Fairness, University Admissions, and Contextual Data [1]

Liam Shields

University of Manchester

0. *Introduction*

University education is a highly valuable good. Those who receive it benefit from developing their skills and often increasing their expected earnings and job opportunities.[2] Wider society also benefits from the public goods that university education produces, such as more widely disseminated knowledge, and increases in productivity. In addition, universities shape our society and its major institutions. Disproportionately graduates end up in positions of influence in society.[3] However, not everyone who would like to go to university, or who would benefit from doing so, can be offered a place.[4] As with any scarce and valuable good, access to it should be fair.

Achieving fair access to university education would involve overcoming at least serious three obstacles. First, a variety of obstacles that stand in the way of individuals ability being developed fairly and recognized, including prevalent social norms and the distribution of resources, have complex causes and addressing them may require the support and co-ordination

[2] According to Department for Business Innovation and Skills, Research Paper No. 112, "The Impact of university degrees on the lifecycle of earnings", August 2013. Available: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/229498/bis-13-899-the-impact-of-university-degrees-on-the-lifecycle-of-earnings-further-analysis.pdf, Male graduates earn 250k and female 165k more than non-graduates in their life time. For a critique of focussing narrowly on income, which seems broadly sympathetic to my own treatment, but goes much further is characterizing the distinctive value of university see Kotzee, B., and Martin, C. "Who should go to university? Justice in university admissions." *Journal of Philosophy of Education* 47.4 (2013): 623-641.
[3] See the Elitist Britain 2019 report from the Sutton Trust: https://www.suttontrust.com/wp-content/uploads/2019/06/Elitist-Britain-2019.pdf. See p. 15 Fig. 3 for the statistic that 84% of those in elite positions held a degree, compared with 19% of the working age population of the UK. 49% of elites held a degree from a Russell Group University, compared to 6% of the working age population. And 24% of elite held a degree from Oxford or Cambridge University, compared with 1% of the working age population.
[4] Even after lifting caps on numbers there are still limits to how many students any university, and the sector as a whole, can educate in any given year because of resources of all kinds.

of several different organisations as well as good luck. Second, in a democratic society, characterized by a good measure of social inequality, it can be hard for governments capable of coordinating those institutions to get elected by promising to deliver the radical egalitarian platform that would include fair university admissions. Third, interference with some aspects of the family that are necessary to ensure fairness may be morally objectionable, such as restricting parenting practices that result in differential development of talent and skill, including private tuition and even reading bedtime stories.[5] These problems are not easily surmountable.

One determinant of access to university education that *could* be controlled without confronting these objections is university admissions procedures. Because universities are relatively autonomous, they are quite capable of adopting even radical measures in the name of fairness, and can do so within a single, albeit complex and multi-faceted, organisation.[6] Furthermore, recent expansion of higher education in the UK and dramatic increases in tuitions fees in England have brought about an increasing focus on fairness in higher education not only from the general public and prospective students, but also from government and the universities themselves. For these reasons, it is worthwhile asking the question of how we might *increase* fairness in the distribution of the goods of university education via admissions, assuming that much else about the background will remain both unjust and relatively fixed.

In this paper I aim to go some way to clarifying the demands of fairness as they apply to university admissions today by searching for an account of fairness in university admissions that is both i) philosophically defensible and ii) practically useful. By "philosophically defensible", I

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[5] See, for instance, Brighouse, H., and Swift, A. "Legitimate parental partiality." *Philosophy & Public Affairs* 37.1 (2009): 43-80; Mason, A. "Putting story‑reading to bed: a reply to Segall." *Critical Review of International Social and Political Philosophy* 14.1 (2011): 81-88; Segall, S. "If you're a luck egalitarian, how come you read bedtime stories to your children?." *Critical Review of International Social and Political Philosophy* 14.1 (2011): 23-40.
[6] The fact that some universities are already acting unilaterally to change their admissions quite radically is evidence that others could follow. See McKie, A., "Warwick to admit disadvantaged students with three Cs at A level", Times Higher Education, 14th May 2019. Available: https://www.timeshighereducation.com/news/warwick-admit-disadvantaged-students-three-cs-level. Accessed 21st May 2019.

mean that the account of fairness in university admissions must be capable of being derived from a principle or theory of fairness that can be supported by sound arguments, whose intuitive plausibility is stronger than rival philosophical accounts, and whose verdicts are tolerable given prevalent levels of the inequality and injustice. We should not base our account of fairness in university admissions on a flawed account of fairness since to do so would invalidate the conclusion arrived at in research that relied on it and the policies adopted to promote it. By "practically useful", I mean that the derivation from the underlying account of fairness in general must yield an account of fairness in university admissions that can provide verdicts on the fairness of the admissions regime based on the cohort that is admitted. This will enable the account to be applied by empirical studies. The need for the account to be "practically useful" comes from the fact that some theories of fairness are so idealised as to be incapable of judging admissions cohorts as more or less fair or they simply require abolition or radical revision of the university, or universities. A practically useful account will enable us to assess university admissions regimes in their own terms and in the form that they currently exist taking into account epistemic and practical limitations.

The paper is structured as follows. In Section One, I review two commonly used standards of fairness that have been applied to university admissions and find them wanting in terms of their philosophical defensibility. This underlines the importance of linking conceptions of fairness used in empirical studies and policy debates to the philosophical literature. In Section Two, I draw on the philosophical literature on equality of opportunity and revise one prominent account to better respond to existing inequality and injustice, and to make it practical useful. I call this conception Non-Ideal Fair Equality of Opportunity. This underlines the importance of taking into account of existing injustice and the epistemic and practical limitations we face. In Section Three, I draw out the implications of Non-Ideal Fair Equality of Opportunity for university admissions and discuss

how it might support recent proposals for more radical changes to admissions using contextual data. Section Four concludes the paper.

Before going any further, however, it is important to make a number of clarifications about the scope of my task. First, I shall focus only on the nature and value of an opportunity to study an undergraduate degree at an Elite UK University. I do not offer a precise definition of 'Elite Universities' but will suggest that the Russell Group of universities or the Sutton Trust 13 offer a good guide to what they are. While other universities also confer great benefits on those who possess an offer of a place there, the sector as a whole is highly differentiated and so it is unlikely that all should be regulated by the same principle. Drawing a non-arbitrary distinction is difficult, but it is also instructive to have some examples that confer great benefits and appear to suffer particularly from unfair admissions because they are the *most* selective.[7] At the very least my analysis applies to these institutions. It may apply more widely. It is worthwhile attending to the fairness of these opportunities first and extend our analysis further as appropriate.

Second, a critic could claim that it is a mistake for someone concerned with fairness to narrow their focus in this way. The starting point should leave it open that universities should be abolished or that they should confer on individuals different sorts of goods than those that they currently do. To narrow the focus in the ways that I have, they might add, is to leave a critical blind spot and to fail to acknowledge existing injustice. An attempt to articulate a utopian society (realistic or otherwise) should not narrow its focus in these ways, true. But I think a different sort of enterprise is also distinctly valuable and important. To explain why, consider that my aim is to examine how

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[7] Research shows that these universities fail to achieve proportionate rates of admissions for those with the same prior attainment. See Boliver, V. "How fair is access to more prestigious UK universities?." *The British journal of sociology* 64.2 (2013): 344-364; Boliver, V. "Lies, damned lies, and statistics on widening access to Russell Group universities", *Radical Statistics* 113, 2015: 29-38; Noden, P., Shiner, M., and Modood, T., "University offer rates for candidates from different ethnic categories." *Oxford Review of Education* 40.3 (2014): 349-369; UCAS, UCAS Undergraduate reports by sex, area background, and ethnic group. UCAS: Cheltenham: (2016). Available: https://www.ucas.com/corporate/news-and-key-documents/news/ucas-publishes-first-equality-reports-individual-universities; Zimdars, A., Sullivan, A. and Heath, A. "Elite higher education admissions in the arts and sciences: Is cultural capital the key?" *Sociology* 43.4 (2009): 648-666.

the current system, or something like it, could be fairer and what the fairest admissions system could be, within certain constraints. This is for two reasons. One, radical social reform that is required to make society fully just is not on the horizon and so it is worthwhile asking which principles should guide us in assessing incremental changes that are available. This does not commit me to the view that we should pursue incremental change at the expense of radical change, only that, from some set of alternatives we should pursue one rather than the others. Second, and again in lieu of radical social reform, a failure to assess the more incremental changes in terms of a philosophically defensible account of fairness at best denies us the sort of critical thinking that is required to ensure our policies are fair as well as sensitive to other sorts of relevant considerations. At worst it leaves a vacuum for muddled thinking and for ideas, such as efficiency or democratic positioning, to masquerade as fairness. So even if radical social reform is required by ideal fairness, when our options are likely to be constrained in certain ways, it is important to ask what standard we should use for more incremental changes here and now and ask what this means for the policies we should favour. This paper is an exercise in non-ideal theory.

1. *Two Commonly Used Standards*

University admissions processes and outcomes are currently assessed by standards that may seem to articulate fairness or part of it. The HESA Standard Key Performance Indicator sets benchmarks for university cohorts. The benchmark is determined by the sector average level of representation of particular groups among its admitted cohort (by social class and ethnic origin for example).[8] This KPI is often used to group together similar universities rather than compare them all since comparisons of dissimilar institutions are not considered valid. To make more meaningful comparisons, HESA also has an adjusted list but the underlying idea is the same: that given some group of relevantly similar universities and the students they admit, they ought to share members

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[8] See HESA, "Guide to the UKPIs". Available: https://www.hesa.ac.uk/data-and-analysis/performance-indicators/guide.

of certain groups evenly between them. So, for example, if there are two similar universities we should not expect one to admit double the proportion of privately educated or BAME students to the other. To the extent that members of these groups are more evenly shared between the universities, as a proportion of their intake, the universities would have succeeded in coming closer to this benchmark and, one might infer from this, more fair.[9]

As a standard of fairness, this one faces a major problem. The KPI takes as a given, and therefore leaves beyond criticism, the question of who gets admitted in the first place. So long as members of particular groups who are admitted to any of the universities are evenly distributed it does not matter how that cohort is determined. Access to university is unfair even when this sort of benchmark is fully satisfied since it is inevitably satisfied where universities only admit white or privately educated students, regardless of their qualification or merit. This KPI is fundamentally flawed and rides roughshod over plausible demands of fairness. Indeed, as long as the universities within the comparison class are all equally biased against certain groups this benchmark can be met, but that doesn't imply that it is fair. So this KPI should be rejected because it cannot be grounded in a *philosophically defensible* account of fairness.

Another account of fairness has been used in the empirical literature on university admissions. Sociologist Vikki Boliver has used a widely held and intuitively appealing standard in her work on fair access to "prestigious" universities.[10] Boliver takes as her definition of fairness: equal access for those who are equally well qualified by prior attainment given that they applied to prestigious universities. In other words, fairness requires that those who apply to a particular university with the same prior attainment (A level grades) should have the same chance of being admitted,

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[9] See Ibid, Table T1a for participation of under-represented groups in HE 2014/15. University of Sheffield state schools or colleges Benchmark is 82.5%, location adjusted benchmark 83.3%.. Actual: 86.5%. But about 93% go to those schools. Manchester is benchmark: 82.8% and adjusted benchmark: 83.6%. Actual: 82.4%. Social class: Sheffield: Benchmark: 24.2%, Adjusted: 24%, Actual: 21.2% Manchester: benchmark 24.6%, adjusted 24.9% Actual, 21.5%,

[10] Boliver, V. "How fair is access to more prestigious UK universities?." *The British journal of sociology* 64.2 (2013): 344-364.

regardless of socio-economic background, ethnicity etc.[11] On its face, this view is quite plausible, so to assess it we need to delve deeper and ask whether it can be grounded in a philosophical account of fairness and whether that account is defensible.

One prominent and widely held view of how advantageous positions should be allocated is meritocratic. Proponents of meritocratic equality of opportunity argue that while advantageous positions should be formally open to all, selection is fair so long as one's "merit" determines success. Something like this view could underpin the idea that prior attainment should determine chances of success, not race, gender or social background, and with those with greater prior attainment having a greater chance than those with lesser prior attainment. If merit, understood here as prior attainment, were the only factor relevant to being made an offer of a university place at a prestigious university, then we would expect the cohort of offer-holders to proportionately represent the cohort of equally qualified applicants. In other words, if Meritocratic Equality of Opportunity is correct, then something like the standard Boliver applies would be an accurate marker of the fairness in university admissions. However, if it is incorrect, then this standard may require revision or rejection. For this reason, we do well to question the standard applied by questioning the philosophical foundation on which it is based.

One reason to doubt that Meritocratic Equality of Opportunity is philosophically defensible as an account of fairness in the allocation of advantageous positions is that there can be unfairness in opportunities to develop merit, especially where merit is understood as prior attainment. The more and better educational opportunities an individual has prior to university admission, the more

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[11] Boliver states that, after controlling for prior attainment applicants from manual class and state school background continue to be only around two-thirds as likely as their higher professional/managerial and private school counterparts to receive admissions offers from Russell Group universities (0.72 and 0.66 to 1, respectively) (Boliver, 2013: 357). So, even those with exactly the same prior attainment, even controlling for A level subject, have different chances of success in getting an offer from a prestigious university depending on non-merit factors, such as schooling, ethnicity and social class.

opportunities to develop "merit" that person has, but then a meritocratic distribution focused on attainment can be a manifestation of unfairness.[12]

To see more clearly what is wrong with a narrow focus on meritocratic equality of opportunity and therefore a focus on prior attainment, imagine that all the top university places have been awarded to members of the upper class through cronyism and that a progressive new government is suddenly elected into power and enforces Meritocratic Equality of Opportunity. After generations of consolidating superior education, jobs and wealth the upper-classes are in a far better place, particularly if private schooling is available, to ensure that their children end up being the most meritorious, thereby preserving vast social inequalities between members of different classes.[13] Although opportunities are formally open to all equally, regardless of social background, race or gender, opportunities to develop 'merit' are not distributed equally.[14] Intergenerational transmission of opportunities to cultivate merit has generated a deeply divided and unequal society, which we would rightly think is at odds with equality of educational opportunity. Unmodified MEO is blind to existing unfairness and cannot explain why the fact that certain privileged groups are disproportionately the most "meritorious" is unfair. For this reason, it is not plausible to think that fairness requires that advantageous positions be distributed in this way when there is a background of unfairness. A theory of fairness should be able to identify this unfairness, and a theory that did not have anything to say about it could support an unfair admissions policy. We can conclude this section by saying that while both KPIs and Boliver's standard, inspired by MEO, appear to give us standards that are practically useful in this context, in that they can give determinate judgements about whether the standard is met or not based on available data, they are not based on philosophically defensible accounts of fairness. In the case of KPI, this is because

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[12] See for example Chambers, C. "Each outcome is another opportunity: Problems with the moment of equal opportunity." *Politics, Philosophy & Economics* 8.4 (2009): 374-400.

[13] It is reasonable to think that this could accurately describe the persistence of inequality in the UK.

[14] Williams, Bernard. "The Idea of Equality" in Laslett, P. and Runciman, W. G., ed.s *Philosophy, Politics, and Society*, London: Basil Blackwell, 1962: 110-131.

the account tells us nothing about fairness, in the case of Boliver's standard it is because it only tells us part of the story, though it is instructive and troubling that even that standard is not met.

One final point on the current state of university admissions and related empirical studies is that many empirical studies on fair access to UK universities do not provide much discussion of what fairness is, nor do they cite the philosophical literature, often deferring to government reports for guidance.[15] The 2004 Schwartz Report, which is widely cited in the empirical literature on UK university admissions and is referenced in many university admissions policies[16] states that "Everyone agrees that applicants should be selected on merit; the problem arises when we try to define it" and that "interpretation of merit is a matter for individual institutions."[17] Allowing universities to define merit for themselves is highly problematic. Much more needs to be said about precisely what merit is and how ability matters for fair admissions.[18] There may be good reasons for this focus. For instance, it may be that the empirical research is supposed to test whether universities are living up to the standards they espouse or the standards set for them, regardless of whether this standard coincides with what fairness demands. Alternatively, it might be that the philosophical literature does not yet have a practically useful standard of fairness that can be operationalized. But if we are to test university admissions against the standard of fairness in the near future, then we do need an account that is both philosophically defensible and practically useful.

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[15] Zimdars, A., "Fairness and undergraduate admission: a qualitative exploration of admissions choices at the University of Oxford." *Oxford Review of Education* 36.3 (2010): 307-323.

[16] An initial look at Russell Group Universities I found that the report is mentioned in the student admissions policies of University of Manchester, University of Leeds, University of Liverpool, University of Cardiff, University of Exeter, University of Bristol, University of Glasgow.

[17] Schwartz, S. *Fair admissions to Higher Education: Recommendations for good practice*. The 'Schwartz Report', Report of the Admissions to Higher Education Steering Group. Nottingham, 2004: DfES.

[18] Some similar problems have been identified with prevalent definitions of fairness by empirical studies in Australia. See Pitman, T. "Understanding 'fairness' in student selection: are there differences and does it make a difference anyway?", *Studies in Higher Education*, 21. 8 (2016): 1203-1216.

2. *Fair Equality of Opportunity*

Having identified the defects with currently used standards, and MEO, where should we look to next for a philosophically defensible account of fairness? A good place to start is with John Rawls' Fair Equality of Opportunity. This account gives a prominent role to the idea of underlying potential in determining equality and thus provides a critical capacity lacking in the commonly used standards discussed above. It has therefore something to contribute to debates about education, and university admissions in particular. Moreover, unlike many other accounts of equality of opportunity, Fair Equality of Opportunity retains some meritocratic credentials through its permissive attitude to inequality stemming from differential talent.[19] This makes it well suited to our task of finding an account for measuring realistic and incremental improvements to fairness in admissions because the meritocratic aspect of university admissions is very much ingrained. However, taken unreconstructed Fair Equality of Opportunity is neither philosophically defensible nor practically useful in this context, it can be made so.

Fair Equality of Opportunity requires that offices and positions of advantage, such as well-paid job opportunities, be formally open to all and that individuals should have a fair chance to be the most qualified for those positions.[20] Fair chances are had by all when those who are similarly naturally talented and motivated have an equal chance to attain these positions. So, our social institutions, including universities, should be designed so that regardless of socio-economic origin or schooling those who have the same natural talent and motivation have similar chances. This principle may support compensatory educational measures that close the attainment gap between the naturally talented rich and the naturally talented poor. This is because naturally talented students from poorer backgrounds should fare as well as naturally talented students from wealthier

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[19] For example Equality of Opportunity for Welfare or Luck Egalitarianism, which seeks to equalise the effects of both natural and social luck, while FEO only seeks to equalize the effects of social luck, such as family background. See Knight, C. *Luck egalitarianism: Equality, responsibility, and justice.* Edinburgh University Press, 2009 and Lippert-Rasmussen, K. *Luck egalitarianism.* Bloomsbury Publishing, 2015.
[20] Rawls, J. *Justice as Fairness a restatement*, Harvard University Press, 2001: 42-4.

backgrounds. If native talent is distributed evenly across the social classes, then FEO would require proportional representation of those social classes in the cohort of students admitted to elite universities.[21]

Note that, unlike MEO, this view is capable of criticizing pre-university inequalities in opportunities to develop merit among the equally naturally talented, because it focuses on underlying or natural talent. Also derived from this principle we could get an admissions procedure that encourages universities to make offers to ensure that those with equal natural talent and motivation have an equal chance of an offer, regardless of their socio-economic background. FEO says something quite significant about how the cohort of students at elite universities should be formed and not merely about how the members of that cohort can be fairly shared among the elite institutions, as HESAs KPIs would have us do. FEO does seem to be an attractive view of fairness in the allocation of advantageous positions, but is it neither philosophically defensible and nor useful in this context.

When FEO is applied to currently unequal societies, like our own, there is a good philosophical objection to FEO: it neglects the importance of developed talent and potential ability at the point of entry to the fair allocation of advantageous positions.

To see why neglecting developed talent in determining fairness is not philosophically defensible, consider the following: If we ensure that those with equal natural talent and ambition have an equal chance of a university place, as FEO seems to require, we should offer places to students who have dropped out of high school without any qualifications at the expense of offering places to those with good grades and above average tariff levels. After all, they could have equal or even higher native talent than those who receive exceptional grades. Few people believe that

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[21] It may be advisable to control for morally innocent differences in application rates, such as authentic preferences that are not the result of adaptation to unjust social norms.

we should give opportunities to those who have the best underlying but uncultivated ability at the expense of those who have less underlying ability but have higher levels of developed talent.[22] As well as being unpopular, it is also implausible to treat those cases equally. It is a sad fact, but one that a non-ideal account of fairness must take account of that by the time universities make offers it is already too late to close these gaps. This renders the view somewhat implausible with respect to guiding the current state of university admissions.

At this juncture, prior attainment may seem our only basis on which to make decisions about admissions. But this is too quick. Something can be done to make FEO more defensible in non-ideal circumstances, like our own. I suggest that in non-ideal cases, like this, we supplement FEO with a requirement pertaining to merit, talent, or ability thus creating a non-ideal account of FEO. I will now survey some ways of understanding "merit" that we could use instead of developed talent and prior attainment that could supplement native talent in making FEO philosophically defensible.

The way that we have been thinking about "merit" so far is in terms of the qualifications or credentials or "prior attainment". According to this view of merit, those who have equal prior attainment should have equal chances of success. We should make offers to the applicants who have the most tariff points or best qualifications. If we fail to do so, and offer places to those with inferior qualifications at the expense of those with superior qualifications, then we perpetrate an unfairness according to this view. The most qualified who miss out will have a justified complaint. I shall call this principle of fairness "Merit as Best Qualified".

Another understanding of admitting based on "merit" is the idea that the one who, with the available level of investment and support, is expected to reach the highest level of achievement should be chosen over anyone else. So, with respect to the university, we would choose those who

[22] Miller, D. "Two Cheers For Meritocracy". *Journal of Political Philosophy*, 4, no. 4 (1996): 277-301.

we have most reason to believe will do best on the degree in terms of the degree itself, assuming that these standards are morally innocent. In this way we choose the applicant with the greatest potential for excellence, which may not be the one with the highest prior attainment. In particular, when opportunities to develop talent prior to standardised tests are distributed very unequally we would expect highest prior attainment and greatest potential to provide very different rankings of individuals. I shall call this "Merit as Greatest Potential".

Finally, consider the role that merit would play if understood as requiring that individual applicants were at least minimally qualified to take advantage of the opportunity. So, for instance, it would be wrong to give a person who was illiterate a place on a demanding degree program that requires high standards of literacy. This understanding of merit jettisons the "maximizing" idea that is implicit in the other three. I shall call this "Merit as Competence"[23]

Drawing on FEO, I suggest that we reject the popular "Merit as Best Qualified" and instead adopt "Merit as Greatest Potential" as being of importance as derived from FEO's focus on native talent. "Merit as Best Qualified" is only valuable as a reliable guide to who has the greatest potential, and it can only perform that role well in a more equal society than we currently have. If the best qualified person would do very poorly in terms of the course, it would be wrong to admit them over someone who would succeed. An explanation of why "Merit as Best Qualified" plays such a powerful role in existing institutions is that it has been taken, for too long, to be an adequate proxy of potential. Against an unequal background of opportunities to develop talent and

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[23] The ideas of merit as competency and merit as greatest potential makes sense of the statement in the 2003 White Paper, DfES 2003,The Future of Higher Education, London, HMSO. It states that "all those who have the potential to benefit from higher education should have the opportunity to do so." This is something that Boliver herself observes and admits that her definition of fairness is a conservative one, but one that is justified because of the limited data that we have. Boliver notes that "the use of the phrase 'potential to benefit' in the 2003 White Paper… marks the beginning of a growing acceptance of the idea that prior attainment in formal examinations may not be a reliable indicator of prospective ability without some consideration of the socio-economic context in which that attainment came about." (2013, 346).

potential, qualification is clearly not an adequate proxy. This is what makes MEO indefensible in non-ideal circumstances, even if it is the correct principle for ideal theorising.

"Merit as Greatest Potential" also directs us to invest in better ways of identifying underlying potential that are sorely needed in an unequal society like ours. Moreover, focus on greater potential provides a strong defence against accusations that measures taken to improve fairness lead to "dumbing-down" or would be cruel to students admitted who have been set up to fail.[24] This is because those with lower prior-attainment are not necessarily or even likely to be less intelligent or less able to learn.

It is important to explain the difference between "Merit as Greatest Potential" and those with the greatest natural talent, which is also a key and attractive feature of FEO. Natural talent is one's potential ability when born or created or some other early stage of life, given some baseline level of individual investment and favourable environment.[25] One's potential, for the purpose of determining greatest potential should be determined just before admittance. While potential is the same as natural talent at the very early stage of life, our potential can change later in life. For example, imagine an extreme case of a person who has a high genetic endowment but in early adulthood contracts an illness or is involved in an accident the consequences of which are severe brain damage. At this point the person's potential is drastically diminished, but her natural talent score may be very high if taken from birth or prior to the brain damage. I take it that it can be fair to favour a less naturally talented person at the start of their life who has more potential at the point of entry or application to university. Of course, there are all sorts of unfair ways that a

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[24] It is worth noting that many universities use contextual data in admissions. For a survey of the use of contextual data by highly selective UK universities see Boliver, V., Crawford, C., Powell, M. and Craige, W. "Admissions in Context: the use of contextual information by leading universities", *Sutton Trust*, October 2017. Available: https://www.suttontrust.com/wp-content/uploads/2017/10/Admissions-in-Context-Final_V2.pdf

[25] For discussions of potential in the context of FEO applied to education see Clayton, M. "Education" in Olsaretti, Serena, ed. *The Oxford Handbook of Distributive Justice*. Oxford University Press, 2018: 438-459; Mason, A. "Fair equality of opportunity and selective secondary schools." *Theory and Research in Education* 14.3 (2016): 295-312; and Vallentyne, P. "Of mice and men: Equality and animals." *The Journal of Ethics* 9.3-4 (2005): 403-433.

person's potential can be stunted, poor schooling, material deprivation etc. and this should be acknowledged in a complete account of fairness in society as a whole. Indeed, this is achieved by the inclusion of reference to natural talent, but for our purposes, in this non-ideal context, fairness should also be primarily concerned with Merit as Greatest Potential. And Merit as Competency should act as a constraint on any position combining concern with Merit as Greatest Potential and native talent. This will be especially important if we are to give great weight to native talent because native talent levels imply nothing about one's ability at the point of entry.

Practically useful

The directive to give equal chances to those with equal native talent or to give priority to those with the greatest potential may not be particularly easy to follow in practice due to constraints our knowledge of native talent in particular. To improve the usefulness of this approach, I think we should assume that native talent at birth is not unevenly distributed across groups, even though it plausibly is unevenly distributed across individuals within and without those groups. [26] This is for two reasons. First, any assumption that members of some groups are naturally less talented than others would be highly pernicious and threaten to violate our duties of respect to each other.[27] Second, any inequalities that were found might be a consequence of a racist or otherwise prejudiced ways of determining success of degree courses. It is not at all clear how we can test ability controlling for the presence of injustice.[28] At the very least there is a significant burden of proof

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[26] For a more radical reform of university admissions that emphasizes part-time study and an open admissions process, which is motivated by a wide range of considerations and not merely those of fairness, see Sperlinger, T., and McLellan, J., *Who are universities for?: Re-making higher education.* Policy Press, 2018.

[27] On the stigma that may arise as a result of revelations see Wolff, Jonathan. "Fairness, respect, and the egalitarian ethos." *Philosophy & public affairs* 27.2 (1998): 97-122. For more on the problems of intelligence tests, and issues of race see Gomberg, P. "IQ and Race: A Discussion of Some Confusions." *Ethics* 85.3 (1975): 258-266. For an exploration of scientific racism see Chase, A. *The legacy of Malthus; the social costs of the new scientific racism.* University of Illinois Press, (1980).

[28] Success on a course may be an inappropriate benchmark for that reason. Success at universities, for example completion rates and higher degree classification may be linked to coming from a higher social class or otherwise advantaged background.

on those who would say that members of certain already underrepresented groups are less talented at birth and this excuses the fact.

If, then, we assume that underlying talent is evenly distributed throughout the different social classes and other important groups, then we would expect proportional representation of those groups admitted to universities. Particular attention should be shown to represent different categories of schooling because we know that inequality in development of native talent stems, at least partly, from inequality in schooling. So, we should expect selective, private and high-achieving state schools to be represented at no more than proportional levels.[29]

We also have other reasons to favour proportionality in cohorts. Universities shape society not only by their research and other work, but also by the kind of students they produce and put into leadership positions in that society. Insofar as universities significantly contribute to who occupies elite positions and insofar as diversity and proportional representation are important for the composition of such elites, we do well to look for ways that universities can affect fairness through how they shape future society. This is explained by Elizabeth Anderson's account of fair opportunity in education.[30] Anderson describes an ideal conception of a democratic 'elite' and then claims that education must be distributed to achieve this composition. This requires that elite membership be composed along all lines of social inequality, meaning that the elite must have

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[29] Shields, L. "Private school, college admissions and the value of education." *Journal of Applied Philosophy* 35.2 (2018): 448-461.

[30] Anderson, E. "Fair opportunity in education: A democratic equality perspective." *Ethics* 117.4 (2007): 595-622: 596. Anderson describes an ideal conception of a democratic 'elite' and then claims that education must be distributed to achieve this composition. This requires that elite membership be composed along all lines of social inequality, meaning that the elite must have representatives from the different groups in society and not merely at token levels. This is important because an elite composed solely of those from the same background, say wealthy, private school-educated, white men, is likely to lack knowledge of the interests of those they serve, including working class Muslim women living in rural areas, and is likely to lack a disposition to serve them. Members of the elite are likely to stereotype those they do not know and so miscalculate their interests. The cognitive deficits Anderson associates with unqualified elites worsen the position of the least advantaged in society and minority groups by enacting and creating ill-informed policy. Whether the elite are well-qualified and well-constituted or ill-qualified and ill-constituted has far-reaching effects on the lives of all in a democracy and so we all have an interest in having a well-qualified elite. Anderson explains the role of elites in the following passage. 'In a democratic society, elites must be so constituted that they will effectively serve all sectors of society, not just themselves. They must perform in their offices so that the inequalities in power, autonomy, responsibility, and reward they enjoy in virtue of their position redound to the benefit of all, including the least advantaged. This requires that elites be so constituted as to be systematically responsive to the interests and concerns of people from all walks of life.'

representatives from the different groups in society and not merely at token levels. This is an additional reason to aim for a proportionate cohort representing different disadvantaged groups alongside competency and greatest potential.

But there are two further problems. First, even if native talent is evenly distributed, realised talent to a sufficient degree, that is competence, will not be evenly distributed in an unequal society due to present injustice and inequality. Second, even the sufficiently talented will make different choices about whether and which universities to apply to and what subjects, as a consequence of social norms and expectations, some of which will result from unjust stereotyping and adaptive preference formation. While socialisation presents a major obstacle to achieving perfect fairness, it is not at all clear that much can be done about it in the short term and particularly by university admissions. Although expanding the diversity of *applicants* is something that universities could do more of it is not something that really applies to admissions decisions directly. There needs to be a division of labour. Our benchmark for admission, in particular, should focus on those who apply to elite universities and are sufficiently qualified and focus particularly on those who likely suffered education disadvantage. But other measures, not only from universities, should be taken to increase the representativeness of the cohort. In addition, if my suggestions are taken up it may make admission to elite universities seem much more accessible to members of historically under-represented groups and therefore challenge socialisation to some extent. Now, let's turn to the specific guidance that Non-Ideal FEO might give admissions.

3. *Derivation of Principles and Contextual Data*

Non-ideal FEO states that, in unequal societies those with the same native talent and ambition should have the same prospects for success in pursuit of advantageous positions, such as university places, unless they lack competency at the point of admission, and priority should be given to those with greater potential at the point of admissions. I propose the following two criteria for determining admitted cohorts:

Proportionality: Because of the relevance of natural talent, which we assume is equally distributed, and the importance of Merit as Competence, among the minimally competent candidates we should seek proportional representation across the relevant set of social groups since we should assume natural talent is distributed evenly.

Greatest Potential: Because of the relevance of Merit as Greatest Potential, among the minimally competent we should prioritize those who are expected to do best, which is not necessarily the same as those who are most "qualified."

We already have enough in these criteria that is useful and philosophically defensible to make a good deal of progress, beyond KPIs and other currently used standards, but there is some indeterminacy in how to weigh the criteria above. So I will now discuss ways they could be made more determinate.

There are two ways of applying these criteria by appealing to lexical priority ordering. First, we could give Proportionality lexical priority over Greatest Potential and favour a more proportionate cohort over a less proportionate one, but within the set of equally proportionate cohorts we should favour the proportionate cohort that contains the most students with greatest potential. Second, we could give Greatest Potential lexical priority over Proportionality and favour the cohort which contains the most students with the greatest potential, but of possible cohorts equally great potential we should give priority to a more proportional cohort. A further less clear cut, but nevertheless determinate way of proceeding is to attach a value to improvements with respect to Proportionality and Greatest Potential so that they can be weighed against one another. So, perhaps similar sized gains in proportionality and merit should be weighed equally or perhaps gains in proportionality should be given double weight. A practical way of resolving this might be

to rank universities in terms of Proportionality and then separately in terms of Greatest Potential then combine their performance taking the weighted average of their position in each to determine fairness of their admissions procedures. It could be used as a benchmark much like the HESA KPIs are by higher education regulators, or the industry press or some think tanks, lobby groups, and charities.[31]

These proposals depart from existing thinking and require us to look in different places for relevant information. In particular, we should create more opportunities to display potential, for example with individual entrance tests and foundation years capable of making up for less competitive pre-college tests, which muddy the waters. This will be a key part of making the idea of merit as greatest potential operational.

The practice of using contextual data in university admissions processes is coming to prominence.[32] The use of contextual data typically means that applicants who are identified as being disadvantaged, for example because they are from a particular post-code where participation in HE is relatively low, or who received free-school meals can be made an offer of a place on the basis of lower pre-university attainment. So, their disadvantage earns them a discount on the tariff relative to non-disadvantaged applicants. The basic idea behind contextual admissions is that to determine student potential at the point of entry individual prior attainment should be judged within the context of the disadvantage faced by the individual student. To offer a crude and simplistic example, a student who attended a very prestigious and well-equipped private school and received A grades may have no more, and perhaps a lot less, underlying potential than someone who attends a poor performing school and received lower, perhaps much lower, grades.

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[31] Different priority rules will yield different results. Those that prioritize proportionality over merit as greatest potential will advocate positive discrimination. Those that prioritize merit as greatest potential will not. For a rejection of objections to positive discrimination in the context of English University admissions see Clayton, M., "On widening participation in higher education through positive discrimination." *Journal of Philosophy of Education* 46.3 (2012): 414-431.

[32] Boliver, V., Crawford, C., Powell, M. and Craige, W. "Admissions in Context: the use of contextual information by leading universities", *Sutton Trust*, October 2017. Available: https://www.suttontrust.com/wp-content/uploads/2017/10/Admissions-in-Context-Final_V2.pdf

The achievement of certain grades, at least partly, reflects the level of advantage or disadvantaged an individual faces and not merely their ability. The use of contextual data, therefore fits well with my proposed shift from a focus on "Merit as Prior Attainment" to a focus on "Merit as Greatest Potential". In addition, our use of contextual admissions should be guided by proportionality, as supported by the equal native talent requirement and constrained by "Merit as Competency". So, contextual admissions should be used to vary the lowest level of prior attainment that indicates competency, and would enable as close to proportional admittance as possible. Depending on the appropriate balance of Proportionality and Greatest Potential, we should see more radical discounting of admissions offers for disadvantaged applicants.

Presently the size of the discount given to disadvantaged applicants is quite small with most who use contextual data in admissions lowering the requirements by one or two grades. In rare cases, the requirements are lowered by four.[33] But given the scale of inequality and disadvantage, this modest discount does not make much of a difference to the proportionality of the cohort of university entrants. The arguments I have provided hold that the discounts should be used so that those who apply are equally likely to be admitted if they are competent, allowing for proportionality and ability. The thinking behind it is that for someone from a disadvantaged background can display equal potential to someone from an advantaged background by achieving lower grades.

A recent research briefing produced by the Durham University Evidence Centre for Education, "Using contextualised admissions to widen access to higher education: a guide to the evidence base", has suggested a number of ways in which the goal of widening participation can be achieved by a more radical use of contextual data in university admissions.[34] In particular their

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[33] See Boliver, V., Crawford, C., Powell, M., & Craige, W. (2017). "Admissions in context: the use of contextual information by leading universities". Sutton Trust. Accessed 28th Nov. 2019: https://www.suttontrust.com/wp-content/uploads/2017/10/Admissions-in-Context-Final_V2.pdf.

[34] Boliver, V., Gorard, S., and Siddiqui, N., "Using contextualised admissions to widen access to higher education: a guide to the evidence base", Research Briefing No. 1, DECE, 2019. Available: https://www.dur.ac.uk/resources/dece/ContextualisedHEadmissions.pdf; Boliver, V., Gorard, S. and Siddiqui, N.,

focus on the Office for Students' aim to achieve proportional participation levels for those from the highest and lowest quintiles of neighbourhood participation in university (POLAR) by 2038-39.[35] My final remarks in this paper will be to discuss the ways that my arguments may offer support to those proposals and how they may support revisions to them.

The authors of the research briefing make three key recommendations, but the most relevant recommendation for my purposes is the following. Universities should,

"Set separate minimum entry requirements for contextually disadvantaged learners. The evidence suggests that these could be as low as BCC for contextually disadvantaged learners entering higher-tariff universities, without inevitably setting such students up to fail."[36]

The authors clearly take seriously the idea of competence as a prerequisite for avoiding high failure rates. The authors' approach to the minimum level is driven by the concern that the lowering of grades required for admittance may set some students up to fail on their courses. They derive the minimum required from looking at data on completion rates and the degree classification. It is important to note that at least some students will fail to graduate and fail to secure a "good degree", defined as a 2:I or first class. Some of those with the highest grades on entry will fail in these respects, but the failure rate is higher for those with lower entry grades. The authors identify the relevant question here as being what chance of failure/success is tolerable? They take 50% chance of success as the lowest tolerable level consistent with not setting up

"How can we widen participation in higher education? The promise of contextualised admissions", pp.95-110 in Deem, R. and Eggins, H. (Eds.) *The University as a Critical Institution*, Boston: Sense Publishers (2017).

[35] See Office for Students, young participation by area. Available: https://www.officeforstudents.org.uk/data-and-analysis/polar-participation-of-local-areas/

[36] Boliver, V., Gorard, S., and Siddiqui, N., "Using contextualised admissions to widen access to higher education: a guide to the evidence base", Research Briefing No. 1, DECE, 2019: 7. Available: https://www.dur.ac.uk/resources/dece/ContextualisedHEadmissions.pdf

applicants to fail, but also suggest that 70% could also be used and be consistent with very significant gains.[37] I don't have any objections to this level, though it isn't something my framework would commit me to specifically. Their remarks about using more fine-grained data and providing much more support for students during the degree are certainly well taken.

Moreover, once the entry requirements are significantly lowered it would enable, though not ensure, greater proportionality can be achieved across different social groups. Such proposals could therefore be supported by the framework I have defended here. However, there are a few ways in which the arguments in this paper require this to be supplemented or may, depending on the empirical reality, point us in a different direction.

Two important supplements may be required depending on which groups must be proportionately represented in universities. The focus on these studies is on social class and economic disadvantage, but we know that other characteristics, such as race, are correlated with unfair treatment independently of economic situation.[38] It is therefore reasonable to hold that BAME applicants should be proportionally represented and so a richer set of measures should be used to admit students. The second way in which my arguments would suggest this proposal needs to be supplemented is with a greater focus on identifying those with the most potential, beyond competence. As I have argued that Merit as Potential is relevant to fairness, we should consider differences in potential within the cohort of applicants when making offers of places. There is no discussion of these sorts of judgements being made in the proposals, which is a shame because the idea of merit as potential clearly is a necessary ground for focussing on contextual data in the first place and potential occurs on a continuum. The premise of the use of contextual data is that prior attainment is not a good way of making judgements of relative potential without the context of

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[37] Ibid. p. 5 and Boliver, V., Gorard, S. and Siddiqui, N. (2017) How can we widen participation in higher education? The promise of contextualised admissions, pp.95-110 in Deem, R. and Eggins, H. (Eds.) *The University as a Critical Institution*, Boston: Sense Publishers p. 107.

[38] Boliver, "How fair is access to more prestigious UK universities?."

advantage/disadvantage being taken into account. Perhaps more nuanced judgements about potential will be practically difficult. The same too might be said about increasing the number of categories of disadvantages and linking them with increasingly large discounts on the grade requirements. For example, those in the most disadvantaged groups could be given the largest discounts while those in the less disadvantaged groups, but still disadvantaged, could be given smaller discounts. Ideally, some discount for disadvantage or possibly a cost for advantage would occur along a continuum so that all applicants can be assessed together. So long as this did not render the proposals practically useless, it is called for by the idea of Merit as Potential since disadvantage, and its effect of making prior attainment less reflective of potential, will vary depending on the extent of disadvantage. It may be possible to offer increasingly large discounts based on existing data on the POLAR quintile or more individual-level data categories, even family income and wealth because they are not binary, unlike other measures, such as eligibility for Free School Meals.[39]

4. *Conclusion*

In this paper, I have considered the problem of university admissions among elite UK universities assuming an unjust background. I argued that the currently used standards were either practically useless or philosophically indefensible. I argued that we should adopt a revised version of Fair Equality of Opportunity, which I call Non-Ideal Fair Equality of Opportunity. This account gives due weight to considerations of native talent, greatest potential and competency in determining a fair allocation of advantageous positions. I then derived from these commitments criteria that can be used to assess or benchmark university admissions procedures. From the commitment to giving equal chances to the equally naturally talented I derived the proportional representation requirement, because without relatively easy and cheap tests it would be pernicious to assume some groups in society had more natural talent than others. This means that university admissions

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[39] I am grateful to Vicky Boliver for this suggestion

cohorts should be proportional relative to the cohort that applies to those universities. From the commitment to greatest potential, I derived a requirement to make offers to those who have the greatest potential where this can be derived from prior attainment adjusted for various disadvantaged. These two criteria should be given weighting in our assessment. I added to this a constraint that no one who lacks the competency to do well on a degree should be admitted. I then discussed the most recent and radical proposals for the use of contextual data and showed that my arguments can offer a grounding to those proposals, but sometimes point towards further refinement or supplementation.

I believe that this more demanding account of fairness could be applied to set more accurate benchmarks for university admissions procedures. The arguments hopefully bring to bear insights from philosophical discussion of fairness in non-ideal theory that are nevertheless practically useful for empirical studies and benchmarking.

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