



The Myth of Meritocracy in the Legal Profession

Who Really Gets Ahead and Why

BY J. RYANN PEYTON

The legal profession has long portrayed itself as a meritocracy—a system where advancement depends solely on individual talent, hard work, and achievement. Yet beneath this carefully maintained veneer lies a more complex reality: the legal profession’s meritocratic ideals often clash with structural barriers, implicit biases, and entrenched advantages that determine who truly advances and why.¹

As we peel back the layers of the myth of meritocracy, we confront not only empirical questions about who succeeds and why, but also profound moral uncertainties about what fairness truly demands. The rhetoric of merit serves both to inspire excellence and to justify

existing hierarchies, creating a tension that cuts to the heart of how we understand justice within the profession.

This moral complexity invites us to consider philosopher T.M. Scanlon’s contractualist framework of “what we owe to each other”—a theory that asks what principles of fairness could be justified to all affected parties, including those traditionally marginalized. By examining legal meritocracy through Scanlon’s lens, we discover that the work of equity is not merely an optional supplement to meritocratic ideals but also an essential fulfillment of our moral obligations to one another as equal participants in the profession’s shared goals and purposes.

Part I: The Facade of Meritocracy in the Legal Profession

The legal profession maintains a powerful story about how success is earned. This story, rooted in the language of fairness and objectivity, holds that anyone with sufficient talent, work ethic, and ambition can rise to the top. It is a narrative that reassures insiders and outsiders alike that the system is just—that outcomes reflect merit alone. But how accurate is this portrayal? Before we can begin to assess the legal profession’s challenges around equity, inclusion, and justice, we must first examine the foundational myth that underpins its structure: the belief in pure meritocracy.

The Official Narrative

The legal profession presents itself as the quintessential meritocracy. From law school admissions emphasizing standardized test scores to firms hiring based on class rank and journal membership, the system appears designed to reward objective excellence. The profession’s hierarchical structure—from associate to partner, from trial court to appellate court—suggests a ladder where advancement depends on demonstrated capability and performance.²

Law firms and legal institutions point to seemingly objective metrics: billable hours, client development, case outcomes, and scholarly publications as evidence that success flows naturally to those who earn it through talent and diligence. This narrative is powerful precisely because it contains partial truths—hard work and talent do matter in legal careers.³

The Uncomfortable Reality

Despite these meritocratic claims, the legal profession remains marked by striking disparities that cannot be explained by differences in ability or effort alone:

The pipeline problem: Long before attorneys reach partnership decisions, the path narrows disproportionately for certain groups. While law schools have made progress in diversifying student bodies, the drop-off in representation becomes increasingly stark at each career stage. According to American Bar Association data, women comprise approximately 54% of

law students but only 22% of equity partners. Similarly, people of color constitute roughly 31% of law students but only 10% of partners.⁴

The hidden curriculum: Success in law frequently depends on unwritten rules and cultural knowledge not equally accessible to all. From understanding the nuances of networking to mastering the unspoken expectations of applying for legal jobs, those with family members or mentors in the profession navigate these waters with built-in advantages. First-generation lawyers often find themselves disadvantaged not by capability but by lack of access to this hidden curriculum.⁵

Subjective evaluation metrics: Despite claims of objective assessment, advancement in legal careers often hinges on subjective evaluations. Studies have demonstrated persistent biases in how legal work is evaluated—identical memos receive different scores depending on the perceived race or gender of the author. Similar biases affect who receives prime assignments, developmental feedback, and client exposure.⁶

The myth of the level playing field: The demands of legal practice—particularly in prestigious settings—often presuppose certain resources. Unpaid internships at public interest organizations favor those with financial cushions. The hustle culture advantages those without primary caregiving responsibilities. Client development expectations benefit those with preexisting connections to economic power.⁷

Old networks and new barriers: Despite anti-discrimination policies, informal networks continue to influence who receives mentorship, prime assignments, and promotion considerations. The practice of lateral hiring from peer institutions reinforces rather than disrupts existing patterns of advantage. Meanwhile, supposedly neutral criteria like educational pedigree often correlate more strongly with socioeconomic background than with legal ability.⁸

Through these mechanisms and others, the legal profession perpetuates advantages that have little to do with merit as conventionally defined. The result is a system where the most privileged are often positioned to appear the most meritorious.⁹

Part II: Competing Moral Justifications for Meritocracy

The meritocratic ideal in the legal profession can be examined through different moral lenses, each with distinct implications for how we understand fairness and justice.

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The Traditional Defense: Meritocracy as Truth and Virtue

Defenders of the current system might argue that:

- 1. Meritocracy rewards true excellence:** The law is intellectually demanding and consequential; it matters deeply that the most capable minds shape and practice it.¹⁰
- 2. Meritocracy respects individual agency:** By focusing on achievement rather than background, meritocracy honors the dignity of individuals as authors of their own success.¹¹

3. Meritocracy serves societal interests:

By placing the most qualified individuals in positions of authority, meritocracy produces the best outcomes for clients and the justice system overall.¹²

4. Meritocracy already incorporates fairness:

Modern meritocratic systems have removed the most obvious barriers through anti-discrimination policies and diversity initiatives. Any remaining disparities reflect genuine differences in choices, priorities, or capabilities.¹³

This defense portrays meritocracy as both descriptively accurate and morally justified. It suggests that while no system is perfect, the legal profession's current approach represents a fair balance between excellence and opportunity.

The Critical Perspective: Meritocracy as Myth and Manipulation

Critics offer a fundamentally different assessment:

- 1. "Merit" is socially constructed:** What counts as merit is itself a product of those already in power. The qualities valued in legal practice—from writing style to speaking manner—often reflect the norms of dominant groups rather than objective measures of capability.¹⁴
- 2. Structural conditions precede individual merit:** Differences in opportunities and resources throughout life create uneven starting points that no amount of individual brilliance can fully overcome. True merit cannot be measured without accounting for these differences.¹⁵
- 3. Meritocratic rhetoric legitimizes inequality:** By attributing success to individual merit alone, the system obscures structural advantages and disadvantages, leading the privileged to view their position as wholly earned and the disadvantaged to internalize their exclusion.¹⁶
- 4. Claimed meritocracy resists reform:** When a system portrays itself as already fair, it becomes resistant to changes that might produce more equitable outcomes. Merit becomes a shield against examining underlying structures.¹⁷

This critique suggests that meritocracy in its current form functions less as a fair system of advancement and more as a mechanism for reproducing existing social hierarchies while providing moral cover for resultant inequalities.

The Reconstructive View: Manipulating Meritocracy Toward Justice

A third perspective suggests that meritocracy requires intentional reconstruction to fulfill its moral promise:

- 1. Expanding definitions of merit:** True merit in legal practice encompasses a broader range of skills and perspectives than traditionally recognized. Lived experience with systemic challenges may constitute valuable merit in understanding how law affects diverse populations.¹⁸
- 2. Contextualizing achievement:** Genuine meritocracy requires evaluating

accomplishments against the backdrop of opportunities and obstacles faced. A slightly lower LSAT score achieved despite significant socioeconomic barriers may represent greater potential than a higher score achieved with abundant resources.¹⁹

- 3. Proactive intervention:** Rather than assuming a level playing field, this approach actively works to create one through targeted support, mentorship programs, and structural reforms that ensure access to the “hidden curriculum.”²⁰
- 4. Outcome-oriented assessment:** This perspective measures meritocracy’s success not just by its procedures but by its results. Persistent disparities signal the need for systemic adjustments, not simply individual effort.²¹

This reconstructive view acknowledges the value of rewarding capability and effort

but insists that doing so requires deliberate attention to structural conditions. It suggests that meritocracy becomes morally defensible only when actively engineered to account for systemic inequities.

Part III: Scanlon’s Contractualism and the Moral Imperative of Equity

The debate over meritocracy in the legal profession gains philosophical depth when viewed through the lens of T.M. Scanlon’s contractualist theory as articulated in his influential work “What We Owe to Each Other.”

Scanlon’s theory suggests a straightforward way to judge right from wrong: **an action is wrong if it’s based on principles that others could reasonably reject.** In other words, we should only act according to rules or principles that would not cause any person—considering them as equals—to reasonably say, “That’s not fair to me.” It’s not about maximizing overall happiness, but about respecting others by asking, “Could someone reasonably object to this?” It’s a way of grounding morality in mutual respect, not in outcomes.²²

When we consider the legal profession’s meritocratic ideals through Scanlon’s framework, several insights emerge:

- **Reasonable rejection of meritocracy status quo:** Those systematically disadvantaged by status quo meritocratic practices could reasonably reject principles that ignore structural barriers while claiming to be fair. A contractualist approach would acknowledge that principles perpetuating avoidable disadvantage fail the test of justifiability to all concerned.²³
- **The inadequacy of “equality”:** Scanlon’s framework reveals why simple equality of opportunity is insufficient. Principles that treat people identically despite vastly different starting positions can be reasonably rejected by those for whom such “equality” creates continued disadvantage.²⁴
- **Dignity through structural reform:** Genuine dignity requires acknowledging how systemic factors shape individual prospects. Structural reforms that expand

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access and opportunity don't undermine merit but rather fulfill our obligation to treat each person as morally equal.²⁵

- **Merit within justifiable parameters:** Scanlon's approach does not abandon merit but contextualizes it within principles that no one could reasonably reject. This allows for competition and differentiation based on relevant qualities and efforts, but within systems designed to be justifiable to all participants.²⁶

The Moral Imperative of Equity Work in Meritocratic Systems

Through Scanlon's lens, pursuing equity in the legal profession is not merely about diversity statistics or reputational concerns—it represents a fundamental moral obligation arising from what we owe to each other as equal moral beings.

The work of reconstructing meritocracy to account for structural inequality becomes an expression of mutual respect. It acknowledges that principles governing advancement and success must be justifiable to all subject to them, including those traditionally marginalized.²⁷

This contractualist perspective shifts the conversation from whether equity initiatives are necessary "exceptions" to meritocracy to understanding them as essential to creating a genuinely justifiable system. The goal becomes developing principles for advancement that no participant could reasonably reject—principles that recognize excellence while accounting for the uneven landscape on which it develops.²⁸

Conclusion: Toward a Truly Justifiable Meritocracy

The legal profession's meritocratic self-image requires honest reexamination. The data clearly demonstrates that who advances often depends on factors far removed from individual merit. Yet this recognition need not abandon the ideal of rewarding talent and effort—rather, it calls for reconstructing meritocracy in ways that fulfill rather than betray its moral promise.

Scanlon's contractualism provides a compelling framework for this reconstruction. It suggests that a justifiable meritocracy must devise principles that all participants could

accept as fair, considering the full context of opportunity and its limits. Such a system would maintain high standards while acknowledging the varied paths through which excellence emerges.

For the legal profession, this means moving beyond rhetorical commitments to diversity toward structural reforms that make success truly accessible to all with the requisite capabilities. It means expanding our understanding

of merit to include perspectives and qualities neglected in traditional assessments. It means creating supports that enable those from underrepresented backgrounds to navigate the profession's hidden curriculum.

Most fundamentally, it means recognizing that we owe each other systems of advancement justifiable to all who participate in them. In a profession dedicated to justice, nothing less will suffice. **CL**



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