

# *School choice and the burdens of justice*

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## ABSTRACT

This paper takes issue with Swift's argument for the claim that parents who affirm equality of opportunity can justifiably buy advantageous private schooling if it is necessary to ensure educational adequacy for their children. We advance a number of reasons of justice and morality that support the view that egalitarian parents ought to accept a degree of educational inadequacy: parents have a *pro tanto* reason to share the burdens of injustice; it is not obvious that the legitimacy of parental partiality is as extensive in unjust circumstances as it is under just arrangements; we have some duty of justice to accept inadequacy for our children in the fight for the realization of educational justice; and we might be morally required to accept more than a fair share of the burden of establishing just educational institutions.

KEYWORDS *equality of opportunity, fairness, justice, legitimate partiality, morality, private education*

## INTRODUCTION

PARENTS WHO believe private and selective schools are unjust and should therefore be abolished encounter difficult decisions when faced with an education system that permits such schools. Part of the difficulty is the question of how closely our actions in non-ideal conditions should match what we believe would be required of us under ideal circumstances. Should justice-desiring parents send their child to the local comprehensive school regardless of how inadequate that school is? Does opting out make such parents hypocrites? The argument of Part Two of *How Not to Be a Hypocrite* (Swift, 2003)<sup>1</sup> is that, under certain circumstances, parents making choices within non-ideal

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educational rules are justified in opting out, even when this worsens the educational opportunity for those remaining in comprehensive schools.

In this paper, we criticize Swift's argument. Our principal claim is that there are fewer circumstances in which parents are justified in opting out. In an unjust world, both justice and morality demand that we to share the burdens of injustice. Consequently, parents are required to accept some educational inadequacy for their child. Or so we shall argue.

Before we elaborate and criticize Swift's argument, it should be noted that Swift's provocative book is a critique of standard defences that some parents offer in justification of their decision to opt out of the comprehensive system. We disagree with Swift on the range of reasons that render opting out unjust or immoral. Nevertheless, this should not obscure the fact that Swift has provided a powerful argument for the abolition of private schools and compelling refutations of many of the justifications parents typically invoke in defence of their decision to buy education for their children.

#### EDUCATIONAL ADEQUACY AND GOING PRIVATE

As Swift explains, those who opt out of comprehensive schools typically receive an education that is superior, in relative terms, to those who do not. This secures a competitive advantage for their children. At its most basic, 'they are jumping the queue for university places and well-paid or interesting jobs' (Swift, 2003: 23). What is important 'is not how much education one gets, or how good that education is, or even one's results, but one's position in the distribution of those things' (Swift, 2003: 23). What makes private schools 'better' is not so much the resources available, but the peer group effects of being in an environment with other bright and motivated children (Swift, 2003: 22-3). Like-minded children as well as enthusiastic parents willing to devote time to the good of the school are key factors in improving a child's educational performance.

The ability of some to purchase competitive advantage in this manner is, so Swift argues, unjust: it is a straightforward violation of equality of opportunity. Helping your child to jump the queue means that others are losing out. University places and rewarding jobs should not depend upon the willingness and ability of a parent to buy private education for her child.<sup>2</sup> Such goods should be assigned according to merit, not social background. 'It should depend on how intelligent she is, and how much effort she's prepared to make when applying that intelligence' (Swift, 2003: 24).

Moreover, going private not only disadvantages others in relative terms, it can also worsen the quality of the education of those remaining in comprehensives in absolute terms. Removing bright and motivated children from

comprehensives denies those schools a valuable resource, namely, a sub-group of children whose very presence would enhance the educational experience of others. Similarly, the attendant migration of potentially enthusiastic and dedicated parents removes a crucial foundation for a successful school. Because of these effects when bright children opt out of comprehensives, the absolute level of the quality of education for those who remain falls.<sup>3</sup>

The absolute and relative disadvantages caused by private schooling give us sufficient reason, Swift argues, for abolishing such schools. By returning children and parents to comprehensives we would improve the education of most children and better realize equality of opportunity.<sup>4</sup> Nevertheless, Swift also argues that under the current system parents can justifiably opt out of an inadequate local comprehensive. This can be the case even if opting out, and sending one's child to the type of school one wants abolished would contribute to educational injustice overall.

Swift's defence of this position rests on the claim that parents have the right to secure an adequate education for their children (Swift, 2003: 134–5). Sometimes opting out may be the only feasible way of achieving this goal. Whether opting out is justified depends, however, on two things: where the level of 'adequacy' is set, and the size of the cost imposed on others by opting out. Let us take these components in turn.

An adequate moral view must allow some room for endowing the interests of those close to us with some special weight. Acting partially towards our own children can be justified within a wider, impartial moral framework. We determine what counts as legitimate partiality by identifying what everyone would agree to from an impersonal viewpoint (Swift, 2003: 14–16). On this conception, reading one's child bedtime stories is likely to be acceptable, while murdering his or her competitor is not. There are limits to legitimate partiality. According to Swift, providing one's child with an adequate education is one of those things that would be agreed to from the impersonal standpoint, even when this makes things a little worse for others (Swift, 2003: 93).

Swift's criteria of adequacy are elaborated via consideration of various potential justifications for opting out.<sup>5</sup> Where the local comp does not cater for the special needs of one's child, or where the child is subject to bullying, there are sufficient grounds for viewing it as inadequate (Swift, 2003: 114–19). An education that provided a less than good enough chance of avoiding a life of poverty would be inadequate, as would an education that condemned one's child to less than a fair chance of a decent life (Swift, 2003: 119–25, 130–4). 'Nobody who could do otherwise should have to condemn her child to an unfairly poor chance of achieving at least some intrinsically desirable outcome – university degrees, interesting jobs – that will make their lives better' (Swift,

2003: 132). Opting out in these cases is an attempt to regain the fair chance that all would have if nobody could opt out. The effect, however, is that securing adequacy in this way gives one's child competitive advantage over others by pushing her up the queue.<sup>6</sup> This does not, of course, provide a justification for sending one's child to Eton, only to achieve an education that is 'good enough' (Swift, 2003: 109). Going beyond (mere) adequacy would violate legitimate partiality.

#### FAIR SHARES

In addition to the adequacy test, the justifiability of opting out depends upon the costs imposed on others (Swift, 2003: 135). One should be willing to bear a fair share of the costs in order to contribute one's fair share to the realization of equality of opportunity. Determining what constitutes a fair share of the burden of realizing educational justice is not so straightforward. According to Swift, we should not be expected to bear more than a proportionate cost in realizing justice: 'Many parents may be willing to give their child only a fair rather than a better-than-fair education. What they're not willing to do is give him one that is worse-than-fair' (Swift, 2003: 146). The implication is that we must do our part in realizing the just system we desire, but we are not required to sacrifice a child to achieve a little more educational justice for all.

Consequently, opting out where to do otherwise would be shouldering more than a fair share of the costs is permissible from the point of view of social justice. As Swift comments:

Some schools really aren't [adequate], and in those cases I am advocating inequality-enhancing flight. What justifies contributing to greater inequality is the greater weight one may legitimately give to the interests of one's own children when it comes to avoiding inadequate schools. If the choices you face mean that the only way to get your kid into a good enough school is to contribute to a process that makes other people's even worse off, then that is indeed awful. But what makes it awful is the set of choices available, and that you should be willing to change. (Swift, 2003: 164)

The exact metric for calculating fair shares is not rendered explicit in Swift's argument. Nevertheless, it is possible to approximate the central ideas. Swift distinguishes two types of 'cost'. The first is the cost of sending your child to a comp compared to opting out. 'This is a measure of the gap – in overall 'goodness for your son' – between the local comp and the alternative options currently available' (Swift, 2003: 143). The second cost is that of sending your child to a comp compared to the local comp as it would be if no one could opt out. 'This is a measure of the gap – still in overall 'goodness to your son' – between the local comp under current school rules and how it would be under fairer school rules' (Swift, 2003: 143).

It appears that the gap between the local comp under current rules and the local comp under ideal rules in some way sets the boundaries of any demands that can be made on an individual regarding her contribution to realizing educational justice. Thus, our fair share of the burden should not exceed, it seems, the cost that would be imposed on our child by remaining in a comp system under the ideal system. We are not required to do as much as we can to bring about educational justice. We need only shoulder as much of the burden as would be required if everyone complied with the demands of justice (see Swift, 2003: 145).

While the details of calculating our fair share are unclear, the general strategy of limiting the demands that justice places upon us by appealing to what would be proportionately required of individuals had everyone contributed, is a familiar one. Without such a limiting feature justice might be thought – on a simple view – to require that each person perform the action that will contribute to the best outcome. Compliance with such requirements would, of course, be particularly onerous. This is especially true given that the level of demand placed on agents would increase as expected compliance by other agents decreased.<sup>7</sup> In terms of education this truly would require the sacrifice of one's children at the altar of educational justice.

We might conjecture that Swift would accept the view that we should define an individual's fair share of the burden under non-ideal circumstances by reference to what would be required of each person under ideal circumstances (i.e. a just education system). This has the advantage of viewing the project of achieving educational justice as a collective enterprise, rather than as something that falls disproportionately upon morally motivated individuals. Whilst the metric is not explicit, this certainly appears to be in line with Swift's view regarding what the cost of attending the local comp would be under current arrangements, compared to what it would be under ideal circumstances. Such a principle is only moderately demanding:

It does not require that sending one's son to the local comp would be sacrificing him to emotional trauma, or condemning him to being bullied, or giving him only a no-better-than-fair chance of avoiding poverty. Nothing dramatic like that. All that's needed is that the local comprehensive be such that sending him there, though indeed making a fair contribution to educational justice, will mean that he bears an unfair cost. [A parent] is willing to vote for a fair system, one that makes him worse off than he could be if he were allowed to opt out. Why should he pay a heavier price just because others are not willing to vote for a fair system? (Swift, 2003: 147)

#### SHARING THE BURDENS OF INJUSTICE

We now offer some criticism of Swift's position. His fair shares argument concentrates primarily on the realisation of the goal of educational justice.

However, the duty to contribute fairly to the achievement of this goal does not exhaust the duty of justice that applies to individuals. In this section and those following, we argue that justice may constrain our actions in certain ways regarding school choice which makes it more demanding than the fair shares position as outlined by Swift.

To illustrate one type of demand that justice may place upon individuals, consider the case of Ron, which bears similarities to the questions of education under discussion.

*Ron* believes that burglary is unjust, but it happens and is quite widespread. He now faces a choice of whether or not to accept some stolen goods. He reasons that, given the other injustices in society, which have deprived his family of an adequate standard of living, his taking advantage of these stolen goods is an effective way of providing for his children what is rightfully theirs. He then discovers that the state's crime prevention policies have effectively limited the problem of burglary to the poorest sections of society. If he accepts stolen goods he knows that he will be accepting goods that were taken from families who are more unjustly treated than is his family. Still, he goes ahead and receives the goods.

Ron's case is relevantly similar to the case of buying private education, because it involves taking advantage of an opportunity that we think should not exist as a means of providing for one's children. Furthermore, in both cases the benefit gained from taking advantage of the opportunity has the effect of worsening the position of others who are already more unjustly treated than those who benefit from such opportunities. Rather than the more usual prioritizing of the claims of the worst off in the distribution of goods, this allows some to gain at the expense of others who are already worse off. Intuitively, at least, this is suspect from the point of view of justice.

One difference between Ron's case and that of education is that both burglary and receiving stolen goods are illegal whereas purchasing private education is not. Some might suggest that we should criticize Ron for the illegality of his actions alone. Nevertheless, consider a variant of Ron's case.

*Robin* has a choice of whether or not to accept stolen goods (while still believing that burglary is unjust). He reasons that, given the other injustices in society, which have deprived his family of an adequate standard of living, his taking advantage of these stolen goods is an effective way of providing for his children what is rightfully theirs. He now discovers, through reading crime statistics, that it is the unjustly rich whom burglars target. Robin now feels better about receiving stolen goods and goes ahead.

Even if we think that neither Ron nor Robin should receive stolen goods, Robin's conduct is surely better from the point of view of justice. Robin benefits from accepting goods taken from individuals who enjoy legal rights to those goods but whose entitlement to them from the point of view of justice is suspect. In contrast, Ron's conduct involves accepting goods that are

taken from someone who is already more unjustly treated compared to Ron. Thus, while recognizing the illegality of both Ron and Robin's actions, it would appear that Ron has, other things equal, a weightier reason to refuse the goods. In short, stealing from the rich to give to the poor is less reprehensible than stealing from the poor to give to the rich (or not-so-poor).

The force of the objection can be further seen by stating it *interpersonally* (Cohen, 1992: 280), that is, as articulated by those who are more unjustly treated directly to those who intend to opt out of the comprehensive system. The interpersonal question – 'what right do you have to act in such a way that deprives me of some of my, unjustly smaller, share of educational opportunity?' – asks for a justification that those deliberating whether to go private will find difficult to provide.

Cases such as those of Ron and Robin suggest that justice requires more of us than simply contributing our fair share to the realization of justice. In addition to this we also have a duty to share the burdens that injustice inflicts upon us. It is surely a wrong to add to the burden shouldered by those who are already more unjustly treated. While the details of a fully fledged account of what such a sharing of burdens consists in is beyond the scope of this paper, it is possible to suggest, in broad terms, one element of such an account. The following principle is a candidate for a part of such an account. This principle states that it is *pro tanto* unjust for an individual to act in a way that worsens the position of others who are already more unjustly treated than he or she is. If sound, the principle provides an objection to going private on the part of those who can afford to go private in an unjust system, for, empirically, it is unlikely that those proposing to opt out are the most unjustly treated. Indeed, the possession of the resources to enable one to opt out indicates that such people are not part of the least advantaged group, because the problem is, in part at least, framed by the inability of some to purchase private education.<sup>8</sup>

There is an analogy to be had between the case for purchasing private education and certain defences of private property. It is an analogy that highlights the problematic nature of the claim that it is sometimes permissible to opt out, even when this worsens the position of those who are already unjustly treated. When Locke (1689/1988) and Nozick (1974) defend the right of individuals to appropriate a part of the external world without the consent of others, they acknowledge that they are required to show how such unilateral privatization can occur without worsening the position of others. If someone's situation is worsened by your appropriation, then you must either compensate them or renounce your claim to the resources you have taken.

This proviso on appropriation without others' consent is often criticized as being too weak. Many believe that any theory of just acquisition of unowned resources must be constrained by more stringent criteria (Waldron, 1988:

282–83; Cohen, 1995: 76–91). Nevertheless, despite its modesty – indeed it is so modest that it is acceptable to libertarians – it is often violated by parents who purchase private education for their children. Indeed, those who opt out cause the position of those who remain in the comprehensive system to be worsened. Moreover, if anything, their conduct is morally worse because there is the added factor that those who are made worse off are comparatively already suffering more injustice.

One response to this argument cites a relevant difference between the case of would-be appropriators of unowned resources and parents contemplating going private to benefit their children. Whereas the former are not treated unjustly by the rules which presently constrain them, the latter are and that makes a difference. It might be thought, for example, that the non-worsening proviso does not apply if one's unilateral conduct is motivated by a concern to avoid being a victim of injustice. And, surely, if they refuse to opt out, parents would be condemning their own child to an unjust level of educational opportunity.

However, if we are egalitarians, our thoughts about permissible conduct in non-ideal circumstances must be sensitive to the *extent* to which different individuals suffer injustice. In lessening the degree to which their own children suffer from injustice, parents who opt out are not merely worsening the position of others' children who are already unjustly treated. They are worsening the position of children who are *more* unjustly treated than are their own children. That must be a cause for egalitarian concern.

#### LEGITIMATE PARTIALITY

Others might resist the argument advanced in the previous section with an appeal to the idea of legitimate partiality. If we adopt an impersonal viewpoint, everyone, including the worst off, would accept a principle allowing parents to act with a degree of partiality with respect to their children. Since the worsening of the position of those who are more unjustly treated is the product of the exercise of legitimate parental partiality, those affected do not have a reasonable complaint against those who make them even worse off. Inequalities of opportunity or treatment that are the outcome of such impersonally agreed partiality are, therefore, 'clean' inequalities from the point of view of justice.

According to Swift we would impersonally agree to a principle that permits parents to engage in a number of activities that benefit their own children, such as reading bedtime stories and securing for them an adequate education. Crucially, however, Swift's appeal to legitimate parental partiality seems to assume that the strength of parents' reasons to be partial is invariant across just

and unjust circumstances. That is, the activities permitted by such a principle are assumed to be the same regardless of whether we live under just or unjust conditions. This seems mistaken. Our attitude to parental partiality should depend on whether the background social and economic institutions within which such partiality is to be expressed are just or unjust. There is no reason to assume, in advance of working out the relevant parts of a theory, that a single principle would be suitable for both ideal and non-ideal circumstances.

The range of activities with respect to their children in which it is just for parents to engage is wider under just circumstances than it is under unjust ones. Under just circumstances, by hypothesis, each set of parents enjoys a just share of resources and opportunities. Against that background, everyone has a fair opportunity to engage in the partial activities that are deemed important. The reasons we have to read bedtime stories to our children and to ensure that they have a decent start in life are complex, but they are best theorized in terms of the special relationship that exists between parent and child and the parental obligations that derive from that relationship. Since these obligations apply to all parents, we would, from an impersonal point of view, acknowledge that everyone should have, and may make use of, a fair opportunity to fulfil these obligations. In a just society that principle is guaranteed.

By contrast, under unjust circumstances not everyone enjoys a fair opportunity to engage in this same set of partial parental activities, because opportunity and resources are distributed unfairly. Given those circumstances, it is not obvious that we ought to accept as legitimate the partial parental activities that we would accept if social justice obtained. To see this we need only to reconsider the parent of the child who, already more unjustly treated than another's child, is made even worse off by the decision of the other person to opt out of the local comprehensive. Suppose that it is suggested to that already worse off parent that she would, from an impersonal standpoint, accept a degree of parental partiality as just, and that this would include the permissibility of others opting out. Her reasonable response is that, of course, if everyone had a fair opportunity to act partially with respect to their child then that decision might be permissible. However, the injustice of the circumstances here and now cancels or limits that permission. Once the legitimacy of parental partiality is seen to be dependent upon the justice of the background social institutions, we may question its force in unjust circumstances.

Many hold views of this kind with respect to the purchase of private medical treatment. If justice obtained in the distribution of resources, many would not object to individuals using their share to purchase medical health insurance that buys them a greater range of medical services, more comfortable treatment when in hospital, or perhaps swifter care. But in a society with

an unjust distribution of resources, many object to private health insurance on the grounds that it worsens the treatment available to those who cannot afford to pay for private insurance. The objection remains even when it is pointed out that the unjustly rich are merely getting what they would have been entitled to buy in a just world. It remains valid because the legitimacy of purchasing such care depends, among other things, upon whether there exists fair opportunity to buy it.

The critique of the appeal to the legitimacy of parental partiality to justify opting out in an unjust world can be reinforced by addressing matters from the point of view of the child rather than from that of the parents. The principle of legitimate parental partiality, we have argued, supports a permission for parents to engage in those activities associated with the special relationship between parent and child. Under just circumstances, some such principle would be acknowledged. However, even there, we would be concerned about the effects of the operation of that principle on children's life prospects, and social institutions would be mandated to ensure that children's opportunities are not rendered unequal by it. Remedial policies would be put in place to ensure that, whether or not they benefit from their parents' exercise of their right to act partially towards them, all children enjoy adequate and equal opportunity. Such a policy may require providing additional educational resources to schools in areas where parents cannot, or do not, as effectively deploy their rights of legitimate partiality. So any plausible principle of legitimate partiality, as described from an impersonal point of view, would offer both: (1) a fair opportunity for parents to engage in a certain range of partial activities; and (2) a set of policies to remedy the differential effects of that permission with respect to children so that their respective educational opportunities remain equal. Again, in the unjust circumstances in which many live, the unequal effect on children's opportunities of the differential exercise of parental partiality is not neutralized, as it would be in an ideal world. It follows that there is a case in an unjust world to cancel or limit those opportunities that would exist in a just world.

#### DUTIES OF FAIRNESS AND SOLIDARITY

Another dimension of the duty of justice that is not fully captured in Swift's account relates to notions of fairness and solidarity. Swift considers a case in which the local comprehensive is adequate in virtue of there being desirable peer group effects from the range of pupils who attend. A parent opting out will do nothing to damage the adequacy of the school, but would benefit her child. Swift points out that, on his view, the parent would lack a reason to opt out in the first place, because she is entitled to seek only a good enough

education for her child. He also points out that in opting out she would be failing to bear a fair share of the costs of the realization of educational justice. The principle of fairness is that 'it is unfair to take advantage of others' willingness to play their part in a cooperative strategy that yields a desirable aggregate outcome' (Swift, 2003: 148).

There is a long-standing left wing commitment to express solidarity with others who are unjustly treated. It is a precept of trade unionism that it is wrong to accept work on terms that are beneficial for the individual but which contravene union agreed rules that are framed to advance the degree to which the group as a whole secure a just wage. It is that commitment to the idea of the unjustly treated sticking together that may explain the hostile reaction of many in the British labour movement to the decisions of Blair and Harman to take their children out of their respective local comprehensives. That principle of solidarity can be expressed in terms of the principle of fairness. If there is the prospect of a desirable outcome that is achieved by the co-operation of many, then there is a duty of fairness on the part of each to co-operate if others are similarly willing.

One pivotal issue with respect to the practical implications of these ideas concerns the required likelihood of the desirable outcome being achieved for the duty of fairness to apply. The duty of fairness is typically discussed with reference to cases in which there is a co-operative practice up and running that is already delivering a benefit to the group. Indeed, in Swift's case the desirable outcome is immediate: sending one's child to the local comprehensive will not reduce his educational opportunity below adequacy and will further the cause of educational justice. In such cases, it is unjust to free ride on the co-operative behaviour of others.

However, there are other cases in which the desirable outcome is a long-term political goal and yet the duty not to opt out of the cooperative scheme remains. Think of the trade union example previously mentioned or rationing schemes in times of war. We may also have duties to co-operate in a collective scheme of refusing certain benefits where that is motivated by a long-term goal of ridding society of the unjust distribution of those benefits. The difference between these long-term causes and the standard cases in which the duty of fairness is discussed is that in the latter those who restrain their behaviour according to the group rules also benefit from those rules. In the case of the choice between private and comprehensive schooling in Britain, it is not likely that the children whose parents restrain their conduct will benefit from their restraint. If any child benefits, he will be a child of a future generation. Nevertheless, this difference makes no difference from the point of view of the duty of solidarity. It remains the case that there is a good, the good of educational justice, that requires the co-operation of many to achieve.

Since the refusal to opt out is an effective means of furthering the achievement of that good, if a significant number are willing to refuse to opt out, then one is duty-bound to refuse as well.

One of Swift's replies to a similar case is that it is mistaken to infer a lack of commitment to the ideal of equality of opportunity from a willingness to accept benefits that would exacerbate inequality of opportunity in an unjust world. That is true, but it fails to bear on the present case. For an open refusal to accept an inequality-exacerbating benefit for one's child is a clear way of displaying one's commitment to the cause of educational equality. It has epistemic advantages over the strategy of accepting the benefit while professing one's commitment to equality, because there is less room for doubt about one's real motives. Like war and disease, we are required to fight injustice. In that fight, an unambiguous commitment to the cause of justice has benefits in terms of assuring others that their co-operative restraint is being reciprocated. If these remarks are sound, then it may not be unjustified for a parent to display her commitment and contribution to educational justice by accepting for her child some inadequacy in his education.

#### FAIRNESS AND MORALITY

There is an interesting relationship between the ideas of fairness and morality that remains below the surface in Swift's argument. Even if we accept Swift's account of our duties of *justice* in an unjust world, it might still remain wrong to opt out and thereby fail to contribute to the realization of justice. It might be wrong because *morality* might require us to promote the good, which in this case includes a just distribution of educational opportunity, even when that requires us to do more than our fair share. This section raises one problem, albeit in brief form, with the general project of conceiving of duties to realise a certain end in terms of fair shares.

Consider a simple example. Imagine that there are 50 children who have got into danger in the sea. As a passer-by on the shore you can run to a nearby boat, push it down the beach, and row it out to the children in an attempt to save their lives. To do so would require an extreme effort on your part, so much so that it would leave you exhausted. It seems certain that under such circumstances you should at least attempt a rescue. The notion of fair shares employed in Swift's account of contributing to educational justice would seem to imply, however, that you are only required to make a proportional sacrifice. Recall, you are only required to bear a cost comparable to the gap between the education your child would receive in a comprehensive under current (unjust) circumstances, and the education she would receive under ideal (just) circumstances. To do more than this – to continue to send your child to an

inadequate school when you could do otherwise (in the hope of realizing educational justice) – is to bear more than your fair share.

Imagine further, therefore, that you are not alone on the beach, but that, in fact, there are four other people there. The rescue operation is now a collective enterprise, one that requires a far smaller contribution from each individual in order to achieve the same end. According to the notion of fair shares it would seem that, if the other four refuse to help, then all you need to do is contribute one-fifth of the total required effort. One-fifth, let us assume, would be insufficient to push the boat more than a few yards down the beach, let alone rescue any of the children (not even one fifth of them). This surely shows the notion that we are required to do only our fair share, as it has been formulated, is problematic, or at least leads to deeply counter-intuitive consequences in certain cases. It seems absurd to claim that an individual would have discharged her moral duty by pushing the boat a few yards, and would therefore be absolved of moral condemnation. Of course, in this case it is unfair that the willing individual has to shoulder more than a fifth of the burden of the rescue mission. However, the complaint should be levelled against those who refuse to help, not against morality itself. The moral requirement to promote the good of justice remains intact even when it is rendered more burdensome and unfair by the immoral behaviour of others (see Kagan, 1991: 924–5). Trying, with all your effort to rescue the children is not a supererogatory act. We might likely view with some suspicion someone who appealed to fair shares by abandoning the rescue attempt at the shoreline.

The purpose of this point is not to claim that there is no cut-off point for heroism (see Fishkin, 1982: 5), and that sacrificing one's child for some small gain in educational justice for all would be required. Opting out of the local comprehensive school may still be a justifiable route for parents to take. What this criticism does do is render problematic the view that a conception of fair shares exhausts our moral reasons to promote educational justice. Sometimes we might be required to contribute more to the cause of realising justice exactly *because* of the fact that others do not. Exactly how much is a separate question, but just because we are fortunate enough to have the means to buy our child out of an inadequate school does not necessarily mean that our decision to do so has moral validity.

#### CONCLUSION

In Swift's view, parents who advocate the abolition of private schools on the grounds of injustice can, nevertheless, justifiably opt their children out of the state comprehensive system. Swift's defence of this conclusion centres on the claim that, in the pursuit of a just education system, parents and children need

shoulder no more than the fair share of the burden necessary to bring about this end. This may be done, according to Swift, even when it worsens the quality of the education for those children whose parents cannot afford to purchase private education. Parents need not resign themselves to sending their children to inadequate state schools for the sake of their political principles if they have the financial resources to do otherwise.

In this paper we have argued that parents who affirm equality of opportunity can justifiably, and perhaps ought to, accept some inadequate education for their children. The fair share view of the duty of justice fails to accommodate a number of convictions that egalitarians typically have. First, we have a *pro tanto* reason to avoid worsening the situation of others who are more unjustly treated than we are. Second, even if the principle of legitimate partiality permits us to avoid educational inadequacy for our children given a just background distribution of resources, it might not do so when resources are unjustly distributed. Third, accepting a degree of inadequate education might be justified as a fair contribution to the cause of ridding society of injustice. And, finally, we might have moral reasons to promote justice even when that means contributing more than our fair share.

How much educational inadequacy should parents accept for their children? We have not answered this question, but we hope we have done enough to put it on the agenda.<sup>9</sup>

NOTES

1. Note that we follow Swift in using 'opting out' and 'going private' as shorthand for parents removing their child from the local comprehensive system and sending them to a private (i.e. non-state) school, or a selective (grammar) school. Similarly, we use 'private' school to signify both non-state schools and grammar schools.
2. Swift writes: 'Equality of opportunity looks like a crucial part of social justice, and it implies that children's chances of success should not depend on their parents' bank balance' (Swift, 2003: 12).
3. This is true even when migration is small, as can be seen in the UK where only 7% of children are educated privately. See Swift (2003: 45–6) for further elaboration.
4. Since our focus is on how parents who favour egalitarian educational justice ought to choose within unjust school rules, for the sake of simplicity we suppose that Swift's controversial argument that equality of opportunity is crucial to social justice is sound. For the same reason, we also grant his claim that opting out would often buy a better education for one's children. For further discussion of the relationship between equality of opportunity and social justice, see Rawls (1971: 60–75), Pogge (1989: 161–81), Brighouse (2000: 112–62), Arneson (1998), and Clayton (2001).

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5. As Swift notes: 'Everything turns on what counts as good enough. How bad does a school have to be for it rightly to be judged unacceptable? In what ways would it have to harm the child who might go there?' (Swift, 2003: 114). Crucially, what is important is whether the local comp really is inadequate and not what parents happen to believe about it, hence the need for an independent test for inadequacy.
6. Other reasons considered include opting out in order to sustain a close familial relationship, and opting out in order to get an intrinsically valuable education (Swift, 2003: 125–30).
7. For a view in which the burden on individuals does increase as the level of compliance with a principle decreases, see Singer (1972).
8. Plainly, we require a means of measuring the extent to which different people are treated unjustly. The measure invoked here might be viewed – in a manner akin to Swift's implied metric for fair shares – in terms of the size of the gap between the opportunities that one enjoys in the actual (unjust) world and those opportunities one would have in a just world.
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BIOGRAPHICAL NOTES

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