WITH LIBERTY AND JUSTICE FOR SOME: A PHILOSOPHICAL ARGUMENT IN OPPOSITION TO THE SMALL SCHOOLS MOVEMENT IN NEW YORK CITY

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The year 2002 was a big year for education in New York City.[1] Mayor Michael Bloomberg proposed a bill to dismiss the city's local school boards, elected by popular vote in each of the city's thirty-two community districts. On June 10, the New York State Senate passed that bill. The mayor was then granted the power to fill the highest position in the school system, the Chancellor, who would choose the deputy chancellors and district-level superintendents.[2]

One year later, in September 2003, I stepped into my first classroom teaching position at a new small school in New York City, funded in part with seed monies from New Visions for Public Schools as part of the Bill and Melinda Gates Foundation's educational initiatives. Our school was co-located with four other schools in our building. The school opened with almost no supplies: no chalk, blackboards, books, photocopiers, desks, or chairs. There were no lights or electricity. We eventually brought up chairs and tables from a basement trash pile. We also salvaged discarded white boards. We were vultures, digging through trash bags for books and any salvageable supplies.

Despite these obvious inequities, students had selected our school as part of the school choice movement with the help of their guidance counselors and parents. They were completely unaware of the challenges that presented themselves on Day 1. They had no way of knowing that our school was unprepared to provide them with even basic supplies for learning or that we were ill-equipped to meet their educational needs.

A decade later, after the rise and fall of many small schools within New York City, reformers, politicians, and people of influence held fast to the belief that by creating small schools of choice for students, parents and families were free to choose the most appropriate education for their children. They also believed that free market practices would create an environment of increased

[1] I would like to thank the Ohio Valley of Philosophy of Education Society and my editors, whose detailed feedback helped me to develop this essay. I would also like to thank my family and colleagues for their support. I greatly appreciate the encouragement and feedback I received from both Dr. Nancy Brooks and Joaquin Lorenzo. Finally, I am indebted to Dr. Sheron Fraser-Burgess for her unending patience in mentoring me through this process.

[2] Richard Pérez-Peña, "Albany Backs Mayoral Rule Over Schools," *New York Times,* June 11, 2002.

accountability and transparency, which would improve educational outcomes for all students.

I will argue that these measures failed to improve educational equity and opportunities for students, and that they also placed students most in-need at an even greater disadvantage, thus hurting the very children these laws were created to help. I will support this argument using a critique of neoliberalism in the context of education as defined by Michael Apple, John Rawls's original position, and the application of Rawls's position in an educational context by Barry Bull.

History and Context

In order to appreciate the gravity of the injustice created by the small schools of choice, it is important to understand both the history and the context underlying this movement. The small school movement originated in the democratic ideology of Deborah Meier, who sought to create schools that gave students, parents, teachers, and all stakeholders in the communities they served a voice in education.[3] In New York City, Meier's vision was implemented haphazardly by a group of business and political elites able to pour millions of dollars into an initiative without carefully considering the complex interests involved in creating new small schools. The elites created small schools based on free-market principles of neoliberalism and forced those without social or cultural capital to navigate this new system without assistance. This lack of forethought placed students and parents at an even greater disadvantage than had existed previously.[4]

The small school movement began in earnest in the 1990s with Deborah Meier's experiments in building the Mission Hill School in Boston and Central Park East in Harlem. These initial successes led policy makers to view Meier's small schools as the panacea to low graduation rates and poor student achievement. These school reformers attempted to develop a mass model to replicate Meier-type schools, an effort which quickly became much more wide-spread with the aid and support of groups including the Bill and Melinda Gates Foundation and New Visions for Public Schools.

Between 2002 and 2005, 149 secondary schools were opened in New York City, with the vast majority of them being phased into existing large single-school buildings accommodating up to 4,000 students. These buildings were being transformed into multiple school campuses.[5] As of 2012, there were

[3] Deborah Meier, *In Schools We Trust: Creating Communities in Learning in an Era of Testing and Standardization* (Boston: Beacon, 2002).

[4] Patricia Gándara and Julie Maxwell-Jolly, *Priming the Pump: Strategies for Increasing Achievement of Underrepresented Minority Graduates* (New York: The College Board, 1999), 58.

[5] *From Large School Buildings to Small School Campuses: Orchestrating the Shift* (New York: New Visions for Public Schools, 2005), http://eric.ed.gov/?id=ED541347.

over 400 high schools and 700 unique programs in New York City.[6] Almost immediately after gaining mayoral control, Mayor Michael Bloomberg appointed the Panel for Educational Policy (PEP) to displace the existing Board of Education and began the process of identifying and closing failing schools, replacing them with new small schools. In the decade after this process began, 140 existing schools have been closed and over 550 new ones have been opened.

New accountability measures were instituted using a report card grading system that compared schools within peer indices. These measures were designed with ways for schools to earn extra points by focusing on students who were "worth" more than others in raising learning outcome statistics. Each student was assigned a point value based on their eighth grade test scores. Students' diplomas were also assigned a point value varying by diploma type and student classification. For example, a self-contained special education student graduating with a Regents Diploma earned the school more "credit" toward the report card grade than an English Language Learner graduating with the same type of diploma.[7]

The framework for creating small schools of choice was "a demanding and competitive proposal process that was designed to encourage and enable a range of on-the-ground stakeholders with innovative ideas—from educators to school reform intermediary organizations—to start new schools."[8] Additionally, the vast majority of these new schools, including charter schools, were "located in historically disadvantaged communities and were intended to be viable alternatives to the neighborhood high schools" which they replaced.[9]

Neoliberalism

The new small school movement based its philosophy on what was, according to Shiller, a "simple theory of change steeped in neoliberal theory."[10] Neoliberalism is a social, moral, and economic philosophy that allows the market and competition to drive decisions resulting in deregulation[11] that

[6] *Directory of NYC Public High Schools* (New York City Department of Education, 2012), http://nyc.gov/schools/ChoicesEnrollment/High/Resources.

[7] *Educator Guide: The New York City Progress Report, High School, 2011–12* (New York City Department of Education, 2013), http://schools.nyc.gov/ProgressReport.

[8] Howard S. Bloom, Saskia Levy Thompson, and Rebecca Unterman, *Transforming the High School Experience: How New York City's New Small Schools Are Boosting Student Achievement and Graduation Rates* (New York: MDRC, 2010), xi, http://www.mdrc.org/sites/default/files/full_589.pdf.

[9] Ibid.

[10] Jessica Shiller, "Marketing Small Schools in New York City: A Critique of Neoliberal School Reform," *Educational Studies* 47, no. 2 (2011): 161.

[11] Jay Winter, "Neoliberalism," in *Europe Since 1914: Encyclopedia of the Age of War and Reconstruction*, ed. John Merriam (Gale Virtual Reference Library, 2006).

"transforms our very idea of democracy" into a simple economic concept.[12] According to Apple, neoliberalism is currently the most powerful ideology within our conservative modernization movement.[13] However, in the focus developing a competitive model of education, insufficient attention was paid to what makes equity possible.

The original public plan for creating small schools of choice was to have "a demanding and competitive proposal process that was designed to encourage and enable a range of on-the-ground stakeholders with innovative ideas—from educators to school reform intermediary organizations—to start new schools."[14]

Several issues arose in implementing this model. School and district-level administrators, teachers and support staff used many data systems to track student progress and learning outcomes in a business-like model.[15] However, tracking true academic performance was nearly impossible when the data by which instructional decisions were based was often inaccurate and non-congruent. There was also the belief that for poor and minority students to have any chance at educational salvation, they, and their parents, had to possess the power to choose between schools.[16] This required an unwavering confidence in market-based practices to bring about school reform[17] and demonstrated the underlying belief of neoliberal education practices: a blind trust in fairness and unequivocal justice of free market economics.[18]

One of the greatest hurdles to this kind of reform was that the vast majority of these new schools were "located in historically disadvantaged communities and were intended to be viable alternatives to the neighborhood high schools" which they replaced.[19] The goal of creating heterogeneous ability classrooms in small schools failed, not because classrooms were segregated but rather the small schools themselves were segregated. These new small schools competed with each other with those having the best marketing strategies attracting the best available students. The winners in this competition were generally located in the more affluent areas of New York City as research showed that both low and high performing students from all socioeconomic strata elect schools that are within close proximity to their home. The "differences in placements reflect the differences in students' choices and the

[12] Michael Apple, *Markets, Standards, God, and Inequality* (New York: Routledge, 2006), 15.
[13] Ibid.
[14] Bloom et al., *Transforming the High School Experience*.
[15] Jonathan Kozol, *The Shame of the Nation: The Restoration of Apartheid School in America* (New York: Random House, 2005), 213.
[16] Ibid.
[17] Michael Apple, *Markets, Standards, God, and Inequality* (New York: Routledge, 2006), 15.
[18] Ibid., 35.
[19] Bloom et al., *Transforming the High School Experience*.

options available to them in their communities."[20] Students and families generally chose schools located in their neighborhoods due to travel time required. Schools and student attendance at small schools was strongly predicted by the distance a student must travel, even after other factors were taken into account.[21] The Schott Foundation for Public Education found that Black and Hispanic students, especially those living in poverty, live in community school districts that are far under-resourced and have less qualified teachers, in comparison to their more wealthy White and Asian peers.[22]

The Original Position and Justice

Having provided a context of neoliberalism within the small school movement, I shall now use Rawls's theory of Original Position to demonstrate how both the ideology and implementation were unjust. Rawls's theory of Original Position can be applied to the small schools of choice movement in New York City, arguing that the small school movement was unjust because not all constituents living within the system had any input or choice in developing the principles aligned with their conception of the good.

The Theory of Original Position, which is intended to apply to the basic structure of a well-ordered society of which schools are a part, serves to generate two Principles of Justice that capture the criteria for a well-ordered and just society. Both of these principles are equally important and interdependent.

a. Each person has an equal right to a fully adequate scheme of equal basic liberties, which is compatible with a similar scheme of liberties for all.
b. Social and economic inequalities are to satisfy two conditions. First, they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged member of society.[23]

[20] Lori Nathanson, Sean P. Corcoran, Christine Baker-Smith, *High School Choice in New York City: A Report on the School Choices and Placements of Low-achieving Students* (New York: Research Alliance for New York City Schools, 2013), vi, http://media.ranycs.org/2013/008.

[21] Amy E. Schwartz, Leanna Stiefel, and Matthew Wiswall, "Do Small Schools Improve Performance in Large, Urban Districts? Causal Evidence from New York City," *Journal of Urban Economics* 77 (2013): 27–40.

[22] Michael Holzman, *A Rotting Apple: Educational Redlining in New York City* (Cambridge, MA: Schott Foundation for Public Education, 2012), 3, http://schottfoundation.org/drupal/docs/redlining-full-report.pdf

[23] John Rawls, *Political Liberalism* (New York: Columbia University Press, 2005), 291.

According to the first principle of justice all citizens deserve basic liberties and to be valued both justly and equally.[24] Rawls developed his theory of justice with the notion that people could indeed construct a well-ordered society using a veil of ignorance principle, where no one knew their place in the society and were blind to their own conceptions of the good, their talents, and abilities.[25] In structuring this well-ordered society, designers would acknowledge the savings principle, in which all previous generations would have wanted to follow the social agreement.[26] Under the veil of ignorance, all citizens ought to have a voice; however, this never happened within the small schools movement. The people living within the small school movement never received an opportunity to voice their agreement or dissonance.

Assuming that citizens had a clear enough idea of the circumstances necessary to insure that any agreement reached was fair, the content of justice for the basic structure could be ascertained, or at least approximated, by the principles that would be adopted.[27] As Noddings stated, "The underlying assumption, in the tradition of Locke and Rousseau, is that individuals somehow exist before communities and that they enter a "social contract when they form communities and societies."[28]

Noddings made the argument that Original Position posited that children were not yet part of the community, rather that they came before it. Although children were granted certain unalienable rights from the US Constitution as human beings, they had not yet made the decision to join the community. Their relative position within the society was determined solely by their parents' status. In the case of constructing the small school movement, parents did not even have a say in its creation, rather a mayor strong-armed the state legislature and secured necessary support by influential people of power and means to restructure the entire system.

Rawls stated, "All forms of legitimate social corporation are, then, the handiwork of individuals who voluntarily consent to them; there are no powers or rights lawfully expressed by associations, including the state, that are not rights already possessed each individual acting alone in the initial just state of nature."[29] The fundamental issue in New York City was that not all people voluntarily consented to small schools, rather school choice was thrust upon them, especially after the dismantling of the local community school boards. Additionally, those from the working class, my students and their families, did not need to understand or support this initiative. It was put into place without

[24] Ibid., 274.
[25] Ibid., 272.
[26] Ibid., 274.
[27] Ibid., 261.
[28] Nel Noddings, *Philosophy of Education*, 3rd ed. (Boulder: Westview Press, 2012), 180.
[29] Rawls, *Political Liberalism*, 264.

their consent. As an already disenfranchised population, their opinions were not taken into account. This was allowed to happen because, as Willis stated in his seminal work, *Learning to Labour*, only the working class need not to support or believe in the dominant legitimations claimed by those in power.[30]

Fostering the ideals of liberty and justice required to maintain a democratic society as required by the first principle, was impossible when one group was functionally disadvantaged from the start. For example, although there were over 1,600 K-12 public schools in New York City for over 1.2 million students, there were different admissions requirements for each school.[31] This kind of disparity between facilities, resources, and money was the most documented form of inequity in education. When one group of students had top-notch facilities, such as those in the highest performing test-admission schools, and another group had little, if anything in comparison, there was relative inequity. These disadvantaged students experienced "social injustice because of the ways in which oppression have been institutionalized within the education system."[32]

Another form of disparity that occurred was in the form of preparation needed to succeed in the school system. Rawls asserted that the aim of a society was not to rank students expected contributions to society,[33] yet this was exactly what the small schools of choice selection process did. An additional barrier to equality was that some schools, such as specialized test schools, required a benchmark grade on the Specialized High School Entrance Exams as the sole criterion for admission.[34] Students of well-to-do families often began preparing for this test as early as fifth grade, by taking courses that could cost more than $2,000 each.[35] Students who came from under-achieving middle schools could enroll in a two-week free preparation course by Department of Education if there were seats available and often demand exceeded supply.[36] Many of the small schools required an open-house visit with a parent or guardian. Many times this form of family support was not possible for parents or guardians. Some were disabled and unable to leave their homes. Others

[30] Paul Willis, *Learning To Labour: How Working Class Kids Get Working Class Jobs* (Farnborough, UK: Saxon House, 1977), 123.
[31] *Directory of NYC Public High Schools*.
[32] Philip Mirci, Corey Loomis, and Phyllis Hensley, "Social Justice, Self-Systems, and Engagement in Learning: What Students Labeled 'At-Risk' Can Teach Us," in *Educational Leadership and Administration: Teaching and Program Development*, vol. 23, ed. California Association of Professors of Educational Administration (Houston, TX: Connexions [Rice University], 2011), 58, http://cnx.org/content/m41059/1.4/.
[33] Rawls, *Political Liberalism*, 274.
[34] Damon Hewitt, Rachel Kleinman, Lazar Treschman, and Aprurva Mehrotra, *The Meaning of Merit: Alternatives for Determining Admission to New York City's Specialized High Schools*, (New York: Community Service Society, 2013), 6.
[35] Ibid., 8.
[36] Madelyne Corcino, telephone interview, November 25, 2012.

worked two or three jobs. It was easy to take the stance that a child's education should have been a parent's top priority; however, that was often not the case. Many of my students' parents were much more concerned with the more immediate issues of working to pay rent and put food on the table. There was no option for leaving work and taking a loss of the day's wages or even worse, the possibility of losing one's job.[37]

All that remained were unscreened schools. I taught at one of those schools. One hundred percent of our students received free school breakfast and lunch. For many, especially foster children, those were the only meals of the day. Some came to school often without the most basic supplies. Pens, pencils, and paper could not be taken for granted. We did not have the teachers to meet our students' needs.

Special education students were reclassified to comply with state mandates. ELL students were placed into pan-English language classes to meet ELL mandates. Counselors and social workers were excessed, or "let go" because of citywide budget cuts. These circumstances could hardly be considered to meet Rawls's premise of "equal right to the most extensive liberty compatible with a similar liberty for others."[38] The small schools of choice movement not only denied our students equitable liberty to appropriate educational access in comparison to their better-off peers, it placed them at even a greater disadvantage.

Rawls's second tenet of Original Position required those in power to act as if they did not know what their lot would be upon completing the system design. They would not know if they would be the most-advantaged or disadvantaged student. Theoretically, using Rawls second tenet, those planning to set up schools and allocate teachers, resources, funding would have done so blindly using a veil of ignorance, setting up the system in such a way that they would not have known their lot, conception of the good, or assigned school. How would policy makers have designed schools if their children had been the ones attending them? Would Mayor Bloomberg have allowed his children to sit in classrooms without books or paper? If he had a child diagnosed with autism, would he have allowed his child to sit in a room of thirty-four children? Would he have cut his children's access to clubs, sports, and other extracurricular activities for the sake of redistributing inter school funds for test preparation mandated through citywide and No Child Left Behind (NCLB) policies?

Bloomberg spoke about equity of all children; however, it will not happen until people in power who are making the decisions can envision their own children sitting in the seats of my students in a small school of "choice." The small schools movement created only the illusion of choice and did not resemble the democratic schools that Deborah Meier created. Yes, my students

[37] Ibid.

[38] John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 60.

were able to "choose" up to twelve schools on their high school application. However, those schools were all very similar in composition, resources, and mandate.

Continuing Rawls's argument within an educational framework and the goals of public schools Barry Bull acknowledged that public schools were one of the few social institutions with which almost the entire population came into contact and by which the entire society was affected.[39] As such, schools had a responsibility to the society in aiding students in developing their own conceptions of the good, which allowed individual to determine "the aims that one should pursue and the obligations that one has in pursuing them."[40] Bull identified four distinct rationales for public schools as they applied to Rawls's Original Position: personal liberty, democracy, equality of opportunity, and economic growth.[41]

Schools ought to instill and maintain personal liberties in future citizens by providing opportunities and guidance for students as they develop their own conception of the good while "fostering in children responsibility and respect for the political values of our society including personal liberty."[42] For this to happen, schools and their curricula ought to be meaningful for all students and families, not just those with social and cultural capital to navigate the baffling labyrinth of application procedures to secure a spot at a top school.

Bull argued that schools prepared students to actively participate in our democracy and exercise their personal liberties in ways that did not infringe upon the personal liberties of fellow citizens.[43] However, if those creating the education system had "an unlimited power to control the values we come to hold and the activities in which we engage no one would ever be his or her own person, and the personal liberties would be meaningless."[44] This series of events demonstrates that the small school movement was unjust because from its inception power was held by a single dominant group influencing the values of those in the non-dominant majority. The dominant group forced its conceptions of the good on others without other groups having a meaningful forum to contribute their conceptions of the good. Bloomberg, Klein, Gates, and other "big players" in this movement all neglected the messy process of democratic discussion in creating schools and deciding what was best for all constituencies involved as described by Deborah Meier.[45] Instead, the Department of Education quickly created scaled-up factory-model small

[39] Barry L. Bull, *Social Justice in Education: An Introduction* (New York: Palgrave Macmillan, 2008), ix.
[40] Ibid., 6.
[41] Ibid., 18.
[42] Ibid., 25.
[43] Ibid., 26.
[44] Ibid., 27.
[45] Deborah Meier, *In Schools We Trust: Creating Communities in Learning in an Era of Testing and Standardization* (Boston: Beacon, 2002), 40.

schools without the public having a voice as to which schools would inhabit their local schools buildings.

The critical element in assessing equal opportunity in education in New York City was "whether the schools take with equal seriousness all the diverse aspirations of their students"[46] without limiting with their future personal liberties. On the surface the small schools movement did this, but not in comparison to the test schools. Additionally, even though the small schools each had their own theme, by and large the curriculum was still the same with an elective or two to meet the specialized selling point of each small school. Most small schools did not have the partnerships that would allow them to infuse the school's theme throughout the curriculum. Only schools that were granted a Regents waiver for portfolio assessment were permitted to deviate from the standard curriculum and Regents Diploma mandate, which was very difficult to attain. Of all the high schools within New York State, only thirty-nine had been granted a Regents waiver to do portfolio assessment as part of the New York State Performance Standards Consortium, and even students in those schools were still required to pass the New York State English Language Arts Regents Examination.[47]

"A fair chance to take advantage of an educational opportunity means in part that citizens should be allowed to qualify for that opportunity on the basis of their demonstrated abilities. But it also means that citizens should be given a fair chance to acquire the abilities that would allow them to qualify."[48] In New York City public schools, students from low socioeconomic backgrounds and neighborhoods were not given a fair chance to develop the abilities that would allow them to qualify for the higher rated small schools, thus furthering segregation and injustice. They attended local elementary schools and were surrounded by poverty whereas children on the Upper East Side attended local districted elementary schools equipped with the best resources provided by the Department of Education or parents of children attending the school.

In addition, parents from advantaged communities can afford private tutoring for students to prepare for the Specialized High School Entrance Exam, giving them opportunities to expand their potential for exercising personal liberties and developing their concept of the good. Students from disadvantaged areas, like those attending my school, developed conceptions of the good in part based on their experiences as being "relegated to a permanently inferior social class based on characteristics that are irrelevant to

[46] Barry L. Bull, *Social Justice in Education: An Introduction* (New York: Palgrave Macmillan, 2008), 51.
[47] Ken Slentz, "New York Performance Standards Consortium," memorandum to the New York State Board of Regents, July 17, 2013, www.regents.nysed.gov/meetings/2013Meetings/July2013/713brca12.pdf
[48] Bull, *Social Justice*, 38.

their potential" in a democratic society.[49] Although we had done this as a society by making certain groups inferior, the small school movement served to further entrench these students in an almost inescapable caste system based on socioeconomic status, ethnicity, and geographic location within the City.

Here We Stand

So here we stand in the middle of a broken and malfunctioning system with hundreds of small schools co-located within buildings competing for both students and resources. Students drop out. Teachers leave. Resources are not equitably distributed.

Arne Duncan and Richard Riley were right when they said, "We are currently preparing our students for jobs that do not exist yet . . . using technologies that have not yet been invented . . . in order to solve problems we do not even know are problems yet."[50] However, more importantly, we are preparing are students to live in a democracy that grants all individuals "life, liberty, and the pursuit of happiness."

On January 1, 2014, newly elected Mayor Bill DeBlasio took office. He pledged to end the current neoliberal marketplace practices created during the small school movement over the last decade. Maybe someday soon, New York City public school children will be emancipated from the tyranny of neoliberal school choice practices. Mayor DeBlasio and his newly appointed Chancellor Carmen Fariña must remember that "distance breeds generalization"[51] as they work to fix the injustices created during Bloomberg's administration. They must also consider the schools they would want their children attending and act as if they are working under Rawls's veil of ignorance. They must see to it that all children have an opportunity to fully develop their own conception of the good following Bull's rationale of public schools in modern-day society. Most importantly, they must take into account the Original Position and involve members from all constituencies as they work to develop a legitimately fair system that empowers rather than disenfranchises, and seeks to provide "liberty and justice for all."

[49] Ibid., 30.

[50] Arne Duncan, "Through the Schoolhouse Gate: The Changing Role of Education in the 21st Century," *Notre Dame Journal of Law, Ethics, and Public Policy* 24, no. 2 (2010): 294.

[51] Elliot W. Eisner, *The Educational Imagination: On the Design and Evaluation of School Programs,* 3rd ed. (Upper Saddle River, NJ: Prentice Hall, 2002), 16.