

## Responsibility and School Choice in Education

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Consider the current vogue for deploying market mechanisms as tools for improvement in state education systems. The idea behind it appears to be something like this: we should grant parents some measure of choice over their particular children's education, because doing so ultimately serves the interests of all children. It does so by creating a market mechanism in state education, which will lead to improvements in provision through the same pressures that lead to greater efficiency and quality when deployed in more familiar settings.

This proposal has some initial plausibility, especially by dint of its appeal to the interests of all children, rather than (for example) the rights of particular parents to advantage their particular children if they have the ability and inclination. In this paper, I consider two arguments against the proposal, one unsuccessful, and one successful. Both hinge on demonstrating that it implies unpalatable claims about responsibility, because a market in education is acceptable only if we may hold children who are disadvantaged by the market substantively responsible for the factors that lead to their disadvantage.

My plan is as follows. In Section I, I explain the argument in favour of parental school choice and a market mechanism in education, and explain why it seems more promising than other arguments for parental school choice. In Section II, I set out some philosophical principles, to the effect that showing equal concern implies a burden of proof such that any inequalities must be ones for which the disadvantaged party is responsible. The first argument against the market in education (given in Section III) seeks to rule out all market mechanisms in education by showing that they necessarily fail this condition on the grounds that children choose none of the relevant factors (principally, the ability and motivation of their parents). This argument fails, because it assumes that free choice is necessary for responsibility. I suggest that it is not, or at any rate that the burden of proof is on the person who claims that it is. The second argument (discussed in Section IV) is more modest. It seeks to indicate that a proposed market mechanism would need to meet rather demanding conditions in order for the children it disadvantages to be properly held responsible for that disadvantage. This argument – which is sound – offers some room for the defender of market mechanisms to evade egalitarian objections. Nevertheless, those conditions are sufficiently demanding that the scope left for morally innocuous market mechanisms in education is nevertheless very limited.

### **I. School Choice**

A policy of school choice is one which grants parents freedom to choose between a range of options for their children's formal education. There are many such policies, differentiated by the particular sets of options advocated, and the grounds on which each set of options is supposedly justified. So, for example, one might argue that parents should be free to pay to send their children to elite schools because preventing them from doing so would violate their right to spend their money as they wish (eg Nozick 1974). Or, one might defend parents' freedom to choose between schools with distinctive religious or philosophical characters, on the basis that parents have a right to use their children's schooling to shape their moral and religious

convictions (eg Fried 1978, p. 153; Bridges 1984: 57-58; Almond 1991, 200-1; and see also helpful discussion in Hand 2002).

The argument under consideration in this paper seeks to justify parental school choice within a free state-run education system (though, if successful, it might justify other policies of school choice too), on the basis that doing so will allow us to take advantage of the purported benefits that the free market brings in other domains. Since the publication in the eighteenth century of Bernard Mandeville's *Fable of the Bees* and Adam Smith's *Wealth of Nations*, it has been argued that allowing unconstrained freedom of exchange between individuals, at prices they choose, of goods over which they have private property rights, produces a multitude of beneficial consequences. Competition between sellers has the effect of increasing quality, reducing prices, and eliminating inefficient or unattractive enterprises. The price mechanism (indicating the rate of exchange at which buyers and sellers are willing to engage in their transactions) sends signals to consumers about how they might efficiently satisfy their preferences, and to producers about how they should deploy their productive capacity. In general, we are told, the market serves – with an ‘invisible hand’ more deft than any coercive coordination might be – to arrange the production, exchange and consumption of goods and services to everyone's benefit.<sup>1</sup>

These arguments do not apply directly to education, which is importantly dissimilar in various respects (as I discuss in Section IV below). But, it is argued, having something like a market in education can have an analogously beneficial effect. In particular, giving parents free choice will force individual schools to improve, for fear of losing pupils (and hence, funding). In conjunction with a loosening of regulation, it will also create incentives for schools to diversify and experiment. Successful methods will be adopted by other schools, and the rewards will be an improvement in standards across the sector. In general, the proponents of a market mechanism claim that it is either the only or the best mechanism for ensuring that the state-run system is the best it possible can be.<sup>2</sup>

Put more formally, the argument runs as follows:

- (1) We should adopt the educational system which maximally promotes children's interests in a way which shows equal concern for all children.
- (2) A market mechanism in education is the best way of identifying and achieving an education system which maximally promotes children's interests in a way which shows equal concern for all children.<sup>3</sup>
- (3) (Some measure of) parental school choice is necessary for a market mechanism in education.

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<sup>1</sup> See Mandeville 1924 and Smith 1976. Modern exponents include Friedrich Hayek (1948, 1973-1979: vols 2 & 3) and Eamonn Butler (2008).

<sup>2</sup> Examples are legion. For a selection, with particular reference to the state education system in the UK, see: Tooley 1998, Blundell 2006, Stanfield et al 2006, Hlavac 2007 and Secretary of State for Education Michael Gove's introduction to the second reading of the Academies Bill, *Hansard* 19 July 2010: column 24.

<sup>3</sup> Advocates of market mechanisms might say that this premiss should be stronger: A market mechanism is the *only* way of identifying and achieving such a system. I use the weaker version of the premiss here for reasons of argumentative economy. The argument is valid using the weaker version; the weaker version is *much* easier to motivate than the stronger version (which must demonstrate that no more effective mechanism than the market *could* exist); and the failure of the weaker argument necessitates the failure of the stronger.

- (4) (from 1 and 2) We should adopt a market mechanism in education.
- (5) (Conclusion) (from 3 and 4) We should adopt a policy granting (some measure of) parental school choice.**

The argument is valid. It also has the attractive quality of using, in Premiss 1, a principle that will appeal to those of a liberal and egalitarian cast of mind. Such philosophers find many other arguments for versions of school choice unpalatable precisely because they fail to show equal concern to all children. In Section II I explain in more detail what that condition amounts to, but for the moment let us roughly understand equal concern to require, when deciding on policy or institutions, that no child's interests are taken into account less than any others. This is vague, but gives some of the content of the egalitarian disquiet with school choice which I seek to capture. For example, the existence of fee-paying schools allows parents with the money and motivation to buy their children a superior education, at least in principle; allowing such schools, if it benefits anyone at all, benefits only the lucky children of rich and motivated parents. Or, again, an argument frequently levelled against allowing parents to send their children to schools with a view to their being instructed in a particular religious or moral viewpoint is that this shows unequal concern for the interest those children have in autonomy.<sup>4</sup> Such criticisms of school choice indicate a tacit commitment to something like Premiss 1. So, using that Premiss has the powerful argumentative advantage of justifying school choice on precisely the grounds usually relied on by opponents to reject the policy.

The validity and egalitarian attractiveness of the argument notwithstanding, the argument is unsound, because there are good reasons to reject Premiss 2. It is very unlikely that a market mechanism in education can indeed show equal concern for all children, because such a mechanism will almost always end up wrongly holding disadvantaged children responsible for the factors which disadvantage them.

Before arguing this, however, I should make plain one possible line of attack which I will not adopt. Premiss 1 contains a placeholder, referring to children's interests. So, the argument for school choice relies on our having a prior theory of what children's interests actually are: until we have such a theory, Premiss 1 is incomplete.

This is not merely a matter of careful philosophical book-keeping. Whether or not Premiss 2 is even credible depends upon what we think children's interests actually are. This is because the market-based argument can't even get off the ground unless we assume that the people exercising choice in that market – namely parents – are at least minimally competent and motivated to select the educational choices which best promote their children's interests. That assumption is plausible only on certain theories. On the view that the relevant interest is in a pleasurable childhood, then the assumptions are reasonable, if we think that most parents are well-placed to know what gives their children pleasure, and well-motivated to give it to them. On other theories of children's interests, parental competence, or motivation, or both, seem more in doubt. For example, on the view that the relevant interest is not pleasure *as a child* but pleasure maximised *over a life*, the assumption about parental competence is less plausible: the good

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<sup>4</sup> Such arguments come in two compatible versions: one could worry that such a policy violates the equal concern constraint either by unjustifiably privileging the autonomy of parents over children, or by leading to unjustifiable variations in autonomy amongst different children.

intentions of a parent need not translate into knowing what will make for the best life in the long run. Alternatively, if we think that children have a crucial interest in establishing critical independence from their parents' conceptions of the good, then the assumption about motivation is threatened: many parents think it an important right (or duty) to inculcate their children with their substantive religious and moral views.

I shall not discuss this (rather obvious) point further, because doing so would enmire me in the difficult question of what the correct theory of children's interests actually is. The argument for market mechanisms in education is plainly a non-starter if our theory of interests undermines the assumption that parents exercise school choice with competence and motivation. So, I shall assume for the sake of argument that the background account of interests is one on which it is credible to believe that parents are competent and well-motivated. As we shall see, even this assumption is insufficient to render the market-based argument sound.

## II. Equal Concern and Substantive Responsibility

In a nutshell, the problem with Premiss 2 is this: a market mechanism in education fails to show equal concern, because it erroneously holds the children who are disadvantaged by a regime of school choice responsible for the fact.

In this section, I set out a view of what the equal concern constraint requires. I then explain the account of responsibility on which my argument rests, and show why erroneous ascriptions of responsibility violate the equal concern constraint. I then go on in Sections III and IV to show that the ascriptions of responsibility implied by the market mechanism are indeed erroneous.

The injunction to show all children equal concern is ambiguous between various different constraints, of varying egalitarian bite. Depending on one's background political theory, one might take it to impose an extremely demanding condition – that one seek to equalise children's attainment of some goal like wealth or welfare, for example – or something rather weaker, like the requirement that positions of power and influence be open to people on the basis of merit rather than heredity. For present purposes, I take the equal concern condition to imply just a norm of non-discrimination:

**The Principle of Equal Concern:** A policy which treats individuals differentially, or leads to inequalities in the distribution of some good which is the focus of that policy, is justifiable only if there exists some relevant difference between people that justifies the differential treatment.

In this, I follow Bernard Williams, who argued (1962) that the mere fact of our common humanity, tautological as it is, does at least imply that those who wish to treat humans differentially bear a burden of proof. It may be thought that this is far too weak a principle to capture the core of egalitarianism. Nevertheless, it is quite strong enough for present purposes. Importantly, both the egalitarian and their opponents can agree on it, though they disagree over which differences are relevant to justifying inequalities and how many inequalities are thereby in practice either condemned or vindicated. The substantive egalitarian will think the burden of proof is enough to render most inequalities impermissible. By contrast, the libertarian will think most inequalities acceptable, but can still endorse the principle because they think that the

processes that lead to inequalities (the different free choices made by individuals under a regime of absolute private property rights) pass the test.

The principle of non-discrimination implies two important things for present purposes. First, it is weak enough that even a libertarian defender of school choice should accept it, and hence accept Premiss 1 of the argument given above. (That is true even though, as I argue below, the principle has implications that are strong enough to refute their position.) Second, it tells us what sort of justification has to be offered for policies which lead to inequalities. I take it that a ‘relevant difference’ means the following. Take an individual in unequal circumstances, which is to say circumstances where she suffers some comparative disadvantage in respect of the appropriate measure. That inequality is justified just in case there is a specific relation that obtains between that individual and her circumstances, such that the relation’s obtaining justifies the comparative disadvantage she suffers. This might take various forms. For example, one might justify a differential distribution of money on the basis that some people work harder than others and that differences in industry are relevant to financial desert; one might justify greater concern for one’s own children on the basis of the relationship which one shares with them and not others; one might justify elite higher education made available only to the talented on the basis that society will reap benefits overall. Many things might count as relevant differences, depending on one’s background theory of justice. The Principle of Equal Concern merely states that, in cases of differential treatment, some such defensible difference must be adduced.

Let us now turn to the matter of responsibility. Ronald Dworkin (2000: pp. 287-8) and Tim Scanlon (1988: pp. 149-216, and 1998: pp. 248-251) have each distinguished between two senses in which we use the term ‘responsibility’. One sense has to do with identifying the causal role agents play in bringing things about. So, for example, some guests might come into my dining room, see some food on the table, and ask ‘Who is responsible?’, meaning ‘Who cooked this?’. The other sense has to do with who ought to bear the burdens and benefits of a state of affairs. So, if one of my guests dies half way through my starter, the others might ask ‘Who is responsible?’ meaning ‘Who should be punished for poisoning the soup?’; or if they arrive and there is no food on the table at all, they might ask the question, meaning ‘Who can we complain to about our empty stomachs?’

The first sense – called *attributive responsibility* (or *attributability*) by Scanlon and *causal responsibility* by Dworkin – picks out a descriptive concept. To ascribe responsibility in this sense is to claim that an agent played a certain causal role in bringing about a state of affairs. For example, this paper’s existence is at least partially attributable to me because of my sitting down and writing it. There is scope for some disagreement about precisely what causal role is indicated, but on most theories the things that are attributed to us are all and only the things that we freely choose to bring about.

The other sense – which Scanlon and Dworkin dub *substantive* and *consequential responsibility* respectively – refers to a normative concept: something which grounds praise or blame, or claims for reward, compensation, punishment or something of that ilk. Now, neither Scanlon nor Dworkin is completely clear about what, in general, a judgement of substantive responsibility involves (as opposed to setting out some specific examples of such judgements). So, let us use the following schematic account as a way of sharpening the concept. To assert substantive responsibility is to claim that there is a relation between an agent and a state of affairs, and that this relation’s obtaining has some normative upshot. Or, to put it more precisely:

**The Concept of Substantive Responsibility:** an agent  $x$  is substantively responsible for state of affairs  $s$  in respect of a normative upshot  $Z$  just in case there is a relation  $R$  between  $x$  and  $s$  such that  $Z$  depends counterfactually upon  $Rx:s$ .

By ‘normative upshot’ I mean some claim about what  $x$  must, may, or may not do; or about what some others must, may, or not do in respect of  $x$ . And by ‘counterfactual dependence’ I mean that the normative upshot  $Z$  obtains, and (all other things being equal) would not obtain if  $Rx:s$  weren’t true.

This schema is deliberately broad: it delineates the outlines of the *concept* of substantive responsibility. Different moral theories will result in different *conceptions* of responsibility, depending on how the variables  $x$ ,  $s$ ,  $R$  and  $Z$  get filled in. Indeed, one and the same moral theory might contain more than one conception of responsibility: this analysis of substantive responsibility lends itself to a sort of pluralism, according to which different normative outcomes will be grounded by different relations between individuals, and that what is necessary and sufficient for substantive responsibility in one domain need not be so everywhere else.<sup>5</sup>

In the context of political philosophy, questions about substantive responsibility usually arise when we are trying to decide what to do about disadvantaging situations that agents find themselves in. So, for example, Dworkin says that the crucial question about responsibility is this:

‘When and how far is it right that individuals bear the disadvantages or misfortunes of their own situations themselves, and when is it right, on the contrary, that others – the other members of the community in which they live, for example – relieve them from or mitigate the consequences of these disadvantages?’ (Dworkin 2000: p. 287)

Dworkin’s point here, I take it, is that normative judgements about what people should and shouldn’t be expected to put up with presuppose judgements of substantive responsibility. In particular, a claim that someone should bear a disadvantage is just a roundabout way of saying that they are substantively responsible (in the technical sense identified above) for it: the two claims stand or fall together.

We can now see the connection between the preceding analysis of substantive responsibility and the principle of equal concern. The latter shifts the burden of proof: the defender of policies which lead to inequalities must offer a justification for such policies. Moreover, it indicates what type of justification that must be. There must be some specific relation that obtains between each individual at the sharp end of those inequalities and the states of affairs which disadvantage her, such that the relation’s obtaining justifies the comparative disadvantage that she suffers. Only such a relation will be a ‘relevant difference’ of the sort required to justify inequalities. That is just to say that, on the appropriate account of substantive responsibility, she must be *substantively responsible* for her disadvantage.

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<sup>5</sup> Serena Olsaretti (2004: pp. 139-141, 159, and 2009) effectively defends this sort of pluralistic view about substantive responsibility, although not in the terms I’ve used here.

This gives us a useful way of assessing policies. Showing equal concern constrains policies as follows: a policy is unacceptable if it leads to comparative disadvantages for which people are not substantively responsible.<sup>6</sup> The arguments in the rest of this paper seek to show that the proposal under consideration – namely, to incorporate market mechanisms into state education by instituting a regime of parental school choice – fails this condition.

### III. Against School Choice I

It might seem as though the principles set out in Section II, if correct, make the impermissibility of a market in education almost too obvious to be worth stating. The obvious line of thought is roughly as follows.

Parents are not equally competent, well-motivated, and well-placed for making school choices. Hence, a regime allowing such choice will lead to relative disadvantage, whatever the conception of interest that we use to measure it. The children of competent, well-motivated or lucky parents will get an education that promotes their interests well. Other children will be disadvantaged by an education that promotes their interests less well. In particular, their disadvantages will be both non-positional (since they will end up less well-off in absolute terms) and positional (since the well-educated will also thereby be more competitive in the subsequent competition for the necessary means for satisfying their interests).<sup>7</sup> This is justifiable only if we can hold the children at the sharp end of this disadvantage responsible for the state of affairs; children aren't responsible for having the parents that they do; so, they can't be held responsible for disadvantages that arise from their having different parents. So, the policy of school choice required to instantiate market mechanisms in education fails to show equal concern for all children. For that reason, Premiss 2 of the argument in Section I is false, and the argument fails.

This is an attractive line of thought. However, it doesn't work. To start with, as it stands, it equivocates between attributive and substantive responsibility. On the one hand, we might understand 'responsibility' throughout to mean 'attributive responsibility'. If we do, then many of the factual claims made are true. In particular, someone's having parents ill-suited to playing the educational market on their behalf is something that cannot be attributed to them. On this construal, however, the informal argument is invalid, because the conclusion doesn't follow. Claims about attributability are, strictly speaking, just descriptive claims about which relations obtain between agents and states of affairs: the fact that inequalities arise from an education market that aren't attributable to children does not, strictly speaking, imply that those comparative disadvantages aren't just. What we need instead is to conclude that children aren't *substantively* responsible for those disadvantages. One way we might try to do so is to eliminate

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<sup>6</sup> Which is to say, the Principle of Equal Concern and my analysis of substantive responsibility together imply responsibility-sensitive (or 'luck') egalitarianism, albeit in a schematic form without the specific conceptions of substantive responsibility appended by the view's various proponents. See, for example, Arneson 1989, Cohen 1989, and Temkin 1993: p. 13.

<sup>7</sup> Positional advantages are those whose status as advantages consists in being well-placed compared to others in the relevant respect: consider, for example, the advantage of being the fastest runner in a footrace, or being the richest participant in an auction. Non-positional advantages are those whose status as advantages does *not* depend on being well-placed compared to others. For example, if I am interested in reading ancient poetry, my being able to read a bit of Latin is a good thing irrespective of how good everyone else is at Latin. For further discussion of the distinction between positional and non-positional goods in education, see e.g. Brighouse & Swift 2006.

the ambiguity in the other way, and construe all instances of ‘responsibility’ above as meaning ‘substantive responsibility’. But while that construal would make the argument valid, it would also make it question-begging: the premisses would assume precisely what the argument seeks to prove, namely that children aren’t substantively responsible for disadvantages arising from the market mechanism.

One might think that the argument can be easily repaired by making explicit the assumption, which presumably explains the equivocation in the first place, that there is a tight connection between attributability and substantive responsibility, such that attributability is the relation which grounds the normative payoffs in the domain under scrutiny. Then, we can understand the factual claims to refer to attributive responsibility – which makes them true and non-question-begging – and the conclusion to refer to substantive responsibility – which gets us the desired refutation of the original argument for school choice. Made explicit, the assumption amounts to the following additional premiss:

**The Necessity Claim:** an agent is substantively responsible for comparative disadvantages only if they are attributable to her.<sup>8</sup>

Someone might believe the Necessity Claim because they hold one of a number of stronger principles. Maybe they believe that attributability is necessary for substantive responsibility in respect of any normative payoff, or that attributability is both necessary and sufficient for substantive responsibility in respect of at least some normative payoffs, or even both principles at once. It does not matter for present purposes, because whatever else they believe they have to believe *at least* the Necessity Claim.<sup>9</sup> In what follows, I argue that the Claim is false, because there are circumstances in which we may be substantively responsible for a state of affairs which is not attributable to us, including substantively responsible for disadvantages that arise from that state of affairs.<sup>10</sup> Moreover, there is a *prima facie* case for thinking that a regime of parental school choice is one such circumstance. So, in the case of disadvantage deriving from a market in education, the Necessity Claim is false, and the first argument against school choice fails.

To show the first point: consider situations of emergency, in which someone desperately requires the help of an innocent bystander, who can provide that help at negligible risk to herself, but in a way which causes her some comparative disadvantage. For example, we might imagine a marathon runner, mid-race, who comes upon a baby drowning in a shallow pond, or a stranger who has been set upon by poisonous snakes. The runner is a competent swimmer, and (in the fortuitous manner typical of such examples) has a phial of antivenin on her person. She is also, in each case, the only person who can help: only she can save the baby, and nobody else nearby

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<sup>8</sup> I leave aside for the moment the question of whether it is sufficient. For illuminating discussion, see Olsaretti 2004: ch. 6, Olsaretti 2009, and Steiner 1994: p. 216.

<sup>9</sup> One possibility which I don’t survey here, suggested to me by Michael Hand, is that one endorses a weaker Necessity Claim, which states that a *child* is substantively responsible for comparative disadvantages only if they are attributable to her (even if the same is not always true of adults). I think this weaker claim might be true, and if it is, it would suggest that this first argument has more going for it than I suggest. Since I haven’t time to argue for the weaker Necessity Claim, however, I shan’t assume so here. The arguments in the rest of the paper suffice to show that even if we give the benefit of the doubt to the defender of school choice on this matter, the argument given in Section I fails.

<sup>10</sup> Another, different argument to the same end is given by Zofia Stemplowska (2008).



possesses the antivenin. Let us also assume, for the sake of argument, that the runner is not attributively responsible for her being the only potential helper. She doesn't choose that there's no other competent swimmer present, and we can't attribute the lack of alternative sources of antivenin to her either. These factors, which are not attributable to her, ensure that if she stops to save the baby or snake victim, she will suffer a comparative disadvantage in her marathon, perhaps losing the race.

Most people would say that, lack of attributive responsibility notwithstanding, our runner is under a duty to provide aid, and would rightly be condemned if she refused to save the baby or produce the antivenin. Moreover, the duty in question is one which fits my general characterisation of substantive responsibility above. The normative payoff (the duty not to withhold aid) obtains just because a specific relation obtains between the runner and the states of affairs concerned, namely her being their sole useful occupant. So, we have a counterexample to the assumption that attributability is necessary for substantive responsibility. The latter *can* be grounded by the sort of relation exemplified by the situations of emergency I have just been considering.

The crucial factor in these cases (and, hence, the relation which grounds their normative payoff) is not their picturesque urgency. What matters is not really that the baby and snake victim will die *quickly* without the runner's aid: we could easily rework the thought experiments with a more dilated time factor. Rather, it is the fact that the runner finds herself in a situation where other people's interests will be seriously harmed overall if she doesn't act in a certain way. In general, when we find ourselves in such situations, we must make the best of a bad lot – and their not being attributable to us is neither here nor there, since the source of the moral demands on us is the claims made by other agents whose situation isn't attributable to them either. So, the plausible line of thought goes, in such cases we have a responsibility to bear at least some burdens in order to do what least harms people's interests overall.<sup>11</sup>

If we accept this principle, then there is a *prima facie* argument for thinking that the same relation – and hence the same responsibilities – arise in the case of school choice. Indeed, this is what lies at the heart of the argument set out in Section I. If we find an education system which best serves children's interests in general, howsoever construed, then everyone has a responsibility to bear at least some burdens to uphold it. As it happens (so the argument goes), free parental choice is necessary for both identifying and sustaining such an education system, because it is only through the diversity and trial-and-error of a market mechanism that we will be able to identify good educational practice. Individuals within markets are fallible, and can make bad decisions (both on the consumer side and the supplier side), but the beauty of the mechanism is that those bad decisions themselves feed into long term improvement overall. So, the disadvantages suffered by the children whose parents make bad choices are a necessary part

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<sup>11</sup> At this point it might be objected that this stretches the notion of responsibility too far. My claim here is effectively just an alternative formulation of the idea that we have a duty to uphold just institutions: if such broad duties as this are questions of substantive responsibility, has that latter concept not lost its distinctive character and become merely a way of labelling any normative conclusion in our political philosophy?

I think not. Some relations between agents and states of affairs cannot obtain except against the background of certain political institutions. However, it still makes sense to think of the particular burdens that an individual bears *as a result of the existence of those institutions* as being ultimately a matter of a relation between them and the state of affairs for which they may or may not demand compensation, and hence a matter of responsibility.

of a structure which overall is best for promoting all children's interests, and – by the principle set out above – they are disadvantages for which they can justly be held substantially responsible.

#### IV. Against School Choice II

The counterargument just set out is sufficient to sink the first version of the case against school choice and the market mechanism. Indeed, I think it has broader implications: it suggests that considerations of responsibility and equal concern will be unable to support a blanket ban on market mechanisms in state education. Nevertheless, reflection on the conditions of substantive responsibility does at least indicate two respects in which the argument for a market mechanism is conditional: it depends on an undefended (and, as I shall argue, unattractive) ethical theory about our interests, and it will work only for market mechanisms which meet rather demanding conditions. This suffices to offer a second argument against school choice, which is weaker but more effective.

First, this argument for school choice depends on the following ethical claim: if we care about interests at all, we should seek to maximize the instances of interest-satisfaction over the whole population, with complete impartiality about whose interests they are, and how satisfaction or frustration is distributed. That will be true only on certain accounts of what interests are, and how they should be traded off against each other in cases of conflict. Many plausible accounts of interests reject at least one of the features mentioned above, because they deny that simple maximization of interest-satisfaction is either coherent or desirable. For one thing, some accounts of interests (those based on autonomy, for example) do not admit of interpersonal comparison and aggregation of interests, as the argument assumes. For another, even if we *do* think that interests admit of interpersonal comparison and aggregation, it is a further substantive claim to say that simple maximization is the appropriate principle to adopt. Our best political theory *might* tell us that there will be some limits to what disadvantages people should be expected to shoulder for the common weal. Such limits are possible even for the strict consequentialist: one might argue, for example, that we should adopt the set of rules most likely to produce the best sort of society possible, and that in such a society such disproportionate burdens would not be shouldered by those who don't (and can't) consent to it.

My aim here is not to defend a particular theory of interests, but rather to show that the market-based argument for school choice presupposes some contentious claims about interests, namely that interpersonal aggregation and comparison of interest-satisfaction are both possible and desirable, and that there are no limits to the disadvantages that individuals can be expected to shoulder for the common weal. Since the argument makes those presuppositions, it is available only if one is prepared to accept them, for only if they are true will it be correct that children are substantively responsible for suffering disadvantage if that helps maximize interest-satisfaction overall.

At the very least, this reveals a burden of proof which the defender of school choice must bear, and it shows that many moral theories (those which deny interpersonal comparison and aggregation of interests, and those which think that there are limits to how an individual's interests may be harmed for the sake of others') will be incompatible with the market-based argument. As it happens, I also think that we can go further. Reflection on the character of a theory which could get round those limits suggests that it would be deeply unattractive for other reasons. Save for the proponents of especially procrustean forms of utilitarianism, few political

philosophers have defended the view that there are no limits to what we can do to the interests of an individual with a view to overall maximization. If we admit *any* limits at all, though, restricting the burdens borne by vulnerable children (which is to say, limiting their substantive responsibilities) is surely one of the most plausible candidates. If that is right, then I have shown not only that the defender of school choice bears a burden of proof, but also that it's very unlikely that he or she could meet that burden.

Turning from the ethical presuppositions of the market-based argument, it also faces problems when we consider the practical conditions that would need to be met for it to work. Classic arguments for the utility of the market depend on showing that the epistemic and coordinating effects of the price mechanism lead to the most efficient deployment of productive and consumptive capacity available (where by 'efficient' I mean roughly 'producing as much preference-satisfaction with as little effort and as few resources as possible'). The argument for the market in education will work only if it has a similarly beneficial effect for educational goods, substantially improving overall quality in the system, and doing so notably better than any alternatives. Only then will the general advantages be sufficient to justify the disadvantages suffered by children at the sharp end of market inequalities.

The problem is that there is reason to doubt this, because of the disanalogies between the classic marketplace of goods and services and the education system. The effectiveness of the market mechanism in the former depends precisely on those features which are absent in the latter. In the marketplace of medium-sized dry consumable goods, we assume rational self-interested adults making decisions for themselves. In the educational case, we have parents making decisions on behalf of children. The price mechanism of the marketplace delivers quick epistemic data and depends only on consumers knowing what they themselves desire, for what price, at the time of purchase. Getting the same epistemic payoff in the educational case requires either that parents have the knowledge and experience to know what makes for a good education, or that the state is able to identify it through the sort of (non market-based) research and inspection regimes that the argument assumes to be either impossible or unnecessary. In the marketplace, productive capacity is assumed to be flexible and responsive to the price mechanism. Educational institutions, by their nature, respond more slowly to the pressure to change, such that the period of improvement may last the whole of a child's educational life in a particular institution. In the marketplace, overall improvement depends on adult consumers and producers taking risks, mindful of the chance of their purchasing decisions and commercial enterprises failing. In the educational case, the analogous driver of overall improvement is our sure knowledge that some schools will fail; the consequences of school failure are heaviest for the children concerned, who share none of the features – well-informedness, consent, and so on – which make the parallel (and generally less severe) failure of the entrepreneur palatable.

What does this set of contrasts prove? Well, in itself it doesn't offer a positive argument *against* school choice, because it doesn't demonstrate that no market mechanism in education could meet the conditions mentioned. Nothing that I've said rules out the possibility that that an ingenious designer of institutions could devise a mechanism which pays due heed to the distinctiveness of the educational domain and still manages to have the epistemic and coordinative virtues of the market. What it does do, however, is to show what a difficult task that will be, by giving strong *prima facie* reasons for thinking that any market mechanism in educational will be neither effective nor just. If that's right, then the disadvantages which the

mechanism guarantees cannot be justified – in which case, the prospects are bleak for a defence of school choice along these lines.

## Conclusion

What should we make of the proposal to bring market mechanisms in the state education system? It turns out that the answer to this question – ostensibly a matter of practical policy – hinges on a much deeper pair of debates in political philosophy: the debate between egalitarians and libertarians about the propriety of basing state policy on principles of equality, and the debate (principally amongst egalitarians) about how best to understand the normative significance of individual responsibility.

Noting the intractability of those philosophical debates, the pessimist might conclude that bringing philosophy into the policy discussion will serve only to paralyse it. What we have found instead, at least in respect of the matter under discussion here, is that reflection on the political philosophical foundations has decisive implications for policy. Let me conclude by drawing together the three lines of argument which show that market mechanisms in education are either unjustifiable, or at any rate tremendously hard to justify.

First, the deep disagreement between egalitarians and libertarians belies the fact that there is at least one deeper principle over which they can agree. That principle is as follows: policies and institutions concerned with the distribution of a good must show equal concern for all citizens by ensuring that resultant inequalities in respect of that good are justified by a relevant difference between citizens. This is a minimal enough principle that even the most strident libertarian can endorse it: we just interpret their talk of private property rights and the inviolability of individual free choice as proposals for what we should take those relevant differences to be.

Second, the debate over the proper role for responsibility in political theory has been muddled by two confusions: first, a failure to distinguish the concepts of attributive and substantive responsibility; and second, a tendency to conflate the two in practical terms by assuming that we are substantively responsible for just those things that are attributable to us. An analysis of the structure of the concept of substantive responsibility, and of the possible (and not mutually exclusive) conceptions of substantive responsibility that it permits, showed that this assumption is unmotivated, at best; and I gave some reasons to think that it should be rejected.

Third, even the minimal principle mentioned above turns out to have substantive implications for policy. In light of my analysis of responsibility, it turns out that arrangements which guarantee inequalities – as a market mechanism in state education certainly would – are acceptable if and only if the individuals at the sharp end of those inequalities are substantively responsible for the comparative disadvantage they suffer. So, on the basis only of principles which even the habitual defenders of free markets and parental choice must accept, it looks as though the permissibility of a market mechanism in education depends on our answer to the following question: would the children disadvantaged by such a mechanism properly be held substantively responsible for the fact?

My contention is that the answer to this question is ‘no’, and hence that the market-based argument for parental school choice fails. (Indeed, if the answer is indeed ‘no’, it shows not just that market-based arguments for school choice fail, but also that there could be no successful argument, and hence that the policy should be rejected out of hand.) I haven’t offered decisive

reasons to take that view. As we saw in Section III, the most obvious such reason, that children don't freely choose their parents, turns out to fail because it relies on precisely the conflation between attributability and substantive responsibility that I rejected in Section II. Nevertheless, the considerations presented in Section IV should show how difficult it will be to support a 'yes' answer to my question. So, to the extent that we are moved by those considerations, political philosophy tells us this about the current vogue for a market mechanism in education: absent a serious attempt by its proponents to show that disadvantaged children are responsible for the fact, we should have none of it.<sup>12</sup>

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## References

- ALMOND, BRENDA (1991) Education and Liberty: Public Provision and Private Choice, *Journal of Philosophy of Education* 25: 193-202.
- ARNESON, RICHARD (1989) Equality and Equal Opportunity for Welfare, *Philosophical Studies* 56: 77-93.
- BLUNDELL, JOHN (2006) Sell off the three Rs to really deliver education, *The Business* 1 October 2006.
- BRIDGES, DAVID (1984) Non-paternalistic Arguments in Support of Parents' Rights, *Journal of Philosophy of Education* 18: 55-61.
- BRIGHOUSE, HARRY & SWIFT, ADAM (2006) Equality, Priority, and Positional Goods, *Ethics* 116: 471-497.
- BUTLER, EAMONN (2006) *The Best Book on the Market* (Chichester: Capstone Press).
- COHEN, GERALD (1989) On the Currency of Egalitarian Justice, *Ethics* 99: 903-944.
- DWORKIN, RONALD (2000) *Sovereign Virtue* (Cambridge, Mass.: Harvard University Press).
- FRIED, CHARLES (1978) *Right and Wrong* (Cambridge, Mass.: Harvard University Press).
- HAND, MICHAEL (2002) Religious Upbringing Reconsidered, *Journal of Philosophy of Education* 36: 545-557.
- HAYEK, FRIEDRICH (1948) *Individualism and Economic Order* (Chicago: University of Chicago Press).
- HAYEK, FRIEDRICH (1973 – 1979) *Law, Legislation and Liberty* (Chicago: University of Chicago Press, 3 volumes).
- HLAVAC, MAREK (2007) *Open Access for UK Schools: What Britain can learn from Swedish Educational Reform* (London: Adam Smith Institute).
- HOHFELD, WESLEY (1923) *Fundamental Legal Concepts as Applied in Judicial Reasoning* (New Haven: Yale University Press).
- KRAMER, MATTHEW (1998) Rights Without Trimmings, pp. 7-112 in M.H. KRAMER, N.E. SIMMONDS & H. STEINER *A Debate Over Rights* (Oxford: Oxford University Press).
- MANDEVILLE, BERNARD (1924) *The Fable of the Bees, or Private Vices, Publick Benefits* ed. F.B. Kaye (Oxford: Clarendon Press) (originally 1714).
- NOZICK, ROBERT (1974) *Anarchy, State, and Utopia* (New York: Basic Books).
- OLSARETTI, SERENA (2004) *Liberty, Desert, and the Market* (Cambridge: Cambridge University Press).
- OLSARETTI, SERENA (2009) Responsibility and the Consequences of Choice. *Proceedings of the Aristotelian Society* 109: 165-188.
- SCANLON, THOMAS (1988) The Significance of Choice, pp. 149-216 in S.M. MCMURRIN ed. *The Tanner Lectures on Human Values VIII* (Cambridge: Cambridge University Press).
- SCANLON, THOMAS (1998) *What We Owe To Each Other* (Cambridge, Mass.: Harvard University Press).
- SMITH, ADAM (1976) *An Inquiry into The Nature and Causes of The Wealth of Nations* ed. E. Cannan (Chicago: University of Chicago Press) (originally 1776).
- STANFIELD, JAMES et al (2006) *The Right to Choose? – Yes, Prime Minister!* (London: Adam Smith Institute).
- STEINER, HILLEL (1994) *An Essay on Rights* (Oxford: Blackwell).

- STEMPŁOWSKA, ZOFIA (2008) Holding people responsible for what they do not control, *Politics, Philosophy & Economics* 7: 355-377.
- TEMKIN, LARRY (1993) *Inequality* (New York: Oxford University Press).
- TOOLEY, JAMES (1998) *Education without the State* (London: Institute for Economic Affairs).
- WILLIAMS, BERNARD (1962) The Idea of Equality, in: P. LASLETT & G. RUNCIMAN eds. *Politics, Philosophy and Society, second series* (Oxford: Blackwell).
- WILLIAMS, BERNARD (1990) Voluntary Acts and Responsible Agents, *Oxford Journal of Legal Studies* 10: 1-10.