

Legitimate concerns: On complications of identity in school punishment

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Abstract

In the present unjust context of US schools, many educators face uncertainty about the legitimacy of their issuing punishments, especially when their identity meaningfully differs from that of their students. In this article, we address these doubts by acknowledging distinctive elements of schools to provide helpful distinctions and analyses of the legitimacy of punishments within them. Specifically, we interrogate the role that identity categories such as race and gender play in establishing legitimate punishment within schools, with a particular focus on the case of Black girls attending US schools. We offer a taxonomy of legitimate responses to undesired student behavior, arguing that a particular person in their role within a school might lack legitimacy to punish based upon their identity even while other, related yet more nuanced, behavioral responses remain. In this work, we aim to equip educators with tools to better navigate the options available to them and better understand the significance of their actions in response to student behavior.

Keywords

Identity, legitimacy, legitimate punishment, punishment, school punishment, teachers

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Introduction/overview

Educators are tasked with responding to student behavior for a myriad of reasons, including but not limited to moral education of students, maintaining safety, and creating an environment conducive to learning. While educators have a variety of responses from which to choose (e.g. redirecting students' attention and identifying an unmet need), punishment stands as an often invoked yet potentially fraught enterprise in schools. Given the present unjust context of US schools, many educators face uncertainty about the legitimacy of punishment and related activities issued from them in their hierarchical institutional roles, especially when their identity differs from that of their students. In this article, we address these doubts by asking how legitimacy ought to be understood in the potential activities of punishment, that is, if punishment is an acceptable response to student behavior in schools, what helpful distinctions and analyses of its practice might contribute to greater confidence in its legitimacy? In this work, we acknowledge distinctive elements of schools. Punishment is often used when a student has violated a school's standards of safety and morality, leading an educator to aim at teaching the student a moral lesson through the experience of that punishment. As such, we consider how morally educative forms of punishment might further complicate an analysis of such legitimacy.¹ We interrogate the role that identity categories such as race and gender play in establishing legitimate punishment within schools; in this, we provide a particular focus on the case of Black girls attending US schools. Drawing on Tommie Shelby's (2016) account of distinctions in legitimacy to punish in an unjust society and Jane Mansbridge's (1999) work on the legitimacy of descriptive representation, we offer a taxonomy of legitimate responses, arguing that a particular person in their role within a school might lack legitimacy to punish based upon their identity even while other, related yet more nuanced, behavioral responses remain. In this, we aim to equip educators with tools to better navigate the options available to them and better understand the significance of their actions in response to student behavior.

We seek to take into account the profoundly non-ideal circumstances in which schools and students find themselves. It is no secret that US schools suffer from a plethora of ills that stand to impede their educational mission. These might include funding cuts, teacher shortages, high teacher turnover, and students who are several years below the grade level, to name a few. These conditions are exacerbated in contexts stricken by immense poverty, which happen to be disproportionately populated by Black and Latinx children. Communities within this context are surveilled and criminalized in ways that affect students' schooling experiences (Ferguson, 2000; Morris, 2016; Rios, 2011). While issues of identity and punishment are likely to arise across many educational contexts, we focus on the particular circumstances of Black girls in US schools while suggesting that much of our argument applies to other contexts and identities (e.g. religion, class, sexual orientation). We focus our argument on the case of Black girls in US schools because empirical evidence suggests that they face a series of unjust circumstances that make identity particularly salient to issues of punishment. Given the overwhelmingly White and female US teaching force (Department of Education, 2016; IES, 2019) and the re-segregation of US schools (McNeal, 2009), Black girls are likely to attend schools with high proportions of Black and Latinx students and are unlikely to have a shared race and gender

identity with their teachers (Albert Shanker Institute, 2015). Moreover, qualitative and quantitative research demonstrates that Black girls experience both racism and sexism in school discipline and, because of their intersecting identities, are subject to harsh and unequal treatment in schools, including the criminalization of their appearance (Crenshaw et al., 2015; Morris, 2016; Wallace et al., 2008; Wun, 2016). Together, this research suggests that Black girls may have particular cause to question the legitimacy of punishment in the schools they attend and the role of identity therein. To be clear, our analysis uses these particular circumstances to inform a broader understanding of punishment in school contexts with histories of enduring power hierarchies contingent upon identities (e.g. race and gender). As such, it should not be assumed that all school punishment across identity groups should be analyzed in these ways or that these analyses can necessarily be reciprocally applied to any specific pairing of identities.² The context of the enduring power hierarchies experienced by Black girls is salient to our analysis, such that other applications must be similarly aware of context and power.

In what follows, we seek to ease educator uncertainty about the potential legitimacy of school punishments by developing a taxonomy of legitimate responses to student behavior. As this taxonomy draws on an account of state punishment, we then outline the role of punishment in unreasonably unjust³ educational settings. Subsequently, we consider the interplay between identity and legitimacy to discuss identity-based reasons why particular school actors might lack legitimacy to punish, suggesting what these educational agents might do in response within unreasonably unjust educational settings. Finally, we conclude by synthesizing our claims and pointing to potential recommendations for policy to remedy the breakdown in legitimacy to punish in schools.

A general analysis of punishment in an unreasonably unjust society

Acknowledging that punishment, as a means for behavior modification and moral education, has long played a prominent role in educational settings (Rousmaniere et al., 2013), we consider the ways in which these and related abiding responses to behavior deserve nuanced analyses within the non-ideal contexts of contemporary US schools. Given this, we deem it useful to draw from work theorizing non-ideal societal factors. For this reason, in this section, we draw heavily from Tommie Shelby's attentive analysis of punishment in non-ideal, unjust circumstances as it stands to offer nuanced resources for analyzing the particular contexts of the schools we wish to explore (i.e. those that educate and punish Black girls in the United States). In what follows, we will explore this existing general analysis of legitimate punishment under unreasonably unjust institutional circumstances, expand that analysis to the specific contexts of legitimate punishment in schools (as a specific institutional type), and offer a fuller taxonomic statement of the necessary criteria for this and other related responses.

As part of a larger project on the non-ideal circumstances of 'dark ghettos', with an intersectional understanding of locations in which poor Blacks bear the burdens of disadvantages which compound according to gender, and other identity category types, Shelby's work defends the view that some unreasonably unjust institutions (e.g. states) might, nonetheless, legitimately issue punishments, provided they meet some necessary

criteria. Attending to the specific circumstances of unreasonably unjust states which might serve as a classic institutional model upon which further analysis can be built, it might be sensible to regard punishment as a condemnatory form of hard treatment issued in response to breach of a rule. As such, two criteria of legitimacy for such punishment deserve attention: the *authority to punish* and the *moral standing to condemn*.

Shelby defines the authority to punish by stating that an institution possesses this authority if it has the right to be obeyed (i.e. *legitimate authority*) and/or is enforcing a freestanding (i.e. freestanding in that it does not depend only upon the state's authority) moral right (i.e. *justifiable enforcement legitimacy*).⁴ Legitimate authority can be observed in situations in which the state institution has a status which allows it to create and demand compliance to laws, with punishment as an extension of that activity. Justifiable enforcement legitimacy, on the other hand, derives authority from moral rights. In such cases, the state has the authority to enforce laws and pursue punishment in the service of maintaining standards of safety and morality. It is worth noting that, in either case, possession of the authority to punish is not, by itself, sufficient for legitimacy in punishment; an institution with such authority may illegitimately exercise its power or may issue hard treatment that does not meet the definition of punishment (e.g. putting an individual with a contagious disease into quarantine). One might also note that the authority to punish inheres in the *office* or *role* inhabited by the person exacting punishment, rather than in the personal specificities of the *individual* occupying that role. We will explore this distinction more thoroughly in section 'Identity matters'.

In addition to the authority to punish, Shelby defines the necessary criterion of moral standing to condemn as a discrete tributary of legitimacy in punishment. In situations in which a person commits acts in defiance of either the legitimate authority of the institution or a freestanding moral right, an institution has the moral standing to condemn, that is, to 'call people to explain, justify, or accept responsibility' (p. 238), when it has sufficiently demonstrated its allegiance to moral standards of justice for the persons under its jurisdiction. Under this view, condemnation is a necessary component of legitimate punishment as it provides a centrally important symbolic value: it communicates warranted moral criticism and disapproval. Importantly, to the extent that punishments must be condemnatory, a punishment issued without moral standing to condemn falls short of the standards of legitimate punishment.

To be clear, these criteria of legitimate punishment (i.e. forms of authority and standing) do not always coincide with one another, and the particular arrangement of their presence or absence might result in distinct options for legitimate punishment. For example, under ideal circumstances, a state with legitimate authority over its subjects might be able to condemn (thereby communicating warranted moral disapproval of) those who commit acts that challenge its rules. In this way, it achieves legitimate punishment. But in non-ideal cases, the institution of the state often cannot rely upon the existence of such legitimate authority. An institution might lack *legitimate authority* as a result of, say, its failure to secure reasonably just arrangements. In other words, the state may not possess this default form of legitimate authority (i.e. the right to be obeyed) to punish its constituents if it has, for some reason, failed to provide social conditions in alignment with the demands of a just social structure. That said, a state may still possess the moral and legal ability to *justifiably enforce legitimate* punishment upon those who breach freestanding

moral standards. Stated differently, even though an institution might not have the moral standing to censure a moral breach on the basis of that infraction representing a defiance of its authority (i.e. its right to be obeyed), it may nonetheless condemn the act as an offense to the moral order, so long as it is not also guilty of sufficiently similar moral offenses. In this way, a state institution under non-ideal circumstances might still achieve legitimate punishment.⁵

This general analysis of punishment provides a fine foundation upon which to address the specific features of legitimate punishment in school settings marked by unjust conditions.

Toward specific analysis of punishment in unreasonably unjust schools

On the basis of the general analysis of punishment within unjust social institutions provided within the existing literature as presented above, we now extend that focus toward the situations of specific *educational* institutions (i.e. schools) that have failed to prevent an unreasonable level of injustice in their structures. On our account, these schools as arms of the state are partially complicit in broader societal failings vis-à-vis preventing unreasonable levels of injustice. Therefore, we ask how the animating mission and various specific features of these institutions might require additional complications to the general analysis of criteria for legitimate punishment under unjust circumstances. That is, to what degree is it right to think that these educational institutions have features that cannot be satisfactorily represented within the general institutional account? This analytic extension and the taxonomic criteria it offers may do much to assist in easing uncertainties regarding legitimacy of educator-initiated punishment in schools.

Before turning to this query, we wish to demarcate three features of the scope of our specific attention to educational institutions: (a) institutional type, (b) institutional effects, and (c) institutional essence.

First, in what follows we focus on those *schools* that might be understood as unreasonably unjust educational institutions. In so doing, we fully acknowledge that further work might be done to address the other types of educational institutions and/or broader organizational context within which individual schools are positioned. That stated, we begin our present analysis with a focus on schools, as they are a readily identifiable site within these larger educational institutional structures. We welcome future work that might, indeed, continue this analysis beyond the school level.

Second, in identifying schools as educational institutions that have failed to do what they can to prevent an unreasonable level of injustice through their structures, we acknowledge that these schools might be identified by one of at least two interpretations of that designation. Under an 'internally focused' interpretation, schools are causally complicit in the existence of injustices within them. Under an 'externally focused' interpretation, schools are causally complicit in the existence of injustices in the broader society. We believe the analysis we offer below to be open to either interpretation and, as such, we do not intend to either elevate interpretation or endorse the necessary equality of both. Rather, we wish only to use the designation to identify schools that are sufficiently morally

imperfect institutions (however that might be construed) and, by so doing, attend to unique criteria for legitimate punishment within them.

Finally, as schools primarily serve an essentially educative mission, our analysis will focus on educative dimensions of punishment within these institutions. As such, our analysis attends to the use of punishment as a means of teaching a student a given moral lesson through the experience of that punishment.

Schools surely do more than only educative work. In considering the vast amount of activity conducted within them, it might be argued that a significant portion of those proceedings serves rather little explicit educative value. If true, this might suggest that much of the punishment occurring within schools has a rather similar character to that of punishments occurring elsewhere, but we see little reason, *ceteris paribus*, why that fact would necessitate an extension of the general analysis of punishment. For instance, if a state-run school engages in non-educative forms of punishments, the school is, in effect, acting as an arm of the state, punishing students as subjects of the same. Although these instances certainly have nuance and value (e.g. of interest might be questions of whether a school can serve as a legitimate arm of state action in punishing subjects and questions of whether the legitimate punishment of students who are children/minors should be determined by these or other criteria), they are largely explained by the general analysis as presented above. Far more interesting to us is the potential unity of the particular educative mission of schools and the particular educative dimension of punishment.

In focusing on this educative character of punishment, we aim to begin sketching (but do not herein provide a full statement of) a view of punishment that might sit alongside other accounts (Duff, 2001; Feinberg, 1965; Shelby, 2016).⁶ Our educative account might align most readily with Howard's (2017) view of punishment as moral fortification. Howard's account of punishment suggests that the activity aims to impart some content to the recipient, thereby improving their relative status as a capable moral agent. We understand an educative view of punishment to require that a moral lesson be *taught* but not to mandate that one come to personal regret and/or a broader repair to the injured community by having learned the lesson (Hampton, 1984). As such, we regard as educative all forms of punishment that visit hard treatment upon relevant and appropriate parties for the central purpose of contributing to their improved status as capable moral agents.⁷

Having delineated the areas of our concern, we now turn to the central question driving the remainder of this article: within the unjust contexts of the schools identified, what criteria must be present for morally educative punishment to be legitimate?

We extend two elements of the general analysis of legitimate punishment within unjust institutions and offer an educational addition to these criteria. As such, we address the following: (a) Authority to punish within schools, (b) Moral standing to condemn (in the service of punishment) within schools, and (c) Educational license to punish within school.

In what follows, we discuss each of these criteria before addressing a major concern and detailing applications of this analysis.

Criterion 1: Authority to punish within schools

Features of the general account of an institution's authority to punish can be extended to schools. In this way, a school has the authority to punish its students if it (a) has the right

to be obeyed by its students (i.e. *legitimate authority*) and/or (b) is enforcing a freestanding (from the schools presumed authority to be obeyed) moral right (i.e. *justifiable enforcement legitimacy*) within its realm of influence. In showing how this general account might be applied to school contexts, we offer two examples of reasonable, though not universally accepted, claims that align with this criterion's description.

For example, a school might claim legitimate authority to punish insofar as it is acting as a representative of the guardian(s) of the student. This argument regarding legitimate authority does not stem from, say, the school's (potential) status as a representative of the state or other of the criteria to be explicated below. More simply, the school, by the widely invoked principle of *in loco parentis*, may simply be interpreted as having a relationship with the student that requires it to act in pursuit of the student's needs and, by measure of the degree to which it does so, the school might have a corresponding right to be obeyed by the student, with the right to issue some forms of hard treatment entailed under that broader right to obedience.⁸

Somewhat similarly, a school might be interpreted as having a justifiable enforcement legitimacy that does not hinge upon its special status as an actor to be obeyed but as a protector of those within its care. For example, even if it has inadequately provided care for the needs of a student (and therefore might not be able to offer an *in loco parentis*-derived argument for a right to be obeyed by the student), it might, arguably, justifiably visit hard treatment upon the student if doing so is the only way to prevent the student from significantly harming others in the school (for whom the school is, presumably, attempting to honor its purported responsibilities of care).

Criterion 2: Moral standing to condemn (in the service of punishment) within schools

As above, we suggest that the general institutional analysis is quite helpful in identifying the broad features of this criterion, with some specific nuances required for application within schools. In general, an institution, and those acting on its behalf through their roles, has the moral standing to condemn through punishment when it demonstrates its allegiance to moral standards of justice for those under its jurisdiction.

As such, many of the schools of our focus (see above) seem to lack the moral standing to condemn through punishment. That is, insofar as schools have failed to prevent an unreasonable level of injustice through their structures, they have also failed to demonstrate allegiance to moral standards of justice for their students. When such schools attempt to punish, their students often point to the hypocrisy of those actions, balking at the hard treatment offered, as it constitutes further insult to existing injury. Given the educative essence of schools, this lack of moral standing to condemn is especially regrettable as a student's experience of well-applied condemnation might be an important pedagogical tool, insofar as punishment is aimed at shaping and potentially strengthening their moral sensibilities.

Criterion 3: Educational license to punish within schools

As schools have an essentially educative essence, we wish to suggest that punishments (and other potential activities within schools) ought to cohere with this essential aim. As

introduced above, we understand punishment to have an educative dimension that may well be salient for questions of legitimacy of punishment within schools (*qua* educational institutions). In short, this is to suggest that schools act most legitimately in punishing students when they do so in reference to a legitimate educational license.⁹

On our view, a school has a license to educate when it (a) exists in appropriate formal relationship with its students and (b) can, in good faith, teach only content it regards as worthy (i.e. true/valuable). When invoked in good faith (i.e. toward ends that align with this worthy content), this general account of educational license can also justify some forms of hard treatment of students, serving as a criterion for legitimate educative punishment in schools.

- (a) The subjects of hard treatment via educative forms of punishment most legitimate for schools should be restricted to those persons with whom the school has a formal educational relationship. While schools may have other reasons for visiting hard treatment upon ‘non-student’ persons (e.g. arguably in pursuit of the previously discussed responsibility of care for the needs of its students), they have little defensible grounds for appeal to their educational license in this activity. A school ought to seek to educate only those persons in proper educational relation to it. Schools cannot, for instance, claim as legitimate educative punishment the hard treatment of former students, parents of current students, or unaffiliated citizens. In some sense, doing so would be an overreach as the institution has insufficient license to act on these persons in educational ways.
- (b) These instances of educative hard treatment ought to aim at teaching content that the school regards as worthy. That is, the school cannot invoke educational license to legitimize punishing students in bad faith. A school has improperly invoked its educational license to punish if it punishes with, *inter alia*, no educative content, content it does not believe to have value and/or contain truth, content it knows to have no value and/or contain no truth, and so on.

Interestingly for our present purposes, these examples suggest limits to invocations of this dimension of educational license, namely, that schools and teachers not invoke an educational license to teach content in bad faith. In summary, we hold that, if it regards the curricular content as worthy, a school does not necessarily act in bad faith when it aims to teach a set of values that it has failed to enact. That is, schools might truly endorse the worthiness of, say, a moral standard that they fail to attain and, owed to their educational license exercised in good faith, have some legitimate justification for teaching that moral standard to their students.¹⁰

Complex criteria of educative responses?

The application of these criteria is a complex matter. For example, even if a school might in good faith invoke an educational license (Criterion 3) to teach those moral standards it has not itself achieved, such a school, by virtue of the same failing, lacks the moral standing to condemn (Criterion 2) students for similar shortcomings, such that the legitimacy of punishment for this particular issue within schools may be questioned. We assert

and further analyze below that such cases may result in a special form of *penalty* rather than punishment.

In such cases, we argue that an educational license can be invoked by these schools to justify their performing *as if* they have a ‘moral standing to condemn’. Insofar as this is enacted by a source of authority in the service of improving the circumstances of justice (e.g. by pursuing moral educational aims), our view is that ‘performative condemnation’ is a special option available within educational contexts. That is to say, to the extent that those schools lacking ‘moral standing to condemn’ might also have an educational license to educate students toward greater endorsement of moral requirements, they may, as an educational strategy, legitimately act in ‘performative condemnation’, given the pedagogical power of a student’s experience of well-applied moral ‘condemnation’ of the infraction. That is, when the moral standing to engage in condemnation is unavailable, its educational variant might be invoked. In these cases, when coupled with the authority to issue the forms of hard treatment usually reserved for punishment, an *educative penalty* might be issued by a source of authority.

In general philosophical analyses, the distinction between punishment and penalty hinges upon moral condemnation (Feinberg, 1965; Spjut, 1985). Broadly construed, legitimate punishment is possible for moral infractions; legitimate penalties can be understood as more minimal (in the sense that condemnation is absent) responses to infractions lacking some or another moral status. A penalty can mandate hard treatment without also condemning the recipient and/or her actions.¹¹

If the schools described above cannot legitimately engage in educative punishment of moral infractions due to an absence of Criterion 2, perhaps their ability to issue penalties, distinct from condemnation laced punishments, for these moral breaches deserves attention – especially if such penalties have the potential to be educational.

For example, under circumstances in which only Criteria 1 and 3 are met, a school might express performative condemnation of a student’s behavior, say, harming another student, even as the school recognizes that it also harms students in various ways (e.g. via discriminatory forms of tracking and standardized testing) and, therefore, lacks the requisite moral standing to condemn such acts. Performative condemnation allows schools to legitimately issue *educative penalty* (i.e. morally formative hard treatment that only mimics the condemnatory features of true punishment) in pursuit of their distinctive aims. Without the ability to utilize this special option, many unreasonably unjust schools would be otherwise unable to perform important moral educational work even when educative hard treatment adjacent to punishment could be productive for justice aims. From our view, this might be too heavy a toll placed on the efficacy of imperfect schools.

In closing this section of our analysis, it may be helpful to catalog a rough taxonomy of the response options possible, according to the presence of various legitimacy criteria:¹²

Legitimate general (i.e., without an educative focus) *punishment in schools*:

This response is available when Criteria 1 (i.e., either form of authority to punish in schools) and 2 (i.e., moral standing to condemn within schools) are present. This response does not attend to the special educational character of schools, though education may incidentally occur;

many standard institutional accounts of legitimate forms of punishment will apply to this option of response. As such (and as stated above), this response is a form of punishment in schools that we will not analyze in great detail.

Legitimate educative penalty in schools:

This response is available when Criteria 1 (i.e., either form of authority to punish in schools) and 3 (i.e., educational license) are present. This imperfect response attends to the special educational character of schools and, by performative condemnation, attempts to mimic otherwise unavailable morally educationally useful reactions to students' behavior.

Legitimate educative punishment in schools:

This response is available when Criteria 1 (i.e., either form of authority to punish in schools), 2 (i.e., moral standing to condemn within schools), and 3 (i.e., educational license) are present. This response attends to the special educational character of schools; it is sensitive to issues unaddressed in standard accounts of legitimate forms of punishment. As such, it is the legitimate form of punishment in schools that most realizes the aims of schools and punishment in a justifiably integrated manner.

In identifying this taxonomy of possible responses, we offer the beginnings of a useful guide for educators in their role as representatives of schools who are uncertain of what activities they may legitimately pursue. This taxonomy might also serve as a rough classification system for educators to review their past responses to student behavior (e.g. demonstrating why a previous response attempting authentic moral condemnation was inappropriate). We note, however, that the above analysis focuses upon schools as institutions in possession of legitimacy status and, to the degree that it might identify individual persons as actors within these structures, might recognize individual persons only in their roles as representative of the institutions. In the following section, we discuss why this might be unsatisfying when expressing these institutional criteria via individual educators and provide further important conceptual extensions for refined analysis of legitimate punishment within unreasonably unjust schools.

Identity matters

In analysis of general patterns of legitimacy of rule, Mansbridge (1999) offers an identity-sensitive account of why an individual person in their institutional role might not be able to access the fullest degree of legitimacy (or the perception of it) available to occupants of their role.¹³ Applied to school punishment, this analysis adds further nuance to the taxonomy offered in the previous section. Thus far, our analysis has focused upon institutional legitimacy. In this section, we consider how this analysis is complicated when considering individual persons who are acting in institutional roles.

To wit, Mansbridge's identity-sensitive account of legitimacy contends that identity indeed matters to the legitimacy of rule. Through her normative account of descriptive representation in the political sphere, she suggests that disadvantaged groups may have particularly acute reasons to desire 'descriptive representatives', or 'individuals who in

their own backgrounds mirror some of the more frequent experiences and outward manifestations of belonging to the group' (p. 628). For example, under a scheme of descriptive representation, a woman legislator represents women constituents; a Muslim legislator represents Muslim constituents. This identity-sensitive account of legitimacy is careful to note that descriptive representation should resist essentialism by stressing the contingency of such representation on historical context that would lead descriptive representatives to substantively represent constituents' interests. Furthermore, this account suggests that such representation need not manifest itself in outward appearance but could also be based in shared experience (e.g. religious affiliation, shared rural identity).

Mansbridge's analysis offers several ways in which identity matters to descriptive representation, including, but not limited to, the following: (a) *adequate communication*, (b) *social meaning*, and (c) *improved perceptions of the state's legitimacy in the face of past injustices*. In contexts in which one group has been historically dominant and another has been historically subordinate, descriptive representation can improve communication by mitigating arrogance on the part of the dominant group and distrust on the part of the subordinate group and lead to 'vertical communication' (p. 641) whereby groups with common experience share communication styles and bonds of trust. Because political issues often arise unexpectedly, and many politicians do not hold crystallized views on all issues, descriptive representation can improve deliberation by making it more likely that disadvantaged groups' substantive interests will be represented. Descriptive representation also holds social meaning and has the potential to increase the perception of, for example, women as capable of ruling when there are more women legislators in office. Finally, descriptive representation can improve the perceived legitimacy of the polity by making members of disadvantaged groups feel included in what they may view as a more democratically legitimate state.¹⁴

Although Mansbridge's identity-sensitive account of legitimacy attends to the political sphere, its core is salient for the relationship between group identity and punishment within schools. For example, Monique Morris's (2016) ethnographic research on the punishment of Black girls finds that Black girls were often censured for dress code violations (e.g. short skirts), while their White counterparts were not punished for wearing similar attire. Morris (2016) argues that this disproportionate punishment of Black girls' appearance is rooted in a history of racialized gender stereotypes that hypersexualizes Black girls, often as an avenue to their further mistreatment. Mansbridge's insights about identity and representation, we argue, apply to such disadvantaged students in schools, who are also often disadvantaged in relation to school punishment and descriptive representation among those punishing them.

In this section, we illustrate the importance of descriptive representation for legitimacy in school punishment using US examples with a focus on race and gender identities, given the relationship between such identities and the harsh and/or disproportionate receipt of school punishment in the United States (Crenshaw et al., 2015; Morris, 2016; Wun, 2016). To motivate and illustrate our claims, we focus on the case of Black girls' school punishment. In addition, we are sympathetic to Mansbridge's identity-sensitive account of legitimacy in the political arena and argue that much of the core of her argument applies to authority, standing, and license related to punishment in schools under

unjust conditions. In particular, we focus on three dimensions of the importance of identity in establishing legitimacy to punish in schools: (a) adequate communication, (b) social meaning, and (c) improved perceptions of legitimacy.

Insofar as punishment might aim at serving a morally educative function (i.e. meeting the criteria of *legitimate educative punishment in schools*), the educative impact of said punishment relies on its legibility to the recipient – in this case, the student. To avoid undue miscommunication between members of saliently different identity groups, descriptive representational authority ensures a greater likelihood that persons with relative fluency in shared communication standards are involved in crafting punishments meant to be educational. Such ease of communication could decrease the likelihood that punishment is perceived as unjust, making the punishment more legible to students as a moral lesson. Consider the example of a White teacher who admonishes a Black girl to ‘fix her face’ (or, to put it differently, ‘maintain a neutral facial expression’) after being reminded to sit up and pay attention in class. Given histories of White supremacy and slavery that, like other histories of domination, often breed ‘inattention, even arrogance, on the part of the dominant group’ (Mansbridge, 1999: 641), the white teacher might misread the student’s body language (i.e. the student actually *was* paying attention or the student’s facial reaction was not directed at the teacher). Moreover, given the historical and contemporary social marginalization of Black Americans, and Black girls in particular, the student might distrust the teacher and perceive her reprimand as unjust or discriminatory, regardless of the intention behind it. In contrast, imagine a Black teacher from the same community as the student telling this student to ‘fix her face’. Good reason exists to believe that the teacher’s tone of voice and/or shorthand communication, rooted in a shared history and group identity with the student, likely results in fluid communication and, perhaps, a sense of trust (Foster, 1997; Ware, 2002, 2006) As such, in that moment, the student might receive the correction in a manner not unlike their reception of correction from a loving family or community member (Hambacher et al., 2016). Because of this communication, the student is more likely to perceive the teacher’s redirection as educative and, perhaps, as rooted in a desire for the student to avoid expressing herself in ways that could negatively affect her school experience. In addition, correction from someone with a shared identity might also be received as identity-aware preparation for broader society. The Black teacher’s comment of ‘fix your face’ might be predicated on implied and explicit messages that communicate to students that their teacher, as a Black woman, knows what they will need to navigate an unjust world. In this way, the educative impact of the corrective response is more greatly optimized through the use of shared identity.

Descriptive representational authority also contributes to the social meaning of punishment as educative. For example, consider again the example of the white teacher telling a Black girl in her class to ‘fix her face’. Now, imagine that the teacher is a White woman and that every teacher the student interacts with and receives punishment from throughout the course of her school day is also a White woman. The student is rather likely to perceive this pattern as carrying social meaning, concluding, for example, that ‘Persons with these characteristics (i.e. white women) have authority to regulate the bodily expression of Black people and punish on that basis, while persons without these characteristics (e.g. Black women) do not’. Thus, descriptive representation carries an important social meaning when there is a notable presence or absence of individuals

from a given group, and this ‘shapes the social meaning of those characteristics in a way that affects most bearers of those characteristics’ in schools (Mansbridge, 1999: 649). Alternatively, if the same girl encountered several Black women teachers throughout the school day, this descriptive representation would carry a different social meaning, showing that Black women, too, have the authority to punish.¹⁵

Finally, we argue that descriptive representational authority may lead to increased perceptions of legitimacy of punishment in schools, more broadly. In other words, students who see their group identities proportionately represented among authority figures in the school are more likely, *ceteris paribus*, to perceive punishment from these authorities as legitimate. Again, consider a Black student who encounters a profusion of White women teachers throughout the course of her school day, all who possess the authority to punish. That student might feel as though her voice is not represented in designing punishment meant to be educational. However, with a proportional representation of Black women teachers who also possess the authority to punish, the student might feel as if she were, in some meaningful sense, present (or represented) in deliberations regarding legitimate punishment by way of descriptive representation. Such a feeling of inclusion may render the authority of the school as expressed by its actors (both Black and otherwise), including its authority to punish, significantly more legitimate to the student’s eyes. The student might have good reason to perceive punishment in this school as more legitimate because of such proportional representation.¹⁶

In light of these dimensions of descriptive representation, it follows that some educators, in their roles as institutional (i.e. school) agents, might have, in relation to some students, less claim to the criteria needed for legitimate punishment responses to students. That is, due to the aforementioned moral asymmetries of identity, even when an institution seems to meet various legitimacy criteria, not all individual representatives of the institution will (in all instances) have full or equal claim to these criteria as their identities interact with those of the students they might punish. Indeed, given the reciprocal relationship between institutions and the individuals who populate them, a pattern of such descriptive representational limitations may also call into question the institution’s presumed legitimacy to punish. In the next section, we consider how these dimensions of identity sensitive criteria (i.e. *adequate communication*, *social meaning*, and *improved perceptions of legitimacy*) might complicate the taxonomy earlier provided.

Complications and limitations

A call for descriptive representation entails care and nuance in navigating our earlier-provided taxonomy of potential institutional responses to student behavior. That is, many of the concerns raised by a sensitivity to descriptive representation might stymie otherwise straightforward analyses of the criteria of, say, *legitimate educative punishment in schools* under the unjust contexts of our focus.

As such, this section will provide a non-exhaustive account of why, owed to the identity complications explored above, educators ought to take special care in invoking the legitimacy criteria for punishment in schools. Even as an institution seems to meet legitimacy criteria, those persons acting on behalf of the institution via their formal roles may find that their identities, in relation to those of their students, limit claims to legitimacy. In presenting

a few examples of identity-based limitations to *legitimate educative punishment in schools*, we aim to show that careful sensitivity is needed to navigate the intersection of institutions, individuals, and legitimacy criteria for all presented punishment responses in schools.

Limitations of adequate communication on the moral standing to condemn

First, an educator's identity may limit her ability to adequately communicate with a given student, thus threatening her moral standing to condemn. For example, an educator's identity might render an attempt at moral condemnation (to say nothing of its similar impact on the performative condemnation necessary for educative penalty) less than adequately legible to the students the educator aims to punish. Recall the Black student who might have good reason to be unsure of the White educator's moral status within the larger structures of injustice visited upon the student. In this scenario, it is likely that the educator cannot legitimately engage in educative punishment because her condemnation, or its mere performance, falls flat for the student as it fails to meet the standards of adequate communication. Quite literally, due to the significance of the relevant social identities, the student cannot receive the educator's lesson (due to the centrality of condemnation in this attempt at educative punishment) and, as such, a good faith attempt at legitimate educative punishment might not be an available option for this educator in relation to this student.

Limitations of social meaning on educational license

An educator's identity might also have a social meaning for the student that could potentially threaten her educational license. For example, an educator's identity might visit upon students some lessons that the educator regards as unworthy, thus eroding an educational license. If, say, a male educator is committed to the pursuit of gender equality and wishes to teach the same to his students as a moral matter, he might have good reason to pause in a number of situations as he realizes that some intended educative punishments of a female student serve to reify existing and unjust gendered power relationships. Consider the previous example, altered such that a male educator tells a female student to 'fix her face'. This educator risks exacerbating school-based injustice by contributing to a history of males policing female bodies. Against a backdrop of injustice rich with inherited patterns of power and significance, the social meanings of the punishment may teach content that the educator does not endorse (Levinson, 1997). As such (i.e. due to social and moral significances and meanings that have been inherited by the bearers of these identities), relative to this student, it appears that legitimate educative punishment might not be an available option for this educator, given his recognition of insufficient educational license due to a failure to meet the demands of worthy content.

Limitations of perceptions of legitimacy

Finally, we wish to recall the student who witnesses racialized patterns of punishment in her school setting. To the extent that legitimacy rests upon perceptions of appropriate treatment, we note that enduring patterns of the perceived illegitimacy of individual

actors in school punishment proceedings may erode the perception of institutional legitimacy. That is, as individual educators' claims of legitimacy to punish in schools depend on the legitimacy of the institutions through which they operate, so too does institutional legitimacy depend upon the presence of sufficient instances of individual exercise of legitimacy. Thus, an institution with low levels of descriptive representation among its educators may find itself in such poor alignment with its students that multiple forms of institutional legitimacy are imperiled. This process is somewhat recursive as the illegitimacy of individuals' actions affects the illegitimacy of institutions, thus further affecting the illegitimacy of the individuals acting within it.

Again, we think that these examples, and many others like them, are important for better understanding the nuances of legitimacy in school punishment under non-ideal circumstances. Through them, we acknowledge that identity (as held by an individual and/or as a pattern among many individuals) might significantly affect the set of legitimate options available to individual educators and the institutions within which they act.¹⁷

Conclusion

In this article, we applied and extended a general picture of legitimacy to punish in unjust contexts with a focus on legitimacy to punish in schools. Similar to this general account of the unjust state, we contend that schools have failed to prevent an unreasonable level of injustice. Because schools serve an educative mission, we suggest that, if present, punishment also ought to serve the educative mission of schools – in other words, that it often aims to teach students a lesson. Drawing on general criteria for fully legitimate punishment within institutions marked by injustice, we consider punishment in schools to be legitimate when persons have the authority to punish and the moral standing to condemn. Furthermore, building on the educative goal of punishment in schools, we include a criterion of educational license as we suggest a taxonomy of legitimate punishment and punishment-related responses to student behavior.

While a general institutional analysis of legitimacy suggests a focus on individual persons only insofar as they act in a role as a representative of the institution in issuing legitimate punishment, we draw on an identity-sensitive account of legitimacy to argue that the specific identities of a person *does* matter for the legitimacy of punishment when that person represents or reflects a salient group identity in the context of schools. In particular, we argue that identity matters in so far as it promotes adequate communication, the social meaning of punishment as educative, and improved perceptions of the legitimacy of punishment. Given that there are certainly bound to be identity mismatches in schools (i.e. in contexts with histories of enduring power hierarchies contingent upon identities, it seems unlikely that every teacher can be a descriptive representative for every student), we offer implications for educators in unreasonably unjust schools. Namely, we contend that some educators under these circumstances cannot select from the full taxonomy of punishment responses otherwise available.

Our argument has significance for issues of identity and punishment in contemporary schools. Research suggests that Black and Latinx (Gregory et al., 2010); special education-identified (Skiba et al., 2008); and lesbian, gay, bisexual, transgender, and queer

(LGBTQ) students (Himmelstein and Bruckner, 2011; Snapp et al., 2015) are disproportionately punished compared to their peers. Moreover, minoritized students often perceive these punishments as unjust and do not experience them as educational, at least not in the way they were intended (Ferguson, 2000; Morris, 2016; Rios, 2011). Increasingly, there are calls for diversifying the US teacher workforce (Ferlazzo, 2018), which is predominantly White and female (Loewus, 2017). The argument we present in this article supports the notion that there is value to teachers and other educators in the school building sharing group identity with their students, particularly as it relates to punishment in schools that have failed to prevent an unreasonable level of injustice. When educators share a group identity or identities with students, this can lead to improved communication, social meaning, and perceptions of legitimacy in punishment as educational rather than unjust.

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Notes

1. In what follows, our analysis is premised upon the idea that punishment may be educative. Given our focus, we cannot offer in this article a detailed defense of that view. Instead, we direct cautious readers to preexisting work on that subject. A particularly elegant and intuitive account, attentive to the specific context of school-aged children, is found in Schrag (1991). In addition, Michael Hand's (2018) *A Theory of Moral Education* may be instructive on these claims.
2. Because of this, our analysis may not be applicable to some cases of inter-identity school punishment. Consider, for example, racial groups without an established history of power hierarchy. Similarly, for groups with such a history, the proper analysis of legitimacy is unlikely to be symmetrical; that is, a member of group A punishing a member of group B is unlikely to have the equivalent moral weight as the reverse arrangement. For more on the moral asymmetries of race, see Blum (1999), and for a school-based discussion of the same, Blum (2012).
3. We borrow the term 'unreasonably unjust' from Shelby's (2016) *Dark Ghettos*. We take this to mean contexts that have heightened and concentrated economic, social, and educational disadvantage. In addition, the term connotes the idea that aspects of the injustice are within the

control of the school rather than mere residual effects of background economic and social conditions.

4. For present purposes, it may be helpful to consider this a bit of a misnomer. The ‘authority to punish’ is an ‘authority to issue hard treatment’. Punishment is a type of hard treatment, and it would seem that other forms of hard treatment are justified by this authority (a possibility we shall address below). In any case, we maintain the language of the literature. In addition, please see Feinberg (1965) for further description of the concept of hard treatment in the context of punishment.
5. These matters are complicated even further as the state’s failure to secure just conditions may well contribute to the motivations of people taking actions that it wishes to condemn. Under these circumstances, a state risks punishing those who illicitly act partially due to their reduced palette of choices that result from state failings. Punishment under such circumstances would further undermine legitimacy as the state would be punishing crimes in which it is causally complicit.
6. Examples of these views of punishment include the ‘expressive view’ held by Joel Feinberg (1965), the more nuanced ‘communicative view’ refined by Antony Duff (2001), Tommie Shelby’s (2016) ‘symbolic view’ of punishment, and a good many more.
7. For this reason, in what follows, we do not address punishments aimed only at compliance with school rules that are generally regarded in contemporary contexts as non-moral expectations of behavior/conduct (i.e. ‘All students must bring a pencil to class’). This category of infraction undoubtedly deserves attention (and may have a moral dimension, depending on one’s construction of the relevant features) but is beyond the scope of our current attention. Instead, we attend to those punishments that more explicitly invoke moral concern in the contemporary contexts of our focus.
8. Shelby (2016) himself invokes a related argument in establishing the general institutional analysis (fn. 3).
9. Although our analysis is novel, we adhere to the conventions of the literature in identifying this as a license to punish, even though it might more accurately be described as a license to issue hard treatment.
10. In stating that some legitimate justification might exist, we do not here make specific substantive claims regarding the nature of the moral educational practices that fit this description; that specificity is beyond the scope of our current arguments. Having identified the possibility of moral education under these circumstances, we point to the various categories explored by Hand (2018) as basis for good future work aimed as categorizing and analyzing these options. Indeed, Hand’s work is well suited for such explorations as it defends a view that punishment might play a role in moral formation (pp. 32–33).
11. As we focus on educators’ navigation of legitimacy criteria of punishment in schools, we set aside a fuller analysis of the undeniable fact that some students might experience moral condemnation when none is intended. Again, our analysis aims at clarifying what educators can legitimately do, rather than how their actions are perceived.
12. We do not address situations without the presence of Criterion 1 (i.e. authority), as, absent that criterion, the hard treatment of punishment cannot be legitimate. In addition, we do not address instances of non-educative penalty that might emerge under those situations in which only Criterion 1 is present. The authority to issue hard treatment may allow issue of simple penalties (i.e. without moral condemnation or educative purpose). While we take these cases to be of general interest, they are too far beyond the scope of our specific concerns regarding the special character of the institution of schools.
13. Although this general analysis is aimed at political authority and representation, it proves helpful for our present analyses. In what follows, we focus on those elements that sufficiently track with our focus on legitimate punishment in schools.

14. A perhaps non-obvious element of this analysis is the degree to which perceptions of legitimacy (by the ruled) are necessary for legitimacy. Although our article does not engage this in detail, such analysis is found in Mansbridge (1999) and Applbaum (2019).
15. Again, as Mansbridge (1999) and many others have shown, this phenomenon is far more complex than we can fully describe here. Our remarks on social meanings simply acknowledge the fact of this complexity and should not be read as exhaustive.
16. We are thankful to an anonymous reviewer for pointing out that such increases in perceptions of legitimacy, though potentially pragmatically useful, are not necessarily morally beneficial. For example, the student we describe might come to perceive as ‘legitimate forms of educational punishment’ those patterns of hard treatment issued by Black women, even if that treatment is linked to arbitrary or capricious standards or rules. Although this is a fine and elegant point worthy of analysis, we preserve it for future attention as it is beyond the scope of our paper’s focus on morally significant standards/rules.
17. This stated, we hasten to add that these limitations are not simply reasons for inaction. Rather, they are also an invitation to more thoughtfully respond to student behavior in unjust contexts. Educators are, perhaps, justified in exercising creativity in light of these and other limitations of identity. For example, consider afresh those cases in which, say, an educator’s moral standing might be limited by the facts of socio-historical contexts of power and a salient identity mismatch with a student. An educator might be unable to pursue *legitimate educative punishment in schools* under this context. More than this, the educator may also be unable to pursue *legitimate educative penalty in schools* as even the educator’s *performance* of condemnation may be rejected by the student. However, perhaps an educator might creatively channel the educative core of these responses by issuing hard treatment (which would, by dint of the lack of moral standing to condemn, be penalty) and simultaneously directing the student’s attention to the fact that this treatment is not true punishment. That is, an educator might rely on their *authority* and *educational license* to offer a creative response. Such a penalty could indicate only the severity of the student’s infraction such that the unpleasantness of the penalty serves as an indicator of the seriousness of the offense. But the educator might also bring the student into explicit observation of the fact that a *penalty* has been issued rather than a *punishment*. By directing the student’s attention in this way, the educator may indeed make the subject of his or her own ‘inability to legitimately punish’ this student serve as the educational core of the student’s experience of this response. That is, rather than (even performing as though he is) condemning the student, the educator might condemn his or her own status as potential punisher and/or the unjust system within which the educator and student relate to one other. Penalty issued in this creative way might have strong educative power as it calls the student to reflect upon the unjust circumstances within which they all act. This is but one example of how an educator might acknowledge the legitimacy limitations of his or her position, while nevertheless constructively pursuing a response aligned with the extant criteria.

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