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Thank you!

Breaking school rules: On the permissibility of student noncompliance in an unjust educational system

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Abstract: Rule violations are an expected occurrence within schools. Educators' judgments about these violations—and responses to them—form a significant portion of standard school proceedings. Most educators and policymakers categorically reject violations as an appropriate behavior in schools. But is that judgement always appropriate? Do there exist circumstances that might yield alternative judgments? In this paper, the authors argue that, in fact, under unjust circumstances noncompliance with school rules may be permissible or even desirable. Building on a contractual framework which places systemic injustice at the center of inquiry, the authors show that under unjust conditions schools forfeit their ability to hold students accountable for role-dependent types of violations. This justifies student noncompliance and undermines traditional responses to such violations.

Keywords: Noncompliance, Rules, Violations, Discipline Policy, Punishment, Schools

Introduction: The Permissibility of Noncompliance

It is, perhaps, inevitable that some students will break school rules. Rule violations happen regularly in the classrooms, hallways, and shared spaces that define the educational institutions of schools. The substance of these rebellions spans a range between matters large and small, and may represent abiding patterns of action or unique occurrences. Educators' judgments of these infractions—and responses to them—form a significant portion of standard school proceedings.

Straightforwardly, the appropriate judgement and response tied to the general form of such noncompliance with school rules might seem obvious (Coverdale, 2020; Hand, 2020). Though the causes of individual instances of noncompliance may well be as varied as the many contexts within which they occur, surely students should not be permitted to break school rules. In essence, it may seem right to think that any response to student noncompliance should reflect this universal judgment of the impermissibility of such action.

But, is that judgement always appropriate? Do there exist circumstances that might yield alternative judgments? That is to ask: might educators and others have reason to adopt a more nuanced view of the permissibility of student noncompliance?

In this article, we engage this important question by offering and exploring a set of circumstances supportive of the permissibility of student noncompliance with school rules. In this, we focus on students of color within the specific context of unjust educational systems in the United States. We argue that unjust educational systems, partially characterized as those that fail to fulfill their obligations toward students, forfeit much of their right to be obeyed by these students, thereby justifying some student noncompliance with school rules.

In what follows, we address competing approaches to structural and systemic analyses of social phenomena, suggesting that the application of these analyses to the circumstances of schools may obscure or reveal specific features of that context. Our focus on a systemic analysis allows us to recognize how schools forfeit their claims to student obedience such that student noncompliance with some, but not all, rules is permissible. In outlining the permissibility of noncompliance across various rule categories, we provide evidence for the moral and political value of such student behavior. Through this, we acknowledge both immediate and long-term transformative goals and offer educators some general guidance for their thoughtful response to student behavior.

The article's core claims regarding the permissibility of certain instances of noncompliance with school rules require a broad framing of the analyses that motivate standard responses to student noncompliance. As such, we begin by considering the need for a systemic-injustice model of social analysis, focusing on the specific contexts of persons marginalized by race and class identities.

Structural Concerns and the Need for a “Systemic-Injustice Model”

In his recent book, *Dark Ghettos* (2016), Tommie Shelby invites reconsideration of the framework through which “ghetto” neighborhoods and their residents are understood. According to Shelby, the dominant framework for philosophizing about and developing policies that address the problems of marginalized (specifically black and poor) populations is the *medical model*. Research and policy based on the medical model typically identify what sorts of interventions would help overcome those problems. However, because of its emphasis on deviation from (and restoration of) normalcy, the medical model tends to treat symptoms rather than address underlying causes. In this particular case, the medical model does not adequately address the underlying cause; namely, it does not attend to the unjust character of the *basic structure* of society’s systems and the morally arbitrary role played in restricting the options of some and expanding those of others.¹

Due to this, the medical model is unsatisfying for three reasons (Shelby, 2016). First, it exhibits a status-quo bias by considering the basic structure to be just and acceptable, and so operates under the assumption that we should work within it to make changes. Second, it downgrades the agency of those it aims to help by refusing to acknowledge their autonomy and willingness to resist injustices committed against them. Finally, it obscures the advantages that privileged members of society stand to gain from the plight of marginalized groups. As such, adherents of the medical model tend to pathologize members of marginalized groups and intervene in their lives in ways that perpetuate the disadvantages inflicted on them by the unjust basic structure of society. To address the problem of the unjust basic structure, Shelby suggests abandoning the medical model for a *systemic-injustice model*: a model which emphasizes our

¹ This usage of “basic structure” follows John Rawls’ (1971,1993) influential work. We discuss this conceptual contribution in further detail ahead.

collective duty to develop and maintain a just society (as assessed by analysis of, *inter alia*, its basic structure) and thereby foregrounds everyone's right, regardless of their social position, to be treated justly and to participate in this collective pursuit of justice.

Alongside the discourse on pathology that burdens marginalized individuals Sally Haslanger (2015) critiques the recent emphasis on implicit bias as the exclusive cause of social injustice. Similar to how the medical model seeks to tackle the problem of social injustice through interventions that compensate for perceived deficiencies of marginalized populations, the *implicit bias model* aims to tackle the problem through interventions that make privileged individuals cognizant of how their implicit biases unwittingly lead to discriminatory conduct with severe consequences for marginalized populations. Like the medical model, the implicit bias model treats the symptoms of the injustices rather than the underlying, or basic, structural causes. The difference between the medical model and the implicit bias model is the target of the intervention, the former being targeted toward those who suffer from injustices while the latter toward those who commit injustices.²

The two models face a similar limitation; they both decontextualize human conduct separating it from the social, cultural, and material conditions that beget it. As a result, structural factors that restrain action and perpetuate oppression are rendered invisible and remain unchallenged. Shelby and Haslanger demonstrate the need for an account that addresses these structural issues that perpetuate existing outcomes. A systemic-injustice model provides such an account. It draws attention to the underlying cause—the unjust basic structure—of social behaviors. It privileges interpretations of said behaviors that account for the structures in place over individualistic interpretations which exaggerate people's ability to control their

² Arguably, the implicit bias model is an improvement over the medical model because, at the very least, it lifts some of the burdens of fighting oppression from the shoulders of marginalized populations.

circumstances. More importantly, it reveals the reasonableness of such behaviors under unjust conditions. Our aim in this paper is to reinterpret rule violations in schools in light of a bounded systemic-injustice analysis, and outline implications that follow.

The Unjust Basic Educational Structure in America

To understand the relevance of a systemic-injustice model as an analytic tool for making sense of US educational institutions, we establish that schools operate under a particular form of unjust basic structure.

We follow Shelby, as described in the previous section, in his invocation of political philosopher John Rawls' (1977) "basic structure" as a suitable subject of analysis in matters of justice. For Rawls, the basic structure of a society comprises the arrangement of the various institutions and processes that determine the allocations of the society's burdens and benefits across the persons who live therein. Given this, the basic structure of a society is critically important in setting up the conditions under which free and equal moral persons might come to construct—and recognize some appropriate reasons to consent to—a social contract with their fellows.

Given this Rawlsian background, our analyses address a particular form of unjust basic structure, distinguishable from broader analyses (which focus on what we might dub the basic *social* structure as described by Rawls). In what follows, we focus attention to the context of an unjust *basic educational structure*.

We readily acknowledge that educational institutions might be analyzed as part of a broader Rawlsian focus on basic social structures; we surely admit their powerful role in allocating life prospects and outcomes. But our current focus is elsewhere. In concentrating on the basic educational structure, we aim to identify that educational benefits and burdens are

structured in particular ways internal to these educational institutions and their standard practices.³ Taking education to hold specific moral concerns allows us to consider the basic features of its structures that might frustrate the conditions for creating and consenting to a social/educational contract with one's fellows. In the case of the US educational system's prospects for such contractual arrangements, we find the basic educational structure to be unjust.

Of course, we do not take this unjust quality to be self-evident to all readers. To many, it may seem that the overall quality of US education in comparison to other countries or the existence of federal policies which aim to make funding more equitable for all students are evidence of a just structure. We will argue that this is not quite so. Rather, the US educational system is inherently unjust for many marginalized and vulnerable populations.

In its current form this structure privileges students on the basis of class, race, gender, ability, ethnicity, religion, and other demographic characteristics. Given the limited scope of this paper we will focus our analysis on race (and its intersection with class), but similar conclusions can be drawn about other demographic foci. The unjust basic educational structure has both micro- and macro-level foundations. The former pertains to patterns of injustice observed in particular types of schools that directly impact academic success and, in turn, life prospects of students of color. Not all schools are complicit in micro-level structural injustices, only schools that are associated with the particular micro-structures that beget these sorts of injustices. The latter, or macro-level, pertains to patterns of injustice in the educational system writ large. Given that the institution of schooling is built on an unjust basic educational structure, the institution itself is implicated in macro-level structural injustices and all schools are complicit by virtue of their membership in this all-encompassing unjust educational network. In practice this means

³ Given the focus of our current work, we do not enumerate specific constituent elements of the basic educational structure. Instead, we provide examples that suggest the justice or injustice of the structure.

that all schools, even the more internally just ones, perpetuate injustices whether intentionally or unintentionally by virtue of contributing to the preservation of this network. The macro-level foundations of the unjust basic educational structure are of greater significance.

At the micro level, the emphasis is placed on particular types of schools (micro-structures) and the unjust practices they employ. Such practices can be employed on a large scale (within entire school networks) or on a small scale (within individual schools). We use disciplinary practices as a case in point. Public schools disproportionately punish (Fabelo et al., 2011) and give harsher punishments for similar infractions to students of color (Lewis et al., 2010; Skiba et al., 2011). Increased rates of punishment can negatively impact the academic performance of students of color (Gregory et al., 2010; Morris & Perry, 2016), impeding their ability to succeed. These disciplinary patterns can be a result of teachers' implicit biases (Girvan et al., 2017) accentuated by structural factors such as "cultural mismatch or insufficient training in culturally responsive classroom management practices" (Skiba et al., 2009, p. 1089), school-, district-, or network-wide policies such as the 'no excuses' policies employed in charter schools (Goodman, 2013), or system-wide policies such as federal mandates affecting all traditional public schools nationwide (Lewis et al., 2018). Schools that engage in such practices, either independently or as part of a larger network, contribute to the unjust basic educational structure at the micro level.

At the macro level, the unjust basic educational structure implicates any school that is part of the broader US educational system. School funding is a good example of how this occurs. Public schools in the US are primarily funded by local property taxes, even though said funding is distributed unequally due to racial segregation. As a result, wealthy (usually predominantly white) neighborhoods have better funded schools than poor (usually predominantly nonwhite)

neighborhoods. Notwithstanding desegregation efforts following the *Brown v. Board of Education* (1954) US Supreme Court decision, segregation persists to this day as do its well-documented insidious effects on black student resources and achievement (Owens, 2018; Reardon & Owens, 2014). Macro-level structural injustice in education becomes apparent in the mechanisms that keep segregation in place. For instance, the Supreme Court in *Millikin v. Bradley* (1974) foreclosed the possibility of inter-district desegregation which led to an increase in between-district segregation (Fiel, 2013; Stroub & Richards, 2013). More recently, in *Parents Involved in Community Schools v. Seattle School District No. 1* (2007) the court declared race-based voluntary integration unconstitutional, hindering voluntary desegregation and facilitating resegregation (Thompson Dorsey, 2013). In addition to the legal climate, white parents have exploited the structure of the educational system and abandoned desegregated schools for different districts, a phenomenon better known as white flight, thus contributing to the reversal of desegregation (Reber, 2005). Charter schools and private schools further contributed to white flight by providing another avenue for white parents to avoid desegregated public schools (Clotfelter, 2004; Frankenberg et al., 2011; Reardon & Yun, 2003).

All schools in the US, regardless of whether they are part of the public-school system or fully independent, are complicit in the unjust basic educational structure in that they contribute to the above-described distribution of educational burdens and benefits. Public and charter schools are complicit as manifestations of an unjust system that privileges some and disadvantages others. This disadvantage occurs regardless of independent educational actors' intentions or willingness to provide students with necessary resources to succeed. As such, school complicity in this injustice cannot be absolved. Private schools also remain complicit by enabling this structure to function notwithstanding concerted efforts to disrupt it. Even if some private schools

want to provide opportunities to disadvantaged students, to the extent that those more advantaged are better positioned to access these opportunities, they still contribute to the preservation of the unjust structure. Hence, the unjust basic educational structure implicates all schools.⁴

Just Schools and the Educational Contract

Toward a Standard of Reasonableness

Against this backdrop of unjust institutional conditions, a curious set of questions emerge regarding student behavior. Namely, how ought student noncompliance with the explicit rules, norms, and standards of the school be interpreted? What forms of response to such noncompliance might be appropriate? What evidence can be brought to bear suggesting that particular forms of response are inappropriate? Toward engaging these concerns, we offer a social/educational contractual framing of expectations within schools. Before focusing on the specific contexts of schools, a few remarks about social contractual analyses may be instructive.

Rawls' (1993) influential work theorizing the concept of justice in an ideal society suggests that much of what makes a set of rules and norms legitimate (rather than arbitrary) is that persons bound by those rules would endorse them as reasonable; viz., they would allow themselves to be restricted by these structures as they recognize that such restriction accomplishes various forms of collective good. In this way, the legitimacy of the structure rests on an implicit social contractual agreement by those governed and, since the structure creates a context in which persons come to deliberate and agree with other free and equal moral persons, the structure must be just in order for the contractual agreement to be freely entered. To be clear, Rawls does not claim that all persons must actually deliberate about or formally endorse these

⁴ We acknowledge the possibility that independent schools may exist whose aim is specifically to help marginalized students and rectify injustices. Such schools would likely not be complicit in educational injustice.

rules before they are to be held accountable for their content. Rather, he suggests a hypothetical scenario in which persons consider a structure within which they might be placed, without knowing the specifics of their placement within that structure. The idea here is that since persons would choose a structure that is most likely to provide equal and just treatment to all persons (irrespective of the specific characteristics and identities of these free and equal moral persons) this scenario might serve as something of a test, establishing that a well-designed system produces the sort of structures, laws, or rules that all persons could endorse on the basis of reasonableness.

Shelby (2016) extends this idea in a quite useful manner, when he focuses his systemic-injustice analysis to matters of crime and punishment. In attending to the non-ideal circumstances of ghettos, he argues that many of the structures and rules placed upon persons living under these specific conditions fail to meet a standard of reasonableness. That is, without knowing whether one would be placed within ghetto circumstances, one could hardly be reasonably expected to endorse a structure that features even the possibility that persons (including oneself) could be consigned to the relevant burdens of such a life. In essence, the presumption of the legitimacy of these structures represents a flawed contract, an unjust basic social structure, asking of persons far too much in exchange for too little. The authority of the state (in issuing the laws) is called into question, such that the compliance of the citizens (in observing the laws) need not follow. As such, noncompliance with the structures of the social and political landscape is a reasonable response to the flawed social contract of a poorly-designed system. Here, we take specific notice of how Shelby's systemic-injustice approach focuses attention on a special context within a broader collection of institutions and systems even while that special area of focus (i.e., law and crime) can also be analyzed relative to its role in

that larger social context. Additionally, Shelby's systemic-injustice informed focus on the contractual nature of the criminal justice system within an unjust basic social structure serves as a fine model for why our own attention to contractual elements within our area of focus—school rules within an unjust basic educational structure—avoids the pitfalls of the medical model and other similarly superficial attempts to address deeply structured injustices. Attending to matters of basic structure (especially including prospects for reasonable contractual arrangements impacting the structure itself) of a specific context stands as a fine first step in analyzing and addressing systemic injustices.

With these political analyses in mind, we now consider the special context of schools, exploring whether the concept of an *educational contract* might helpfully guide behavioral expectations therein.⁵

Normative Elements of an Educational Contract

Schools may well serve as a particularly appropriate example of a context within which standards of reasonableness, rather than explicit endorsement by those 'governed,' ought to guide expectations of behavioral compliance. Very few school settings actually require that students fully legislate the standards by which they are held accountable (Conroy, 2006). In most instances, students are expected to comply with structures and rules that they have not created nor formally endorsed. However, students are not expected to comply with just *any* school rule. Schools are held to public forms of accountability such that, effectively, the rules are (supposed to be) standards that students would endorse were they sufficiently developed to recognize that the limitations represented by these rules support educational aims that they endorse. In part, the

⁵ We do not intend to suggest that schools have had, currently have, or should have a literal or legal contract. We use the language of contract to analyze the reciprocal relationship of obligations between, *inter alia*, schools and students.

activities and rules of the school, as assessed relative to an ‘educational contract’ analogous to the analysis of legitimacy within the social contract described above, serve to develop students into persons for whom the reasonableness, and legitimacy, of the structures of schools is legible.

Under ideal circumstances within which schools might pursue their current missions, broadly defined, the educational contract that guides student behavior in schools might be described as having two important normative elements (among others) that bind students and their schools in a transactional relationship: moral and conventional rules.

Moral Rules

These rules reflect general moral standards as they are applied to the specific circumstances of schools. Both school representatives and students are expected to abide by these norms as moral agents interacting with others. As such, general prohibitions against causing harm to or mistreating others might be enacted through explicit rules. Failure to comply with these rules compromises the moral community of persons within the school.

Conventional Rules

These rules reflect school-specific conventional standards that hold instrumental value (Goodman, 2006; Hand, 2020). While they need not possess a moral or ethical core, compliance with them allows the work of schools to proceed without undue interruption or complication. These might include raising one’s hand to speak in class, avoiding non-pedagogically-justified instructional biases, completing assignments by their due dates, evaluating students only on their relevant performance, and the like. Failure to comply with these rules compromises the educational activity of the school community.

Given these elements, we might define the illustrative and clarifying thought experiment of the educational contract as: a set of mutually binding expectations/obligations that would be endorsed by reasonable persons in the service of constraining the behavior of participants within educational settings, thereby enabling these persons to achieve their appropriate moral and educational aims.⁶

Unjust Schools Fall Short of the Standard of Reasonableness

Given our earlier analysis of the unjust conditions of schools, we wish to suggest two meaningful ways in which schools fail to abide by the standards of reasonableness that rest at the core of the educational contract: equal treatment and just punishment. Though our reference to these is not an exhaustive account of schools' shortcomings, some discussion of them is representative of the general concerns to which our analysis is attentive.

Equal Treatment

It is reasonable to expect that, to the extent possible, schools ought to treat students equally. This expectation might be well recognized by considering its alternative: it would be *unreasonable* for a person to want to participate within a school that might treat them poorly or well on the basis of arbitrary factors of, say their racial and/or class identity. Sadly, this seems to be the case in much of the US (Losen et al., 2015). That students receive unequal treatment of this sort represents a failure of schools (which, importantly, is antecedent to any related failure of students) to abide by the moral and conventional standards of the educational contract. This is a moral failing as it expresses a flawed privileging of some students over others, that runs counter to general moral standards of fairness.

⁶ In this paper, we focus on the contract between schools and students. However, the *educational contract* as an analytic tool can also be applied to different educational settings (e.g., homeschooling or parenting).

Just Punishment

It is reasonable to expect that, if it must exist at all within school settings (Hand, 2020), punishment be meted out in accordance with general moral requirements of justice. While this is a complex claim about which there is much disagreement (see Shelby, 2007), it requires that punishment be proportional to the infraction and not be patterned in a manner that suggests unequal treatment. Add to this the reasonable expectation that schools not use punishment in such a way that obscures or frustrates the educational work of the institution and it becomes clear that unjust punishments might break the conventional rules of schooling and engender, *inter alia*, diminished academic outcomes (Gregory et al., 2010). These moral and conventional failings of schools underserve the interests of students and position them poorly for success.

As schools fail to meet the standards of the educational contract in the ways explored above (in addition to potential other failings), students are justified in understanding themselves to be free from the binding power of the relationship. Stated plainly, since schools do not perform in accord with the educational contract, student compliance with school rules might, in many cases, become optional.

In response to this claim, one might argue that schools' broad roles override concerns related to breach of the educational contract. Even if schools have not maintained their end of the educational contract, students still ought to abide by the terms of the contract and comply with school rules. We resist this objection because schools have a moral educational role to teach students about their moral responsibilities and rights. Though one might argue that there is much efficiency to be gained by holding students to their compliance responsibilities within this broken educational contract, we fear that doing so would have rippling effects across the current

and future lives of these students, who will have poorly learned their relationship to their own moral rights in schools and, by extension, society at large. One need only consider the distorted views and experiences of citizenship developed under such a regime (i.e., expectation of compliance with the rules of the state notwithstanding enduring patterns of inequality and injustice) to understand the weight of the stakes involved (Goodman & Uzun, 2013).

Forfeiting “Compliance-on-the-Basis-of-Role-Authority”

Before moving on to a closer look at the substance and significance of student noncompliance with school rules, it is appropriate to note the limitations on the types of noncompliance we have thus far identified.

To review, in suggesting that an educational contract might guide behavioral expectations for school representatives and their students alike, we have suggested that the legitimacy of schools’ rules might be evaluated via a standard of reasonableness. Reasonableness, in this case, loosely refers to a willingness to endorse a structure that would be considered fair and endorsable by others regardless of their social positions, along with any legitimate constraints that the structure imposes to the benefit of a collective project. In observing schools’ failure to uphold the expectations of the educational contract, we have suggested that schools relinquish the legitimacy of their authority to hold students accountable for breaches of school rules. But this authority may be slightly more nuanced than our analysis has thus far suggested.

While institutional authority is an important part of the analysis of school punishment, it is a complex element of evaluation (Thompson et al., 2020). In asserting that schools have forfeited their authority relative to student compliance, we identify *compliance-on-the-basis-of-role-authority*. That is, students are released from only “obligations to comply” that depend on the relationship of authority (i.e., role authority) that they, under ideal circumstances, share with

the school. School failures do not necessarily discharge the students' obligations to comply with moral standards that exist independently from the school's role authority—authority to expect compliance on the basis of role relationships between school and student. This distinction will be meaningful for our analysis below.

Permissible Noncompliance

Varieties of Noncompliance

In determining the permissibility of noncompliance, we first offer distinctions between various types of noncompliance. Such distinctions allow for a finer degree of attention to instances of noncompliance, isolating the various features that might drive a more nuanced assessment of its permissibility as opposed to a wholesale evaluation. For instance, ought a classroom teacher view the noncompliance of a student, Avery, who continually speaks without raising a hand the same as the noncompliance of another, Blake, who often takes items from nearby unattended backpacks? Why might these cases strike us as different in some meaningful way?

Similar to our previously stated distinction between types of school rules, Joan Goodman (2006) offers a useful framework for distinctions that can be valuable for determining the permissibility of infractions and/or the disciplinary measures that might follow. Following Larry Nucci and Elliot Turiel, Goodman distinguishes between *moral* and *conventional* violations. The former pertains to violations that carry moral significance and are universally condemnable (e.g., physically harming a fellow student). The latter to violations that carry no moral weight and may differ between contexts, depending on the values of a school (e.g., chewing gum during class). This distinction proves useful in reviewing intuitions regarding types of noncompliance and appropriate responses. Punishing both types of violations on equal terms—viz., using similar

types of punishment for each—obscures the differences in moral weight between the two. At best, it symbolically imputes equal moral weightiness to both serious moral offences *and* minor conventional infractions. At worst, it voids the moral significance of *all* infractions. Yet, assigning different types of punishment based on the moral weightiness of the infraction can be tricky, as the distinction between the moral and conventional category is not always clear. Certain violations may be differently interpreted among reasonable people and, accordingly, may carry different moral weight between disagreeing persons. Goodman refers to these violations as *derivatively moral* and suggests they should be evaluated on a ‘case-by-case’ basis.

Determining the Permissibility of Noncompliance

Building upon Goodman’s distinctions regarding different types of violations (i.e., moral, conventional, and derivatively moral), we can offer increased nuance for evaluations regarding the permissibility of noncompliance. Instances of noncompliance that are moral infractions are impermissible regardless of whether the school upholds its end of the educational contract, since they are violations of moral obligations that we hold in our capacity as moral agents situated among others. Instances of noncompliance that are conventional infractions, on the other hand, constitute violations of contractual obligations, which renders their permissibility contingent on the legitimacy of the contract by which they are purportedly bound. Under just conditions, contractual obligations justify compliance-on-the-basis-of-role-authority of a particular school and its acting agents; the school, *qua* its role as a school, can make justified claims for the behavioral compliance of its students. Under unjust conditions, however, the contract becomes illegitimate, thereby rendering contractual obligations void and justifying the permissibility of noncompliance-on-the-basis-of-role-authority.

For instances of noncompliance that are derivatively moral infractions, the analysis is more complex. Though the basis of derivatively moral obligations is contractual, which might seem to suggest a ‘weak’ hold on students within an unjust basic educational structure, their violation could potentially hold moral weightiness for other school members. In these situations, the school might serve as a procedural authority, an arbitrator of sorts, in protecting the claims of others (without advancing a particular moral position) by holding open a space for moral disagreements between students. Consider, for instance, Chidi, a student who is often disengaged from the instructional content and expected activities of the class, otherwise known as being ‘off-task.’ While being off-task is a conventional violation that need not hold moral weight, it could potentially distract an otherwise attentive fellow student thereby inflicting some educational harm on them. If this does, in fact, deal harm to a student this conventional violation takes on moral weight relative to the educational experiences of the classroom, rendering it impermissible on the basis of role-independent moral standards. Such a conventional violation may or may not be permissible depending on the circumstances under which the violation takes place. If, for example, in being off-task Chidi is talking to fellow students who are trying to remain on-task, then this conventional violation carries moral weight. If in being off-task Chidi keeps to himself as in daydreaming or drawing in his notebook, it does not.⁷

To the extent that a conventional violation carries no moral weight, it remains conventional *per se* and, under unjust conditions, related noncompliance-on-the-basis-of-role-authority would be permissible. To the extent that a conventional violation carries moral weight,

⁷ One might object here that even in keeping to oneself a student might be distracting others who curiously observe that student instead of staying on-task. While it might certainly be the case that students are distracted by anything out of the ordinary, it is unreasonable to reduce all conventional violations to derivatively moral ones given that this places the bar for meeting moral standards too high for reasonable expectations of compliance. For instance, a student might also be distracted by a fellow student’s facial tic, nervous twitching, hair texture, or facial characteristics—things over which the student has no reasonable control. Insofar as a student is not unduly distracting someone, then, it is safe to consider their being off-task a purely conventional violation.

it becomes derivatively moral and, depending on the severity and moral impact of the violation—even under unjust conditions—noncompliance might be impermissible. Nonetheless, given that derivatively moral violations are *prima facie* violations of conventional rules, in unjust basic educational structures their moral significance should be weighed against the reasonableness of the expectation to follow that rule under unjust schooling conditions. Consider again Chidi, the frequently off-task student. If Chidi has fallen behind in class due to no fault of his own and, despite knowing this, the teacher has been unable to assist Chidi in understanding the material, then it might be unreasonable to expect the student to pay attention and remain on-task with deeply confusing course material. Of course, this case remains complex as one needs to determine the relative weight of the potential harm to others when Chidi is off-task. This weight needs to be considered alongside the unreasonableness of expecting Chidi to be on-task while educational needs are unmet. The standard of proof for designating both the violation to be derivatively moral and the noncompliance to be impermissible on-the-basis-of-role-authority is met when the moral significance outweighs the unreasonableness inherent in abiding by an unjust rule. For instance, if in being off-task Chidi is distracting a fellow student sitting next to him (a derivatively moral violation) and that student is, generally, relatively advanced in their studies then the minimal harm to that student likely does not outweigh the unreasonableness of the demand that Chidi remain on-task with confusing material, rendering his noncompliance permissible. If in being off-task Chidi is distracting a student who has fallen behind and in doing so is impeding them from participating in a remedial lesson that could help close important learning gaps, then the significant harm to that student likely outweighs the unreasonableness of the demand that Chidi remain on-task, rendering his noncompliance impermissible. Moreover, given their power within this system, the burden of proof falls upon the school faculty to

demonstrate—to all parties involved—that this moral significance outweighs considerations of injustice. We acknowledge that there is much nuance here; easy conclusions are few as faculty attempt sober and unbiased analyses. Though many conventional violations may immediately seem to be derivatively moral in nature, we have provided a framework process for determining the status of these difficult cases. On our view, the moral complexity of this challenging work should not dissuade faculty from this process. Instead, acknowledgment of the moral stakes of these matters may provide motivation for faculty efforts. In the above case of Chidi, faculty must be able to demonstrate that, indeed, the harm to the distracted student is significant enough to outweigh the unreasonableness of the expectation that Chidi stays on-task with confusing material.

In this section, we have offered a broad heuristic for determining the permissibility of noncompliance, dependent upon the moral weightiness of the violation. In what follows, we offer further nuance in suggesting additional salient evaluative features of the contexts within which student noncompliance may occur.

Noncompliance as Political and Restorative

Having provided a standard for determining the permissibility of various types of violations, two additional salient considerations strengthen our belief in the permissibility of noncompliance-on-the-basis-of-role-authority: that rule violations (1) can have political bearing and (2) can serve the purpose of restoring justice.

Political bearing

A student who suffers educational injustice by not being treated fairly or by being unjustly punished for arbitrary reasons may choose to violate conventional rules as an act of resistance against the oppressive power embodied by the school. For instance, a student, Dionne,

may choose to disobey a teacher's instructions in full knowledge of the consequences that will follow. Dionne recognizes at least two important truths: (1) that the perceived benefit of obeying the teacher is relatively minimal within her unjust school environment and, (2) that the act of resistance can be critical in preserving a sense of agency and self-respect (Shelby, 2016). Furthermore, even if a student has not been directly impacted by the unjust school environment, that student may still choose to violate a rule as an act of solidarity with their friends who are unjustly treated. Such an act may allow a relatively privileged student to demonstrate their solidarity with those who are disadvantaged within the unjust environment, symbolically (if not also materially) rejecting the undeserved advantages conferred upon them by the unjust system (Shelby, 2016). Insofar as an act of noncompliance is pursued for the above or similarly motivated reasons it takes on political bearing, an additional salient factor to be considered when weighing the permissibility of noncompliance related to derivatively moral violations. For instance, if Dionne's increase in self-respect or political empowerment is more substantive (politically and/or educationally) than the academic gain (and related projected professional gain) of a student who avoids the distraction that accompanies Dionne's noncompliance, then noncompliance may be permissible.

In response to this argument, one might claim that it is not reasonable to consider every 'misbehavior' that occurs in schools as an act of political dissent. After all, school-aged children have not fully formed their intellectual capacities and are perhaps unable to exercise full agency. Even if we grant the truth of this contested claim, we would note that school-aged children are not entirely lacking in these capacities or exercises of agency. Students are able to form and express through their actions political views related to their circumstances. To the extent that a rule violation entails a conscious rejection of, what the student perceives to be, unreasonable,

morally weightless norms of an unjust basic educational structure as enforced by an illegitimate source of authority, the act can be considered one of political dissent, even if less refined than might be possible for a similarly frustrated adult.

Restoring Justice

Acts of noncompliance can further be viewed as means of restoring justice. Recall the contractual terms discussed in the previous section. Insofar as the educational contract is just, then it is morally binding and the participants have an obligation to abide by standards of justice. As mentioned above, this primarily refers to treating other participants fairly and justly distributing any potential punishments for contract violations. However, should some participants violate the norms of fairness essential to the legitimacy of the educational contract, these misdeeds (even if unintentional) might release mistreated participants from contractual obligations to abide by school rules. Should some participants violate norms of fairness while still using their institutional power (role authority) to hold other participants to educational contractual obligations, then this contract becomes unjust, such that, on the basis of reasonableness, no participant should be expected to abide by its obligations. Yet, within our current unjust basic educational structure, students are expected to do just that. Namely, to abide by unjust rules set by an unjust educational contract, which is presumed binding only by virtue of an illegitimate authority's enforcement power. Under such conditions, students' rule violations may have the potential to restore the very justice that the unjust educational contract has violated.

If sustaining an unjust relationship—passively or actively—contributes to the existence of injustice, then disrupting it is an active repudiation of injustice and consequently an act of (at least partially) restoring justice. As such, for someone committed to justice, violating rules developed within an unjust basic educational structure may itself be considered an imperative of

justice.⁸ A caveat is that rule violation restores justice only to the extent that the violation is conventional. Moral violations yield further injustice and, therefore, cannot be justified on the basis of restoring justice. Conventional rules hold their legitimacy only when the conditions under which one is expected to abide by them are just. Those who have been unjustly treated are thus released from these contractual obligations. In unjust situations, injustice is maintained when those unjustly treated abide by illegitimate contractual constraints and justice is restored when they refuse to abide. Derivatively moral violations, as previously discussed, must be assessed on a case-by-case basis.

Dissent as Educational Aim and the Value of Noncompliance

Given the political dimensions and restorative possibilities of noncompliance, a strong case has been made for its permissibility. Building upon this, we now provide support for the view that encouraging noncompliance, under appropriate circumstances, might be a worthwhile educational endeavor.⁹ That is, rather than merely permissible, noncompliance might also be desirable, such that this permissible practice ought to be responsibly encouraged and developed.¹⁰

Veins of scholarship praise contestation or dissent as an important component of democratic education (Allen, 2016; Hess & McAvoy, 2015; Zimmerman & Robertson, 2017). Indeed, Sarah Stitzlein (2012) goes so far as to argue that children “should have the right to an education for dissent” (p. 43), designating it a ‘positive’ right as distinguished from the

⁸ Consider Rawls’ (1971) reference to a natural duty “to assist in the establishment of just arrangements when they do not exist” (p. 334).

⁹ In presenting this support, we will not argue in full for the desirability of dissent. Such arguments extend beyond the boundaries of this article. For detailed discussions see Mordechai (2009).

¹⁰ Although thus far we have only argued for the permissibility of noncompliance, our discussion in the previous subsection could suggest its desirability in light of potential benefits for disempowered students; namely, access to tangible moral and civic goods (such as a renewed sense of self-respect and empowerment) which could enable the preservation or restoration of justice.

‘negative’ right to express dissent without fear of retribution. Following this scholarship, we continue our analyses of noncompliance, providing reasons (though not a full argument) in support of the view that noncompliance-on-the-basis-of-role-authority might not only be permissible but also desirable. In the previous subsection we presented the value of noncompliance in absolute terms—namely, on the basis of its political dimensions and its ability to (at least partially) restore justice. In this subsection we will premise its value (and potential desirability) in comparative terms—namely, in relation to other, more demanding, forms of dissent.

The value and desirability of students practicing noncompliance-on-the-basis-of-role-authority in an unjust basic educational structure might be supported by twin observations: the practice is both accessible and effective.

Accessibility

In observing its accessibility, we call attention to the minimal barriers to participation in this practice. Unlike more demanding forms of dissent, such as Stitzlein’s (2012) “cultural critique” or “consciousness-raising” (p. 45), noncompliance does not require students to have particular sets of skills (analytic, expressive, etc.). Surely, having such skills may be useful but, since most school-aged students are still developing in these areas, noncompliance is a far more accessible means for expressing their dissent. Furthermore, unlike other forms of dissent that may require greater (individual or collective) organization and/or an appropriate platform, noncompliance requires relatively little even as it might potentially communicate very much of a student’s views of their circumstances.

Effectiveness

In observing its effectiveness, we note the ability of noncompliance to successfully communicate one's dissent relative to unjust school norms and resistance to illegitimate institutional authority. Indeed, few modes of action communicate dissent and resistance more clearly than noncompliance. One need only look to the role and goals of civil disobedience in the US and elsewhere to identify a powerful case in point. While verbally expressing one's dissent from the status quo in a school can certainly be effective if done skillfully, it cannot communicate dissent in as immediate and symbolically powerful a manner as an act of noncompliance. Additionally, noncompliance goes farther than verbal dissent by instantiating active resistance to illegitimate authority; it is resistance in both communication and action.

By highlighting these two observations, we have provided support for the view that, if educating for dissent is a desirable educational endeavor, noncompliance may be a useful tool in such activities as undertaken by students. Educators with an eye toward developing responsible practices of dissent among their students would do well to consider noncompliance anew.

Justifiable Responses to Noncompliance

Having demonstrated the permissibility (and potential desirability) of noncompliance-on-the-basis-of-role-authority, it is important to address how our argument might guide responses to rule violation, particularly punishment. That is, if noncompliance might be permissible (and potentially desirable), how ought educators respond to student noncompliance? Is punishment ever a justified response?

Unlike other philosophical accounts of school discipline (e.g., Goodman & Cook, 2019; Warnick & Scribner, 2020), our purpose is not to argue for particular systems or forms of punishment. Rather, we highlight the types of violations and circumstances that offer fewer and

greater reasons to reject punishment as a justifiable response to noncompliance. In line with Goodman's distinctions, we argue that, even under an unjust basic educational structure, there are few reasons to reject punishment as a response to moral violations and more reasons to reject punishment for conventional violations. Derivatively moral violations are to be evaluated on the basis of their severity and reasonableness.

Moral Violations

Regardless of whether a school operates within an unjust basic educational structure, there are few reasons to reject punishment as a response to moral violations. Even illegitimate educational authorities might punish for moral infractions as such punishments are distributed on a non-arbitrary role-independent basis and solely for the purpose of enforcing the moral obligations of students toward others. In other words, the purpose of punishment here is not to hold students accountable to the (illegitimate) authority represented by the school. Rather, it is to protect other persons (students, teachers, etc.) from undue harm or fundamental rights violations. The role of the school as arbiter of this sort of punishment might be especially important for protecting vulnerable students. On one hand, this means that schools serving overrepresented poor and nonwhite populations must not overpunish or criminalize their students. On the other hand, insofar as rule violations in said schools harm other vulnerable students, such actions can compound the injustices suffered by the victims. This prospect charges schools with the obligation to ensure that their most vulnerable students are protected from many kinds of injustices, including ones inflicted upon them by other students, and may afford schools the right to punish moral violations. However, in instances when said violations are committed by vulnerable students, punishments must not unduly burden or further victimize the perpetrators. This suggests that certain types of punishment (e.g., exclusionary or references to law

enforcement) may be unjustified regardless of the infraction or the status of the harmed party. More severe punishments may still be justifiable, even under unjust conditions, in cases of infractions that cause severe (physical and/or mental) harm to the victim.

Conventional Violations

To determine the appropriateness of punishment for conventional violations in situations with an unjust basic educational structure, one must first analyze the violation. When a violation is purely conventional in character then punishment is unjustifiable. Since the weight of conventional rules is based on role-authority and its legitimacy, punishment of conventional violations can never be justified under an unjust basic educational structure. Hairstyle violations are such an example. Similarly, dress-code violations occupy this category, to the extent that the violations are not threatening to other students' well-being.¹¹ Under conditions wherein the relevant rules depend only upon custom or the whim of school leaders, punishment for their violation is without merit. When a conventional violation takes on moral weight and, thereby, becomes derivatively moral, then the moral significance of the violation needs to be carefully examined and weighed against the reasonableness of the demand that the student abides by the conventional rule. Tardiness is such a violation, given its context-dependent infraction status and its situation-dependent moral weight. Tardiness could take on moral weight when it disrupts regular classroom procedures to an extent that it impedes other students' learning or when punctual students feel like they are treated unfairly, which likely decreases student morale. Such circumstances could provide justifiable grounds for punishment of the violation. However, having moral weight (and thus being derivatively moral) does not alone provide sufficient

¹¹ If a student, for example, wears a shirt with a swastika or other nazi symbols, punishment is an appropriate response given the moral harm that such symbolism does to students whose dignity and humanity is challenged on account of their racial, ethnic, or gender identities. Moreover, such attire raises questions about student safety in light of the history of physical violence embedded in such symbols.

grounds for designating a rule violation impermissible and, relatedly, a punitive response to the violation permissible. For instance, if it is unreasonable to expect a student to be on time given their living circumstances or to punish a student for tardiness when more serious moral breaches of contract by teachers go unpunished (such as the conscious or unconscious inequitable treatment of students on the basis of race and/or class), then there is reason to consider punishment for tardiness unjustifiable despite its apparent moral weight. In cases wherein the harm of the violation is morally severe, such that punishment might be considered justifiable, the degree of severity of the punishment must be weighed against the reasonableness of the infraction. Moreover, the accumulated patterns of injustice experienced by the student committing the violation must be taken into account to avoid their further victimization.

One objection to our analysis might contend that we have overlooked the possibility of moral self-harm. That is, even if a conventional violation carries no moral implications for other students, it may still have important and morally relevant consequences for the student committing the violation. For example, habitual tardiness may leave a student ill-prepared to adequately participate in a society that expects punctuality. Following this objection, punishment might seem warranted as a paternalistic measure enacted for the ‘benefit’ of the student, even if others are not spared any harm. However, we resist the force of this objection on the grounds that evaluations of perceived benefit to students are insufficiently *reliable* (Lamboy et al., 2020) and difficult to weigh against important moral and educational benefits that may accompany an infraction (e.g., the preservation of the student’s self-respect or the reclamation of the disempowered student’s agency).

Conclusion: Some Final Considerations

We have argued that all schools in the US operate within an unjust basic educational structure and all schools are complicit in this structure by virtue of facilitating its operation. This, we showed, is the case even when facilitation is done unwittingly or goes against the desires, intentions, or ethical principles of particular schools' actors. Complicity in systemic injustice further suggests all schools are in violation of an educational contract, by which, on the basis of a *standard of reasonableness*, every participant in the educational system should be expected to abide. Violation of the educational contract's basis tenets on behalf of educational authorities, compromises the legitimacy of these authorities' expectations of obedience and releases students from role-related compliance obligations. This renders conventional rule violations permissible and potentially desirable.

Since noncompliance is permissible under certain conditions, a reevaluation of responses to rule violations is prudent—namely, educators may find that student punishments may, under certain conditions, be unjustifiable. To determine the permissibility of specific rule violations and/or justifiability of responses, we provide a guidance-oriented analytic framework. This framework can be used as a reference by those educators and policymakers who agree that the unjust basic educational structure of the US ought to be considered when evaluating disadvantaged students' acts of noncompliance.

Revisiting assessments of rule violations under unjust conditions is important and necessary work. However, it is, on its own, an insufficient response as it merely enables us to treat students more fairly *within* an unjust basic educational structure. A move away from the medical model and toward a systemic-injustice model further compels us to challenge and disrupt the very structure that disadvantages students of color in the first place. It compels us to consider solutions that foreground our collective duty to change the basic educational structure in

ways that make it more just and to ensure that all are able to participate in and contribute to the development of an educational system that serves everyone's needs and treats everyone fairly.

Before concluding we briefly outline some responses that might assist in this shift:

1. Educators and policymakers can provide students with additional channels for political empowerment that can be more productive in the long term. Students could be allowed to protest and formulate student organizations or activist groups through which to express their indignation and willingness to resist systemic injustice. Such organized action could empower students, amplify their message, and build their sense of self-respect even more than *ad hoc* acts of noncompliance can. More importantly, such action has the potential to galvanize the public into collective action or even instigate the development of a new civil rights movement that advocates for the removal of policies that privilege those already advantaged and for investment in poor communities of color—that is, without damaging their social fabric or jeopardizing their residents' ability to maintain their homes.
2. Students could be encouraged to embrace their own educational aims and norms rather than simply be expected to follow externally prescribed norms that impose heavy burdens for minimal gain. They might prefer, for example, to reject white middle-class individualistic norms of academic success and instead choose to build social ties and bonds of solidarity within their communities that allow them to prosper and flourish as a group. This might require that schools stop following strict standards and structure their instruction around the priorities of those they serve. Moreover, it might require that schools hire teachers and administrators from within the communities that they serve who are better able to serve their students' needs and advocate for their students' rights.

3. Schools could be more transparent about their aims and policies and allow students and parents to weigh in and challenge whatever they find objectionable. This would increase students' trust toward schools and increase schools' legitimacy. To that end, schools could work closely with school-based organizations (parent-teacher association, student government, etc.) to, firstly, restructure the schools' foundations in ways that disrupt the mechanisms that maintain systemic injustice within schools and, secondly, exert concerted pressure toward local and state government to challenge unjust policies and encourage local control.
4. Schools could work with community-based organizations to help build and support structures that benefit disenfranchised students, their families, and their communities or help improve their homes and neighborhoods. These goals may take priority for students, so having such options available allows them to exercise their agency for their own benefit in ways that the current disempowering educational system does not. Moreover, in doing so, students would concentrate their educational efforts on learning things that are pertinent to their own concerns and lived experiences and would be able to help repair the damages caused by racially unjust policies and disinvestment in neighborhoods where communities of color reside.

These suggestions are certainly not exhaustive nor offered with great detail here. Rather, they are intended to point toward possible directions for further research which might be necessary for dismantling structural injustice in American education. Each of these suggestions, though perhaps not sufficient for making substantive change on its own, marks a move away from the medical model of diagnosis and remedy of symptoms and toward a systemic-injustice

model which foregrounds the restructuring of education to meet standards of justice. This restructuring involves a rejection of the current aims and outcomes of education for new collectively-generated ones and a reimagining of the use of extant educational apparatus to serve those new aims and facilitate those new outcomes. It entails reconceptualizing education as a means of social transformation rather than preservation. For justice to be actualized in education, concerted efforts need to be made along these, and other similar, lines with the potential to restructure the educational system based on standards developed by communities themselves. Such efforts would respect the agency of those communities and would provide them with the institutional means to create an educational system that serves them well and treats them fairly.

The unjust basic educational structure in which all schools partake has led to grave injustices for disenfranchised populations and, particularly, for students of color. In general, the approach that most educators and policymakers take in addressing the numerous problems that students face adheres to a medical model of diagnosis and remedy. This presumes student behaviors to be unduly disruptive, disorderly, or violent while propagating narratives of pathology and deficiency. The systemic-injustice model, on the other hand, rejects such discourse and treats students as agents who choose to resist the injustices inflicted on them, as would be done by many reasonable persons subjected to such conditions. It allows educators, policymakers, and researchers to take seriously the implications of mandating that students of color participate in an unjust educational setting which makes unreasonable demands on them. It compels us to reject deficit interpretations of rule violations and understand them as often reasonable, morally permissible, and legitimate forms of resistance. Perhaps, as we have suggested, such responses are even desirable under current circumstances and should be cultivated as productive means of challenging an unjust status quo.

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