The Ethical Status of Social Impact Bonds

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1. Introduction

Are social impact bonds (SIBs) an ethical way to deliver social care? In this paper, I develop a consequentialist framework for evaluating the ethical status of SIBs. SIBs represent a new form of marketized social intervention (Bridges Fund Management 2017) and it is this attempt to create markets for social care that yields the potential for ethical problems. The framework I develop extends work by Debra Satz (2010) on the ethics of marketization by incorporating issues which are specific to SIBs, providing a more nuanced view of issues related to decision-making, consent and potential harm in the contractual setting of a SIB. It identifies four criteria for their ethical evaluation: informational asymmetry, power imbalance, generation of individual harm and gen- eration of societal harm, all of which potentially impair social welfare.

The marketization of social care using SIBs has a relatively short history. The first SIB, which focused on reducing recidivism in a prison population in Peterborough in the UK, was developed in March 2010 and, by 2016, 61 SIBs in total had been initiated worldwide (Floyd 2017). In order to analyse the ethical issues associated with SIBs, it is important to understand the structure of such schemes and how they differ from previous forms of social care delivery (Gustafsson-Wright, Gardiner, and Putcha 2015). SIBs differ from earlier models of public-private provision or pay-by-results delivery contracts in two important ways. First, they are intended to transfer financial risk to the private sector by sourcing upfront financing from external investors (Social Finance 2016)[1] and, second, SIBs generally provide additional non-core social services rather than serving as substitutes for existing services. As such, they are often used as a means of testing new approaches to solving social problems. For an excellent review of the literature on SIBs, see Fraser et al. 2016.

It has been argued that the marketization of social care using SIBs is justified because of their potential benefits (Mulgan et al. 2011; Social Finance 2016; Stoesz 2014). In particular, it is argued that SIBs enable innovation in tackling persistent social problems and generate economies through scaling and the use of effective performance manage- ment (Gustafsson-Wright, Gardiner, and Putcha 2015; Edmiston and Nicholls 2018; Floyd 2017; Social Finance 2016), which results in savings to the public purse and improved social outcomes (Big Society Capital 2014).

Some studies, though, have questioned the accuracy of claims about the purported benefits (Ronicle et al. 2014) with some scholars claiming that these are “often hypothetical and poorly” evidenced (Edmiston and Nicholls 2018, 61). Others argue that poorly constructed schemes incentivise service providers to target the easiest outcomes at the expense of addressing hard cases or to overstate effectiveness (Warner 2013). Others have questioned the “hype” regarding SIBs and whether specific SIB structures are truly necessary for achieving these benefits (Floyd and Gregory 2015).

Critical scholars have questioned the cultural effects on civil society of the market- ization or financialization of the public sector (Dowling 2016; Dowling and Harvie 2014; Hood 1991; Humphrey, Miller, and Scapens 1993; Le Grand 2010; Kurunmäki and Miller 2011; Nicholls 2009; Sinclair et al. 2014). These concerns, which include the colonisation of public sector values by the corporate sector and the misalignment of incentives between civil society organisations and business interests (McHugh et al. 2013; Nicholls and Murdock 2012), raise serious ethical questions regarding SIBs.

This paper develops a new framework for assessing the ethical status of SIBs by extending and partially modifying the framework provided by Satz (2010). It draws on evidence from SIBs that address problems of recidivism, education, homelessness and long-term healthcare to identify the salient differences between the characteristics of ethical markets advanced by Satz and those which pertain to SIBs. In doing so, it suggests key characteristics of SIB structures which may render them unethical either in principle or in practice.

The paper is structured as follows. In section 2, I briefly introduce and justify the use of a consequentialist approach to evaluating the ethical status of SIBs drawing on work by Satz (2010). In Section 3, I consider the applicability of Satz's framework to the market for social care provided using SIBs and extend her framework to accommodate the particular characteristics observed in practice. Section 4 briefly considers the difference between the ethics of markets for SIBs and the ethics in markets for SIBs. Finally, Section 5 offers some concluding remarks and suggests possibilities for further research.

2. Why use consequentialism to evaluate the ethics of SIBs?

The cost-benefit arguments frequently used to justify the development of SIBs represent a form of consequentialist reasoning[2] which is consistent with mainstream economic analysis. Cost-benefit analysis forms the core of much of the reasoning in political decision-making, and thus explicitly or implicitly invokes consequentialism: the merit of a course of action is evaluated with reference to the outcomes it produces. This makes consequentialism the natural method for assessing SIBs. Many reports by government agencies and SIB intermediaries evaluate SIBs by referring to their costs and benefits (Bridges Fund Management 2017; HM Government 2014; Rangan and Chase 2015; The Whitehouse 2013). This can be seen in a report by Social Finance on the benefits of the Peterborough SIB which states:

> "Successful rehabilitation will deliver benefits to society and reduce public spending on the prison system. In simple terms, fewer offenders will commit less crime requiring fewer prisons costing less money." (Social Finance 2010, 1)

Perhaps the best argument in favour of some version of consequentialism against a deontological competitor which "appeals to conformity with certain rules of duty" (Smart and Williams 1973, 5) is that only consequentialism is truly compatible with a fundamental commitment to, and respect for, the welfare of persons. For, as Smart and Williams (1973) noted, although most of the requirements of a system of deontological ethics will coincide with human welfare, there will be instances where the requirements of duty will in fact conflict with human welfare. Smart notes that a deontologist is subject to prima facie "heartlessness", apparently preferring "abstract conformity to a rule to the prevention of avoidable human suffering" (Smart and Williams 1973, 6). I take consequentialism to be appropriate for evaluating the ethics of SIBs, since there is a natural co-alignment of objectives of SIBs and consequentialist reasoning: SIBs are primarily concerned with enhancing the welfare of persons through the use of market mechanisms. Other moral frameworks, such as deontological approaches, may simply reject the marketization of social care out of principle without sufficiently scrutinizing its purported merits. If a consequentialist analysis suggests that ethical concerns exist in SIB structures, however, they should be taken seriously.

Within the field of moral philosophy, Debra Satz employs a consequentialist frame- work to provide an insightful critique of marketization, which is particularly appealing for use in this study because it addresses issues that are relevant to SIBs. It considers the vulnerability of market participants and the potential restrictions powerful profit- seeking market participants can impose on others regarding access to healthcare, employment or education (Satz 2010, 5). In her book, Why some things should not be for sale: The moral limits of markets, Satz analyzes the ethical status of markets using four criteria which specify when a market is "noxious", by which she means that it is fundamentally unethical. Satz argues that if any one of these criteria is satisfied, the market will necessarily be unethical in principle.

Two of the criteria proposed by Satz (2010) identify the *characteristics* of noxious markets, specifically, a lack of agency and the vulnerability of participants. First, Satz (2010) argues that agency requires a participant to be fully informed about the likely outcomes of their market engagement to facilitate appropriate decision-making. If information asymmetries exist between participants, so that some participants lack agency, markets will be unethical. Satz's second condition specifies that a power imbalance between participants is associated with unethical markets, because of the possibility of exploitation. The third and fourth criteria proposed by Satz (2010) specify market *outcomes* which reflect harm to individuals or harm to society. These outcomes generally refer to longer term negative welfare effects for particular groups in society or even the undermining of civil society or democracy. Satz's criteria form the basis for the development of an ethical framework for evaluating SIBs.

3. Developing a framework to evaluate the ethical status of SIBs

In what follows, I consider the applicability of Satz's criteria for evaluating SIBs, and propose modifications based on evidence from SIBs in UK and US settings (listed in the appendix) to develop a framework for evaluating the ethical status of SIBs. It should also be noted that, whereas Satz's framework refers to the ethics of markets, in Section 4, I will also consider ethical issues that arise in SIB markets. These refer to the existence of unethical practices in SIB markets which are nevertheless ethical in principle.

3.1. The information asymmetry criterion

According to Satz's first criterion, ethical concerns arise if market participants lack agency: that is, if they are poorly-informed with the result that they are not be capable of making rational decisions. Similar informational concerns have been highlighted by social welfare theorists with respect to the marketization of healthcare (Arrow 1963, 951). However, Satz's information asymmetry criterion needs modification if it is to be applied to the case of SIBs. The idealized market transaction described by Satz is a simple two-person commercial interaction, such as the trade of a good or service between an individual purchaser and a vendor, whereas SIBs are more complex, with multiple market actors (Hipp and Warner 2008). As Warner (2013, 310) has stated, "[t]he mix of actors involved in SIBs raises the complexity beyond simple contracting to a network of actors connected by a series of contracts and performance payment schemes." Additionally, in contrast to Satz's framework, the financial incentives of SIB investors are often unknown to the subjects of interventions, as is the fact that they serve to generate profit. Furthermore, information regarding interventions may be complex, uncertain and contested (Fox and Albertson 2011) and the outcomes of interventions may be inaccessible for those without clinical knowledge. What counts as a suitably informed market participant is thus not adequately addressed by the information asymmetry criterion in the Satz model which must be extended to address the informational status of subjects, service providers, intermediaries and investors connected with a SIB.

Two further informational issues require a modification to be made to the Satz framework if it is to be relevant for SIBs. The first concerns evidence regarding the effectiveness of an intervention, which may be unclear, and experts may disagree about its efficacy. The NYC Able SIB,[3] for example, aimed to reduce recidivism of prisoners at Riker's Island in the US using a method known as Moral Reconation Therapy © (MRT).

The effectiveness of MRT is contested as conflicting evidence exists: one meta-study shows a statistically significant but small effect for 33 studies including 30,259 partici- pants (Ferguson and Wormith 2013), but the overall picture is mixed, with other studies finding MRT to be ineffective. An early investigation highlighted a number of concerns about the validity of the MRT approach (Clark 1985) and more recent work has found no significant difference in recidivism between the treatment and control groups for 375 offenders who participated in MRT (Behrens 2009, iv). Furthermore, the effectiveness of the intervention may not be known if a SIB is used to test an innovative approach or apply an established intervention to a new population, as was the case for the NYC Able Project. In these cases, informational asymmetry is ethically problematic if financial incentives drive the choice to proceed with an intervention that would otherwise not be initiated given the evidence available.

A second, more serious informational deficiency exists when information must be withheld from one or more of the parties to the SIB in order for the intervention to be effective. The Satz framework presumes that all parties are aware of the profit-seeking nature of the market transaction. By contrast, a SIB using a randomized control trial may need to withhold information from subjects and delivery staff concerning their membership of either the intervention group or the control group. Furthermore, it may be necessary to withhold information about the profit-generating nature of the inter- vention from delivery staff to enable the development of trust between them and the subject, as it has been noted that "the introduction of a profit incentive may negatively change the relationship between the service providers and beneficiaries" (UNDP 2018). In the UK, an evaluation report on the Fair Chance Fund SIB highlights the importance for the key worker of winning the trust of the subject, with one interviewee quoted as saying that the keyworker was, "someone I could talk to straight away which was kind of nice. I felt like I could trust him quite soon . . ." (Department for Communities and Local Government 2017, 68). On a consequentialist account, the generation of trust between the subject and the keyworker during the process of referral may justify withholding information about the profit-seeking objectives of the SIB if this is neces- sary for achieving participation, and this participation ultimately enhances the welfare of the subject. If Satz's information criterion is to be applied to SIBs, it is thus in need of modification to reflect any failure to inform subjects about the profit-seeking nature of the intervention, except where ignorance of this fact is essential for the success of the intervention.

Thus far, I have argued that the Satz framework requires some modification to ensure that all parties to a SIB are informed of all decision-relevant information unless that information would prejudice the result of an experimental intervention or damage relationships between staff at service providers and subjects.

3.2. The power imbalance criterion

A power imbalance within a market setting presents a significant ethical concern for SIBs and may be analyzed either at the level of the individual or the level of the organization. Satz argues that no individual participating in the market should have significantly more power than any other, because “[a] market exchange based in desperation, humiliation or begging or whose terms of remediation involve bondage or servitude is not an exchange between equals” (Satz 2010, 93). An unethical market will, in these cases, be characterized by power imbalances between participants, which may result in a subject having no real choice about whether or not to enter into a transaction and potentially being subject to exploitation (Ferguson 2016).

According to Satz’s power criterion, a SIB would be unethical if subjects were not capable of giving informed consent regarding their participation. This raises concerns with SIBs, because many, if not all of them, act upon individuals who do not possess full autonomy, for example due to their incarceration or limited cognitive ability. Although some SIBs do give subjects the choice of opting out of programmes (Nicholls and Tomkinson 2013, 19), it is not clear that the subjects are capable of giving informed consent, whether they are prisoners, individuals from a disadvantaged background, individuals with long-term health problems or children. A modification to the power imbalance criterion is therefore needed for application to SIBs.

In some SIBs, consent is obtained from subjects: at the Peterborough SIB, for example, participation by inmates was voluntary.[4] By contrast, for the NYC Able Project, participation was mandatory for all detainees of 16–18 years attending school,[5] while in Riker’s Island all selected inmates participated because the developers of MRT claimed it was effective only if its application was mandatory (Little and Robinson 1988). In the case of the New York State Increasing Employment SIB, participation was voluntary in principle, but it constituted a “special condition of parole”, with the result that participation was not purely voluntary in practice.[6]

Even if a SIB permits opting-out in principle, according to Satz’s power imbalance criterion it would be unethical if powerful participants persuaded vulnerable subjects to participate if this was disadvantageous for them. In several SIBs, authority figures, such as medical professionals, advise vulnerable subjects, and the power imbalance generates scope for such ethical issues. UK healthcare SIBs have employed “social prescribing” to address social factors such as poor diet, inactivity and social isolation, which are associated with long-term health conditions (Alderwick et al. 2018). Patients are referred by general practitioners (GP) to a link worker who connects them to local organizations offering social, sporting and other activities. A potential concern is that a vulnerable subject is likely to agree to whatever the GP recommends, even if they feel uncomfortable about social prescribing rather than other therapeutic interventions. However, unlike the Satz criterion in which authority can corrupt and lead to noxious outcomes, the relationship between the GP and patient differs structurally from the relationship between the purchaser and vendor of a good or service in a simple market. The clinician does not benefit financially from the referral, and is, in any case, constrained by codes of professional conduct and medical ethics. Consequently, the Satz power criterion requires some modification for application to a SIB setting to reflect the fact that not all actors are necessarily self-interested and that the mere existence of a power imbalance need not generate an ethical concern in principle.

A power imbalance may also exist at the organizational level within a SIB structure. Power imbalances between commissioners, service providers, intermediaries and inves- tors may arise due to their different skill sets. It has been argued, for example, that investors may have stronger financial skills, enabling them to structure SIBs in ways which serve their own objectives at the expense of others (Warner 2013). This is particularly important if investors are contractually permitted to select and deselect service providers, as was the case for the UK Peterborough SIB (Warner 2015) as they may be incentivised to select or deselect particular service providers for financial reasons.

The ethical problem of exploitation may also arise if the bargaining power of the investor exceeds that of the commissioner. In the Utah SIB, it was argued that the investors (Goldman Sachs and the J.B. and M.K. Pritzker Family Foundation) struc- tured the payment criteria in a way that enabled them to receive excessive returns. According to a New York Times article:

> "Goldman said its investment had helped almost 99 percent of the Utah children it was tracking avoid special education in kindergarten. The bank received a payment for each of those children...The big problem, researchers say, is that even well-funded preschool programs – and the Utah program was not well funded – have been found to reduce the number of students needing special education by, at most, 50 percent. Most programs yield a reduction of closer to 10 or 20 percent." (Popper 2015)

Given the empirical findings from previous interventions, the claims made by Goldman Sachs should be viewed, at the very least, with some degree of scepticism. This case illustrates that organizational power imbalances can impinge on the ethical status of a SIB.

To summarise, the power imbalance criterion should reflect both the power relations between individuals involving operational relationships and between organizations, such as service providers, commissioners and investors, in their contracting activities. Parties to a SIB should not abuse their power over vulnerable subjects or exploit local communities by structuring unfair contracts.

3.3 The individual harm criterion

In addition to Satz's requirements about the agency and vulnerability of market participants, she also stipulates particular market outcomes relating to harm to indivi- duals, which must be avoided if a market is to be considered ethical. Satz argues that commercial self-interest may lead to the structuring of markets which preserve the societal status quo in a way that damages individuals' welfare. Decision-making in SIBs may be driven by the incentives of private social investors and social finance inter- mediaries whose interests have been identified as "diverse and wide-ranging" (Edmiston and Nicholls 2018, 73). The resulting decisions may then be incompatible with the provision of care to those who most need it (Lowe and Evans 2016) and may incentivise social organisations to focus on the easiest targets or "shape their provision around the terms of the contract rather than the needs of the client" (McHugh et al. 2013, 250). It should also be noted that SIBs are not structured to compensate subjects for negative outcomes or groups of individuals for negative externalities generated.

The financial pressure to enrol a subject into an intervention may result in unethical outcomes. In this regard, an evaluation report of the UK DWP Innovation Fund SIB, reveals that, on occasion, decisions concerning subject selection were driven by "economic necessity", that is they were primarily motivated by the requirement to sign up a certain number of subjects (Insite Research and Consulting 2014, 46). Non-financial incentive-misalignment in SIBs can also generate harm. The same report states that teachers were likely to select the more disruptive students for participation in the scheme (in order to have them removed from the classroom) rather than selecting students who were most likely to benefit (Insite Research and Consulting 2014). A member of the delivery staff of the SIB is quoted as saying: "We often get the ones that cause the teachers the most problems, but they’re not always the ones that are the most needy” (Insite Research and Consulting 2014, 43). Some coaches on the scheme stated that less disruptive children were often passed over for selection even though they suffered from “low confidence and poor self-esteem” and “were at risk of slipping through the net unnoticed on the way to becoming NEET [not in education, employment or training]” (ibid: 43). This evidence relating to the problems associated with non-financial incen- tives suggests that Satz’s individual harm criterion should be modified for SIBs to specify that poor outcomes, and hence unethical markets, may result from misaligned incentives. Where such incentive misalignments can be addressed operationally, for example by requiring referrals to be made by a third-party educational specialist, they can be viewed as pertaining to ethical activities in a SIB market rather than to the ethics of such markets.

Potential harm may also result from a SIB if a denial of access to social care results from the need to demonstrate the effectiveness of an intervention in order to trigger success payments to private investors. This may be exacerbated by the power imbalance between the financial stakeholders and the subjects who have no effective voice in a discourse that may prioritise effective outcomes primarily for reasons of profit generation. Randomized control trials (RCTs), considered the gold standard for eval- uating therapeutic interventions, are used in some SIB schemes, such as the South Carolina SIB, to establish effectiveness by comparing the outcomes for a group which receives an intervention to those of a control group. RCTs have been identified as ethically problematic in medical trials, in particular where the control group is denied access to treatment even after its effectiveness has become evident to the service provider (Worrall 2008). SIBs may also generate harm by focusing on cost savings, which can also result in a denial of service to potentially vulnerable and needy individuals. As Tse & Warner (2018, 10) have argued, “tying SIB payments to special education can create a financial incentive to keep services away from children who need them”. Satz’s framework thus needs to be modified to take account of any denial of service to needy recipients that results from a requirement to demonstrate either effectiveness or cost savings by a SIB.

A further modification to the individual harm criterion is also required for cases where organization-level incentives may cause implicit harm by delivering interventions that provide only superficial or short-term benefits, rather than effecting fundamental social change. An organization may be willing to invest in interventions which attenu- ate negative effects on individuals of social needs without addressing the core social drivers of those needs. The long-term financial incentive of a business which depends on serving those who suffer from social deprivation is not to eliminate the root causes of that social deprivation, if this would undermine its business model. As Lake (2015) has argued, SIBs may fail to address the fundamental, structural problems relating to economic welfare and social inclusion:

> “Most disadvantaged in the resulting policy practice are the client-recipients of the behavioral interventions provided through the policy mechanism, whose behavioral fail- ures are targeted as the problem to be rectified while the underlying structural and institutional determinants of life chances in a financialized society remain intact.” (Lake 2016, 15)

In the case of the NYC Able SIB, for example, the use of MRT to reduce reoffending rates focused on the moral and psychological failings of the individual prisoner and did not address the broader economic and sociological factors which may have driven the behaviours observed. The intervention may thus be viewed as a distraction from the real work needed to alleviate the social problems that stem from economic and social inequality. The individual harm criterion thus also needs to be modified to take into account the incentive of investors to maintain the socio-economic status quo.

3.4. The societal harm criterion

Satz argues that harmful outcomes for society will result if the market shapes indivi- duals' preferences or capacities in a way that is detrimental to social welfare in the future. Satz's societal harm criterion requires modification for a SIB setting to reflect the fact that a SIB may be classified as unethical if it harms society by prioritising short term objectives at the expense of long-term social welfare (Lake 2015), even if this prioritization confers an improvement in short-term welfare. In addition, SIBs may cause structural harm to a community by financializing social care and transferring resources away from the local authority without securing future funding in exchange.

The marketization of certain services may lead to unethical outcomes if long-term incentives of private investors are inconsistent with long-term societal objectives. In healthcare and prisons for example, markets will viewed as noxious if commercial investors take legal, yet unethical, actions to generate shareholder value. SIBs have been likened to private prisons in the US (Baliga 2013) and some scholars have argued that private providers have lobbied for increased rates of incarceration and the length- ening of custodial sentences (Sarabi and Bender 2000) while others are more agnostic about the direction of causality but acknowledge the "incarceration binge" in the US that accompanied the rise in private prisons (Selman and Leighton 2010).

The fact that SIBs have allowed investors and intermediaries from the private sector to dictate some elements of care delivery, in particular, performance management, raises a concern about the possibility of SIBs generating societal harm. The UK government explicitly acknowledges the need for investors to control the delivery of a SIB because of the risk they are bearing and has suggested various ways this can be achieved, such as taking a seat on the board of the service delivery provider or "replacing providers if outcomes aren't being achieved" (HM Government 2012). The potential for the privatisation of social care provision raises potential ethical concerns due to the divergent interests of state and for-profit organizations.

In order to assess the extent to which societal harm may result from SIBs, it is necessary to be aware of the trade-off between the long-term costs and benefits of SIBs for local communities. Financialization of social care offers potential benefits to local government, such as establishing future funding opportunities for certain care priorities. However, in some cases financialization may result in the exploitative use of local resources with no compensating benefits. The likely impact of a SIB on long term societal outcomes will depend on the relative bargaining power of local authorities and external financial stakeholders, and also on the localized political setting. As Shortall and Warner (2010) have argued, in European contexts, social inclusion is viewed as an important goal whereas, in the US, "social inclusion has no currency in policy debates" and a focus on economic competitiveness is paramount. Different outcomes of financialization of social care provision would be expected in these different political settings, some of which may cause societal harm.

Even within the US, the extent to which financialization through SIBs exploits local communities or enables them to achieve long term goals may vary between different settings as shown for the case of US early childcare SIBs (Tse and Warner 2018). In that study, the authors highlight the different outcomes observed for three SIBs in South Carolina, Utah and Chicago, which they attribute to the local political setting. In the Utah SIB, state legislation capped the return to the investors, thereby limiting possible financial exploitation although the evaluation metrics were never- theless criticized (Popper, 2015). By contrast, the Chicago SIB did not cap the return and in fact structured returns to the investor over a much longer term than for the other two SIBs, thereby dramatically increasing the transfer of wealth from the local community to the investors. Finally, it was shown that the South Carolina SIB was able to advance social inclusion through the use of a rural outreach program, thereby generating social welfare gains for the local community. These varied outcomes for long term social welfare were shaped by the political setting.

The evidence from SIBs suggests that Satz's societal harm criterion needs to be extended to accommodate the long-term benefits and costs to local communities associated with the financialization of social care, taking into account the extent to which the political and institutional setting will affect the risk of exploitation. SIBs risk causing societal harm when the dominant local discourse is economic and local commissioners fail to obtain long-term benefits for the community, such as funding opportunities. The increasing use of SIBs in these types of contexts also risks perpetuating and reinforcing an economic discourse at the expense of a focus on civil society values. Thus, the modification required for the application of Satz's societal harm criterion to SIBs is an acknowledgement of the subtle and different ways in which a SIB can generate welfare and the relevance of the political and institutional context in which the SIB is located.

3.5. A modified framework for the ethical evaluation of SIBs

Having proposed a number of significant modifications of Satz's criteria, I now summarise the revised ethical framework for SIBs in Table 1 below.

Table 1. Conditions for noxious markets for social care using SIBs (Satz's conditions as given in her Table 1 (Satz 2010 98).

	Satz's original conditions for a noxious market (quoted verbatim)	Revised conditions for noxious SIBs
Market characteristics	Information asymmetry criterion (agency) • Inadequate information about the nature of and/or consequences of a market; others enter the market on one's behalf.	Informational failure: • Some subjects within these multi-party schemes are not informed of: ○ The likely effectiveness of the intervention (or may not be cognitively capable of understanding it). ○ The existence of a financial incentive for investors and commissioners in the SIB (except where this is necessary for the success of the intervention which ultimately benefits subjects or future subjects.)
	Power imbalance criterion (vulnerability) • Markets in a desperately needed good with limited suppliers • Markets with origins in poverty and destitution • Markets whose participants have unequal needs for goods being exchanged	Vulnerability of participants: • Vulnerable subjects have no voice in the content of an intervention and/or their participation in it. • Financial incentives result in the unethical treatment of subjects. • Unfair contracting due to the stronger financial skills of private investors or commissioners.
Market outcomes	Individual harm criterion • Produces destitution • Produces harm to the basic welfare and/or agency interests of the individual	Harm to vulnerable subjects: • A focus on contractual requirements is prioritized over the needs of subjects. • Investors' and commissioners' requirement to demonstrate effectiveness results in a denial of service (due to RCTs or a focus on cost-saving). • Investor reluctance to change the status quo for financial reasons leads to superficial or short-term interventions that ignore the ultimate causes of social problems.
	Societal harm criterion • Promotes servility and dependence • Undermines democratic governance • Undermines other regarding motivations	Negative welfare effects of financialization: • Transfer of resources to the private sector without achieving long-term community goals. • Political/contextual factors affect the likelihood of negative consequences of financialization.

The existence of any of these conditions would, I argue, render a SIB market unethical. A failure of agency (informational asymmetry) can occur where subjects cannot be fully informed about the effectiveness of a therapy or the financial incentives of other parties. The marketization of social care also risks being unethical if the financial benefits of the SIB to investors and service providers conflict with actions that serve the needs of vulnerable subjects. If an imbalance exists between the service provider and client, subjects may not be capable of giving informed consent and have no voice in the process in which they are participating. Alternatively, unethical consequences may arise due to a power imbalance between investors and commissioners if their experience and skills in structuring contracts differ resulting in potentially unfair contracts.

In terms of market outcomes, harm to individuals may result from financial incentives that are at odds with the needs of subjects. In addition, an unethical transfer of resources from the commissioner to the external investor may arise if the SIB inter- vention is superficial and fails to address the societal drivers of social problems. In other cases, resources may be extracted by private investors where SIBs fail to achieve the objectives of local communities such as long-term financing (Tse and Warner 2018).

The revised ethical framework for SIBs sets out the potential ethical pitfalls which must be avoided if SIB contracts are to provide a way to address the ethics of markets for social care. If any of these conditions exists, the market cannot be ethical in principle. However, even ensuring that none of these criteria is met does not guarantee a SIB market that is free of ethical problems.

4. The ethics of markets versus the ethics in markets

Unethical practices can be observed even in SIB markets which are ethical, which include the 'gaming' of results and failing to seek informed consent when it is possible to do so. The provision of misleading information or gaming in order to demonstrate effectiveness has been identified as a recurrent problem in SIBs (Lowe and Wilson 2015). A recent OECD report into SIBs stated: "There is a fear that this strong focus on results can change the public service ethos or lead to a narrow mechanical determinism in service delivery. It may be possible to game the results by selecting clients that are easiest to reach ('cream skimming') while leaving those that would be most expensive without service ('parking')" (OECD 2016,16 paragraph 47). Although the report found no evidence of such gaming activity in the two SIBs it analysed (one of which was the Peterborough SIB), it acknowledged that placing incentives on social organisations to demonstrate the achievement of specific targets might have unwanted consequences, since "[f]ocusing too much on narrow metrics may lead to unintended consequences and gaming in fields where cooperation and holistic approaches may be required" (20). As discussed earlier, the Utah pre-school education SIB paid the investor for reductions to the number of children requiring special needs services, but it has been claimed subsequently that the predicted levels of special needs requirements were initially overstated, thereby generating an unethical return for the investor (Popper 2015). Furthermore, the use of binary outcome measures rather than frequency measures (that are preferred by clinicians) has been highlighted as a dishonest way of demonstrating higher effectiveness (McHugh et al. 2013).

A second problem of unethical actions in markets arises if service providers fail to obtain informed consent when it would be possible to do so. For some subjects, it may not be possible to obtain informed consent directly because of their age or cognitive ability, but an alternative is to seek approval of an adult carer before a child is enrolled into an intervention group. In the UK DWP Innovation Fund SIB, the selection of subjects aged between 14 and 15 years took place within a school environ- ment. Recognizing that under-age subjects may not have been sufficiently knowledge- able about the effects of the intervention and given the power imbalance between teachers and students, a report evaluating the Innovation Fund SIB states:

"It was also clear that the school context assisted recruitment onto some projects because it was able somewhat to blur the voluntary nature of the programme." (Insite Research and Consulting 2014, 42)

The decision to "blur" the voluntary nature of the project is problematic with respect to the requirement that informed consent should be obtained. The report then continues by citing a delivery manager who states:

> "The letter that the schools send out to parents . . . it's about 'your child has been chosen to take part in this exciting programme' . . . it's what is called implied consent – if they don't come back and say 'no' then we go ahead . . ." (ibid, page 42)

This interview data from the Insite report demonstrates that explicit consent from children or their parents was not always obtained.

Gaming and the failure to obtain informed consent are not necessary consequences of the marketization of care and do not in principle undermine the use of SIBs to deliver social care, but if they go unchecked, they will result in the SIB being unethical in practice. This failure of ethics in markets, can potentially be addressed through con- tractual means or through regulation to improve the quality and reliability of outcomes reporting.

5. Conclusion

SIBs offer a tantalising opportunity for generating improvements in the allocational and operational efficiency of social care provision and can in principle transfer financial risk to private sector investors, yet they also raise significant ethical concerns. Using a consequentialist approach which draws on work by Satz (2010) on noxious markets, I developed a framework for evaluating the ethics of marketized social care using SIBs. This evaluative framework was informed by evidence from SIBs in the UK and US that have addressed issues of recidivism, education, homelessness, and healthcare. All four criteria contained in Satz's original framework for evaluating the ethics of markets were modified to render them applicable to SIBs.

I argued that SIB markets are not unethical in principle, but that many SIBs are nevertheless at high risk of being unethical because they are characterised by informa- tion asymmetries, power imbalances and financial incentive structures, any of which can lead to a failure of informed consent, poor decision-making by vulnerable indivi- duals, unfair contractual arrangements or a denial of service. In the longer term, unfair bargaining power between local authorities and investors may result in the extraction of local resources without compensating future benefits such as increased revenue streams. These long-term outcomes will be influenced by variations in the political and cultural contexts in which the SIB operates. A trade-off thus exists between the benefits conferred by SIBs and the inherent risk that they will lead to noxious markets for social care. Requiring formal oversight of SIBs and demanding public accountability by investors, commissioners and service providers may provide a means of alleviating some of these ethical concerns, although the risk that SIBs generate societal harm is particularly difficult to address. Future research could helpfully address the question of how best to regulate SIBs to minimise the risk that they are unethical.

I also acknowledged that, even when markets for social care are ethical in principle, some SIB participants may nevertheless engage in practices which are unethical, such as the gaming of results and the failure to comply with requirements for obtaining informed consent. These practices, I argued, do not necessarily undermine the ethical status of the market overall and should be addressed through contractual or regulatory measures to re-align the incentives of the different parties and improve accountability to all stakeholders.

The SIB market is still relatively undeveloped, and it is to be expected that more sophisticated forms of SIBs will soon emerge. Future research could usefully refine the framework developed here to incorporate new issues that arise as the SIB market matures and to reflect the specificities of the geographical and political contexts in which a SIB operates.

Notes

1. It should be noted, however, that at least 3 UK SIBs have been funded by the provider organisation and have received no upfront external investment (Floyd 2017, 5, footnote 22).
2. Many subtle distinctions exist between different versions of consequentialism in the literature; however, for the purposes of this paper, these subtleties can be ignored as my

intention is to simply use the relatively straightforward cost-benefit analysis employed by advocates of SIBs to reflect upon the value of SIBs themselves as a method for achieving public policy objectives in general.

3. Urban Institute (2013). https://pfs.urban.org/pfs-project-fact-sheets/content/nyc-able-project-incarcerated-youth.
4. http://bssec.org.uk/wp-content/uploads/2011/03/SF_Peterborough_SIB1.pdf.
5. https://payforsuccess.org/project/nyc-able-project-incarcerated-youth.
6. https://payforsuccess.org/project/new-york-state-increasing-employment-and-improving-public-safety#.

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Appendix

SIBs referenced

Area
Youth offending
Youth offending
Youth offending Education/employment Youth employment Youth homelessness Education
Education
Education
Social Prescribing

Country Name

UK Peterborough One Service US NYC Able (Riker’s Island)
US Mass Juvenile Justice (2014) UK DWP Innovation Fund

US NY Increasing Employment and Improving Public Safety UK UK: air Chance Fund
US School Readiness Initiative (Utah)
US Child-parent center pay for success (Chicago)

US Nurse-family partnership pay for success (South Carolina) UK Ways to Wellness