

PUNISHMENT, PUPILS, AND SCHOOL RULES¹

INTRODUCTION

In this chapter we analyze general views on punishment in order to consider what behavioural requirements schools may establish for students and which (if any) they may enforce through punishment, during compulsory education. Punishment, as we use the word, is the intentional imposition of burdensome treatment on someone – usually on the rule breaker – for having broken a rule, partly because the treatment is burdensome. By carefully analyzing various aspects of punishment, we aim to identify principles that should guide and constrain which behaviours schools punish, and how and why they punish them. In brief, we develop the following principles regarding legitimate requirements that can be made of students and the ways punishment may be used to enforce them. Before children are autonomous, schools may establish both paternalistic, and other-regarding requirements, but not requirements imposed from within comprehensive conceptions of the good.² They may punish children in order to ensure a fair distribution of the burdens and benefits of social arrangements. Schools may punish children for paternalistic reasons, including developmental reasons, but not for reasons of general deterrence. When children become autonomous, compulsory schooling may establish only other-regarding requirements of student conduct.³ They may punish to ensure a

¹ Thanks to Matthew Clayton, Jeff Howard, Tom Parr, Bill Wringer, J. Adam Carter, Neil Levy, Ian MacMullen, Laura Oxley, Kartik Upadhyaya, and Viktor Ivankovik, and to an audience at The Ohio State University Political Theory Workshop seminar.

² It is, we think, never justifiable, to impose on children requirements from within comprehensive conceptions of the good. It is not justifiable in private schools or in public schools, in contemporary Britain or in medieval Britain. However, despite this, doing so may be excusable in some non-ideal circumstances. For instance, while not justified to punish in line with a comprehensive doctrine, a punisher who has been indoctrinated to think only in terms of that comprehensive doctrine might be forgiven or otherwise excused for having done so. Additionally, we acknowledge that autonomous adolescents and adults may sometimes voluntarily enter private educational institutions that enforce requirements from within comprehensive conceptions of the good. However, as a condition of permissibility, punishment within the boundaries of these institutions can only be excused if there exists viable alternative, comparable quality institutions available for student attendance as determined by any separable secular educational goals that those institutions serve (such as legal education). We thank Ian MacMullen, Neily Levy, and Bill Wringer, respectively, for pressing us to clarify these related points.

³ Viktor Ivankovik points out, correctly, that a single requirement can be motivated by both paternalistic and other-regarding justifications. In such cases, a single rule may be justified for both children and for adolescents

fair distribution of the burdens or benefits of social arrangements; this includes punishing for reasons of general deterrence, due to children's responsible choices enhancing their liability, as well as for other-regarding developmental reasons.

We acknowledge that more or less detail may be given for operationalizing and implementing these principles. Given the generality of our task, we offer limited detail in this regard. A yet more comprehensive account would explain by what authority schools may make and enforce requirements, and to what extent (if any) students or parents should have a role in the deciding requirements. For our present purposes, we highlight that however this authority is distributed, there are better or worse decisions that can be made. In this chapter, we seek only to guide the *content* of these decisions through identifying appropriate goals for and constraints on school discipline.

1. THE CONCEPT OF PUNISHMENT

Philosophers define punishment in different ways, sometimes weaving justifications into their definitions. Following H.L.A. Hart, we keep justification and definition separate. We also keep justifications of systems of punishment separate from justifications of particular instances of punishment within systems. Punishment, as we use the word, is the intentional imposition of a burden (or, equivalently, hard treatment) on someone – usually on the rule breaker – for having broken a rule, partly because the treatment is burdensome.⁴ Typical school impositions (e.g. setting homework, class learning activities, wearing uniform, and requiring attendance) are

– justified in two ways for children, and in just one way for adolescents. In cases where rules are only justifiable in one way or the other, then they are only justifiable for one group or the other.

⁴ We thank Bill Wringe for suggesting the qualification 'partly or wholly because the treatment is burdensome' so as to more clearly express our position elaborated beneath.

often burdensome for those upon whom they are imposed. Indeed, some may wonder whether compulsory schooling is, itself, a form of punishment. As we are concerned with burdens imposed in response to rule-breaking, we do not count it or the other impositions mentioned above as punishments. This is so even if they are often *enforced by* punishments. Furthermore, some burden-imposing responses to rule breaking need not count as punishments. Our qualification that a particular treatment has to be imposed *because* it is burdensome requires the burden imposed to feature in the punisher's intentions as either a means or as an end, rather than as a merely foreseen side effect. For example, school exclusions intended only to avert rule-breaking impose a burden on the excluded student as a side-effect. Such exclusions also respond to rule-breaking in a way which differs from punishment – namely, by regarding it as evidence of *prospective* rule-breaking, which serves as the real motivating consideration. We give some attention to these burden-imposing responses to rule-breaking, but do not regard them as punitive. The qualification “on someone – usually on the rule breaker” is intended to account for group punishment in which a whole group is punished for the perceived rule-breaking of only some of its members.⁵ It is interesting to wonder whether the punished party's and wider community's reactions are constitutive of punishment, whether, for instance, their experiencing treatment *as* punishment is necessary or sufficient for that treatment's being punishment. We think that success in punishment rather than a failed attempt at punishment requires that the party punished experience their treatment as burdensome. So far, we have stated a definition of punishment. Ultimately, we want to say when and how it might be justified.

⁵ We thank J. Adam Carter for pointing out a helpful counter example to our previous formulation.

2. KINDS OF REQUIREMENTS OF STUDENT BEHAVIOR

It is important for a theory of school punishment to consider what kinds of behaviour schools may require, since it is these very requirements that schools claim a right (or duty) to enforce through punishment. We distinguish three kinds of requirements: *Moral*, *Ethical* and *Prudential*.

Moral requirements. Schools should generally require (and teach) students to behave in non-wrongful ways. Alongside demands not to harm, deceive, or discount others, more controversially, *Moral requirements* may also demand that we behave in ways which show due concern and respect for ourselves (e.g. by not self-harming, self-demeaning, or self-corrupting).⁶ We may distinguish between points on a continuum of moral principles, with those principles that are least contingent at one end, and those which are most contingent at the other. The least contingent principles may find themselves realized in more particular ways as more details about the circumstances are determined (e.g. a general, conditional duty to do no harm, may mean obeying a particular principle of following a technician's instructions when using dangerous chemicals in a laboratory). Similarly, students may have contingent, particular (but no less moral):

- Duties to cooperate on fair terms with others (giving them a duty to skill-up within a certain range of skills that are useful in that society), and/or

⁶ The relevant standard of wellbeing may be anti-perfectionist (i.e., one that is broadly agreeable across morally permissible comprehensive doctrines, perhaps so that one might yet commit any one of these), or perfectionist (i.e. the most evidence-responsive account of wellbeing).

- Duties of prospective citizenship (giving them a duty to practice civility in whatever form that takes in schools).

Schools often require that students attend, are punctual, obey dress codes, eat in certain venues in allotted windows of time, complete assigned work, obey teachers' reasonable directions, are neat in various ways,⁷ bring prescribed equipment, and follow human traffic rules. Rules which enable schools to run in a sufficiently orderly way to achieve their legitimate, *morally required* mission are contingent moral rules. Plausibly, such morally required missions might include giving all students a fair chance of flourishing, ensuring that they and their fellow students respect one another's moral rights, and become capable of socially useful work. Such a *raison d'être* for some school rules gives a reasonably clear justifiability test which may prove difficult to pass (it may not warrant prohibitions on swearing, or requirements to wear particular uniforms, attend religious worship or display subordination to high status individuals). At any rate, the various requirements of orderliness in school are highly circumstantial and do not exist across all contexts. Additionally, we may distinguish *Ethical and Prudential requirements*.⁸

Ethical requirements such as requirements to eat according to Kosher or Halal standards, are requirements nested within particular comprehensive doctrines or outlooks. Such requirements may be *politically* or *epistemically* controversial. Politically controversial requirements are those which are (or can be) in dispute among citizens who comply with basic moral requirements. Epistemically controversial

⁷ Apple (1982) emphasizes neatness among school expectations.

⁸ Of course, one might be tempted to introduce legal requirements as a fourth category: *Legal requirements* are whatever the law happens to require teachers and schools to require of students as well as whatever the law requires of students. We resist this temptation as legal requirements shift focus from *what* is required to *whose* requirements they are. What the law *ought* to require schools to require is a question of the kind we said at the outset we would bracket, namely a question about how decision-making authority should be distributed rather than which decisions should be made, however it is distributed. It may be worth noting that in non-ideal contexts, unjust laws can form part of the conditions which effect what teachers are justified or excused for requiring and punishing.

requirements are those not decisively supported by such evidence and argument as is available.

Prudential requirements are not nested within any particular comprehensive doctrine but are of benefit to the person who conforms with them, though that person is under no moral duty to do so. The benefit is that it enables them to more optimally flourish now and later (e.g., by developing character traits and capacities).

In what follows, we consider whether behavioural requirements of the kinds delimited above may be justified in schools or justifiably enforced through punishment. Before considering which of the above kinds of requirements (if any) schools should make, we consider why schools may make or enforce requirements at all.

3. WHICH REQUIREMENTS?

Which (if any) of the kinds of requirements delineated above should schools make and enforce? Students are under many moral requirements. These can include duties to abide by such institutional expectations as maintain a sufficiently educational environment. On this understanding, in many cases schools' job is only to hold students to standards that are morally required of them in any case; sometimes to standards enabled by contingent features of the institutional context, sometimes to standards that hold outside of that context. May schools equally require students to comply with the ethical and prudential reasons which apply to them?

Political theorists part ways at a major fault line about the use of coercive power. We distinguish perfectionist, anti-perfectionist and (what we dub) perceptionist positions:⁹

Perfectionist: coercive power *may* be exercised by [some authority] over [some subject] in ways that reflect the most credible account of flourishing.

Anti-perfectionist: coercive power *must not* be exercised by [some authority] over [some subject] in ways that reflect an account of flourishing [the subject] can reasonably reject or has not voluntarily submitted to.

Perceptionist: coercive power *may* be exercised by [some authority] over [some subject] in ways that reflect [that authority's] understanding of [that subject's] flourishing.

As the content of the square brackets above indicate, the authorities and subjects can be specified in different ways and one may take perfectionist, anti-perfectionist, or perceptionist stances depending on how they are specified. For instance, some may think perfectionism is justified for parents with respect to children in their custody, but not justified for the State with respect to its citizens, or for bosses with respect to their employees. Perfectionists emphasize authorities' duties of concern (to safeguard or promote subjects' flourishing).¹⁰ Anti-perfectionists emphasize authorities' duties of respect (for subjects' rights to form and pursue their own conceptions of the good), and regard perfectionism as wrongfully paternalistic. Perceptionists emphasize the natural authority of some agents (e.g., parents) over some subjects

⁹ This statement is indebted to Clayton (forthcoming). For further discussion of anti-perfectionism in schooling, see Clayton (2006, 2015).

¹⁰ Some versions of perfectionism, like Joseph Raz's preferred principles of state governance, can be liberal in a few ways. First, they can regard ethical requirements as impermissible to enforce (albeit providing for perfectionist government action through taxation is enforceable). Second, they can regard there as being many and various ways of satisfying ethical requirements (e.g. of living a sufficiently flourishing life). Third, they can regard uncoerced, unmanipulated choice as partly constitutive of wellbeing.

(e.g., their custodial children). Perceptionism and perfectionism are stated above as permissions, but they can be restated as requirements. While popular, once made explicit, perceptionism does not look credible as a requirement. It would require authorities to require subjects to behave in ways which are in fact contrary to their wellbeing, if the authorities' views about flourishing are mistaken enough. A more credible version of perceptionism restates it as a permissible margin of error for a perfectionist requirement.

In acting paternalistically, schools must decide how thick or thin a conception of welfare and harm they may act on, and on whether to treat children of different ages alike. Perfectionist Schooling will hold that coercive power *may* (or *must*) be exercised by schools over students in ways that reflect the most credible account of wellbeing. It may aim to ensure behaviour that *complies* (rather than merely conforms) with a detailed, particular conception of the good life. It may aim to ensure this for just for younger children, or for all children. While Anti-Perfectionist Schooling objects to this, in addition to making moral requirements for self- and other-regarding reasons, it may also make *prudential requirements* of, at least, its younger students, for paternalist reasons. In doing so, it will aim to ensure behaviour that complies with an inclusive conception of wellbeing compatible with wide range of more particular conceptions (e.g., by developing of Rawlsian primary goods). Whether schools may oblige and enforce conformity with ethical and prudential requirements depends in part on the moral status of paternalism, to which we now turn.

4. PATERNALISM

In summary, our view on the matter is as follows: we think that before children reach an age at which the majority of children become autonomous (in a given domain), schools may establish

both paternalistic and other-regarding requirements (in that domain). These include moral and prudential requirements, but not ethical ones. When adolescents reach an age at which the majority of students are autonomous (in a given domain), schools may establish only other-regarding requirements of student conduct (in that domain). These include moral requirements, but not prudential or ethical ones. Paternalistic requirements are inappropriate. As students become older the range of domains within which they are autonomous will increase.

A central question of political philosophy concerns when and why agents may legitimately compel others to do things or have things done to them. Sometimes other-regarding reasons are cited to justify coercion (e.g., the protection of first- or third-party interests), other times paternalistic reasons are cited (i.e., the protection of the coerced party's interests). Paternalism is often regarded as hard to justify because it can be disrespectful; subordinating *respect* for autonomy to *concern* for welfare. Call that property which properly warrants *respect*, and which largely overrides *concern* for welfare, 'autonomy'. Respect for autonomy requires us not to do things to or with others (unless for compelling, other-regarding reasons), without their consent.¹¹ Those who think of respect as a weighty consideration independent of concern for welfare may think of some level of ruin as sufficiently bad for considerations of concern to win out. However, they will think that above that threshold people's lives may drop considerably beneath optimal levels of wellbeing without trumping considerations of respect.

What, then, is the test for deciding when someone is generally autonomous, or, more locally, when a single choice of theirs is sufficiently autonomous to warrant respect? A promising

¹¹ Some philosophers subsume respect under concern, saying that the reason we should not interfere with people for paternalistic reasons is that it undermines their wellbeing. This could be for different reasons: 1) Because people are most likely to know what is in their own interests, 2) Because the uncoerced choice of activities is a precondition of, or enhances the goodness of the things chosen, 3) Because coercion tends to be third best to people's choosing what is sub-optimally good for them.

answer suggests that children are autonomous when they meet a ‘control’ condition, whereby their actions are under their control.¹² A too-stringent test is whether a person always identifies and complies with whatever the strongest reasons available to them recommend. Attractively, this enables instrumental and non-instrumental rationality to be the test of control. However, on this view, nobody’s actions are under their control. A weaker test for this control condition might be whether an individual generally makes choices of sufficient quality that interference would not improve their lives. However, this test would not take respect seriously since it would leave people with little opportunity to make something of their lives that they can endorse: an opportunity limited only by a lack of effectiveness of means of interfere. A more intermediate test might ask whether people sufficiently identify and comply with whatever the strongest *moral* reasons available to them require, this enables them to have a life to live, while still allowing rationality to be the test of control. However, it seems arbitrary to restrict the relevant standard of rationality to rationality within the moral domain.

A better test for whether people meet a respect-conferring standard of control in general might be the following tripartite criterion of action that agents: a) meet a threshold of instrumental and non-instrumental rationality that is b) reflected in choices that are c) non-disastrous, on almost any view.¹³ It will involve being able to reflect on, endorse, reject and prioritize desires (non-instrumental rationality), and to think of things that would count as realizations of these, efficient means to their realization, and ways of combining their realization (instrumental rationality). It will preclude acting on alienated desires (i.e., not acting on desires they wish

¹² Another prominent answer is that children’s identities are sufficiently integrated. Schapiro (1999) and Richards (2010, Ch. 6) take such a view.

¹³ The position is somewhat similar to that of the soft paternalist who endeavors only to limit harmful actions that a person has not *freely* chosen Feinberg (1983) and who aims to intervene to support freedom of choice rather than positive outcomes, but we adopt the nomenclature of control and allow non-disastrousness of outcomes as a test of adequate control.

they did not have).¹⁴ This capacity will require a level of general knowledge that makes the world intelligible and navigable. For individual choices, possessing all relevant information is too high a bar: it may be that individuals can make autonomous choices without some important knowledge (e.g., when a Jehova's Witness refuses a blood transfusion on the understanding that this refusal is required by a deity, or when a manager endorses an employee's plan without hearing it, saying, 'Spare me the details – I trust you'). However, at least some level of relevant knowledge (or opportunity for it) is required in these cases. In deciding whether to permit people to exercise control over their lives in potentially harmful ways, it often makes sense to ask whether people are sufficiently informed to make a judgement about the balance of probabilities, payoffs and harms in prospect.¹⁵ If they are not sufficiently informed, the control condition may not be satisfied. We will return to this control condition in our discussion of liability to punishment.

As applied to the context of schools, one might ask when paternalistic reasons are (relevant and) sufficient for the imposition of compulsory education: for requiring attendance and participation in education for students' own benefit, rather than first- or third-party benefits. Our answer is as follows. First, *concern* for children's autonomy-in-prospect means not doing anything that would frustrate its development and aiming to promote it to at least level at which it merits respect.¹⁶ Second, if a student is autonomous (*tout court*, or within some particular

¹⁴ Frankfurt (1971)

¹⁵ Regarding specific choices, Joel Feinberg (1986, Ch. 18) recommends a twofold test for paternalistic intervention. Both insufficient voluntariness (understood as an expression of will) and potential harmfulness are required before interference is permitted. Connecting this with schooling, it may be suggested that children in general lack sufficient voluntary control of their actions to warrant respect and that regular and constant paternalistic intervention and guidance are permitted. While that might seem right, it seems strange to suggest that children's imprudent actions cannot express their wills. We recast voluntariness in terms of a control condition, but our position is much like Feinberg's.

¹⁶ Plausibly the human good consists partly in autonomous action (even if, in the end, respect for autonomy requires prioritizing it over welfare) and so it seems likely that considerations of welfare require the development of autonomy. See Feinberg (1992).

sphere), it is wrong to force anything on them in their own interests (*tout court*, or within that sphere). If they are heteronomous (*tout court*, or within some prudentially important sphere) it can be permissible to force things on them in their interests (*tout court*, or within that sphere), especially if doing so is intended to bring about the conditions that would allow them to make autonomous choices about the matter/s at hand. As such, paternalism is part of a moral educational project, attempting to bring heteronomous students to greater moral autonomy, by coming to understand the relevant factors, stakes, and consequence of their choices. This would be so even when evaluated from within Anti-perfectionist understandings of schooling. However, under Anti-perfectionism the coercive power exercised must not reflect an account of flourishing that the student can reasonably reject, where reasonableness is a moral notion measured in compliance with enforceable duties.¹⁷

Institutional practices often wisely settle upon age-based recognitions of autonomy. For the test to be passable by the vast majority of people aged over 18 or 21 (depending on the context), it has to be fairly low – low enough that it is often achieved by many before they reach that age. For this reason, while the capacity-based test of autonomy detailed above can make good sense of paternalistic attitudes toward younger children, as Andrew Franklin-Hall (2013, 224) points out, it struggles to accommodate “middle and late adolescents (roughly ages 14–18)”. However, he observes that treating adolescents as adults “is in serious tension with our educational aims, which strive to foster much more than the minimal competence for independence in a liberal society” (ibid). Rather than age or competence, Franklin-Hall

¹⁷ This chapter’s authors are a little divided on the question of whether to be perfectionists or anti-perfectionists, Tillson argues for perfectionism in various places (Tillson 2017, forthcoming). Thompson takes a more anti-perfectionist approach (Nikolaidis & Thompson, 2021; Thompson, Beneke, and Mitchell, 2020). That said, given the current state of evidential and argumentative play, perfectionism may have scant resources to provide more detailed guidance than anti-perfectionism: there is no decisively attested conception of flourishing. Even perfectionists can regard paternalistic *coercion* as wrongful, and, therefore, adopt a broadly Rawlsian approach, regarding individuals as autonomous when they are able to form and pursue a conception of the good, encouraging them recognizing requirements of justice, and permitting them to pursue their conceptions of the good only so far as they respect these constraints.

contends that 'life-stage' is a permissible watershed for ending paternalistic interventions since (a) it can be compatible with 'global autonomy' (immunity to interference in determining the shape of our lives), (b) "paternalism at the beginning of a life is much less intrusive" and (c) it can simply be "a normal period of preparation for assuming full authority" (224, 236).

However, disrespect early on is not the same as respect for all. While compulsory education is less intrusive earlier than later, it is intrusive. It is not on a par with forcing people to wear seatbelts, for instance, by failing to conflict with still-developing conceptions of the good. It cuts away a significant chunk of people's lives which they may no longer autonomously govern. On the other hand, compulsory education for other-regarding reasons – when placed at the beginning of life would reduce the cost to the individual by minimizing its interference in people's life plans and this insight marks a change in the kinds of requirements we can make of children at different ages. Though Franklin-Hall thinks that discriminating against people on the basis of age is an injustice, we take more seriously the observation that, in the course of a normal life, nearly everyone reaches such an age, and large societies need some kinds of efficiencies to enable the transition from one set of powers and liabilities to another. As such, these capacity-tracking age-based statuses are broadly defensible.

The distinction between heteronomy and autonomy captures the foundational importance of autonomy in our arguments regarding punishment in the context of schooling. In what follows, we demonstrate how our above analyses of autonomy and paternalism might be used to determine what might be required of students and how this might be enforced. In this we offer two guiding principles. In summary, in this section, we have argued that different kinds of requirements can be justified for autonomous and for heteronomous students.

5. WHY PUNISH SCHOOL STUDENTS?

With this understanding of justified requirements guiding student behaviour, we now turn our attention to justifications for punishing students as a response to violations of these requirements. These can be understood as a subset of reasons that might be thought to render individuals liable for harm (i.e., reasons why a person would not be wronged if they were harmed).¹⁸ Here, it may be helpful to provide another advance summary of our views. Ahead, we will argue that schools may punish both autonomous and heteronomous children to ensure a fair distribution of the burdens and benefits of social arrangements. Schools may punish heteronomous children for paternalistic reasons, but not for reasons of general deterrence. When children become autonomous, schools may no longer punish for paternalistic reasons, but may punish for reasons of general deterrence, as well as for other-regarding developmental reasons. Justifications for punishment are often divided into the familiar categories of purely backward- and forward-looking justifications, and admixtures, in these terms we accept one forward-looking justification, and one admixture. We begin by rejecting purely backwards-looking views.

Backwards-looking justifications. Some deontic views say that some proportionate amount, degree and kind of suffering for wrongdoers ‘fits’ their wrongs. The deontic approach does not require that punishment be instrumental to any further good, or that it reward the efforts by constituting a better state of affairs than would obtain had punishment never occurred. Joan F. Goodman (2006) provides a nuanced retributivist position on punishment in schools. On her

¹⁸ Harms are various. One kind of harm can be the deprivation of opportunities. For instance, only having access to plastic cutlery reduces one’s opportunity to hurt someone with a dangerous implement, but at the cost of being able to cut food with ease, and, depending on the context, it may be experienced as an indignity.

account, pupils' culpable moral wrongs *deserve* punishment. This is in contrast with breaking conventional rules. While the culpability condition "would largely eliminate punishment for children up to their teen years" (224), for Goodman,¹⁹ the word 'largely' allows for exceptions. On her account, "children can be knowingly and wilfully malicious; therefore deserving of punishment" (ibid). On our reading, this notion of 'desert' seems vengeful. Though Goodman does not defend moral retribution as the sole valid justification of punishment, the offered analysis seems to assume it throughout. She provides an example that may be persuasive to some:

A teacher insists a young boy apologize for hitting a girl, and 'make it up to her' in some way; a way is suggested to him when he cannot think of a way himself.

This example is not well understood as retributivist. Goodman suggests the victim does not benefit from the intervention and that the primary intention is to give him a deserved, and unpleasant, experience. A more plausible interpretation sees the intervention as imposing an additional burden of moral training in the practice of compensation.

In her chapter for this volume, Goodman invokes expressions that intimate different kinds of justifications for punishment: for example, retributive punishment 'absolves the debt', 'can be deserved', 'restores' an 'upset moral equilibrium', and ensures 'equal rights'. We do not find these suggestive locutions and appeals attractive or persuasive. First, we regard our own approach as protecting and reflecting equal rights, without being retributivist. Second, we do not accept suffering as a non-instrumentally valuable response to wrongdoing. Third, while wrongdoing does create obligations, such as compensation or apology and makes urgent the

¹⁹ Goodman cites Piaget and Kohlberg in support of this claim.

need to reform any character defects, it is hard to see how someone's suffering harm is, in itself, any defensible improvement in states of affairs. Finally, punishment (and even compensation and apology) cannot undo wrong, even though they can make things better than they otherwise would be.

Following Victor Tadros, we hold that "just desert" is unattractive as a punishment justification, even in the case of adults. First, other things being equal, burdens, pains and negative experiences should be avoided and never sought. Second, whether these burdens and pains are sometimes rightly sought non-instrumental goods is controversial; as such, it would violate political neutrality to act on such a principle. Third, the aim of "just deserts" does not appear so desirable that it could justify associated costs such as reduced rewards and opportunities for learning. Having rejected desert-based views, we now consider consequentialist views in the school context.

Forward-looking justifications. Burdens are sometimes intentionally imposed because they are means to good consequences. The primary good consequences that punitive burdens are thought to conduce to are character reform and/or offence reduction. This view can look suspicious. If punishment truly works as a general deterrent, then why are there any offences at all? If it effectively reforms characters or works as a special deterrent (i.e. deters those punished), then why are there re-offences? The most credible version of the view holds that such mechanisms do not work infallibly, but sufficiently. On the forward-looking view, a condition for the justness of doing harm (by imposing burdens) is that the good consequences obtained through harming outweigh the harm done. More precisely stated, this view suggests that the net balance of value is higher; the state of affairs is best from an impersonal perspective, or *impersonally best*. On an unconstrained consequentialism, all harms, no matter how they are

produced are alike in disvalue and producing a net increase in value is a sufficient enabling condition for doing harm.

However, it seems that (other things being equal) it is worse to intentionally do or allow harm, rather than as a foreseeable side effect. We might call this view *Byproduct discount*. The *Byproduct discount* clause has consequentialist and deontic readings. On a consequentialist reading, one intentional wrong might be worse than two avoidable, foreseeable wrongs, but one intentional wrong is better than letting two intentional wrongs (by others) occur (i.e., that is what is *impersonally best*). In contradistinction, the deontic reading allows an *agential* perspective that usually trumps the impersonal perspective and says that, without their consent, we are not permitted to use people (especially not in harmful ways), even to produce a greater good (i.e., bring about what is impersonally best). On the deontic reading, harming one person is wrong even though *impersonally worse* than letting two people be similarly harmed by someone else. (Although, at some point, consequentialist reasons may dissolve deontic constraints; perhaps harming one person is not wrong to avoid similar harm to millions).²⁰

Additional considerations about which states of affairs are valuable add further variety to this family of views. For instance, if one holds that suffering is generally intrinsically dis-valuable, but intrinsically valuable when attached to wrongdoers, a quite different picture emerges than would if one were agnostic about who bears suffering. Further questions concern which distributions of benefit are most valuable. We have already rejected the idea that suffering is intrinsically valuable when attached to wrongdoers. We discuss the distributive question beneath in section 9.

²⁰ Compare Nagel (1986, Chapter 4).

Notice that neither unconstrained consequentialism, nor the version constrained by a consequentialist reading of *Byproduct discount* gives a principled limitation on who may be burdened to produce good consequences. There is no special permission, for instance, for injuring culpable wrongdoers to a greater degree than innocents. If false accusations of wrongdoing produce a valuable, lively sense of injustice, they are justified.²¹ We find this consequence unattractive in the case of autonomous adults, and favour the deontic reading of *Byproduct discount*. However, the deontic restriction on doing harm seems to make it impermissible to intentionally harm people in most cases. It licenses only acting in ways that generate proportionate negative side-effects of being denied opportunities to harm others. But these are not punishments as they are not intentional impositions of harms in response to wrongdoing. First, it is only in an attenuated sense that the harms inflicted are *responses* to wrongdoing (i.e. as evidence of a danger of further wrong and not cause in their own right), and second, the harms are side effects rather than intentional impositions. However, exceptions exist. If pain is imposed for the good of the person upon whom it is imposed (*qua*, say, character development), then it can be justifiable to punish people in response to their wrongdoing if a) they have given their consent to such treatment or b) their consent is not required for such treatment. In the case of young children, it might be thought that such consent is not required (cf Tadros 2020).²²

A hybrid justification. A modified forward-looking view integrates a backward looking component and says that potential punishing authorities may harm wrongdoers where doing so fulfills a protective duty to the community accrued in doing wrong (via a mechanism of general deterrence), but only up to the level of harm they have a duty to sustain in the course of that

²¹ Thanks to Matthew Clayton for this suggestion.

²² Tadros sketches a defense of this view (2019).

protective duty (i.e., Victor Tadros', 'duty view' of punishment).²³ A 'lesser evil' principle says that if that duty can be executed in either a more or less harmful way, the less harmful way is preferable. This view introduces a principled reason for injuring culpable wrongdoers, but not innocents (it restricts use of the kinds of hard treatment associated with punishment to use in responding to wrongdoing). In the case of liability unenhanced by responsible choice, apportioning impositions of punishment becomes a matter of distributive justice – a matter we shall turn to shortly.

6. PATERNALISTIC PUNISHMENT

How might punishment benefit the punished individual? Here are three suggestions:

1. *Compliance*. Punishment itself might be thought to help develop compliance with just rules by developing relevant dispositions (e.g. knowledge and attitudes) in the party punished.
2. *Conformity*. Alternatively, it might be thought to help ensure conformity with just rules, which is less bad in itself than breaching these rules.
3. *Enablement*. Punishment might enforce and thereby enable valuable activities (e.g. learning, co-operating), or reduce general chances of being harmed.

The idea that punishment enables compliance by engaging students' rationality (rather than bypass or subvert it, or appeal entirely to prudential reasons) is popular in the literature.

Punishing actions is thought to communicate:

²³ This view has interesting consequences (e.g.) if you cannot deter murder by elongating sentences further than 2 years, say, then murderers may only receive custodial sentences of 2 years. In this case, further protective duties might still be owed, and might be repaid in some other manner (perhaps of community service).

1. That an action is wrong (Hampton 1984, Morris 1981)
2. Why an action is wrong (Hampton)
3. The seriousness of the wrong (Morris, Hobson 1986, Hand 2018)
4. The depth of the punisher's attachment to standards of conduct (Morris)

Hobson suggests that it may be essential understanding the concept of wrongness at all. Others think that punishment trains us. Michael Hand takes this kind of view. On Hand's view, although differential punishment can convey an understanding of gravity, its main justification is for conditioning us. Hand illustrates this with the case of parents smacking their children.

When a mother smacks a child for, say, tripping up his younger sister near the top of a staircase, or next to a busy road ... she is attempting to convey to her son the seriousness of his wrongdoing and to establish in him a visceral aversion to putting others in danger. Although she intends to cause her son temporary pain, she does not intend to injure him or cause him harm. Her purposes are educative, and while it is not self-evident that smacking is an effective educational tool, nor is it self-evident that it is not. (2018, 81)²⁴

Paternalistic harms and punishment (whether of a special deterrent or educational kind) may look suspicious here too. Similar to the deterrence arguments analyzed above, if paternalistic punishment works, one wonders why there are reoffences? A plausible response is that while the practice is not fail-proof, it works reliably enough that persons have good reason to think that it will be in the punished individual's interests (to comply or conform with just

²⁴ Hand regards whether smacking is permissible as a matter of reasonable disagreement.

expectations), such that it is worth enacting, at least as a general practice. A failure rate that would defeat this practice would need to be specified.

However, the crucial premises that punishment is necessary (if not sufficient) for communicating the wrongfulness of action (Hampton and Morris), the degree of wrongness or the idea of wrongness in general (Hobson) are left undefended. It is plausible to think there are sufficiently communicative, non-punitive strategies. For Hampton, punishment alerts the punished person to the reasons it was wrong. However, it is hard to see how punishment directs the punished to a sense of the reasons, except perhaps seeing what it's like to suffer in the way one caused or risked causing suffering. It is hard to see that as essential, or even contingently integral to communication. In Hand's case, the claim that it is not self-evident that smacking is not an effective educational tool is not strong enough to warrant the practice. It seems that it would have to evidently be the least harmful means of achieving a necessary goal. The same holds for punishment in general. While we doubt that punishment is needed to promote compliance, we accept that it is more likely to promote conformity and enable valuable activities.²⁵ But why confer such benefits on others? What reasons support or motivate these interventions? We hold two candidates in mind:

- a. Perhaps an authority *owes them* some good (as an entitlement).
- b. Perhaps an authority is permitted to provide them with some good (preferentially, perhaps). On this understanding, the use of punishment seems optional (unless required for other reasons).²⁶

²⁵ Finally, it might be thought that punishing children *as if* they were responsible actors when they break a rule contributes towards forming their capacities for control.

²⁶ Relevant considerations to determining whether these hold include whether there is a just distribution of responsibilities for doing good, whether the costs of doing the benefit (costs to the benefactor, beneficiary or

However, approximating a wrong-doing sensitive burden-imposition might be the thought that while all of us are liable to assume burdens for the sake of improving social conditions, some punitive-looking sanctions are only effective at improving social conditions when imposed on those who have done wrong.

Both on forward looking and on the hybrid account, we will find that some duties are unenforceable:

“it may sometimes be undesirable for the government to attempt to enforce certain duties or political values. This might be due to different reasons. Some of them are related to feasibility problems. At other times, attempting to enforce a duty might violate the duty (or the value) it aims to enforce. Another reason for nonenforceability may be that enforcing one duty involves the violation of a different duty (or the value that a duty is supposed to serve), which overrides the first duty.” (Moles 2015, 660 – 661)

Before discussing liability unenhanced by choice and concluding, we now turn to discuss liability enhanced by choice (i.e., distribution of harms and benefits).

7. CAPACITIES FOR CONTROL AND RESPONSIBILITY

others) defeat a permission or duty to do the good and whether the advantage conferred by punishment unfairly advantages them over others who receive less punishment.

A minimal sense of responsibility might be stated in the following way: persons are responsible for an outcome if they are the proximate cause of that outcome. A more demanding sense (to a first approximation) might be stated as follows: persons are responsible for an action to the extent that they could have chosen to avoid it.²⁷ Where the action is wrong, and a person lacks a valid excuse, the person is *to blame*. It is often thought that responsibility for wrong means that an individual becomes liable to having more harm visited on them. But young children, at least infants, are generally agreed to lack responsibility and so not be *to blame*. While they might be at fault in having acted wrongly, they lack the fault of having been sufficiently responsible to enhance their liability. More accurately, children's capacities are thought to evolve and in doing so, children are thought to become more responsible for their actions. Eventually they are thought to (often) be fully responsible for their actions or often sufficiently responsible for their actions to warrant more harmful responses to their actions.²⁸

What kind of responsibility matters for how people may be treated, why should any kind of responsibility matter at all and why does more of it license different treatment? This question will foreground our discussion of what responses are left in cases where individuals' responsibility is evolving. The relevant lens through which we should discern morally salient differences between kinds and degrees of agency is one provided (or inspired) by Hart: A person is responsible if they had fair opportunity to do otherwise. This can be scalar; a person can be liable for more punishing treatment in proportion with their degree of responsibility.

²⁷ This may be regarded as false due to Frankfurt-examples (although, to varying degrees, we each remain sceptical), or if hard-determinism should be true. Levy (2014) describes Fischer and Ravizza's alternative view (1998): "responsibility requires not regulative control—actual access to alternative possibilities—but only guidance control. Roughly speaking, we exercise guidance control over our actions if we would recognize reasons, including moral reasons, as reasons to do otherwise, and we would actually do otherwise in response to some such reason in a counterfactual scenario"

²⁸ We should note that judgements of agency do not entail (all by themselves) judgements about what responses are appropriate – so this last thought indicates how people often index responsibility against degrees of punitive response (e.g. responsible enough for this harsher form of response). At this level and stage of analysis, we are identifying principles that might guide us in determining relative degrees of response rather than specifics of the response itself.

This can manifest in external features (e.g. freedom from duress) and internal conditions (e.g. having suitable capacities).²⁹ As Nelkin (2016) observes, “what determines blameworthiness is whether one has had a fair opportunity to avoid wrongdoing, where whether one has such an opportunity depends on both one’s capacities and one’s situation”.³⁰ Let us assemble and consider respects in which responsibility might be differentially scored, paying particular attention to suitable capacities. We judge them as relevant because they effect the degree of difficulty and effort required to comply with requirements and, in their absence, an actor lacks a fair opportunity for such compliance.³¹

1. Having or having access to relevant moral, factual and normative knowledge (i.e., of the relative weight of reasons).³²
2. Having self-control. Self-control is composite into four dissociable, scalar capacities. These are capacities for deferred gratification, to maintain goals despite distraction, to suppress inappropriate impulses, and to cancel a started action); acquiring these means acquiring structural changes in the underlying circuitry.³³
3. Context control: Students in compulsory schooling may lack one means of avoiding wrongdoing: we can avoid testing our tolerance/temptation by controlling the situations we are in, if we cannot do that, we are perhaps less responsible for where we give into temptation etc.

²⁹ True, a bad upbringing (external) might result in poor capacities, but it’s the capacities that matter here rather than the history (that’s just the explanation for the lack of capacity). That said, poor capacities can be our own fault – if we had sufficient capacity to improve/ maintain our capacities but didn’t take advantage – a bit like drinking alcohol.

³⁰ Nelkin also cites degree of sacrifice, which seems more relevant to excusability.

³¹ Another strategy could be to take a person with a guilty mind, then isolate and subtract elements, asking after each distillation whether they are still guilty.

³² Rosen (2004)

³³ Churchland, Patricia (2013) ‘On Self Control’, *Philosophy Bites*, with David Edmunds and Nigel Warburton. An alternative (Aristotelian) view is that we are responsible for an action when it reflects a stable character trait. Sometimes this is called an expressive view of responsibility (as opposed to a control theory) (Levy), sometimes it is called attributability view of responsibility (as opposed to an accountability view) (Nelkin)

What is the threshold of these conditions that must be met by people's choices in order to render them liable for use in general deterrence for wrongdoing? If one thinks that the majority of adults can make choices which make them liable for use in this way, then one will think that some or even many adolescents will be liable for use in this way. However, again, we note that large societies need some kinds of efficiencies to enable the transition from one set of powers and liabilities to another.

8. DISTRIBUTIVE JUSTICE: LIABILITY WITHOUT RESPONSIBLE CHOICE

Suppose control never made a difference to how burdens and benefits should be distributed. What then? It seems that discipline regimes should be assessed in terms of (non-desert based) distributive justice alone. Tillson and Oxley (2020a, 48) offer the following:

Arguably, if a child, Sandra, consistently and significantly undermines the weighty interests of others (e.g., the physical or mental well-being of other children or educational opportunities), teachers might reasonably aim to prevent this from happening, and exclusion might be a means of the last resort. This might even be to Sandra's detriment so long as

1. other strategies have been exhausted,
2. the detriment is not disproportionate to the interests others are protected in,
3. is as minimal as affordable and

4. is not for its own sake but a by-product (e.g., of the effective protection of others' weighty interests, such as educational opportunities to some level which is fair on them).

They clarify disproportion in a footnote.

“For instance, if other children were to be protected in their opportunity to learn one fact each, and it came at the expense of Sandra knowing nothing at all, this condition would not be met.” (fn 17)

Elsewhere, Tillson elaborates this differently.

If removing a child from a school community will diminish their educational opportunities, that's a reason not to do it. And if keeping them in the school diminishes other people's educational opportunities that's a reason to remove them. So which should you do? One way to think about this is to focus on the adequacy of education. If keeping that child in the school gives them access to an adequate education and doesn't diminish anyone else's education below a threshold of adequacy we may not have a reason to remove them yet. Even though removing them would improve everyone else's education. If removing them improved everyone else's education a just little bit, but it wasn't inadequate in the first place, and put this child in a situation where they get an inadequate education it looks like you shouldn't remove the child from the school because it visits upon them a disproportionate harm and that can be so even though removing them will produce more education in general. More education in general isn't what matters, what matters is how it is distributed: we should ensure, so

the thought goes, that everyone has an adequate educate education, not that more learning happens in general. (Tillson and Oxley 2020b 15:06 – 16:40)

These arguments might seem to advance a view that evaluates circumstances only in reference to educational outcomes. But, of course, more matters in a life than only education: sometimes a better education might have remedial effect (or counter-balancing effect) on poor quality family life – so that people with worse family life might have a claim to more education than others. People with better family lives might have less of a claim. If this is so, children from loving families might have to put up with more misbehaviour from children from unloving families than children from unloving families would have to put up with from children from loving families. Tillson and Oxley adopt a sufficientarian approach to distributive justice. Our point is not to say that they are right about this,³⁴ but that they are right to draw attention to the importance of principles of distributive justice to work out the distribution of harms and benefits when it comes to protection from wrongdoing.

There may be non-ideal situations in which loving families tend to be wealthy and have power and choices and leverage for less tolerance towards the behaviour of children from unloving families than justice requires, and they may use this leverage to get what they want: if schools do not equally respond to equal *actus reus*, they will remove their child and this may diminish the quality of education more widely. Full engagement with these arguments may mean that national-level laws must be enacted and, perhaps, international treaties created and endorsed, such that this kind of power cannot be exercised.

³⁴ For example, for Tillson, a Dworkinian hypothetical insurance model of distributive justice may be an improvement.

CONCLUSION

Before children are at an age at which the majority of children are autonomous, schools may establish both paternalistic and other-regarding requirements. These include moral and prudential requirements, but not ethical ones. When adolescents reach an age at which the majority of students are autonomous, schools may establish only other-regarding requirements of student conduct. These include moral requirements, but not prudential or ethical ones. Since autonomy-relevant capacities come in degrees and can be sufficient to warrant respect in certain domains before they warrant respect more completely, as students become older the sphere of domains within which they are autonomous will increase.

How may these requirements be enforced? Consider moral requirements first. Consider a developmentally typical child, middle adolescent, and adult who each violate some moral requirement. Paternalism warrants treatment that helps make the child behave better (or otherwise avoids their doing wrong) for their own sake, but not the adult. It may not (ideally) warrant such treatment for the middle adolescent, but reasons of efficiency may make it permissible (so too the injustices that may arise in making the matter discretionary).³⁵ Distributive considerations of general, or background liability (undisturbed by responsible choice) warrants treatment that helps make the child behave better for the sake of others. A similar, but inverse pattern holds when we consider liability enhanced by responsible choice. Choice enhanced liability warrants treatment of adults that deters similar wrongdoing by others but does not warrant such treatment of children. It may (ideally) warrant such treatment for the

³⁵ We plan to discuss the moral limits of teacher discretion in punishment elsewhere.

middle adolescent, but reasons of efficiency and the avoidance of injustice in discretion may make it impermissible.³⁶

Now consider prudential requirements. Consider a developmentally typical child, and middle adolescent who each violate some prudential requirement. Paternalism warrants treatment that helps make the child behave better (or otherwise avoids imprudent behaviour) for their own sake. It may not (ideally) warrant such treatment for the middle adolescent, but reasons of efficiency and injustices that may arise in making the matter discretionary may make it permissible. That said, disobedience of legitimate authorities pursuing legitimate duties of their office (which include the promotion of prudence) in a legitimate way might warrant some burdens designed to ensure conformity or promote compliance. Such duties and permissions will gradually disappear as the child approaches majority (i.e., as their range of local competencies increase). The expressive content of this treatment is as follows: ‘I am entrusted with your good and this action is for your own good. Until you’re mature enough to decide your own good or otherwise override it, I have duty to ensure you behave in accordance with your good, and I am permitted to place proportionate burdens on you to ensure that you do so’. While that is surely a complicated message likely too difficult for most young students to understand, it nevertheless captures important elements of the view we advance.

Students can be responsible for violating prudential requirements, but not blameworthy for doing so. Heteronomous students may be punished if it conduces to conformity with such requirements. Autonomous students may not. Pupils can be blameworthy for violating moral

³⁶ There are questions about on which side one should err. On one hand, erring so as not to punish for reasons of choice enhanced liability adolescents are not sufficiently autonomous to have incurred preventative duties might be contrasted with, on the other hand, the potential error of imposing the good on adolescents who are sufficiently autonomous as to be owed respect. Actors have a choice about who the system will err so as to wrong and in which way.

requirements. Autonomous individuals can be punished for reasons of general deterrence where they are blameworthy. As to whether reactive blame or its expression are appropriate, we remain agnostic in this paper. We note that it is often natural and where it is hard to avoid, but bad, it might be excusable, or permissible but to be avoided. On the other hand, if it is peculiarly educational in shaping our habits towards justified thoughts, feelings and actions, in ways that spares us cognitive burdens, this educational payoff may warrant teachers' faking reactive attitudes where they don't feel them. At a minimum accurate diagnostic blame and its articulation are appropriate where pupils are blameworthy. Where students are only minimally responsible and their behaviour is wrongful (or requiring improvement), they are apt to be corrected and trained to 'make up for it'.

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