The right to higher education

and rethinking merit

Briefing note compendium

UNESCO – a global leader in education

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The Global Education 2030 Agenda

UNESCO, as the United Nations' specialized agency for education, is entrusted to lead and coordinate the Education 2030 Agenda, which is part of a global movement to eradicate poverty through 17 Sustainable Development Goals by 2030. Education, essential to achieve all of these goals, has its own dedicated Goal 4, which aims to **"ensure inclusive and equitable quality education and promote lifelong learning opportunities for all."** The Education 2030 Framework for Action provides guidance for the implementation of this ambitious goal and commitments.

The right to higher education and rethinking merit

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Disclaimer

The ideas and opinions expressed in this compendium are those of the participants; they are not those of UNESCO and do not commit the Organization.

The content and style of the briefing notes have been maintained as per each author's preferences.

Foreword

The notion of access to higher education is structurally rooted in the concept of merit as laid out in the Universal Declaration of Human Rights, which established that 'higher education shall be equally accessible to all on the basis of merit' (United Nations, 1948). The later International Covenant on Economic, Social and Cultural Rights refers instead to capacity, recording that 'higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education' (ICESCR, 1966).

Thus, while the right to higher education exists in international frameworks, it remains predicated on students' prior performance as a determining factor in their eligibility for higher education. Yet, societal inequalities and structural inequities that persist in education systems mean that many miss out on opportunities to benefit from higher education because they cannot meet the merit or capacity requirement. It is important to note that this does not reflect any lack of ambition, effort, or suitability for higher education on the part of potential students themselves.

The search for the common good and for fairer and more equitable societies means that we must necessarily rethink what mechanisms we can deploy to enable more people to reach higher education. To address these new priorities, States must foster social discussion, re-examine the purpose and functions of system governance, and bolster oversight capacities.

These changes come in an environment that is becoming increasingly complex and where institutional autonomy is an integral part of the higher education policy framework. Fostering multiple synergies among government and higher education institutions means moving towards collective, innovative and flexible solutions that can embody the right to higher education.

In this briefing note compendium, UNESCO IESALC presents the findings of a thematic consultation dedicated to rethinking merit and critically discussing the structural barriers surrounding this concept. The briefing note compendium presents experts' views on the various challenges associated with merit and some ideas to restart the debate and promote the right to higher education from a social justice perspective.

Francesc Pedró
Director, UNESCO IESALC

Introduction

Access to higher education is typically premised on the successful completion of secondary education and is based on the 'merit' of the individual. However, little consideration is given to the quality of education available to people or the existing vulnerabilities that might have hindered their achievement and created barriers to accessing higher education. Rethinking the conception of merit involves reconsidering the various assumptions historically considered to be necessary for access to higher education, giving way to new forms of inclusion and pathways to access and success to higher education.

As such, this thematic consultation dedicated to rethinking merit constitutes a step forward to reflect on the international normative frameworks, including the Declaration of Human Rights of 1948 that states "higher education shall be equally accessible to all on the basis of merit" and the 1966 International Covenant on Economic, Social and Cultural Rights, that established that "higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education" in order to advocate for the right to higher education from a social justice perspective.

In this context, UNESCO conducted a thematic consultation held virtually in May 2022. The consultation gathered higher education academics and professionals and from different regions to learn from their perspectives on the key challenges and opportunities towards achieving the right to higher education for all in the region. This consultation was part of a series of regional and thematic consultations held between April 2022 and January 2023.

UNESCO and the right to higher education

Guaranteeing the right to education has been a sustained commitment for UNESCO. Following the recognition of education as a basic human right in the Universal Declaration of Human Rights (Art. 26), UNESCO's 1960 Convention against Discrimination in Education sets legally binding provisions for its 109 ratifying States[1]. The Convention is recognized as the cornerstone of the Education 2030 Agenda and Sustainable Development Goal 4: Quality Education, which is reflected in the agenda's human rights-based approach. UNESCO's dedicated work on the right to education has aimed at monitoring and advocating for this right, as well as supporting its implementation in the national frameworks of its Member States. Considering merging challenges to secure access to and inclusion in education for all, UNESCO has called for a reframing of the right to education to reflect the realities of our ever-changing societies[2].

As a fundamental part of the right to education and in light of the growing commitment to lifelong learning, UNESCO has enhanced its focus on the right to higher education. UNESCO IESALC in conjunction with UNESCO offices and partially supported by the Open Societies Foundation are working on the right to higher education[3] in order to increase awareness and advocacy on the topic as an imperative of social justice based on equality of opportunities and human rights. This work is a collaborative commitment that includes conceptual and policy papers, a series of national case studies, and regional and thematic consultations. This multi-pronged project aims primarily to introduce a social justice perspective of the right to higher education to the international agenda.

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1   https://www.unesco.org/en/education/right-education/need-know

2   https://www.unesco.org/en/education/right-education/evolving

3   https://www.iesalc.unesco.org/en/the-right-to-higher-education/

Aim of this compendium

The thematic consultation on rethinking merit was held as part of a consultation process involving five regional consultations and four thematic consultations. Overall, the consultation meetings covered: Africa, Arab States, Asia and Pacific, Europe and North America, Latin America and the Caribbean, Disability, Gender, Refugees and Forcibly Displaced People, and Rethinking Merit.

As part of the consultation, participants were requested to submit a 2-page briefing note in response to two prompt questions provided in advance of a closed online meeting:

1. What are the challenges to the right to higher education from your perspective/area of expertise (geographic, legal, normative, societal, educational, etc.)?

2. A future aim is to work towards a series of Guiding Principles on the Right to Higher Education. These would be global guidelines that would be used in and adaptable to various contexts. They would reflect existing legally binding instruments (not create new standards). They would provide guidance to States and other higher education stakeholders on how to uphold and advance the right to higher education. What would you consider essential for inclusion in these Guiding Principles?

The briefing notes were shared among participants in advance of the consultation meeting. During the meeting, participants provided a summary of the key aspects presented in the briefing note. Participants had the opportunity to elaborate on their answers to the two initial questions, followed by an open space for discussion among participants.

This compendium presents the briefing notes shared by five of the five participants who were part of the thematic consultation on the right to higher education and rethinking merit.

Their details are listed in the following table.

Key findings

Amongst the challenges preventing the right to higher education highlighted by participants in their briefing notes was the conceptualization of merit and its impact on the right to higher education. The concept of 'merit' has been

Rethinking Merit thematic consultation (listed in alphabetical order)	
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developed through the international legal framework and it assumes that enabling people to participate in higher education based only on their talents would yield equal results. Working with the assumption of an equal society, people's success would depend directly on their effort. However, as participants pointed out, this assumption does not hold, and the meritocratic ideal is a justification for inequality more than a remedy for merit.

Meritocratic systems tend to disregard the multidimensional inequalities at play in the construction of who is recognised as having the right to higher education. It leaves students from socially and economically disadvantaged groups behind as they do not start on the same level playing field as more privileged students. Furthermore, students from these equity deserving groups[4] have lower possibilities of accessing higher education due to structural inequalities at the lower levels of education, for example the likelihood of receiving lower quality education in previous levels. Therefore, framing access to higher education only through merit will forcibly yield and reproduce existing social and economic inequalities. The right to higher education can therefore be impaired or denied if the construction of the concept of merit is not critically analysed.

Reflecting on the legal frameworks supporting the right to higher education, participants noted that in 1966 the concept of 'merit' was replaced by 'capacity' in the International Covenant on Economic, Social and Cultural Rights, yet still the Declaration of Human Rights of 1948 states "higher education shall be equally accessible to all on the basis of merit". 'Capacity' focuses on a student's potential to succeed in higher

education in the future, whereas 'merit' allocates opportunities in higher education based on the student's performance (and access to education along with the influence of their family background) in the past. Goal 4 of the Sustainable Development Goals (SDGs) in the 2030 education agenda aims to "ensure inclusive and equitable quality education and promote lifelong learning opportunities for all." In terms of higher education, SDG 4 extends and recognizes the right to higher education from a lifelong learning perspective.

Nevertheless, even when considering 'capacity', the criteria to determine access to higher education can be very selective. Governments and higher education institutions alike test potential students in a range of ways including entrance exams, aptitude tests, and previous grades. This would still present a barrier to students from socially and economically disadvantaged groups. Despite changes in legislation, by considering these mechanisms, higher education institutions tend to favour already privileged groups and perpetuate these inequalities in society.

Participants put forward different frameworks that could help overcome the current deficiencies in the conceptualization of merit and capacity, for example building a dialogue between different stakeholders with a social justice lens to examine in further depth the ramifications of how merit has been seen and its effect on the right to higher education. Another example was contextualized admissions processes that take socio-economic backgrounds into consideration to minimize the reproduction of inequalities. Furthermore, collaborative reflections must occur in the higher education

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4   Equity deserving groups is a term developed by Wisdom Tettey and adopted by UNESCO IESALC in its social justice framework on the right to higher education. It refers to group of people who have been 'disproportionally impacted by higher education policies and structures that discriminate against them in visible and less visible forms, with lasting consequences in their academic, personal, and professional lives' (https://unesdoc.unesco.org/ark:/48223/pf0000381750, p.12)

community to break historical inequalities and injustices. Additionally, redistributive justice initiatives can promote participation in higher education by formally supporting diverse learners to promote their academic potential irrespective of their background. Such initiatives could be based on social justice principles to incorporate affirmative action policies that create conditions that guarantee the right to higher education for equity deserving groups.

It was also noted that the state should make all financial efforts possible to introduce free higher education – progressively if necessary – particularly for equality deserving groups. Financing becomes central when considering merit and the right to higher education because financial barriers prevent students from accessing higher education independently of the merit/capacity configuration. In this way, higher education that is free for all would produce more equitable higher education systems by obviating the need for barriers to admission based on previous achievement or circumstances.

Reconceptualizing the concept of "Merit" in Higher Education

By Prof. Dr. **Klaus D. Beiter**, Associate Professor, Faculty of Law, North-West University (South Africa)

The student perspective

While Article 26(1) of the Universal Declaration of Human Rights of 1948 had still stated that "higher education shall be equally accessible to all on the basis of **merit**," Article 13(2)(c) of the International Covenant on Economic, Social and Cultural Rights of 1966 changed the formula slightly, by stating that "higher education shall be made equally accessible to all, on the basis of **capacity**, by every appropriate means, and in particular by the progressive introduction of free education." "Merit" is a backward-looking criterion. In allocating opportunities to pursue higher education, it asks, how has a student performed in the past? "Capacity," however, is forward-looking. It asks: What is the potential a student has to succeed in higher education in the future?[1]

In this sense, the ICESCR incorporates notions of equity better than the UDHR. Static discrimination may mean that students from disadvantaged backgrounds did not have chances to perform well in school, in other words, that they do not possess "merit," but they may yet have the potential, the capacity, to pursue higher education. By virtue of the reference to "equal access" in Article 13(2)(c), and also inspired by the non-discrimination and equality provisions of Article 2(2) of the Covenant, such students should be granted the opportunity to pursue higher education. This will simultaneously require states parties – ultimately institutions of higher education – to provide programmes that enable such students

to equalise deficits. In effect, an additional year of study or two might become necessary at higher education institutions for these students, preceding or combined with studies in the various programmes chosen.

Another important precondition for strengthening the ability of students to attain capacity for higher education is to strengthen mother tongue education throughout the education system. The evidence is clear: All cognitive learning depends on fluency in the native language. Hence, bi-, better still trilingual education, with mastery of the mother tongue at its heart must inform education from pre-primary to higher education.[2] Even in higher education, the ideal should be multilingual institutions. These are also necessary to intellectually and socio-economically sustain minority, indigenous, and other disadvantaged groups in society.

Capacity, but also merit, must play a role in admitting and retaining students in higher education. The directive of the last three decades – fuelled by neoliberal notions that every person should be prepared for participation in the global knowledge economy and be able to significantly increase their income potential – has been to admit at least 50% of any yearly cohort of school leavers to university. However, it has been shown (for the U.S.) that only those graduates in the higher earner category (the 90th percentile) enjoyed a significant growth in real income since 1973.[3] Many university graduates now find themselves employed in

positions below their qualification.[4] Apart from that, most qualified graduates are needed in a "very local" economy. It is a tiny percentage that can ultimately participate in the "global knowledge economy." This implies two things: Firstly, capacity (and merit) must, in fact, play a role in admission to, and retention in, higher education. Secondly, however, secondary and higher education need to be diversified, inter alia significantly strengthening programmes that are vocationally oriented. Countries such as Germany, Switzerland, or the Czech Republic, with relatively lower numbers of university graduates, but higher numbers of graduates in TVET, have lower youth unemployment rates and fare better economically.[5] This does not mean that the civil mission of higher education should not be strengthened in higher education in all its facets, including that which is vocationally-oriented. Especially universities are too rigidly oriented towards producing future labourers rather than future critical thinkers. The current business analogy in higher education needs to give way to a mission directed at ensuring sustaining lifestyles and societies, that are intellectually and culturally rooted, rather than economically.[6] In sum, capacity (and merit) must be requirements assessed to exist in relation to the specific form of higher education sought to be pursued, but a multitude of different forms of secondary and higher education must also be offered. Capacity (and merit) should, therefore, not be understood as static concepts.

However, it does not make much sense to just focus on the criterion of merit or capacity, neglecting to emphasise that higher education will remain a distant dream for many if it is not made financially accessibly. Article 13(2)(c) requires that higher education be made "equally accessible to all … in particular by the progressive introduction of free education." This criterion of progressively free higher education has strangely withered away in neoliberal times. Supposedly, higher education is mostly a private good, benefiting essentially those students obtaining the degrees. It is also maintained that the financial burden of higher education exceeds the capacity of most states. The literature shows however that, among countries similarly placed economically, whether these opted for student finance systems entailing low or high fees (and low or high subsidies), was directly correlated to which political parties were (when) in power and for how long. Hence, free higher education is a politically rather than an economically motivated choice.[7] Moreover, once it is appreciated that higher education enjoyed by only some, and not all, nevertheless sustains society as a whole through the advancement of knowledge, higher education must be considered predominantly a public good.[8]

The teacher perspective

Merit is relevant also in as far as staff performance appraisals (promotion, rewards, salaries) are concerned. While UNESCO's 1997 Recommendation concerning the Status of Higher-Education Teaching Personnel still followed the correct approach in this regard, the 2017 Recommendation on Science and Scientific Researchers applies a wrong approach. The 1997 Recommendation considers the major function of appraisal to be "the development of individuals in accordance with their interests and capacities." The 2017 Recommendation does not mention this consideration at all. The 1997 Recommendation emphasised that appraisal would have to "take due account … of the difficulty inherent in measuring [a] personal capacity." The 2017 Recommendation mentions this consideration in a rather subsidiary fashion. The emphasis is now on "all aspects of the

work including, *inter alia*, contributions to publications, patents, management, teaching, outreach, supervision, collaboration, ethics compliance, and science communications." The test, as formulated, has a quantitative tick-box appeal, completely absent in the test of the 1997 Recommendation. The 2017 Recommendation states that "appropriate metrics [should be combined] with independent expert assessment (peer review)." Paternalistically, peer review is to be a magic cure to be prescribed by the state (the nature of quality control in science and higher education must be left to the academic community to decide) – and, recourse is to be had to metrics! The Recommendation's proposal to use metrics (that is, quantitative targets) in staff appraisals is corporatism at its worst. Metrics will often mismeasure because not everything that counts can be counted. Metrics incentivise scholarly dishonesty, are inherently autocratic, and based on distrust. Appraisal in higher education should respect academic freedom.[9] Overall, staff evaluations should play a reduced role in higher education. The emphasis must be on input rather than output control. The proper selection and socialisation of teachers makes repeated evaluations unnecessary.[10] In lieu of performance appraisals, there should rather be "a constructive dialogue" between higher education institution and teacher on how the former might better facilitate the latter's work.

[1] Klaus D. Beiter (2006) *The Protection of the Right to Education by International Law* (Brill) 97.

[2] Tove Skutnabb-Kangas (2000) *Linguistic Genocide in Education: Or Worldwide Diversity and Human Rights?* (Lawrence Erlbaum) 567-649.

[3] Phillip Brown, Hugh Lauder & David Ashton (2011) *The Global Auction: The Broken Promises of Education, Jobs and Incomes* (OUP) 117.

[4] Alison Wolf (2002) *Does Education Matter? Myths about Education and Economic Growth* (Penguin) 70-72.

[5] Julian Nida-Rümelin (2014) *Zur Krise beruflicher und akademischer Bildung* (Bundeszentrale für politische Bildung) 219.

[6] Generally, Stefan Collini (2012) *What Are Universities For?* (Penguin).

[7] Julian L. Garritzmann (2016) *The Political Economy of Higher Education Finance: The Politics of Tuition Fees and Subsidies in OECD Countries, 1945-2015* (Palgrave Macmillan).

[8] Sjur Bergan (2005) "Higher Education as a 'Public Good and Public Responsibility': What Does It Mean?" in Luc Weber & Sjur Bergan (eds.) *The Public Responsibility for Higher Education and Research* (Council of Europe) 13-28.

[9] Klaus D. Beiter (2019) "Where Have All the Scientific and Academic Freedoms Gone? And What Is 'Adequate for Science'? – The Right to Enjoy the Benefits of Scientific Progress and Its Applications" *Israel Law Review* 52(2), 233-91, at 283-84.

[10] Margit Osterloh & Bruno S. Frey (2014) "Academic Rankings between the 'Republic of Science' and 'New Public Management'" in Alessandro Lanteri & Jack Vromen (eds.) *The Economics of Economists: Institutional Setting, Individual Incentives, and Future Prospects* (CUP) 77-103.

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Rethinking Merit Admission practices in the Art for a Few programmes in the UK

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The right to higher education presents a complex challenge: to apprehend the contextualised ways that higher education institutions play a significant role in perpetuating social inequalities and hierarchies that both intersect and accumulate in and over time. A challenge is to identify and implement approaches and practices within higher education that can move beyond this insidious dynamic, towards systems and institutions characterised by a contribution to the creation of more socially just societies. *The Right to Higher Education: Beyond Widening Participation* (Burke, 2012) engaged this problem and argued that a multidimensional social justice framework (Fraser, 1997, 2008) is significant for reframing this complex challenge and for bringing a critical and transformative praxis to processes of widening participation; a praxis that could intervene within deeply inequitable dynamics and forge new and more equitable kinds of higher education (Burke & Lumb, forthcoming 2023).

There are no quick fix answers to redressing entrenched inequalities, and it is crucial that higher education leaders, academics and practitioners (encompassing the whole range of roles and positions within and across the complex institution of higher education in contemporary societies) have access to the highest quality professional learning and development to reframe access, equity, inclusion and widening participation strategies. One of the major flaws of current frameworks is to invest in discourses of meritocracy that individualise and instrumentalise equity and widening participation agendas by ignoring the social, economic, cultural and political inequalities that profoundly shape judgements of merit (Burke, 2012). Meritocracy is a discursive framing that identifies key attributes, seen as objective and value-free, to assess a person's right to higher education. By discursive framing, I draw on Foucault's concept of discourse in which power/knowledge are inextricably linked in ways that profoundly frame social meanings, problems and practices (Foucault, 1972). Discourses of aptitude and capability significantly frame understandings of meritocracy, which construct notions of 'deservedness' of access to and participation in higher education. However, what is missing is critical consideration of the social contexts, economic and material inequalities, institutional structures, power relations, cultural patterns of value and micro-politics that intersect to create the complex conditions in which merit is judged and assessed in ways that perpetuate multidimensional injustices.

The discourses of aptitude and capability are central to national assessment systems, such as the Australian Tertiary Admissions Rank, the UK's General Certificate of Education Advanced Level and the American Scholastic Aptitude Test.

These systems, framed by meritocracy, tend to disregard the multidimensional inequalities at play in the construction of *who is recognised* as having the right to higher education. What merit means and how it is judged across time and space has been extensively researched and shown to be fluid, dynamic and tied to unequal relations of power. Karabel's (2006) meticulous study of 'the hidden history of admission and exclusion' is an outstanding example, providing a close examination of the exclusionary power of meritocracy embedded in national assessment systems. He traces in fine detail how the definition of 'merit' fundamentally changed multiple times over twentieth century America (Karabel, 2006: 4). Such work illuminates that what is often absent are explicit discussions about the relationship between assessment and the historical struggles over the right to higher education, who is seen to belong, and how merit, aptitude and capability are discursively produced in ways that perpetuate deeply embedded inequalities (Burke, 2012). Meritocratic discourses powerfully shape – and limit - our pedagogical imaginations about possibilities to challenge exclusion and strategies to generate inclusion through *social justice principles*.

Meritocracy is deeply entwined with problematic deficit models that misframe the problem of the right to higher education in terms of the perceived deficiencies of individuals from marginalised communities. Deficit models shape 'inclusive practices' in which students navigating complex inequalities are also coerced to fit into the dominant ways of being, knowing and doing - or to risk exclusion. To counter this, multidimensional social justice principles, of redistribution, recognition and representation, are imperative. Inclusion requires *redistributive justice* through access to the economic, material and pedagogical resources needed to participate fully in higher education. These resources include funds to cover all the costs of study; access to adequate technologies, books, childcare; safe and secure housing; appropriate time and space to study; nutritious food; and high-quality educational materials and teaching. However, a one-dimensional focus on *redistribution* is flawed because it overlooks the interconnected dimensions of *recognitive* and *representative justice*. Recognition, that is challenging unequal institutionalised patterns of cultural value, or status subordination (Fraser, 1997), is crucial in creating conditions for *parity of participation* (Fraser, 2013). This requires time, space and conceptual tools for those in positions of influence and decision-making to engage in critical interrogation of how merit, aptitude and capability are constructed, often in the interests of those who are positioned to determine the assessment of merit in the first place. This shifts the focus from pathologizing discourses of deficit and instead pays attention to the unequal relations of power, privilege and value (such as neocolonialism, neoliberalism and neopatriarchies) that are entrenched in higher education structures. Relatedly, representation refocuses attention on questions of *who participates* and *on what terms*. Parity of participation from a social justice perspective extends beyond proportional notions of participation to consider whether opportunities exist to participate in higher education as an *equal peer*. Further consideration is required in relation to the subjective, affective and emotional dimensions of lived experiences of social inequalities, which work at the level of personhood to generate feelings of shame and unworthiness (Burke, 2017). These insidious forces enable harmful forms of institutionalised misrecognition to prevail through taken-for-granted discourses of meritocracy.

A Case Study: Art for a Few

A potent example emerges from the research project *Art for a Few* which examined admission practices in the UK field of art and design (Burke & McManus, 2009). The research involved observations of 80 live selection interviews across five UK higher education institutions. The case of Nina (pseudonym), a young black woman from an inner-city area applying for a BA Fashion course, reveals that selection interviews in the admissions process operate as a profound space of misrecognition, where knowing how to perform potential is connected to the embodiment and enactment of 'appropriate' forms of personhood in the context of the field of practice. Nina was asked the standard interview question of what influenced her artwork and her interview was cut short after she responded 'hip-hop'. She was also denied the opportunity to complete her admissions test. The observation of the post-interview process involved a discussion of Nina's perceived inappropriate influences, her immaturity because she wanted to remain living at home and her supposed lack of 'fashion flair'. Nina's rejection was formally noted as due to her 'weak' portfolio, although her portfolio had been ranked as good/average in the pre-interview assessment process. The selection interview immediately after Nina's involved a male, white, middle-class candidate. He cited famous contemporary artists as his influences, was dressed in expensive, designer clothing and claimed he would 'definitely be leaving home as it's all part of the university experience'. Despite having significantly poorer qualifications than Nina, including having failed secondary school art, he was offered a place.

The case study illuminates how power works within social, cultural and institutional contexts to undermine a sense of legitimate personhood, value and mattering. It is important to identify the interconnection of misrecognition to maldistribution, as the embodied person is judged in the interview situation not only in terms of discursive recitations but also in terms of the kind (and quality) of clothing worn by the applicant. This reveals more subtle processes of inequality that are generated at the material, subjective, experiential and emotional levels and yet are not explicitly articulated and/or observable in any straightforward, measurable or quantifiable way. This illustrates the urgent need for methodologies that help bring hidden, intersecting and multidimensional inequalities to the surface in order to build more nuanced and sophisticated equity frameworks. In the example of *Art for a Few*, this enabled an analysis that illuminated how the location of the admission tutors in entrenched communities of practice, with shared sets of taken-for-granted assumptions about talent and potential, led to the misrecognition of candidates such as Nina. The inter-relationship of the material and subjective embodiment of the judgements cast on applicants brings to light how multidimensional injustices play out often without the apprehension of those engaged in exclusive practices (Burke & McManus, 2009).

However, a focus on praxis helps to ensure that these points are not only abstract, conceptual considerations. Rather, extensive engagement with those situated within the field of practice of equity is as important as the process of analysing the data. With a commitment to praxis, we held workshops about the insights emerging from the research with art and design educators across the country to encourage those exercising institutional assessment of applicants to reflect on how these insights might transform their practice. However, we encouraged colleagues to engage with the research beyond our dissemination workshops, strengthening

communities of practice by transforming these into *communities of praxis*.

This led one program team, responsible for one of the most selective fine arts programs in England, to dig deep into their assumptions and taken-for-granted practices. Engaging with the research, they looked closely at their admissions, pedagogical and assessment practices, and a new perspective emerged that deeply concerned them. They realised they had no representation from the immediate schools, colleges and communities in their local area and the student profile was homogenous – mainly White, middle-class students from across more affluent areas in England. The programme team started to work closely with the Widening Participation Unit, local schools and colleges and developed regular program team meetings to collectively reform the ways they thought about what counted as potential, talent and capability. Working with the analysis provided by *Art for a Few*, they interrogated their values, perspectives and assessment practices. Through this, they developed inclusive capacity to accommodate diverse artistic expressions that better represented the University's under-represented local communities.

Sustaining this commitment to transformation of the program over time, their student profile has dramatically shifted to a highly diverse student body with strong representation from the institution's immediate local communities. The curriculum developed organically as new artistic expressions emerging from their now diverse student communities were recognised, valued and represented. The programme team effectively developed what I call a *community of praxis* (Burke, 2020) in which they exercised ethical reflexivity through social justice perspectives bringing new forms of practice to play and thus transforming the program.

Final Reflections

Underpinned by multidimensional social justice principles, I have introduced the concept of *transformative equity praxis* to challenge *deficit imaginaries* of equity that are rooted in meritocratic discourses. Transformative equity praxis supports national commitments to generate equitable and inclusive access to and participation in higher education but challenges the deficit, remedial and market-driven frameworks that currently characterize policy and practice. Rather, transformative equity praxis demands approaches that attend to the root of social injustices, which are deeply related to access and participation in higher education. Indeed, higher education is a powerful institution with the capacity to reproduce inequalities but also with the potential to be mobilized for social justice transformation. Close attention to the historical, institutionalized and insidious injustices across the different fields of higher education is required, enabled through a commitment to praxis, bringing social justice theory and practice into continual and sustained dialogue in the different contexts in which transformation is being sought. The aim is to transform the institutional and discipline-based structures, cultures and practices that perpetuate exclusion. Transformative Equity praxis brings to light the problem of the mono-dimensional framing of merit.

Praxis is crucial in putting multidimensional social justice principles into policy and practice to create the conditions for transformative equity (Burke, 2012). Praxis brings theory and practice together in dialogue, prioritising reflection-action (Freire, 1972) and interrogating taken-for-granted values, perspectives and practices embedded in higher education fields. Praxis is most powerful when exercised collaboratively. By forming *communities of*

praxis (Burke, 2020) collaborative reflection-action is put to work to challenge problematic meritocratic framings of equity and inclusion, which are embedded in deficit, exacerbating the harms of maldistribution, misrecognition and misrepresentation. Communities of praxis contribute to collaborative processes of transformation and humanisation, by focusing collective effort on dismantling relations of inequality, injustice and oppression (Arday & Mirza, 2018). In reframing the right to higher education through praxis and social justice principles, new orientations unfold in which higher education can mobilise its capacity as a powerful vehicle for transformative equity.

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Capacity or Merit? Rethinking notions in access to higher education

By **Delphine Dorsi**, Director of Right to Education Initiative (United Kingdom)

To start, it is important to recall that international human rights law recognises the right to education for everyone based on the fundamental rights to equality and non-discrimination. States have the obligation to make all possible efforts to realise the right to education at all levels. While they have the obligation to ensure free primary education to all, at the other levels, the introduction of free education can be progressive, international human rights law recognising the financial constraints states may face in realising the right to education for all at all levels at the same time. However, let's stress that states have the immediate obligation to take steps toward the full realisation of free higher education. They must allocate the maximum of their available resources to this aim and progressively increase them. This needs to be highlighted and taken into consideration when rethinking the notion of 'merit'.

This term is used in the Universal Declaration of Human Rights (1948) which states in its article 26 that 'higher education shall be equally accessible to all on the basis of merit'. The UNESCO Convention against Discrimination in Education adopted later (1960), the International Covenant on Economic, Social and Cultural Rights (1966) and the Convention on the Rights of the Child (1989) use the term 'capacity'. The Cambridge Dictionary defines 'merit' as 'the quality of being good or deserving praise'1 and 'capacity' as 'someone's ability to do a particular thing'2. It would be interesting to look at the preparatory

works of these treaties to see why the drafters chose these slightly different terms. In my view, 'capacity' seems to be more 'objective' than 'merit'. According to the UN Committee on Economic, Social and Cultural Rights, which gave an interpretation of the right to education as defined in the International Covenant on Economic, Social and Cultural Rights, 'the "capacity" of individuals should be assessed by reference to all their relevant expertise and experience' (General Comment 13 on the right to education, para. 19). Unlike primary and secondary level, 'merit' or 'capacity' is a condition to access higher education. As education becomes more specific, in-depth and complex at this level, it makes sense to ensure students have the necessary 'expertise and experience' to be able to follow the teachings.

However, in practice, this condition raises some challenges. The criteria to determine whether students have the capacity can be very selective, encompassing for instance entry exams, aptitude tests, interviews or selections based on previous grades. Yet, as there are existing inequalities in lower levels between students of different social and economic backgrounds for instance, this condition can be a huge barrier for students from vulnerable, marginalised or disadvantaged groups, while favouring the already privileged ones and perpetuating inequalities in society. In addition, 'merit' or 'capacity' should be the only condition to access higher education. Yet, in practice, the direct and indirect costs of higher education

prevent students with the required 'expertise and experience' but limited financial resources to access higher education.

It is argued that the notion of 'merit' or 'capacity' was introduced to protect the right of individuals to higher education to avoid unjustified criteria being used to refuse access and therefore lead to discrimination3. However, as briefly described above, in practice, this criteria leads to the exclusion of some students already disadvantaged by their socio-economic backgrounds.

When developing guidelines on the right to higher education, it would be important first to give a definition of 'merit' and 'capacity' and clarify the purpose of this condition introduced at higher education. In my view, it should be clear that the only reason to condition access to higher education should be the aptitudes to follow the teachings. The assessment to determine whether a student is able to follow a particular teaching should be objective rather than competitive. Therefore, it should also be stressed that States must make all possible efforts to make higher education available to the number of students that have the 'capacity' and interest to pursue their education at this level. This includes their obligation to allocate the maximum of their available resources towards the progressive introduction of free higher education, particularly for the most disadvantaged financially. The notion of 'merit' / 'capacity' is meaningless if financial barriers prevent students from accessing higher education.

 In addition, it would be essential to highlight the importance of taking into consideration the students' socio-economic backgrounds in any selective process, particularly when places are limited in order to avoid the reproduction of inequalities. The way of implementation can

be left to the appreciation of states but the guidelines may provide some examples based on good practices4. It would be important to mention that this inclusive process should be done across all types of institutions, including the most prestigious ones - often the most expensive too.

Finally, the guidelines should also stress the importance of the quality of higher education, across all types of institutions, that should not diminish when students' enrolment expands, requiring states to provide additional funding.

1 In French, the Larousse Dictionary defines '*mérite*' as '*ce qui rend quelqu'un (ou sa conduite digne d'estime, de récompense, eu égard aux difficultés surmontées*' ou '*l'ensemble des qualités intellectuelles et morales particulièrement dignes d'estime*'.

2 In French, the Larousse Dictionary defines '*capacité*' as '*l'aptitude de quelqu'un dans tel ou tel domaine*'.

3 UNESCO. 2020. *Report: Making Higher Education more inclusive, SDG-Education 2030 Steering Committee.* UNESCO. Available at: https://www.sdg4education2030.org/making-higher-education-more-inclusive-sdg- education-2030-steering-committee-july-2020

4 For some examples, see the section on 'Rethinking merit' in UNESCO and Right to Education Initiative. 2022. *Right to higher education: unpacking the international normative framework in light of current trends and challenges.* To be published in May 2022.

Rethinking Merit in Higher Education

By **Juan Ponce**, Associate Professor and Researcher at Latin American Faculty of Social Sciences (FLACSO) (Ecuador).

This briefing note contains two parts. The first part analyzes the main policy concept of equality of opportunity in relation to the access to higher education. The second part introduces a discussion about the concept of merit in relation, again, to higher education.

Equality of opportunity

The purpose of an equal-opportunity policy is to level de playing field, so that people from all social and economic backgrounds could have access to higher education and to compete effectively in a knowledge-based, global economy. Differential circumstances of individuals of which they should not be held accountable, and which affect their ability to achieve or have access to higher education should be eliminated.

The problem is that the education process is cumulative. In order to have access to higher education one has to have a secondary diploma, and in order to have a secondary diploma one has to have finished the basic education.

In developing countries secondary school graduation rates are not universal, and the majority of people from poor households or from rural areas or minority ethnic groups, have no access to secondary education. So those that do not have access to secondary education neither have access to superior education.

In addition to the previous, another obstacle to an equal-opportunity policy in relation to education is that, especially in developing countries, important differences in cognitive development are already present at pre-school age, and increase during the school age (Schady et al., 2015).

In this sense, it seems impossible to belief that a policy of equality of opportunity in relation to the access to higher education is being applied in developing countries.

The main consequence of an equality of opportunity policy, in those cases where this can be successfully achieved, is that any differences in the access to higher education, as well as any differences in the achievements of the students in higher education and later on in the labor market, should be explained by merit. In this sense, in the following part the notion of merit will be discussed.

The meritocracy

Michael Sandel (2020) published the book: The Tyranny of Merit: What's Become of the Common Good?. In his book, Sandel criticizes the notion of merit. To start, the book shows that access to higher education is hard to disentangle from economic advantage. In this regard, an equality of opportunity policy is not existent in the USA in relation to the access to higher education. This confirms the analyzes introduced in the previous part.

Behind the idea of merit is the notion that enabling people to compete solely on the basis of effort and talent would bring market outcomes into alignment with merit. In a society where opportunities were truly equal, markets would give people their just deserts. Their

success would be the measure of their merit.

The main argument of The Tyranny of Merit can be summarized in the following three points.

"First, under conditions of rampant inequality and stalled mobility, reiterating the message that we are responsible for our fate and deserve what we get erodes solidarity and demoralizes those left behind by globalization. Second, insisting that a college degree is the primary route to a respectable job and a decent life creates a credentialist prejudice that undermines the dignity of work and demeans those who have not been to college; and third, insisting that social and political problems are best solved by highly educated, value-neutral experts is a technocratic conceit that corrupts democracy and disempowers ordinary citizens."

Sandel introduces two objections to the meritocracy. The first objection doubts that even a fully realized meritocracy, in which jobs and pay perfectly reflected people's efforts and talents, would be a just society. In this sense, according to Sandel, the meritocratic ideal is not a remedy for inequality; it is a justification of inequality.

The second objection worries that even if a meritocracy were fair, it would not be a good society. It would generate "hubris and anxiety among the winners and humiliation and resentment among the losers". Attitudes at odds with human flourishing and corrosive of the common good.

Another critique to the notion of merit is made by Rawls. (Rawls, 1971) argues that even a system of fair equality of opportunity, one that fully compensated for the effects of class differences, would not make a just society. If people competed on a truly level playing field, the winners would be those endowed with the greatest talent. But differences of talent are as

morally arbitrary as differences of class. A fair meritocracy "still permits the distribution of wealth and income to be determined by the natural distribution of abilities and talents."

In sum. An equality of opportunity policy is very complicated to realize. And in developing countries the situation is much more complicated in relation to higher education. In addition, even if a society could achieve the equality of opportunity situation, a meritocratic ideal has some difficulties in terms of justice, that should be discussed.

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The Promise of the Right to Higher Education for Students from the Disadvantaged Groups: The Role of Affirmative Action in Preparing them for Higher Education Access and Success

By **Nidhi S. Sabharwal**, Associate Professor, Centre for Policy Research in Higher Education (CPRHE), National Institute of Educational Planning and Administration (NIEPA), New Delhi (India).

The Right to Higher Education (HE) is now increasingly being acknowledged as a fundamental part of the general Right to Education. However, how ***equal and non-discriminatory access*** to the Right to HE is realised for students from the socially and economically disadvantaged groups (SEDGs) will be influenced by:

- what constitutes 'merit' for admissions in HEIs,

- how inequalities in opportunities for college preparation are taken into account in access to the right to HE, and

- the role of affirmative actions.

All of the above factors influence the ability of students from the SEDGs in securing their right to HE access and success.

Based on empirical evidence generated from CPRHE studies on challenges facing students from the SEDGs in India (Sabharwal 2020; Sabharwal and Malish 2018; Varghese et al 2018), this note calls for affirmative action (AA) measures as a means for correcting all manners of disadvantages and advancing equal and non-discriminatory access to HE. The Right to HE and AA for equal access to this right, in combination, will contribute towards a socially just and meritocratic system where one's socio-economic background or geographical location will not privilege or determine access to higher education and success.

The Right to HE and Understanding of Merit: Considering Disadvantaged Life-Circumstances

The Right to HE replaces the traditional approach where access to HE benefitted those with 'inherited means of merit'; on the other hand, the rights-based approach promotes fairness in HE access for all students, irrespective of social origin or inherited privileges.

The question arises as to what precisely constitutes 'merit' in a way that factors in the disadvantages faced by the SEDGs? When merit in admissions is understood only as academic merit based on qualifying test scores, evidence shows that this is based on access to past resources and is most often affected by inherited class-based or gender-based privilege. Inherited privilege very often helps buy achievements with merit itself being determined by non-meritocratic factors, such as social origin.

Students from the SEDGs, in addition to being from income-poor families, are more likely to be women, belong to a socially excluded group,

reside in rural locations, are first generation HE learners, and experience disadvantaged educational pathways that would have exposed them to under-resourced schools, out-dated high school curricula, regional language as a medium of instruction (that makes transition to English in HE difficult) and possessing limited knowledge of the college-going process. In other words, students from SEDGs have a lower likelihood of accessing avenues for college preparation, which usually begins early in the education process for students from privileged backgrounds.

Furthermore, equality of opportunity to access the Right to HE can be under threat even when strategies such as outreach programmes are put in place, in an effort to level the playing field through provision of knowledge on the college-going process. However, once eligibility is established, the contest for HE admissions begins in a stratified structure of opportunities, where there is hierarchy in institutional prestige and field of study. Given the entrenched inequalities in preceding levels of education, this will pose a major challenge in realising equitable access to Right to HE, if not supported with affirmative action.

Widening participation of under-represented groups and affirmative action in HE in India

In India, widening participation of traditionally under-represented social backgrounds has been supported by constitutionally-mandated caste-and-ethnicity based AA measures. AA measures in India are anti-discriminatory measures that acknowledge inequalities in prior educational experiences of students from the SEDGs and puts in place concrete steps to secure the rights to HE of non-privileged social/ ethnic groups. AA measures such as the quota system (reservation

of seats in HEIs), relaxation in admission criteria, and financial support, specifically have been significant channels for making the HE system more diverse and representative of the larger society.

While AA measures have helped in reducing barriers to HE entry, new forms of disparities have emerged in HE in India which threatens the realisation of equal and non-discriminatory access to the right to HE. These disparities include regional disparities in HE access; social disparities in access patterns, such as those related to choice of subjects; and, disparities in learning outcomes. Regional disparities in HE enrollment is closely associated with the regional concentration of private higher education institutions (PHEIs). Provinces in India with high concentration of PHEIs experienced faster growth and expansion of higher education (Varghese 2015). A related fallout has been that access to higher education remains low in rural areas as compared to urban. Rural-urban disparities are linked to the availability of HEIs, which are found more often located in urban areas. In other words, equal and non-discriminatory access to the right to HE for population groups residing in under-served regions and in rural areas remains insecure.

The social disparities in access to higher education continue to persist, especially, in access to elite institutions and technical/ professional programmes. Access to the most selective universities and programmes of study are still restricted to those from the most privileged backgrounds. Among multiple disadvantages faced by students from the SEDGs and women, their low familial economic, social and cultural capital pose as barriers to academic preparation required for test-based admissions in selective institutions offering technical/ professional subjects. Moreover, due to gender

conservatism, women's choice of subjects is largely influenced by differences in educational investment by families, distance to college and safety within HEIs. Women residing in rural areas and born in disadvantaged groups have the highest chances of being left-out from higher education.

Another pressing issue in the context of securing the benefits of the right to HE for students from SEDGs in India is of their academic integration and developing inclusive campuses for their retention and academic success. Academic integration means the degree to which students participate in teaching-learning processes, which is an outcome of support received from their HEIs in the academic domain and feeling of inclusion in the social domain. Unfortunately, limited academic support, stereotypes, undemocratic behaviour and exclusion from social relations results in low participation, marginalisation and social isolation of students from the SEDGs. As a consequence of limited presence of supportive policies for academic integration and social inclusion, the disadvantaged students are more likely to face high dropout rates, lower levels of academic success, and poor learning outcomes.

The role of affirmative action for right to HE access and success

In order to realise the promise of the Right to HE for the students from the SEDGs, it is important to recognise the role of affirmative action in preparing students from the SEDGs for HE access and success, and thereby reducing inter-group HE inequalities. It is important that affirmation actions democratise informed HE decision-making and include a socially-just conception of 'merit' which considers students' future potential of academic promise. 'Merit' is to be looked at more broadly for students

from the SEDGs, demonstrating aspects of motivation, maturity and perservance in prior educational profile. Importantly, AA measures implemented at institutional levels that ensure that HEIs are ready to fully support diverse learners will help in meeting students' academic potential, irrespective of their backgrounds. In conclusion, when the Right to HE is augmented by affirmative actions for the students from the SEDGs, it will help actively minimise barriers to entry at HEIs, as well as help in placing mechanisms to support their success.

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The right to higher education

Regional and thematic consultations

These compendiums present the briefing notes shared by participants in a series of regional and thematic consultations on the right to higher education. As an integral component of the evolving right to lifelong education, the right to higher education incorporates access to higher education, participation and student success, and students' post-higher education trajectories.

As the only specialist institute of the United Nations with a mandate for higher education improvement, the UNESCO International Institute for Higher Education in Latin America and the Caribbean (IESALC) considers it vital to place discussions about the right to higher education on the international agenda and to advocate for policy and regulatory change that leads to higher education for all.

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