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**The Political Morality of School Composition:
The Case of Religious Selection¹**

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In September 2016 Prime Minister Theresa May announced her government's intention to facilitate the creation in England of new Academies with a religious character by abolishing the requirement that they restrict the proportion of pupils selected on the basis of religious criteria to 50 per cent (May 2016). Apparently, this restriction had served as a brake on the creation of new faith Academies and Free Schools: some religious organizations cited it as a reason why they had not been willing to be involved in such a process (The Catholic Bishops' Conference for England and Wales 2013; Board of Deputies of British Jews 2016). This in turn was seen as hindering the government's aim of increasing parental choice and improving educational standards. The evidence showed that the cap on selection by religion had done nothing to make faith schools more diverse so, it was argued, there was no reason to continue with it (DfE 2016, 31-33).

At the time of writing, the Secretary of State for Education, Damian Hinds, has reneged on the 2017 manifesto commitment to remove the cap for new Academies and Free Schools but is offering more funding for Local Authorities to open voluntary-aided faith schools that may admit without a cap (DfE 2018a). That move is

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entirely in keeping with wider policy developments, such as the shift to Academies and Free Schools itself, which have made it easier for faith-based organizations to enter the education ‘market’. The arguments offered for those developments typically combine - or slide between – two claims: on the one hand, parents are entitled to exercise choice over their children’s schooling; on the other hand, allowing schools to respond to demand can be expected to improve standards, especially standards at the bottom. Both considerations are particularly salient in the case of schools with a religious character: parental choice with respect to religion is widely regarded as especially important – more, say, than choice with respect to schools specializing in science or music - while schools with a religious character are often claimed to be ‘better’ than their non-religious equivalents.

Critics of such policies raise a number of objections. Some appeal to empirical evidence: the better outcomes achieved by such schools are entirely due to the characteristics of the children who attend them. They are not being compared with genuine equivalents and their better results should be attributed to their composition rather than their religious character (Allen & West 2009 and 2011; Andrews & Johnes, 2016; Dreissen, Agirdag & Merry, 2016a and 2016b;² Sullivan et al 2018). Others raise normative concerns. For some, in so far as religious schools are, for whatever reason, better than the alternatives, it is problematic – objectionably discriminatory - if the benefits that come from attending such schools are distributed in a way that reflects parents’ religious affiliation (Pettinger 2014, 477; Shorten 2017). Others contest the understanding of ‘better’. Even where such schools do

² Although they note that Islamic schools represent an important exception to this rule.

achieve better test results than genuine equivalents, other pupil outcomes are also relevant to their evaluation. It matters that future citizens acquire not only cognitive skills and knowledge but also tolerant attitudes and dispositions, and the kind of understanding of the lives of others that is best achieved in culturally and religiously diverse 'common' schools (Gutmann 1996, 164; Kymlicka 2001, 303-305; Cattle 2008, 219-221). Still others challenge the deference accorded to parental choice. Children are separate individuals with their own moral standing and interests; they thus have the right to schooling that will both equip them to live autonomous lives and respect their moral independence in the process (Clayton 2006).

The arguments over policy with regard to religious schooling thus invoke a wide range of considerations. Regulation of the curriculum is generally seen as the main way to respect parents' claims to have their children raised in a particular faith while protecting those children from undue influence and producing tolerant citizens supportive of liberal democratic norms. But regulation of school admissions also has a part to play: the 50 per cent cap on the proportion of children that a school may select on the basis of religion was introduced precisely as an attempt to prevent the kind of excessive segregation that is widely regarded as inimical to harmonious relations between different religious and ethnic groups.

Our aim in this paper is to provide a clear and coherent analytical framework for identifying and assessing the heterogeneous normative concerns raised by religious schools, and to illustrate its merits by applying it to the regulation of admissions to such schools. It is a virtue of the proposed framework that it applies to questions

about religious schooling quite generally.³ We concentrate on admissions both because they are currently a focus of policy debate and because there is very little detailed normative discussion of schools' selecting their students on the basis of religious criteria. The issue of selection by academic ability commands a good deal of attention, while familiar debates about elite private schools primarily concern the propriety of selection by ability to pay. But selection by religion, which raises concerns that include but extend beyond the distributive issues central to those other debates, tends to pass under the radar. Discussion of religious schooling from a normative theoretical perspective has focused far more on curriculum than selection (Thiessen 1993; Hand 2003, 2004 and 2012; Siegel 2004; Groothuis 2004; Gardner 2014). We seek to explore what is stake in policy decisions concerning not *what* such schools may teach but *whom* they may teach.⁴

We will find that the normative issues are more complex than is commonly recognized. A wide variety of consequentialist considerations are relevant to the assessment of policies that have the intention or effect of influencing the composition of schools, but so too are non-consequentialist considerations especially often neglected child-centered ones.⁵ Different considerations pull in different directions

³ Indeed, like that proposed by Brighouse et al. 2016 and 2018, on which it builds, the framework is articulated at such a fundamental level that it can helpfully frame all debates about education policy.

⁴ For our views on curriculum, see Clayton et al 2018.

⁵ Our proposal supplements Brighouse et al's entirely consequentialist account with non-consequentialist considerations of a kind that they acknowledge (Brighouse et al. 2016, 5; 2018, 27-28) but otherwise ignore.

and policy decisions can properly be reached only by evaluating their relative importance in particular circumstances. Those decisions also rely on empirical judgments about the likely effects of different policies in the relevant contexts. Our paper argues for a clear conclusion: allowing schools to choose all of their students on the basis of religious affiliation cannot be justified on any plausible views about the balance of normative reasons or readings of the empirical evidence. But our main aim is to structure the issues at stake in a way that makes them amenable to systematic and reasoned analysis and discussion. Public debate about these momentous matters is not conducted at a level of sophistication adequate to the task.

The following section clarifies the empirical phenomena under discussion, explaining the nature of school composition effects and their relation to admissions policies.

Next we set out the normative considerations at stake; particular attention is paid to non-consequentialist claims neglected by recent academic literature and taken for granted in public debate. We then apply the proposed framework to the issue of religious selection, defending the claim that religious selection should be capped and suggesting that regulation should aim directly at achieving religiously mixed compositions.

Selective Admissions and Composition Effects

We are focusing on admissions policies, especially schools' use of criteria to select students. Those criteria matter partly because they influence the composition of schools, both of those schools that are selecting students and of those that are not selecting, or not using the criteria in question. Any comprehensive assessment of a

policy must take into account its impact on all schools whose composition is affected by it.

The significance of admissions policies for school composition should not be overstated. School composition depends on how those policies interact with other circumstances such as residential patterns and parents' choices. Ability to pay or religious affiliation influence school composition wherever spatial proximity plays any role in deciding which children will attend which school, just as long as residential patterns are structured by money or religion. A school could be composed entirely of children of co-religionists without being permitted to use religious selection criteria; it could be allowed to select on that basis yet be substantially composed of pupils from another religious background altogether. Still, selective admissions policies matter partly because they affect the composition of schools; one way they do this is by influencing parents' choices.

But what is the significance of school composition? Why is it important how pupils with different characteristics are grouped together, or combined, in schools? The answer, at its most general, is "composition effects". When equated with "peer group effects" these usually refer specifically to the way in which pupils' academic performance is affected by factors such as the ability, motivation or social class background of others with whom they share a school or classroom. Claims framed in those terms play a major role in debates about the merits and demerits of selection by ability, and of streaming or tracking within schools.⁶

⁶ There is much disagreement about the size, or even the existence, of such effects, mainly because of the difficulty in clearly attributing outcomes to a school's

For our purposes, however, such effects are better conceived more abstractly, as all the ways in which the overall composition of a school makes a difference to those who attend it. Even if it had no impact on their test or exam results, schools composed entirely of boys, or of pupils who had passed an entrance exam, or whose parents were practising Catholics, might be expected to produce students with properties different from those with which they would have emerged had they attended coeducational schools, comprehensive schools, or schools attended by children from many religious backgrounds. Some of those outcomes might be produced directly by interaction between pupils, so that the “peer group” as such played a causal role in the process. But some might result from the effects of school composition on other factors, such as how schools are managed and how well they are resourced, as well as curriculum and teaching practices (see Thrupp, Lauder and Robinson 2002).

School composition can affect a wide range of outcomes, and it can produce those outcomes through a wide variety of different mechanisms. The mechanisms will differ depending on the particular dimension of composition (e.g. gender, ability, religious background) and the particular outcomes (e.g. academic results, capacity for healthy personal relationships, understanding of those with a different religious outlook) in question. In order to *be* a composition effect, it must be that *some* properties of the pupils in question combine to produce the effect, whether more directly (as in peer group effects *stricto sensu*) or less so. But “properties of the pupils” should be understood broadly.

composition when they might result from unmeasured characteristics of the pupils considered as individuals. See, for example, Harker and Tymms 2004; Gorard 2006.

Typically, those properties are relevant to the outcomes likely to be achieved by each child as an individual. For example, children's levels of ability, or motivation, or social class background, are known to influence at least some of their outcomes, when taken as individuals (Marshall, Swift and Roberts 1997). Here composition effects come in where there is an independent effect on outcomes resulting from mechanisms produced by combinations of children of particular types: where, for example, a child's outcomes depend not only on her own level of ability, or motivation, but also on the level of those with whom she shares a school or classroom. But it could be that the properties, as possessed by each individual child, have no bearing on their educational outcomes; here the composition effect emerges through combinations of children with properties that, taken individually, have no impact on outcomes. For example, it could be that children learn better, or enjoy their childhoods more, when in schools with others, or enough others, who are similar to them – with respect to (e.g.) gender, or ethnicity, or religion – even though there is nothing about those properties that could be expected to impact on their educational outcomes or experiences as individuals. Here it is the degree of homogeneity as such that is producing the effect.

It could be, alternatively, that the composition of a school affects its ethos, and hence the self-identity or self-understanding of its pupils – and staff – in ways that are less or more productive of particular outcomes. It is plausible, for example, that being composed of a high proportion of academically able and highly motivated pupils enables those at a school to think of it as primarily engaged in the production of students who achieve good results in tests and exams, and that that self-understanding

itself makes an independent contribution to the production of those good results. Here school composition comes in to the story in so far as it is causally relevant to the maintenance of a particular school ethos and pupil identity, the content of which has an impact on the school's capacity to produce particular outcomes in its pupils. Something similar may apply in the case of schools with a religious character or ethos.

Sometimes 'properties of pupils' are actually those of their parents. This is the case when, for example, different compositions of parents with different levels or kinds of involvement in their children's schooling produce their own effects; perhaps by influencing the resources available to a school or affecting its internal policies with respect to homework or extracurricular activities. Sometimes the properties of parents play their causal role only at the compositional level and would not make a difference to children's outcomes on an individual basis. For example, J.S. Coleman's (1988, S113) seminal analysis of why Catholic schools in the US perform better, in terms of drop out rates, than both public and other private schools, appeals partly to 'social capital', some of which 'can be found...in the community consisting of the social relationships that exist among parents, in the closure exhibited by this structure of relations, and in the parents' relations with the institutions of the community' (see also Bryk et al 1995). These relations make it easier to enforce informal social norms that are conducive to lower drop out rates. Here the properties are not only those of the pupils by proxy, as it were, with the composition of the school in terms of pupils standing in for a claim about parents, but the relevant properties of the parents are themselves relational rather than inhering in each individual.

Whatever the particular outcomes and mechanisms in question, it is an empirical question what proportion of pupils at a school must have any particular property for that school's composition to produce the specified effects, or rather – since we are surely dealing with scalars here - how much of the effect will be produced by what degree of composition. The answer will presumably vary considerably depending on the mechanism, and there is no reason to expect a linear relationship; there may well be tipping points and issues of critical mass. Perhaps most of the beneficial effects that come from parents' being connected through informal social networks kick in as long as 75 per cent of the children have parents with the right kind of ties to others. Perhaps a school can reap whatever benefits result from its capacity to sustain a religious ethos or character with a student body composed 50 per cent of children from families who subscribe to the religious view in question. Perhaps, when it comes to sustaining such an ethos or character, it matters not only what are the proportions of children from different religious backgrounds but also how religious – how devout or orthodox – those backgrounds are.

Two kinds of normative consideration

Arguments for and against selective admissions policies tend to invoke considerations of two distinct kinds:

- (1) Consequentialist: selection produces, or fails to produce, various kinds of good or benefit, and/or it distributes those goods or benefits well or badly. Advocates of selection who take this line typically claim (a) that some schools, or all schools (or perhaps some schools in the short run but all schools

in the long run) will be better if they select their pupils, and/or (b) that selection improves the distribution of the goods that schools produce. Critics of selection who emphasise consequentialist considerations claim (a) that selection makes schools worse, at least in some respects, and/or (b) that selection worsens the distribution of goods that schools produce.

(2) Non-consequentialist: whether or not it produces (or fails to produce) benefits, selection respects (or fails to respect) people's rights. Advocates of selection who take this line claim that people are entitled to establish such schools and that parents or children are entitled to attend them. Critics of selection who emphasise non-consequentialist considerations claim that selection violates the rights of parents or children, or that it is in other ways wrong – albeit not harmful – for schools to select.

Let us consider each of these in turn.

Consequentialist

Arguments that selection makes schools better tend to operate with an implicit view about what it means for one school to be 'better' than another, or than it would otherwise have been. Often the claim is made in terms of the exam results, or test scores, of the kind reported in published league tables. These are presumably (imperfect) indicators of a good thing that we want schools to produce - call it cognitive capacity - which in turn might be valued partly because of its importance for children's labour market prospects. But we might want schools to aim at other

goals too. Perhaps, even from a labour market perspective, ‘soft skills’ are important factors we want schools to develop in children. Perhaps it is also valuable that schools produce children with certain democratic competences or liberal attitudes (e.g. tolerance). And so on.

A recent attempt to systematize this insight invokes the concept of ‘educational goods’, conceived as the knowledge, skills, dispositions and attitudes that help people’s lives go better as adults and contribute to the quality of other people’s lives. It identifies six capacities - for economic productivity, personal autonomy, democratic competence, healthy personal relationships, treating others as equals, and personal fulfillment – that one might plausibly want schools to develop in children.⁷ It also lists, amongst other non-educational values by which schools might be evaluated, “childhood goods” – such as creativity and play - which are valuable for children irrespective of their developmental benefits (Brighouse et al. 2016; Brighouse et al. 2018). Whatever the merits of that particular specification, claims about what makes schools “better” (or “worse”) should clearly attend both to the way(s) they are better, or the goods they are better at producing, and to the possibility of trade-offs between different educational goods: schools that are better with respect to some goods, may be worse with respect to others.

⁷ To regard personal autonomy as an educational good is not to deny that there may also be non-consequentialist reasons why it matters that children develop it.

Considerations of human dignity, or respect for individual agency, can yield a concern that people are equipped to make autonomous choices even where that is not conducive to wellbeing, whether their own or that of others.

But it matters also how those goods, and access to those goods, are *distributed*. While parents are often concerned only with whether benefits accrue to their own children, policymakers must think about how selection policies are likely to impact on both the overall distribution of those benefits and the distribution of opportunities to achieve those benefits. A school might be good at producing high test scores and good citizens but it might do so by selection procedures that make it very hard for other schools to do either, or that achieve those outcomes only by an unfair distribution of opportunities to access the better outcomes. Familiar debates in the literature on educational justice - about educational equality, adequacy and the idea of prioritizing benefits to the least or less advantaged - play out, in various ways, in arguments about selection (see Brighthouse and Swift, 2014 and Clayton, 2018). Perhaps selection, though permitting unequal outcomes, brings immediate benefits to all children, perhaps it benefits some but disadvantages others, or perhaps in the long run it benefits all even though in the short run it leaves some worse off than they might otherwise be. And whatever the distribution of educational outcomes, there are further questions about the distribution of access to places in that distribution. Perhaps, even though a distribution of educational goods could be justified on prioritarian grounds, it could be achieved only by an unfair distribution of the opportunities to access those goods.⁸

Educational goods are unusual in the way that their production and distribution are interconnected. The claim that selection makes schools better involves the idea that the composition of a school affects how good it is. But the composition of a school

⁸ Brighthouse et al. 2016; 2018 neglect the distinction between (i) the distribution of educational goods and (ii) the distribution of opportunities to access to those goods.

also influences who gets the benefits. In a sense, through these composition effects, the pupils themselves – or at least some characteristics of those pupils (or, as we have seen, of their parents) – help to produce the goods that benefit them. This raises distributive issues in a rather distinctive way. Advocates of selection on consequentialist grounds are pointing to the benefits of selection that, at least in the first instance, accrue to those selected precisely by a mechanism that involves discrimination against or exclusion of those who are selected out. In standard cases of discrimination, the goods in question are produced independently, as it were, and the issue is only how they should be distributed. In the case of educational goods, production and distribution cannot be treated as wholly distinct processes.

This means that there may be trade-offs between (a) the total amount of educational goods, (b) the proper distribution of the goods and (c) the fair distribution of access to places in that distribution. If selective schools are better because of their composition, and that composition is achieved by discriminating against particular types of pupils, then we might think that the latter are denied fair access to the benefits. Since, however, those benefits only arise, *ex hypothesi*, because of the selection process, and the benefits are in a sense produced by those who receive them, the normative issues raised by the trade-off differ from standard efficiency v equity or quality v equality cases.

So far we have operated with a simple picture which assumes that (i) the benefits of educational goods accrue entirely to those who possess them and (ii) the goods produced by schools should be understood entirely as ‘educational goods’. Neither assumption is valid: the benefits that result from educational goods can accrue

to people other than the educated person, and those benefits need not themselves be understood as consisting of educational goods. On (i), consider, for example, the benefits achieved by educating children to be democratically competent, or to relate to one another as equals. Here the good consequences that follow from educating children so that they possess the capacities in question accrue at least partly to those with whom the children do, or will, interact. There are, we might say, positive externalities or ‘spillovers’ that arise from the goods in question. On (ii), the benefits in question are not themselves ‘educational goods’, or at least not exclusively so. The benefits are those that come from living in a polity where one’s fellow citizens are democratically competent, or in which they regard one another as equals.

Evaluating school selection and admissions policies from a consequentialist perspective requires keeping in mind both the full range of benefits produced by educational goods and the fact that those benefits need not accrue entirely to the people who possess the educational goods themselves. This complicates the significance of the distinctive interdependence between the production and distribution of educational goods. Composition effects mean that, to some extent, those who receive such goods are also those who produce them, so that it is peculiarly difficult to disentangle their production and distribution. But the benefits produced by educational goods may be enjoyed by people other than those who receive those goods, and the benefits may be enjoyed in a different metric. Suppose, for example, that introducing selection increased some children’s level of some or all educational goods but decreased the level of some or all educational goods received by other children. We cannot assess the full distributive impact of selection without knowing the effect on all relevant measures of advantage. Perhaps, for example, an increase in

cognitive skills enjoyed by those selected will result in scientific advances that benefit, in other ways, precisely those who suffer the loss with respect to educational goods. Or perhaps the greater productivity of those who are advantaged with respect to educational goods can be channeled, via redistributive policies, to those who are less productive. To what extent educational goods enjoyed by some redound to the advantage of others depends in large part on policy in other areas. Policy decisions concerning selective school admissions and education policy should be approached in an integrated or holistic fashion, in light of the interactions between education and other policy areas.⁹

To summarise, the consequentialist approach evaluates admissions policies by considering the benefits or goods that they are claimed to produce, and how those benefits or goods are distributed. Selection may make some - or all - schools better at producing some of those goods but worse at producing others, and there will also be trade-offs between the value of producing more goods, educational or otherwise, and the value of distributing them well and distributing access to them fairly.

Non-Consequentialist

In addition to addressing questions about educational goods and their distribution, debates about admissions policies might reflect non-consequentialist considerations. Identifying the right trade-off between different educational goods, and what justice

⁹ For nice examples of integrated or holistic analyses see Dworkin 2002 on health care and Caney 2012 on climate policy.

demands with respect to their distribution and access to them, might not settle the question of what policymakers ought to do.

As we shall understand them, non-consequentialist reasons are reasons that tell against acting in ways that promote good outcomes, or that permit individuals to act in ways that fail to promote them. These are often expressed in the language of rights, though it is important to note that some claims couched in terms of rights appeal to consequentialist considerations. If a right is justified solely on the ground that its violation would *harm* the right-holder, or fail to respect a right-grounding *interest*, then the right is consequentialist in character. Non-consequentialist rights, in contrast, pick out reasons for acting the force of which is independent of the promotion of good outcomes.

First, individuals or groups might have rights that protect them from certain kinds of treatment. Such rights limit how good outcomes can permissibly be produced. For example, suppose we agree that the elimination of world poverty is part of the best outcome overall. Still, many believe that individuals have rights over their own property such that others may not steal from them even in order to advance that laudable end. Similarly, in the context of schooling many object to admissions policies that realise valuable composition effects by legally requiring particular children to attend particular schools. One way of elaborating this non-consequentialist thought appeals to the *means principle*, according to which it is sometimes morally wrong to use others to advance good outcomes. A child who is legally required to attend a particular school because her inclusion within it would be optimal in terms of

producing educational goods and their fair distribution might object that such a policy treats her as a means for the benefit of others rather than as an end in herself.

Second, some non-consequentialists insist that individuals or groups have the moral option to engage in activities that fail to produce the best outcome overall (Kagan 1989). For example, it might be that groups of like-minded people have the right to set up schools that select pupils on the basis of particular characteristics such as sex, religion, or sporting ability. Some hold that they have that right even if allowing the proposed schools would produce worse outcomes than could be achieved by different admissions policies.

Before going into more detail, notice how the distinction between consequentialist and non-consequentialist considerations can clarify the claim that parents have the right to choose their children's school. Sometimes parental choice is defended in consequentialist terms, as a mechanism for improving educational outcomes. It is often claimed, for example, that parental choice generates incentives for schools to improve the teaching and learning they provide, which raises educational standards generally. However, a policy of parental choice might also, or instead, be motivated by non-consequentialist concerns. At least within some acceptable range, parents might be morally permitted to choose the school their children attend, even if denying them choice and allocating school places in other ways would produce better outcomes –including better distributive outcomes.

Non-consequentialists tend to endorse free association. Individuals who share particular religious, aesthetic or sporting interests are morally permitted to cooperate

to pursue their commitments and to exclude from the association those who do not share their goals. Furthermore, associative freedom should be protected by the community, provided that the group is not motivated by racist or other wrongful discriminatory attitudes. In the central cases of freedom of association what is protected is association between *consenting adults*. Schooling raises more difficult issues because it involves some (adults) deciding how others (children) are educated. Non-consequentialists disagree about the implications of their view for school policy, because they hold different views about who are the *bearers* of the rights in question.

According to one view, parent-focused non-consequentialism, parents have a moral claim to choose the school their child attends. This right is defended by some as a part of parents' entitlement to pursue their own conception of the good (Fried 1976; Galston 2002). On this view, a religious or other group has the right to set up a school and to decide its admissions policies on the basis of the group's values. Once the mix of schools has been settled by different groups exercising their freedom of association, parents have the right to choose the school their children attend from the set of schools willing to admit them. A group might see educating children of its members as part of its mission and refuse to admit children of non-members; a group might want to teach only girls or boys, or less or more able children, or children of parents with a particular religious affiliation, and so on. To the extent that freedom of association is taken seriously, groups ought to enjoy freedom over their schools' admissions criteria, and parents ought to enjoy the right to apply to any school and for their applications to be judged according to the school's particular admissions code.

As presented, this view avoids certain objections. For example, suppose that a particular group wants to set up a grammar school, which creams off a large percentage of able pupils from surrounding schools. Does the grammar school violate the rights of parents who want their less able child educated in a comprehensive school? Not according to the non-consequentialist considerations as we have described them. To enjoy that right it would have to be morally permissible for those parents to constrain others' choices in order to fulfill their own preferences for their child's education. However, we lack a moral permission to constrain others in that way. Parents are free to choose only among those schools available given the choices of educational providers and consumers. The right to choose is not the right to choose how others choose.

According to a different view—child-focused non-consequentialism—the bearers of non-consequentialist rights in education are children, not parents, so parents' freedom to choose their children's school is limited.¹⁰ Various versions are available, depending on the particular rights ascribed to children. On one version of this view, it is morally wrong for anyone—parents as well as the political community—to force children to become a part of an association by sending them to schools that obstruct

¹⁰ Child-focused non-consequentialists might endorse parents' being granted some legal rights with respect to their children's education on the ground that parents are best placed or best motivated to act in ways consonant with their children's fundamental moral rights. Even if one denied that parents had any moral rights with respect to their children's upbringing, and saw their role as entirely fiduciary, one might still support a system of devolved authority that gave parents' legal rights within certain limits.

the development of their capacity for personal autonomy. On another, children's rights are violated whenever they are directed towards controversial religious belief systems.¹¹ The particular worry here concerns adults *intentionally enrolling* their children into controversial conceptions of the good, such as particular religious doctrines. Plainly, parents and adults act in countless ways that affect the beliefs, desires and prospects of children. However, many in the non-consequentialist tradition argue that, while it is often morally permissible to affect others as a side-effect of one's conduct, it is often morally wrong to make others perform acts that they are not morally required to perform or to impose harms on them they are not morally required to incur (Tadros 2015). Non-consequentialist arguments for parental choice assume that parents have a moral right to determine (at least provisionally) the religious or occupational ends that their child pursues; but if everyone has a right to set her own ends, then parents do not enjoy that right over their children (Clayton 2006). According to child-focused non-consequentialism, then, it is not fundamentally objectionable for a government to deny parents the opportunity to send their child to a school that is run in accordance with their convictions about religion.

Child-focused non-consequentialists object to certain kinds of schooling. On this view, even if it is permissible for individuals who pursue particular religious or ethical goals to associate together jointly to realise their shared ends, they may not impose those ends on children. For that reason, it would be wrong for a school to

¹¹ Other versions are possible. For example, it might be that children have a claim to have their views about their schooling listened to or, sometimes, to have their views determine how they are educated. For views of this kind see Mullin 2014; Bou-Habib & Olsaretti 2015.

operate an admissions policy that seeks to include some and exclude others in order to achieve a pupil composition that facilitates the realization of a controversial ethical view. But this does not rule out as morally impermissible all attempts to frame admissions policy to generate composition effects. For example, the right of children to set their own *religious* ends rather than have them imposed on them by others does not condemn others' making children learn norms of *civility* and *toleration*. It does not violate the child's rights if she is made to attend a particular school because her going there makes it more likely that pupils in that school learn various civic virtues. Such a policy is not rights-violating if the children themselves are under a moral duty to contribute to the production of such virtues. True, an admissions policy geared towards selecting a particular profile of pupils to further the virtue of tolerance, for example, uses the child to produce a good outcome. But it might not wrong the child if it uses her to realise a good that she has a duty to bring about.

Non-consequentialist considerations complicate the moral picture with respect to school admissions and school choice. The core idea is that a policy might wrong people even if it is effective in producing schools with pupil compositions that lead to better outcomes with regard to the production and distribution of educational goods. How that idea plays out in detail, and how radical a revision of educational policy it calls for, turns on the answer to further questions, such as whether non-consequentialist rights protect primarily children or their parents, and how exactly the rights in question are understood.

Combining Considerations

We have reviewed two kinds of reason relevant to questions about school admissions: consequentialist considerations that include the production and distribution not only of educational goods but also of other goals that an education policy might serve; and non-consequentialist considerations that might be elaborated in terms of a commitment to respect for the rights of parents and/or children. A justified education policy must identify not only which of the considerations are valid but also the right way to combine them if several are in play.

There are two general ways of approaching this task. First, one might think of each of the different reasons as having *pro tanto* force: one identifies the policy (e.g. a particular admissions policy) that a particular reason (e.g. a particular educational good) supports but then considers whether there are other competing reasons (e.g. other educational goods, non-educational goods, or non-consequentialist considerations) that outweigh the initial reason and favour a different educational policy. On this *trade-off* view, all relevant reasons are weighed in the balance.

Policymakers must identify how important or weighty those different reasons are and judge which policy is best all things considered. Note here that non-consequentialist rights can be understood as reflecting respect for individuals' claims or agency without regarding them as absolute constraints that always defeat consequentialist considerations. Such rights can have merely *pro tanto*, rather than always trumping, force, so they can be outweighed if the good thereby produced is sufficiently important.

One problem with the trade-off view is that it is sometimes hard to see how it produces determinate policy prescriptions, because it does not deliver clear rules to

guide decision making (Rawls 1971). So some propose a second way of combining considerations, one that involves rules that *prioritize* some considerations over others. On this kind of view, certain considerations may become relevant only when others have been satisfied. For example, it is plausible that an *educational minimum* should be guaranteed for all: whatever other consequentialist or non-consequentialist reasons are in play, a view is implausible if it fails to deliver an adequate education, understood as a reasonable opportunity for every child to acquire capacities for participation in the labour market, personal autonomy, democratic competence, healthy personal relationships, and treating others as equals.

Applying the Framework: Regulating Religious Selection

We now apply our framework to consider the regulation of schools' use of religious criteria to choose their students. The government caps at 50 per cent the proportion of pupils that new Academies and Free Schools can select on the basis of religion, but there are still many schools that are allowed to choose all their pupils on that basis, and the government has recently encouraged an expansion in the number of places in such schools. If everybody benefitted from the provision of schools composed entirely of children of co-religionists, or at least if that admissions regime satisfied appropriate distributive desiderata, and if no non-consequentialist considerations were disregarded in the process, then those schools would pose no normative problems. We will see, however, that different considerations pull in different directions. One has to construe educational goods very narrowly to believe that permitting schools to select entirely religiously homogeneous compositions is a good way of producing them, and even on that construal the claim is doubtful. Since, moreover, a 'no cap' policy both

raises distributive concerns and threatens child-focused non-consequentialist rights, we believe that policy to be unjustified, all things considered. To find in its favour, one would have to endorse an implausible view of parents' non-consequentialist rights and of their importance relative to other competing considerations.

Does that mean that we are defending the 50 per cent cap? Here we must remind readers of the specificity and modesty of our argument. Our main aim has been to set out a coherent framework for analyzing the normative issues raised by religious selection. Any determinate conclusion about the regulations that should apply to admissions policies will combine a variety of judgments, some normative, some empirical. On the normative side, there is scope for reasonable disagreement about the significance and relative importance of the different educational goods, distributive principles, and non-consequentialist considerations that we have identified. Although each of us might be willing to defend our own particular view, that would take more space than is available, we would doubtless disagree, and in any case any such attempt would only distract from our purpose. On the empirical side, we simply lack the expertise to offer an informed determinate view about the admissions regime most likely to produce and respect any particular combination of goods and values. While confident that capping at *some* level can be justified, we hold no brief for 50 rather than, say, 30 per cent.

Producing educational goods

Part of the government's rationale for encouraging religious organisations to open new schools has been that such schools tend to perform well (DfE 2016, 30). They

can thus play an important role in providing not merely the ‘more school places’ demanded by demographic change,¹² but the ‘more *good* school places’ (our italics) that the government seeks to offer (DfE 2016, 5&9). The implicit suggestion here is that schools’ religious character plays a distinct causal role in explaining their good performance. As far as composition and admissions are concerned, the thought is that bringing together children from homes that share a religious outlook makes it possible to sustain an ethos or shared culture,¹³ or perhaps simply for parents informally to enforce relevant norms, in ways conducive to better educational outcomes, perhaps especially through effects on discipline and behaviour. But there has been considerable debate about whether the schools in question are as ‘good’ as they seem, about the role played by religious selection in generating such goods as they do achieve, and about whether, even if it were granted that they are particularly productive of some educational goods, they are problematically unproductive of others.

Those who doubt that religious schools tend to perform particularly well point to the composition of the schools in question, suggesting that their ‘good’ headline results, as measured by test scores and exam results, are a function not of the religious character of the school but of the characteristics of the children who go to them. Once one controls for other variables known to predict student performance, such as the

¹²Current projections indicate there will be a 14.7 per cent increase in the number of secondary school age pupils between 2018 and 2027. This amounts to 418,000 additional school places (DfE 2018b, 3).

¹³ Much of the literature expressing or examining this view concerns Catholic schools. See, for example, Donlevy 2009; Mulligan 1999, 182.

proportion of children eligible for free school meals, religious schools perform no better than others (Dreissen, Agirdag and Merry 2016a; Andrews and Johnes, 2016; Gibbons and Silva 2011; Sullivan et al 2018). Their religious character may perhaps play a role in determining which pupils attend them, though even here there is evidence that many parents choose such schools because they are perceived to be ‘good schools’ rather than religious reasons.¹⁴ But, in any case, their better results are not produced by their religious composition.

Wherever the truth lies in those disputes, the more familiar objection to religious selection is that, however good they may be in terms of their students test scores and exam results, schools that educate only – or too disproportionately - children from a particular religious background are less likely to cultivate other educational goods. Some focus on the kind of tolerant civic attitudes and dispositions needed in a well-functioning liberal democracy. Those attitudes and dispositions – which should also be regarded as ‘educational goods’ - are best fostered in contexts where children of different faiths come into contact with one another on a daily basis (Allport 1954; Hughes et al. 2013; Dhont et al. 2014; Hewstone et al. 2018). To the extent that schools foster this kind of educational good, they are providing benefits not only to

¹⁴ A recent poll (YouGov/University of Lancaster 2013) suggested that academic standards, location and discipline are far more likely to influence school choice than religious character. See also Butler and Hamnett 2012. Many readers in the UK will be familiar with the phenomenon (explored comically in the BBC series *Rev*) whereby parents mysteriously (re)discover their faith and resume church attendance as school admissions decisions loom.

their pupils, but also to the wider society.¹⁵ The worry that religious schools hinder the production of civic goods can be traced back at least as far as the Cattle Report into the ‘disturbances’ in a number of northern towns in 2001. It argued that faith schools pose a particular threat because they tend to segregate children by religion, and so should offer 25 per cent of their places to children from families of a different faith or denomination (HMSO 2001, 37). Resistance from the Catholic Church and the Board of Deputies of British Jews led to that proposal’s not being adopted but, as we have seen, a similar concern seems partly to have motivated the 50 per cent cap on religious selection in new Free Schools and Academies. Others worry less about the civic benefits of religiously mixed schools than about the impact on the educational good of personal autonomy. Perhaps regulation of the curriculum is not enough to ensure that children develop the capacity to make independent judgments about how to live their lives. In order for them really to form their own informed opinions about religious and other questions, and properly to appreciate the range of options available to them, it is important that children from different religious backgrounds interact with and get to know each other in a school environment.

Suppose that the aim when devising schools admissions policies were solely the production of educational goods. It would be important to assess the impact of those policies on the school system as a whole, not only on those to whom the rule applied. Religiously selective schools might achieve a high level of educational goods by mechanisms – like admitting disproportionately few students who are hard to teach -

¹⁵ In England this concern is usually discussed in terms of the rather vague and baggy concept of ‘community cohesion’. See DCSF (subsequently renamed DfE) 2007 and, for critical discussion, Mason 2010.

that made it harder for other schools to perform well. If some schools' success comes at the expense of others then, quite apart from distributive issues, a concern for the production of educational goods alone might point towards a different policy. In any case, different policies would presumably tend to produce different goods in different combinations, so policy makers would have to form a view about the optimal balance. That view, like the effect of admissions policies on production itself, would doubtless be context-dependent. In some circumstances, particular weight might be given to the goods of trust, tolerance and mutual respect; in other circumstances, there might be less need to trade off other educational goods for their sake. Having decided on the optimal balance, the next step would be to judge what admissions policies were most conducive to that end. What mix of pupils, in terms of religious diversity, is required in a school in order to foster virtues such as tolerance and mutual respect? What proportion of pupils at a faith school need to be from families that share its faith for it to sustain a religious ethos, or to possess whatever other properties make it academically successful?¹⁶ We offer no precise judgments on the normative question of the optimal balance of goods, and we cannot answer the empirical questions. But we see no reason to think that allowing schools to choose all their students on the basis of religion is the right way to go.

Distributing educational goods

¹⁶ Brighouse 2009, 90 'imagines' that 30 per cent constitutes the critical mass for a school to maintain its faith character. Church of England officials appear increasingly convinced that since a distinctively Christian ethos is about 'serving the common good' it can usually be sustained without admissions policies intended to influence school composition at all (see Church of England Education Office 2016).

As well as affecting the level and mixture of educational goods produced, admissions policies also influence their distribution. Some defend religiously selective schools specifically on the ground that they are particularly good at serving less advantaged children.¹⁷ We take this justification of religious selection to appeal to considerations that are egalitarian (if the aim is to reduce gaps between children from different backgrounds) or prioritarian (if it is simply to raise the bottom of the distribution). Others object by invoking different distributive ideals, such as fair access to advantage. Why should children whose parents espouse a particular religious view have preferential access to ‘better’ schools? Even if the religious character of such school does play a genuine causal role, and the achievements of its pupils are not merely a spurious result of other factors, it is questionable whether children’s chances of achieving less or more educational goods may properly depend on their parents’ religious inclinations.

Bringing distributive issues into the picture suggests another rationale for capping religious selection. Consequentialist considerations taken together might involve policy makers in compromises between productive and distributive concerns. The aim would be to achieve school compositions that realise the best balance between producing more, and the right mix of, educational goods, on the one hand, and distributing them fairly, on the other. From this perspective, a cap of, say, 50 per cent

¹⁷ For the Muslim case, see Dreissen et al. 2016a. The evidence for Catholic schools is highly disputed, a lot turning on the baseline against which one assesses the social composition of any particular school; see Allen and West 2009 and 2011; Fair Admissions Campaign 2014; CES 2017, 48; Pring 2018, 41- 44.

would not simply represent a judgment about the proportion of their intake that religious schools should be allowed to select on religious criteria in order for the system as a whole to achieve a good level and mix of educational goods. It would also reflect the view that the beneficial effects of composition should not be monopolised by members of a particular religious group but instead be shared with the wider local community. Rather than appealing simply to productive considerations, as it were, such as the fostering of ‘community cohesion’, an admissions rule might be an attempt also to address a concern about the fair distribution of educational goods. Although, again, the precise level of the cap depends on complex balancing and empirical judgments beyond our purpose and capacity, factoring in distributive concerns seems to us to make a ‘no cap’ policy even less defensible, on consequentialist grounds, than would a focus on production alone.

Non-consequentialist considerations

Much debate about religious selection turns on views about parents’ or children’s rights. Sometimes those rights are - or are derived from - claims about educational goods. As we noted, some justifications for parents being given the right to choose their children’s schools appeal to empirical claims about the effects of that freedom of choice on school quality. And, since the capacity for autonomy is an educational good, the concern that children have a right to the kind of schooling that will facilitate the development of that capacity can count, for us, as a consequentialist consideration. But some claims about rights are not like this. Irrespective of the consequences, some argue, parents have a right to have their children educated in schools the religious character of which can only be sustained by a particular composition, and hence by

particular admissions policies. Others object to religious schools, and religious selection, by appeal to children's right to a school environment that will foster their capacity for autonomy, which matters for non-consequentialist reasons, or their right not to be subject to parents' decisions of that kind.

The basis and scope of parents' rights with respect to their children's schooling is a topic of lively dispute in the philosophical literature, but that controversy is almost entirely absent from discussion of policy. There it is usually assumed that parents have the right to raise their children as members of a particular religion, and that this extends to sending them to schools that seek to inculcate a particular religious view.¹⁸ If parents have the right to use such schools, and their having the properties in question depends on particular kinds of composition, and hence particular admissions policies, then those policies are justified by appeal to parents' rights. A crucial question then concerns what kind of admissions policies are indeed required for a school to sustain the properties in question. Here we face the same issues as those discussed above, but this time they arise out of a non-consequentialist concern to respect parents' rights, rather than a consequentialist concern with the production or distribution of educational goods.

Where parent-focused non-consequentialist claims tend to be taken for granted in public debate, child-focused ones are notable for their absence. Some faith schools

¹⁸ A more modest view, which we find more plausible, is that the right extends only to having one's child attend a school with a particular religious ethos or character; 'instruction', in school, in a particular faith is a different matter. See Clarke and Woodhead 2015 and Clayton et al 2018.

aim to shape the beliefs and values of their pupils in order to foster religious commitment. It may be that they do not aim to close the minds of their pupils: they might intend to cultivate in them the capacities required for critical reflection whilst at the same time nudging them towards the beliefs and values that are central to the school's religious character. If successful, this would be consistent with views that suppose that respect for the child's independence is achieved by the cultivation of a capacity for personal autonomy (McLaughlin, 2008; MacMullen, 2007). But it will run counter to more demanding conceptions which suppose that, irrespective of any benefits or disadvantages that children might thereby enjoy or suffer, enrolling children in a comprehensive moral doctrine treats them as a mere means and violates their independence (Clayton 2006).

We offer no attempt at a comprehensive assessment of these competing non-consequentialist claims. Nor do we propose a complete account of how they should be combined with judgments about the production and proper distribution of educational goods to yield fine-grained conclusions about admissions policies. Still, nothing here, when joined with the consequentialist considerations outlined above, could plausibly ground a 'no cap' policy. Such a policy would be justified only if parents' right to decide about their children's schooling were part of, or akin to, their own right to freedom of religion or association, rather than a right exercised over another, and even then it would have to be weighty enough to trump all competing considerations. Taken together, children's capacity for autonomy, some threshold level of civic goods, and more general distributive concerns, at least of a sufficientarian kind, are surely too important for that position to be sustained.

To reject this view is not to deny that parents' non-consequentialist rights might have priority of a more constrained nature, priority within a certain range of outcomes. Perhaps for example, parents should indeed be free to choose their children's schools as long as children's basic interests – including their interest in autonomy - are satisfied, and as long as civic goods are produced to some minimal extent. Also on the table are child-centered non-consequentialist positions that recognize reasons to care about civic goods and distributive considerations. As we noted above, plausible views of this kind will be consistent with those concerns because it is permissible to use children to achieve outcomes that those children are under a duty to bring about. And nothing we have said rules out entirely consequentialist views focused on children's interests and civic concerns. Properly to defend a determinate view on religious selection by schools requires both taking a stand on these normative questions and supporting that view with relevant empirical evidence.

Conclusion

Political debates concerning elite private education and academic selection are conducted in terms that show at least some awareness of the range of normative considerations that are relevant. We hope that the analytical framework developed here helps to clarify the competing claims in those debates, but our main aim has been to deepen the relatively limited and superficial appreciation of what is at stake, normatively speaking, when it comes to admissions policies that allow schools to select their students on the basis of religious criteria. Such policies can be justified, and challenged, on many different grounds. If nothing else, we trust that we have at

least established that identifying and balancing the various relevant considerations is a complex task.

It would be easier if all good things went together. In her speech proposing that the cap on religious selection be dropped, the Prime Minister Theresa May seemed to suggest that they do:

Britain has a long history of faith schools delivering outstanding education. They already account for around a third of all mainstream schools in England. They are popular with parents and significantly more likely than other schools to be rated by Ofsted as good or outstanding... I believe it is wrong to deny families the opportunity to send their children to a school that reflects their religious values if that's what they choose. And it's right to encourage faith communities — especially those with a proven record of success, like the Catholics¹⁹ — to play their full part in building the capacity of our schools (May 2016).

¹⁹ The proposal to drop the cap was, in part, a response to the Catholic Education Service's refusal to create any new Catholic academies while it remained in place. The CES objected that it would be against Canon Law for a Catholic school to observe the cap, since doing so might require it to reject a child simply on the grounds of her (or her parents') Catholicism. (Catholic Education Service 2016; The Catholic Bishops' Conference for England and Wales 2013.) Both elements of this claim are moot. On the former, the Second Vatican Council's Declaration on Christian Education (*Gravissimum Educationis*) states that the function of Catholic schools involves "...caring for the needs of those who are poor in the goods of this world or

Unfortunately, the normative issues — what counts as ‘success’?, what are the implications for others, or for the children themselves, of allowing ‘families’ (i.e. parents) to choose a religious school for their child? — are not as amenable as she thinks.

We conclude with three more general observations. First, in so far as the aim of admissions policies is to achieve schools with particular compositions, and whether those compositions are wanted for productive, distributive or non-consequentialist reasons, it is hard to see why policy should not be aimed at influencing them more directly, for example by incentivizing schools to achieve the desired proportions of students with different properties. As we emphasized, admissions policies and schools compositions are different things — and it is the latter that matter. But if it is indeed school composition that plays the causal role, then policy should aim more directly at influencing composition. It might, as recommended by Cattle, require that faith schools offer some proportion of their places to children of other faiths or denominations. Or it might require a weighted lottery with weightings aimed at

who are deprived of the assistance and affection of a family or who are strangers to the gift of Faith” (Vatican Council II 1965). What’s more, many Catholic schools in the private sector, and in other countries, do not engage in religious selection (indeed, religious selection is prohibited in public schools in the majority of OECD countries (see Musset 2012, 15)). On the latter, the cap seems to permit the remaining places to be filled on the basis of faith-neutral considerations (such as proximity to the school), so it is not clear that schools would ever be required to reject applicants solely on the grounds of their Catholicism.

achieving ‘better’ compositions. Or schools might be given incentives to achieve those compositions, such as a ‘religious diversity premium’ analogous to the pupil premium currently attached to children from disadvantaged backgrounds (Clayton et al 2018, 36).²⁰

Second, if we are right that the ‘no cap’ policy is misguided — and with respect to new Free Schools and Academies the government now seems to agree with us — it is hard to see the case for allowing existing schools, or new voluntary-aided faith schools, to continue to operate it. The legitimate expectations of the former may speak for a long slow process of phasing out such arrangements rather than sudden drastic change. But the aim of producing students with good levels — and the right mix — of knowledge, skills, attitudes and dispositions surely applies across the board, as does the importance of appropriately respecting the relevant non-consequentialist considerations. In our view, current policy is best understood not as normatively robust but as bowing to pressures and demands that are given particular force by the British government’s distinctively heavy reliance on religious organizations for the education of its children.

Finally, and in similar vein, although we have framed our discussion around policy with regard to state schools, our analysis is no less applicable to the independent sector. It is widely thought that government has less business regulating parents who educate their children at their own expense than those who seek assistance from the public purse — but our framework is intended to map all the relevant normative

²⁰ Compare Brighouse’s (2000, 184-185) discussion of similar proposals aimed at creating schools composed of children from different social class backgrounds.

terrain. Human rights law may indeed protect from state interference parents' freedom to choose the kind of religious education their children receive, including their freedom to choose schools composed entirely of children of co-religionists, in effect treating such decisions as 'private' (Taylor 2015). For us, that is because the law in question enshrines a non-consequentialist parent-focused right, and one that should be rejected as normatively indefensible.

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