (i.e. best qualified on the moralized understanding of reaction qualifications) Lippert-Rasmussen, *Born Free and Equal?* 251. This duty gives each selector (and only selectors) a reason (not) to act in a certain way.
- An interest in avoiding *complicity* (cf. Shiffrin). Not to *condone* antimeritocratic attitudes.
- The weighthiness of our moral interests (Brownlee and Tadros).

# 6) THE ARGUMENT II: THE INTERESTS

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## 3) Recipients' interests

- First, meritocratic end-state norm (cf. Candidates' and selectors' interests)
- Second, associational interests restricted by meritocratic norms (or those norms serve as parameters for our interests, cf. R. Dworkin and the challenge conception) (cf. Sommer and Midtgaard, manuscript.)
- agent-relative, “*recipient norm*” enjoining “recipients not to respond to candidates on antimeritocratic grounds.”
- E.g. racist and sexist attitudes and reactions are appropriately excluded



# 6) THE ARGUMENT II: THE INTERESTS

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4) Bolstering the claim that the moral interests of the key agents in the realm of reaction qualifications are weighty (or even serve as parameters for a good life): The Dworkinian argument (the challenge conception)

“[W]e must treat some of the circumstances in which a particular person lives...as parameters that help define what a good performance of living would be for him.” (SV 260)

“Many of our ethical parameters...help to define the challenge that people should face.” (SV 262)

# 6) THE ARGUMENT II: THE INTERESTS

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“If living well means responding in the right way to the right challenge, then someone’s life goes worse when he cheats others for his own unfair advantage. It also goes worse when, even through no fault of his own, he lives in an unjust society, because then he cannot face the right challenge whether he is rich, with more than justice allows him to have, or poor, with less.” (SV 265).

# 7) THE ARGUMENT III: LIMITED INTERFERENCES

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- The interferences: First, the state may prevent that antimeritocratic attitudes materialize by prohibiting that qualifications based on such attitudes are counted (by selectors and others). Second, and over time, the state may, by virtue of such policies, contribute to altering the underlying antimeritocratic attitudes. It may do so by facilitating interaction between candidates and recipients, although this is initially unwanted at least on the part of the latter, in this way (on a positive scenario) reducing biases and prejudices or negative reactions. Second, the state may through various non-coercive (yet paternalistic) measure seek to counteract such reactions. Third, we (citizens) may do so through private forms of paternalism (cf. Bengtson and Midtgaard, 2023)
- Why these interventions are relevantly limited or not intolerably interventionist: (a) First, the (volitional) interests that restrictions on counting imply are not promoted are not some that people have a legitimate claim to have promoted (cf. Rawls); (b) The Tadros-Raz "valuable options" point (being denied worthless options does not restrict autonomy)

# 7) THE ARGUMENT IV: CONCLUSION

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- The paternalistic balancing conception
- The considerable moral interests (meritocratic norms as parameters for a good life)
- Limited interferences
- Some paternalistically motivated interferences to promote the mentioned moral interests are plausibly justifiable

# 8) OBJECTIONS

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- The *objection from standing* (cf. Stone 2013): does the state (or for that matter certain selectors acting on behalf of employers) have standing to paternalize? Stone's dirty hands point in a nutshell
- Reponse: in some case it doesn't in some cases it does (e.g. transition to just circumstances, non-unitary actor cases, balancing etc.). Interestingly: *ex hypothesis* selectors *do* have standing.



# 8) OBJECTIONS

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- The ***reconciliation consideration***: If I admit (which I do) that there are plausible nonpaternalistic arguments for not counting reaction qualifications that rest on attitudes that are antimeritocratic, it's unclear that my argument is paternalistic at all
- Response: (i) So what? Or 'then be it', my considerations still support the non-paternalistic argument; (ii) Pedersen's view. The most compelling argument decides (whether a given policy is paternalistic or not); my argument would still not necessarily be paternalistic; (iii) a more relaxed mixed or pluralist view (paternalistic and non-paternalistic considerations)

# 8) OBJECTIONS

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- Why *the long and controversial way home* (i.e, thorough perfectionist paternalism)? I.e why not invoke less problematic paternalistic arguments or arguments that are not paternalistic at all?
- Response: (i) not clear that we will *get* home with these arguments. Weak paternalism: do not touch (i.e. motivate challenge of) anti-meritocratic attitudes; (ii) even if we could, *are* for example nudging interventions less problematic than perfectionist paternalistic policies? Polemically stated: is it better for the state to sneak in meritocratic norms or conduct in accordance with such than to clearly express the norms qua prohibitions etc.?



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