

Prioritarian Educational Justice: An Ethical Problem for Charter Schools?

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The past few decades have witnessed an explosion of charter schools in the United States. Despite the stated mission of many such schools to serve disadvantaged student groups, charter schools have faced criticism from advocates of educational equality. In this article, I seek to defend charter schools from some of these critiques, arguing that, although the principles of justice defended by advocates of educational equality are important guidelines to take into consideration, other concerns that have ethical weight ought to influence decision makers when it comes to evaluation of the charter school movement.

In section one, I lay out the principle of educational justice with which I will be concerned in this article: a prioritarian principle of educational justice coupled with a goal of educational outcome equality. In section two, I discuss a criticism brought against charter schools based on the claim that they fail to live up to the view of educational justice discussed in section one. Finally, in section three, I defend charter schools against these critiques, suggesting that, given some of the limitations educators face in today's society, further considerations need to be taken into account.

EDUCATIONAL EQUALITY AND PRINCIPLES OF JUSTICE

Many would agree that education is valuable in itself and can open up an exciting range of experiences for students. Harry Brighouse and Adam Swift refer to such benefits as the “non-positional goods” of education, since a person's acquisition of such benefits in no way affects the degree to which others can also enjoy them.¹ Education, however, is not only intrinsically valuable but is also a way in which people can acquire extrinsic goods; the more education one receives, the more likely one is to achieve these goods. Importantly, unlike

the intrinsic goods of education, these benefits are positional: the degree of benefit one person receives has the potential to affect the degree of benefit another person can realistically pursue. For example, a person's chances of receiving the benefit of an elite medical school acceptance are dependent not only on the education and academic performance of that particular person but also on the relative performance of all the other applicants. If the applicant in question is educationally disadvantaged compared to the other applicants, his chances of achieving the good under consideration will be lower. Because levels of education are closely tied to these positional goods, many philosophers of education have concerned themselves with the issue of educational equality.²

Underlying the idea of educational equality is the further notion of educational justice.³ One important divide in the education debate is between those who endorse a principle of educational adequacy and those who prefer a more rigorous principle of equality. The latter group considers inequalities themselves to be unjust, while the former group does not consider inequalities *per se* to be unjust but rather is concerned with inequalities that prevent some students from reaching a certain level of educational adequacy.⁴ Scholars who endorse a standard of educational equality, though, attack principles of adequacy for being an insufficient description of justice, since such principles say nothing about what ought to happen with respect to inequalities above the threshold of adequacy.⁵ It is these scholars who tend to favor a "prioritarian" principle of educational justice. Harry Brighouse, starting from Rawls's difference principle, provides a good summary statement that gets at the heart of the prioritarian concern: when contemplating the allocation of educational resources, the right path is to focus on prioritizing the *least advantaged* students.⁶ Because levels of education are so closely linked to positional goods that can result in better life prospects, "adequacy" is not enough. If the appropriate goal of educational justice is to attain equality of educational outcomes, then a prioritarian approach makes sense. It is only by devoting a significantly larger amount of resources to the least advantaged students that they will have a chance of reaching the level of educational achievement that their more highly advantaged peers can gain fairly easily.

The prioritarian principle demands a rigorous conception of educational justice: educational resources must be distributed in such a way as to benefit the least advantaged, defined as those students who suffer the most from social situation, natural ability, and motivational levels. As Brighthouse and Swift maintain, “In order to be legitimate, inequalities should result from fair procedures, and fair procedures are those in which various characteristics of a person are prevented from influencing their prospects.”⁷ No characteristics of a child that are not the result of choice should have an influence on the educational outcomes that child achieves.

CHALLENGES FOR CHARTER SCHOOLS

In this section, I present several objections to charter schools that are grounded in the notion of prioritarian educational justice outlined in section one. In recent years, charter schools have seen a surge of popularity, and according to the National Center for Education Statistics, approximately 2.7 million students were enrolled in charters as of 2014.⁸ Some charters, however, perform no better, or, in some cases, even worse than their counterpart district schools, while others seem to be very successful in improving the academic achievement of the students who attend.⁹ For the purposes of this article, I will set aside the portion of charter schools that do not meet academic expectations. Rather, I want to focus attention on what Brighthouse and Schouten dub “high commitment charter” schools (HCCs).¹⁰ Studies suggest that attending an HCC does tend to improve the academic performance of students.¹¹ In what follows, I discuss two objections to HCCs that arise from prioritarian considerations of educational justice.

One main concern of advocates of a prioritarian principle of educational justice is that charter schools do not actually serve the least advantaged students. This accusation might seem strange, given that many such charters are located in low-income neighborhoods and are started with the explicit purpose of providing a higher quality of education to the least advantaged students. Several features of HCCs, however, lend credibility to the prioritarian’s con-

cern, indicating that it is probably the case that HCCs do not usually succeed in reaching the most disadvantaged students.

First, many HCCs use a lottery system to handle their admissions decisions. Because these HCCs are typically oversubscribed—waiting lists of more than one thousand students are not uncommon—schools need an efficient and unbiased way to determine which students will be admitted. Parents must fill out an application form for their children, and a lottery randomly generates the names of the students who will be offered enrollment. Initially such a process might seem fair, since the random lottery ensures that no discrimination can take place in the selection process. Granted, no discrimination takes place *within* the lottery process, but it is possible that the nature of the lottery system itself necessarily excludes the least advantaged students, since parents must take the initiative to enroll their children in the lottery. These parents also must have the ability to find out about the lottery, as well as the time to invest in filling out the application. Among the least advantaged families, it is questionable whether the motivation, time, or ability to research such information always exists. As a result, the students from the most disadvantaged social situations will very likely be those who are never entered into the lottery in the first place.

Another reason to question the efficacy of HCCs in serving the most disadvantaged results from the internal culture and academic rigor of these schools, features that require high disciplinary standards to maintain. Misbehavior at HCCs is usually taken quite seriously, and suspension rates from charter schools are higher than from traditional public schools.¹² But students who struggle with behavioral issues are, arguably, among the least advantaged students. By demanding exemplary conduct from their students, then, it is possible that many HCCs fail to serve another category of the most disadvantaged students.¹³

Given this information, it seems that HCCs often fail in their mission to serve the least advantaged children in society. Although this kind of discrimination is usually unintentional, the nature of the admissions process and the rigor of the school culture often lead to the exclusion of students who are the least advantaged socially, behaviorally, and intellectually. According to a prioritarian principle of justice, then, it seems that allocating resources to these schools is a

questionable move. If the ultimate goal of educational justice is to serve the very least advantaged, and if the primary focus of educators ought to be on raising the level of educational outcomes achieved by these least advantaged students, then educators and policy makers should not devote resources to projects that, by their very nature, tend to exclude the least advantaged students.

Another criticism that has recently been raised is that the existence of charter schools might actually *harm* the least advantaged children.¹⁴ Their concern is with the indirect effects that the removal of more advantaged students from district schools may have on the students who are left behind. One of their worries is based on research that suggests that struggling students tend to do better when they are in a classroom with more high-achieving students and worse when they are surrounded by low-achieving peers.¹⁵ Based on the discussion of the type of students charters tend to serve, there is some reason to think that, when a charter opens in a district, the majority of students who will enroll at the charter will be more advantaged than the students who do not enroll, since the former group will, for the most part, have the ability to meet a certain standard of behavior and academic performance and will have parents who care about their education. This point about parental involvement leads to a further concern: not only are more highly achieving students removed from district schools when they enroll in a charter, but district schools then also lose the support of those children's parents, parents who are most likely the ones who would be involved in the school.

Given these concerns, it seems reasonable to worry that charter schools not only fail to help but might also harm the most disadvantaged students who are unintentionally excluded from attending HCCs. If the primary requirement of educational justice is to focus on serving the least advantaged students, such a situation is not acceptable from an ethical point of view.

A DEFENSE OF HIGH COMMITMENT CHARTER SCHOOLS

Despite the challenges faced by charter schools from a prioritarian perspective of educational justice, my goal is to defend the existence of such

schools, suggesting that, even if they do not succeed in serving the very least advantaged students, this is not a definitive strike against them. My argument centers on a weakness in the strong prioritarian principle of educational justice: primary focus on improving the educational outcomes of the least advantaged students is an implausible goal, because it is not feasible given the limited educational resources institutions have at their disposal. I will argue that educators ought to employ a sort of “educational triage”: rather than directing their focus to the *least* advantaged, they ought to concern themselves more with the broader category of *less* advantaged students who are in a position to be helped significantly by additional educational resources.¹⁶

One initial difficulty with the implementation of a strict prioritarian principle is epistemological: even identifying the most disadvantaged students might be quite complicated.¹⁷ Another more significant challenge arises from two related issues: the limited resources educators have at their disposal, and the extremely high cost of educating very disadvantaged students. In what follows, I argue that the tension arising from these considerations also lends support to the claim that educators ought to focus on serving the broader category of less advantaged students rather than the set of the most disadvantaged.

Imagine that you are an emergency medical technician called to the scene of an accident. Three people are injured: one has a broken arm, one has a very serious chest injury but nevertheless has a good chance of being saved, and the last has received an injury that will require the attention of your whole team even to have a chance at survival. How should you proceed? According to principles of triage, you should focus your attention in alignment with two criteria: you should choose the victim with more serious needs, but you should also choose the victim whom you have a better chance of saving. In this case, you ought to move past the person with the broken arm; this victim will be perfectly fine on his own if given a basic level of care. You certainly ought to devote some attention to the person with the most serious injury, but if you devote all of your resources to this person—which is what might be required to make a real difference for that person—the victim with the chest injury will be ignored; he might survive on his own, but he also might not. So, it seems

that your best course of action is to focus on the person with the chest injury, the person who has received a very serious injury but for whom your medical resources will probably make the biggest difference. Is it unjust not to do everything in your power to help the most seriously injured person? Perhaps. But if the chances of making a significant difference for that person are small, and you could only truly help that person at the expense of your other patient, it also seems problematic to focus exclusively on the most severely injured victim.

Hopefully the parallels that this medical triage situation may have to situations of educational justice are clear. One significant concern with respect to prioritarian principles of educational justice is that there may be some students who are disadvantaged to such a tremendous extent that no amount of additional resources will serve to bring them up to a level of education that will allow them to pursue certain desirable positional goods along with their highly advantaged peers. It is certainly the case that educating highly disadvantaged students requires a much larger investment of resources than does educating other students to the same level.¹⁸

A legitimate concern is whether or not society has the resources to serve the very least advantaged students beyond a certain threshold of adequacy. It is not clear that any amount of public resources can make up for the degree of private disadvantage a student may suffer; as Debra Satz observes, “We cannot secure the equal development of children’s potentials while permitting a world with diverse families, parents, parenting styles, geographical locations, and values.”¹⁹ If this claim is correct, if educators choose to focus all of their resources on helping the least advantaged students—students for whom there is a relatively small chance of improved life prospects in the first place—they are then prevented from helping other, perhaps slightly more advantaged students, who nevertheless could see a tremendous improvement in life prospects if educators were to channel resources to improving the education of such students.²⁰

Whether or not HCCs help the least advantaged students is one thing; whether or not they harm such students is another. I now turn to the second primary objection raised against HCCs, based on the claim discussed above that the existence of these charters harms the least advantaged students by removing

good students from district classrooms and diverting parental resources from district schools.

With respect to the issue of harm, it is important to note that it is unclear to what extent HCCs cause such a phenomenon to occur. One study of charter schools and their counterpart district schools in Michigan suggests that the presence of charter schools in a district reduces the level of efficiency and student achievement in regular district schools, but the results are not conclusive.²¹ Also, it is questionable that the existence of HCCs on a small scale will significantly alter the quality of education of the competing district schools, since removing a small percentage of high-achieving students and engaged parents from district schools would most likely not make a significant difference in the overall success of those schools. So, this concern is legitimate only if policy makers contemplate founding charters on a larger scale.²² I will proceed, however, on the assumption that such research will reveal that it is in fact the case that the existence of HCCs harms the least advantaged students. Despite this assumption, I suggest that this harm to the least advantaged students may not necessarily be a definitive mark against charter schools.

First, as Brighthouse observes, when educators consider the positional goods acquired by means of educational achievement, they must recognize that there is not a continuous relationship between the two.²³ Rather, it seems that reaching certain thresholds of educational achievement will matter for reaching higher and higher levels of life prospects. Earning a high school diploma is an educational threshold that will make a significant difference in a person's life; passing one extra literature class might not matter so much. If this is the case, then harming the least advantaged in the way discussed above might not be terribly significant if it does not result in a real change in life prospects. Once again, this issue requires further research, but the main point is that some decrease in educational achievement does not necessarily translate directly into decrease in life prospects.

Second, it is important to note that, whether or not educators decide to support charter schools, some group of students will be harmed regardless. If policy makers ban charters on the grounds that their existence harms the

least advantaged students, then it seems they have made a choice that harms the students who would have otherwise attended those charter schools. These students will be worse off than they would have been otherwise. A defender of the least advantaged might respond that the particular group being harmed makes all the difference and that, if given a choice between an action that will harm the least advantaged or an action that will harm someone not in that category, educators should choose the latter. What this approach misses is the fact that such harms might come in different magnitudes. If it is the case, as argued above, that it requires significantly more resources to make a meaningful difference for the most highly disadvantaged, then it is likely that the harm done by directing those resources in a different direction will do proportionally less harm. On the other hand, if that given amount of resources can significantly improve the education of a slightly more advantaged student, then withholding those resources from him will similarly result in a greater harm. So, educators ought to take into account not only the student who is viewed as the object of the harm but also the degree of harm involved.

Although I have argued that a failure to live up to a rigorous conception of prioritarian educational justice should not be a strike against HCCs, I also think that this argument can only go so far. Permitting a certain amount of harm to come to the least advantaged students so that another group of less advantaged students might experience significant educational growth does not entail that any amount of harm is legitimate. It is at this point that a return to the notion of educational adequacy outlined at the beginning of this article is helpful.

I suggest that a rigorous prioritarian principle, one that focuses on the least advantaged, is appropriate insofar as it is necessary to ensure that even the least advantaged students are able to achieve a certain threshold of educational adequacy. Ignoring students below this level of adequacy in order to improve the education of those who are already above the threshold is, indeed, somewhat questionable. Unlike the defender of a pure adequacy view, I have suggested that inequalities above the adequacy threshold do matter, but in contrast to the strict prioritarian, I believe that, once this threshold has been met, primary

focus on the very least advantaged is impractical and potentially has ramifications that are ethically dubious. As long as HCCs do not make it impossible for students at regular district schools to achieve a threshold level of educational adequacy, prioritarian considerations should not automatically rule them out as an option to be tested further. High commitment charter schools, even if they do not often succeed in serving the very least advantaged, effectively can serve less advantaged students and thereby further a more moderate goal of educational justice.

1 Harry Brighouse and Adam Swift, "Equality, Priority, and Positional Goods," *Ethics* 116, no. 3 (2006): 471-497.

2 Unfortunately, the notion of educational equality itself is fraught with ambiguity. As Mary Warnock observed several decades ago, "educational equality" could mean many different things. Do defenders of educational equality mean that all children must have an equal right to education or that they have a right to equal education? And are such defenders concerned merely with equal access to educational opportunity or with equal educational outcomes? This plethora of interpretations necessitates a certain amount of care when treating the topic of educational equality. See Mary Warnock, "The Concept of Equality in Education," *Oxford Review of Education* 1, no. 1 (1975): 3-8.

3 The many possible ways to interpret the idea of educational justice makes approaching the topic an extremely tricky endeavor. For an overview of some prominent positions, see Christopher Jencks, "Whom Must We Treat Equally for Educational Opportunity to be Equal?," *Ethics* 98, no. 3 (1988): 518-533.

4 See, for example, Debra Satz, "Equality, Adequacy, and Education for Citizenship," *Ethics* 177, no. 4 (2007): 623-648. Satz defends a notion of educational justice that involves an adequate threshold of educational outcomes.

5 Harry Brighouse and Adam Swift, "The Place of Educational Equality in Educational Justice," in *Education, Justice, and the Human Good*, ed. Kirsten Meyer (New York: Routledge, 2014), 14-33.

6 Harry Brighouse, "Equality, Prioritising the Disadvantaged, and the New Educational Landscape," *Oxford Review of Education* 40, no. 6 (2014): 782-798. Although Brighouse focuses primarily on social disadvantages, there is good reason to think that other sorts of disadvantages that might be interpreted as natural or dispositional are of equal concern. Gina Schouten rejects a meritocratic version of the prioritarian principle, endorsing a more rigorous conception of the principle under which differences in "natural" talent should not make unequal educational outcomes legitimate; see Gina Schouten, "Fair Educational Opportunity and the Distribution

of Natural Ability: Toward a Prioritarian Principle of Educational Justice,” *Journal of Philosophy of Education* 46, no. 3 (2012): 472-491. Tammy Ben-Shahar goes even further, championing what she calls “all-the-way” educational equality, which is the idea that only inequalities resulting from pure choice, not luck, are justifiable; see Tammy Ben-Shahar, “Equality in Education—Why We Must Go All the Way,” *Ethical Theory and Moral Practice* 19, no. 1 (2016): 83-100.

7 Brighthouse and Swift, “The Place of Educational Equality,” 15.

8 See the NCES report at https://nces.ed.gov/programs/coe/indicator_cgb.asp.

9 These discrepancies result in the fact that, on average, charter schools do not improve student performance on state math and reading assessments. See M.A. Clark, P. Gleason, C.C. Tuttle, and M.K. Silverberg, “Do Charter Schools Improve Student Achievement? Evidence from a National Randomized Study,” *Mathematica Policy Research*, Working Paper No. 11-06, (2011). Retrieved from http://www.mathematicampr.com/~media/publications/PDFs/education/charterschools_WP.pdf.

10 Harry Brighthouse and Gina Schouten, “To Charter or Not to Charter: What Questions Should We Ask, and What Will the Answers Tell Us?,” *Harvard Educational Review* 84, no. 3 (2014): 341-364.

11 The KIPP (Knowledge is Power Program) network of schools has been the subject of the most extensive research, and the studies done on the network indicate that student gains in academic achievement across the board are significant at these schools. See P. Gleason, M. Clark, C.C. Tuttle, and E. Dwyer, “The Evaluation of Charter School Impacts,” *Mathematica Policy Research* (2010), retrieved from http://www.mathematicampr.com/~media/publications/PDFs/education/charter_school_impacts.pdf; also see C.C. Tuttle, B. Gill, P. Gleason, V. Knechtel, I. Nichols-Barrer, and A. Resch, “KIPP Middle Schools: Impacts on Achievement and Other Outcomes,” *Mathematica Policy Research* (2013), retrieved from <http://files.eric.ed.gov/fulltext/ED540912.pdf>.

12 D. Losen, M. Keith, C. Hodson, and T. Martinez, “Charter Schools, Civil Rights and School Discipline: A Comprehensive Review,” *The Center for Civil Rights Remedies* (2016), retrieved from http://www.schooldisciplinedata.org/ccrr/docs/Charter_School_Report_2016.pdf.

The cited study deals primarily with data regarding suspension rates, but the relative rates of expulsion are also a concern worth investigating.

13 One specific group of students that often struggles with behavioral demands is the set of children with special education needs. National statistics indicate that, on average, charter schools serve fewer students with special needs than do regular district schools. A recent study has suggested that the reasons for this trend are complex, but the data gives some reason to worry that special education students are another group that is underserved by charter schools; see Betheny Gross and Robin Lake, “Special Education in Charter Schools: What We’ve Learned and What We Still Need to Know,” *Center on Reinventing Public Education* (2014), retrieved from <http://www.crpe.org/sites/default/files/crpe-special-education-in-charter-schools-what-learned-what-we-still-need-to-know.pdf>.

14 Brighthouse and Schouten, “To Charter or Not to Charter.”

15 Victor Lavy, Olmo Silva, Felix Weinhardt, “The Good, the Bad and the Average:

Evidence on the Scale and Nature of Ability Peer Effects in School,” *Journal of Labor Economics* 30, no. 2 (2012): 367-414.

16 The division between the less and least advantaged student groups lacks precision. Even if it is not possible to draw a definitive line between the two groups, though, I suggest that the distinction is still meaningful and useful.

17 Some scholars have tended to discuss educational equality with respect to race and class divisions. Voluntary self-segregation in some inner-city charter schools is such an issue; for a discussion of the topic, see Sigal Ben-Porath, “School Choice and Educational Opportunity: Rationales, Outcomes, and Racial Disparities,” *Theory and Research in Education* 10, no. 2 (2012): 171-189. But, as Lawrence Blum points out, viewing educational equality primarily along racial and social lines does not successfully deal with the subtleties of the situation, since within a given population group, even if that group shares racial and social characteristics, there will still be a wide range of levels of advantage. See Lawrence Blum, “Race and Class Categories and Subcategories in Educational Thought and Research,” *Theory and Research in Education* 13, no. 1 (2015): 87-104.

18 William Dunscombe and John Yinger, “How Much More Does a Disadvantaged Student Cost?,” *Economics of Education Review* 24, no. 5 (2005): 513-532.

19 Satz, “Equality, Adequacy, and Education for Citizenship,” 6.

20 This concern is closely related to what is often termed the “leveling down” objection. For discussion that includes a response to the objection, see Ben-Shahar, “Equality in Education,” 94.

21 Yongmei Ni, “The Impact of Charter Schools on the Efficiency of Traditional Public Schools: Evidence from Michigan,” *Economics of Education Review* 28, no. 5 (2009): 571-584.

22 The normative implications of the founding of one charter school in a given district might differ significantly from the results of founding numerous such schools; see Brighthouse and Schouten, “To Charter or Not to Charter,” 344, 348-349.

23 Brighthouse, “Equality, Prioritising the Disadvantaged, and the New Educational Landscape,” 782-798.