

Chapter 2

What Do Quotas Do? Reflections on the Ubiquity and Justice of Quotas

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The paper discusses quotas as a matter of fact and a matter of principle (of social justice). The first path of analysis departs from theoretical findings about the modernization of Western societies to arrive at the insight that quotas are an empirical fact of life in modern capitalist societies and thus indispensable to the functioning of modern meritocracy. This insight is followed by a second step of argument concerned with normative justifications of quotas for the disadvantaged and discussing the normative promise of quota policies in relation to their practical effects on recruitment practices, structures and norms, and on the meritocratic allocation of social positions. The final part of analysis tackles the justifiability of quotas as a means to foster the social inclusion and political representation of youth

2.1 Introduction

What do quotas do? Raising this question is already a challenge to some widely spread views and arguments about the detrimental impact of quota policies upon organizations and societies implementing them or upon individuals and groups targeted by quotas. Especially quotas for disadvantaged social groups are confronted with such a categorical disapprobation that any attempt to discuss or call for such policies evokes a number of misunderstandings and myths about quota policies. The great bulk of the rejections and objections to quotas are themselves an expression of the discrimination they are supposed to redress.¹

The first part of this paper discusses quotas as a matter of fact, whereas the second part of the argument analyzes quotas as a matter of principle (of social justice).

¹ In many arguments against quotas for the disadvantaged the rejection is pointed not so much against *quotas* as such but against the fact that they are benefiting the *disadvantaged*.

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The first path of analysis departs from theoretical findings about the modernization of Western societies to arrive at the insight that quotas are an empirical given, an indisputable (though not a *prima facie* detectable) fact of modern capitalist societies. Quotas are empirically ubiquitous to the functioning of modern meritocracy. This empirical insight is followed by a second line of argument concerned with the more specific case of quotas for the disadvantaged. This second step of argument analyses normative justifications of quotas for the disadvantaged and studies the normative promise of quota policies (to further social justice by the acknowledgment of personal merit) in relation to the practical effects of quotas on recruitment practices, structures and norms, and on the meritocratic allocation of social positions. Subsequently, I will finalize my analysis with some considerations concerning the justifiability of quotas as a means to foster the social inclusion and political representation of youth.

2.2 Quotas as a Matter of Fact—The Ubiquity of Quotas

The empirical spread and the functional significance of quotas can be detected by taking into consideration some structural, functional and cultural traits of modern capitalist societies of the West such as the division of labour, the growing complexity of social life, the differentiation of realms of social praxis and the specialization of tasks and qualifications.² Under the conditions of capitalist modernisation quotas are ubiquitous and necessary for defining educational or vocational tasks and positions, for occupying positions and completing jobs.

Most remarkably it is the division of labour as well as the co-related and ever growing differentiation of social realms, tasks and activities that make practices and procedures of selection indispensable to filter out proper candidates for a given job or position. Thus the advancing division of labour and differentiation of tasks and activities installs merit as a major principle regulating the justice of allocation and occupation of social positions. The division of labour is also functionally and causally related to the emergence of a system of meritocracy supposed to attune personal merit on the one hand and the functional requirements of job profiles on the other. Quotas, hidden or opaque, serve as a major mechanism for sorting out candidates for a given position and to match personal capacities and merits to the ever differentiating job and task profiles. Job advertisements are defined in such a way as to address selectively and exclusively only candidates who satisfy the requirements for the successful accomplishment of a given task and whose qualifications, former achievements and merits promise future success. All other potential candidates who fall below or above the bar, who are under- or overqualified for a given position are excluded either in advance through the definition of a job advertisement or later on during the application procedure. A quota principle of selection, giving preference, reserving positions for those who deserve and excluding all those who do not fit

² For an overview on theories and dimensions of Western modernization as a process of multiple structural and cultural social transformation since the eighteenth century see Rosa 2005, 71 ff.; 105 ff.

into the specific job profile, is implicitly at work even in the most simple job announcement and underlies the practices of defining, announcing positions and of recruiting the proper personnel for them. Any most trivial job announcement implements the quota principle of reserving a job or a position for a pool of candidates. Every educand and every employee can be considered as a beneficiary of quota policies, which is why quotas are no policy of ‘preferential treatment’. Quotas are far more widely spread than is usually assumed, especially by their critics. Each and every competitor on the labour or training market reckons with quota-like practices of reserving jobs or training positions for suitably qualified candidates. Each and every job seeker acts ‘preferentially’ and focuses only on those job announcements that are in such a way ‘preferentially’ defined as to match her or his preferences (interests, capacities and experiences). Indispensable as quotas are for the functioning of modern, highly specialized capitalist economies, their reach goes far beyond the allocation of resources and positions. Quotas also apply to the allocation of other valuable social resources—most prominently such as time or funding. Vacation, parental or educational leave belong to the most familiar forms of time-quotas. Parental leave, for example, responds to child needs but it also honours the unique merit of being a parent—the ‘significant other’ for a child no one else can (fully) substitute.

Quotas are indispensable as a mechanism of meritocratic allocation also for another reason. The highly competitive nature of capitalist labour markets and the real possibility of ‘the winner takes all’ outcomes suggest quotas as precautionary measures to prevent any such developments and to preserve a fair share of jobs, of educational opportunities, of housing or of any other items of the social welfare for those who cannot stand up to the competition due to natural handicaps, to social disadvantaging or systematic discrimination. In this case as well ‘a reserving of a fair share’—which is also a concise and eloquent definition of quotas—for the outcasts of capitalist competition appears to be in any case a functional necessity and for many a rightful claim.

The understanding of quotas as a matter of fact and as a functional necessity is important as it sheds new light on the widely shared view that quotas are detrimental to society, organizations and individuals. Widely held opinions about the maleficence of quotas are at odds with the fact of their empirical ubiquity. If quotas are as detrimental to the wellbeing of individuals, to the cohesion and fairness in society and to economic efficiency as their opponents suggest, how come quotas are empirically so widely applied, and serve as the buttress of modern meritocracy?

2.3 Quotas as a Matter of Principle: Quotas for the Disadvantaged, Justice and Merit

The interrelation between quotas and performance/merit can be shown even more emphatically through a second line of argument drawing on justifications of quotas for disadvantaged social groups. Quotas for the disadvantaged are a special case of quota policy insofar as they are targeting in the first place discrimination and

disadvantage as major hindrances to the performance of those affected and also to the rightful acknowledgement of, and reward for, their merits. Quotas for the disadvantaged remove those hindrances and improve the justice of treatment and recruitment of members of discriminated-against social groups. In view to this outcome quotas for the disadvantaged are no special case of quotas. In the following discussion I analyze different approaches to quota justification. The theoretical and public debates on quotas provide important references of analysis of the reasons, stakes and effects of quota policies. A review of normative rationales of quota policies and of their repudiations disclose the normative promise of quotas—to install or improve social justice—and provide us with a tool to examine the match (or mis-match) between this normative claim and the practical effects of quota policies. At this point I will not go into the details of normative-theoretical discussions of quotas and will tackle only some most influential and far-reaching arguments. An instructive systematization of pro- and contra-arguments on quota policies for disadvantaged social groups can be found in Pojman 1997; Skretny 2001; Kaloianov 2008 (concerning the English-speaking discussion on quotas) and Rössler 1993, 2012 (providing also the German-speaking context).

2.3.1 *A Pathway to More and to Real Equality*

Egalitarian anti-quota argumentation culminates in the well-known objection that quota policies are ‘positive discrimination’. This argument consists of an analogy between two diametrically different cases of exclusion—the exclusion as an effect of discrimination and the exclusion quotas introduce towards members of privileged groups. The analogy reveals an insurmountable contradiction of quotas that redress (towards victims of discrimination) and supposedly effectuate (towards members of non-discriminated-against groups) discrimination at the same time. The question is, however, whether the negative impact of quotas for women, for people of colour, for ethnic minorities might have upon men, whites or ethnic majorities can really be regarded as discrimination. If the denigration of persons is the distinctive feature of discrimination, then quotas cannot be compared with discrimination. Under no circumstances may the denigration of persons be a ‘positive’ social relation or experience.³ The impact of quotas on members of privileged groups could rather be seen as a constraint to their range of action while providing disadvantaged persons a playing field where their competences, achievements and merits are fairly acknowledged. The fact that members of dominant groups are normally used to having a unrestrained access to the entire field of social opportunities, and therefore perceive quotas as a form of exclusion, highlights even more the relationship between this

³ ‘The self-esteem of whites as a group is not endangered by such a practice, since the situation arises only because of their general social dominance, and the aim of the practice is only to benefit blacks, and not to exclude whites. Moreover, although the interests of some are being sacrificed to further the interests of others, it is the better placed who are being sacrificed and the worst placed who are being helped’ (Nagel 1973, p. 361).

claim to unrestrained access with the system of discrimination that makes such a claim possible. Moreover, the political ideology of 'positive discrimination' presumes, against factual evidence, the equality of rights and treatment as a matter of fact to conclude that this presumed factual equality is being distorted by quotas. The real world, however, in which quotas operate is characterized by factual and ever growing inequality, which can be effectively and fairly redressed in the long run by policies of differential treatment such as quotas (Walzer 1994). David Theo Goldberg illustrates this contribution of quotas to egalitarian justice with an instructive example:

'Assume that over his lifetime and in the absence of preferential treatment programs, the average white educated male may in principle be capable of competing for approximately seventy-five jobs. From these, the person may receive, say, three actual offers for jobs for which he in fact competes. A black person, equally qualified and without the benefit of preferential treatment programs and in the sort of racially charged world we have been used to, may effectively compete, say, for twenty-five positions and be lucky to land one. [...] With preferential treatment programs in place, it seems reasonable to assume, for the sake of argument, that the black candidate's competitive pool will be stretched by about a half and the white candidate's reduced by about the same amount the black person's is increased. The black candidate will now have a crack at something like forty positions, the white candidate close to sixty. Both can expect something like two offers. The difference between the number of positions each can expect to compete for is reflective of the fact that there will be more competitors in the nonpreferential category, and so the greater number of competitive possibilities will more or less equalize the competitive chances of whites. The playing field has thus been relatively levelled, and the white candidate can hardly claim to be wronged' (Goldberg 2002, p. 235).

The principle of equality (of rights, of opportunity, of treatment) may very well sustain an argument in favour of quotas for disadvantaged groups. Quotas implement the justice of proportionality as they promote a representation and participation of the members of disadvantaged social groups at various levels and in various spheres of society that is proportional to their population share. The normative rationale of proportional justice is that of 'treatment as equal' (Dworkin 1997), not that of equal treatment. Treating members of discriminated-against groups as equal requires to set aside a share of educational and job opportunities (or of other resources) that corresponds quantitatively to their population share. This in turn equalizes statistically and practically the probability for underprivileged and privileged social groups alike of finding and competing for available opportunities. If, for example, migrants comprise 10% of the entire population, a 10% quota for migrants will level the field of competition for migrants and non-migrants. The 90% of non-migrants can compete for 90% of the available opportunities, whereas migrant applicants face each other in the competition for the 10% quota positions. This outcome surely does not satisfy perfectionist claims of egalitarian justice. Nevertheless it provides more egalitarian justice as compared to the state of affairs without and before the implementation of the 10% quota for migrants. In the latter case, when the 90% of non-migrants could compete for 100% of available opportunities, they did in

fact take 98 % of those. A 10 % quota for migrants would thus initiate a process of successive equalization of existing disparities between migrants and non-migrants.

The proportional justice approach of quota policies more often than not has had the overcrowding of quota target persons as its side-effect. One reason for this overcrowding is the prospect of avoiding discrimination. Another reason can be possible mismatches between the share-setting of quota policies and the population share of their target groups. Such mismatches reflect the contested nature of identity politics and the fact that decision- and policy-making is usually in the hands of dominant and privileged groups, who would tend to set aside less than what empirical data suggests. However, where more (quota targeted candidates) compete for less (positions reserved by quotas), the personal merits of quota beneficiaries gain additional weight and substantiate the insight that quotas promote the justice of merit and make the achievements, qualifications and merits of those discriminated against count in the social competition for jobs and opportunities.

2.3.2 A Policy to Promote Merit and Improve Merit-Based Justice

Even when egalitarian arguments of proportional representation advocate convincingly in favour of quotas, such policies may still remain morally suspicious and disputable. The normative and factual inconspicuousness of quotas, which is what I meant above by the ‘ubiquity’ of quotas under the conditions of modern capitalist society, results mostly from their conformity to the merit principle of social justice. Merit as a principle of social justice regulates the relation and the balance between efforts, achievement and social rewards and determines the scale and size of justified social differentiations (in regards to income, status or power). The merit principle of social justice has a greater practical spread and relevance for the justification of distributive provisions in modern capitalist society than the norms of egalitarian justice—the latter being stronger enacted in theory than in practice (see Dubet 2008). It is therefore no surprise that the strongest and most sound arguments against quota policies for discriminated-against social groups regard quotas as a breach of the merit principle of social justice.

The view that quotas are unjust because they violate the norms of meritocratic justice purports that it is unjust to hire persons (from disadvantaged groups) on the basis of their gender, skin-colour, origin, age etc. and thus deprive better qualified candidates (from privileged groups) of the opportunity to apply for or occupy a position.⁴ This major meritological argument against quotas makes three disputable

⁴ Thomas Nagel formulates this popular objection against quotas as follows: ‘The question is: If a black person or a woman is admitted to a law school or medical school, or appointed to a certain academic or administrative post, in preference to a white man who is in other respects better qualified, and if this is done in pursuit of a preferential policy or to fill a quota, is it unjust’ (Nagel 1973, p. 348).

assumptions. A critical commentary of these assumptions will substantiate the claim that quotas implement and promote the justice of merit.

It is firstly assumed that persons discriminated against on the grounds of their gender, skin-colour, origin or age are expected to be less qualified than white heterosexual men and supposedly cannot withstand direct competition with them.⁵ Favourable conditions for socialisation, good education and an upward career path enhance excellence and the superiority of skills. The expectation, however, that a disadvantaged starting position has necessarily to do with inferiority and that underprivileged competitors have necessarily to be less qualified than the rest is empirically, logically and normatively flawed. As a prism of estimating potentials, skills and merits, the expectation of an a priori inferiority of disadvantaged persons may skew the picture of even the most excellent skills and credentials and install hiring-by-stigma instead of hiring-by-merit.

The second assumption of the supposedly meritocratic counterargument against quotas purports that gender, skin-colour, origin, or any other reason for discrimination, are not related to personal achievement and merit. In his seminal work *Principles of Social Justice* David Miller discusses preferential treatment measures that reward members of discriminated-against groups with additional credits in hiring procedures (Miller 2008). Job advertisements declaring that ‘the recruiting of equally qualified women and persons with disability will be given preference’ (one reads much more seldom ‘of migrant background’) exemplify such policies. In the context of such political measures, attributes such as gender, skin-colour and origin are related to merit and are of relevance for the estimation or prognosis of personal skills and achievement. Miller argues that candidates from disadvantaged groups deserve to be rewarded bonus points as they acquired their (equal) skills and qualifications under presumably much more difficult conditions. To arrive at the same level of proficiency, such candidates had to overcome greater obstacles and hardships, to endure heavier social burdens, and to invest more. In brief, the achievement of a given professional qualification equal to that of candidates from privileged groups requires that candidates from disadvantaged groups perform better and achieve more than their privileged peers. This indicates a higher potential and a more favourable prognosis of future performance and justifies the rewarding of bonus points, especially in the cases where the biography of an underprivileged candidate cannot be sufficiently portrayed by conventional indicators of performance (circumstances of socialisation, uninterrupted career paths, multi-faceted profiles, good references, relevant networks, add-ons of various kinds etc.).

The third and major critical argument against the meritocratic justification of quotas regards gender, skin-colour, origin and the like not as a criterion of defining a quota but as the (only) reason for recruiting a target person of a quota policy. It

⁵ I cite ‘white heterosexual men’ as a summative term exemplifying the hold on social privilege. Even if the combination of white skin-colour, heterosexuality and masculinity is not the only one endowing social privilege, it is the one that is more often than not associated with privileged social standing in various socio-cultural contexts and at different historical times.

is suggested that the target-persons of quota policies are being hired not for their skills and achievements but because of their gender (women), skin-colour or origin.

Gender, skin-colour, origin, or (in the case of youth-quotas) age, do not substitute skills and achievements, and are not the reason to recruit a holder of any such qualities. Rather, they steer the targeting of quotas and define the playing field where the beneficiaries of quotas may compete with each other purely on the basis of their competences and merits and where structures and mechanisms of discrimination, with which members of disadvantaged groups are confronted in non-quota hiring environments, are extensively deactivated. Two critical-theoretical approaches to the justice of merit substantiate the meritological rationale of quotas as policies that effectively neutralize discrimination in the competition for jobs and positions and foster the acknowledgement of the achievement and skills of the members of discriminated-against groups. These two theoretical approaches either disclose critical insufficiencies of meritocratic practices (Iris Marion Young) or appeal to a perfected implementation of the merit principle of social justice (David Miller; Axel Honneth).

In her critique of modern meritocracy, Iris Marion Young (1990) differentiates between the idealizing formulations, definitions and argumentations of the merit principle of justice and the reality of its implementations, which are spoiled by various factors, most markedly by domination and discrimination. Those real-world insufficiencies of the justice of merit leave two options open. The first possibility is to admit that merit does no justice to anyone and rather serves as an ideological coating of structures, procedures and practices tailored to sustain asymmetric power relations, systematic discrimination, oppression and marginalization. Young chooses this path of critique and prefers to deconstruct and reject the merit principle as incapable of procuring social justice in the real world. The second possibility is to hold on to the justice of merit and take its real-world deficiencies as an occasion to improve its implementations. Perfectionist critics such as David Miller and Axel Honneth stick to the merit principle for a very good reason. The normative logic of merit has an emancipatory impact as it allows for an upward mobility of individuals alongside a scale of differentials in income, status and power and enables them to choose and conduct a life relatively unrestrained by their social origins and inherited social disadvantage (Honneth 2010).

How can quotas contribute to improve the practical implementation of the merit principle? How do quotas make the personal achievement, merit and skills of members of disadvantaged groups such as women, people of colour or migrants count more in the competition for jobs and positions than without quotas?

Quota policies neutralize structurally entrenched discriminatory biases as they set aside a share of all available positions for candidates from discriminated-against groups. The competition for quota-positions includes only members of discriminated-against groups to the effect that discriminatory biases and negative stigmatizations—as they affect all competitors more or less equally—will not have the significance these have when the underprivileged and privileged compete on an ‘equal’ footing. Quotas create a playing field where personal qualities, qualifications, skills and achievements (of the victims of discrimination) regain their meaning as criteria

for recruitment, whereas the ascriptive grounds for discrimination such as gender, origin, skin-colour, religion or language lose their significance and impact.

Application processes usually have a documentary and interview stage. Tests and assessments play intermediary roles in such procedures. Already the documentary phase, where the first, application file-based selection of candidates takes place, can be shaped by structural and direct forms of discrimination (Schneider and Yemane 2014). Curriculum vitae of candidates from discriminated-against groups usually deviate from the ‘normal’ career path required for a given task and position, as the life course of such individuals is essentially modelled by structural discrimination. Tests and assessments include not only discriminatory biases but also actively reinforce them and put up an aura of objectivity over the outcomes of discriminatory practices of recruitment (Young 1990). The selection of questions, the formulation of assessment tasks, the application of methods of assessment, the evaluation of assessment results—discriminatory biases may be incorporated in all those elements of an assessment procedure that otherwise claims to be neutral and fair towards all applicants. In the document- and test-based phase of a selection process, structures of discrimination (mental, institutional, cultural, material) may overshadow the merits of candidates from discriminated-against groups and thus predetermine the (negative) outcome of the entire procedure.⁶

Where applicants from discriminated-against groups succeed in surmounting the hurdles of the initial phases of a selection procedure, they can still be confronted with direct discrimination in face-to-face encounters during hearings. In job interviews candidates present not only their skills and merits but most of all their personality. The impression their appearance leaves also depends on the performance of co-competitors. At this phase of the selection process, where interaction with candidates and comparison between candidates becomes direct and tangible, the impact of discriminatory biases may even grow. Personal traits (clothing, gesticulation, communicative behaviour, facial expressions, facial features, skin colour, tone or accent of speech etc.) increase their relative weight in relation to skills and qualifications. The latter can still be tested in a hearing but what counts more in this case is the way their presentation proves convincing. All the efforts of applicants from a discriminated-against group to present their personality and skills in a favourable light could prove to be in vain from the very moment they step before the hearing commission, if an aura of their belonging to a negatively stigmatized group, and of being the holder of negatively connoted qualities, shines in the background.

Quotas make sure that the document-based pre-selection of applicants is not distorted by discriminating biases towards non-conventional career paths, as this fact reflects, and results from, an exposure to discrimination. The documentary indices of belonging to a discriminated-against group can no longer have the role of a

⁶ Experiments with anonymous applications have repeatedly confirmed the fact that where the name, sex, age, looks and origin of candidates remain hidden, members of discriminated-against groups score much better than when the grounds to discriminate against them are laid open (Castel 2009, p. 42, 108). Such experiments demonstrate time and again how strong the impact of factors of structural discrimination can be, long before any direct encounter between the parties involved.

selection criterion, as all candidates admitted to compete for quota-positions are set on an equal footing in terms of their belonging to a discriminated-against group. Quotas put their target persons on an equal footing also in the hearing phase of the procedure, as all who are allowed to compete for a quota position are marked by a negatively stigmatized personal trait. Quotas guarantee that hiring decisions disregard all the personal, cultural, ethnic fore- and background traits that trigger discrimination against their holders and in respect to which quota target persons are set on a more or less equal footing. Thus, in all phases of an application procedure quotas allow the skills and merits of candidates to come to the fore.

In the case of a job-position reserved only for women, disabled people or ethnic minorities, neither the structural discrimination against such groups would carry weight by virtue of the definition of job requirements and the selection of assessment tests, nor would the personal image of the candidates trigger direct discrimination and thus crucially disadvantage some applicants in comparison to others. Quotas do neither harm nor injustice but rather institute hiring-by-merit for applicants from discriminated-against groups.

2.4 Quotas—A Just Policy to Further the Political Participation and Representation of Youth?

I will try to answer this question here in terms of principles. This means that I will skip some very important technical issues of the implementation of youth quotas such as age-limits, areas and stakes of implementation. The unresolved question concerning those technicalities is whether youth quotas should serve to empower youth just politically while sparing them the rest of the responsibilities and burdens of mature and fully-fledged participation in social life, in the economy (to be productive and efficient, to be exposed at various risks), in political administration (the burdens and risks of military duty e.g.), in the media etc. For now my discussion of youth quotas remains focused on questions of principle: What kind of condition do youth quotas address and does their expected impact justify them?

Currently adolescence as a life-stage goes together with the privilege of leisure time given to the young to get fit for the transition to adulthood and be ready to face the challenges, responsibilities and burdens of adulthood. In the advanced and affluent societies of the West adolescence is on average coupled with a freedom from the most duties of adulthood, above all from the duty to provide for one's own living, to provide for one's own family and be engaged in gainful work. That this state of affairs is a privilege can be shown through comparisons between now and then, between here and there. In pre-modern and early modern times youngsters from the working class or a farming family were involved in gainful work in the family household or outside of it to a much greater extent than the average youngster from such social milieus nowadays. Historically, over time, adolescence in modern Western societies evolved from a life-stage of gainful activity into a life-stage freed from the duties and burdens of earning one's and the family's living. The same holds

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