The value’s MORALITY.

Rationality requires acting on principles which serve our rational ordering of preferences. Gauthier 1:  
David Gauthier, “Why Contractarianism?” p. 92-106

Since **in representing our preferences we become aware of conflict among them[;]**, the step from representation to choice becomes complicated. **We must**, somehow, **bring our conflicting** desires and **preferences into some sort of coherence. And there is only one plausible candidate for a principle of coherence—a maximizing principle. We order our preferences, in relation to decision and action, so that we may choose in a way that maximizes our expectation of preference fulfillment. And in so doing, we show ourselves to be rational agents, engaged in** deliberation and **deliberative justification. There is simply nothing else for practical rationality to be.**

The only moral theory ensuring the maximization of each agent’s expected utility is one of mutual constraint. This implies a contractarian theory of morality to reconcile differences in preferences. If there is no reciprocity or mutual agreement between parties, no contract exists and neither has an obligation to the other. Gauthier 2:  
David Gauthier, “Why Contractarianism?” p. 92-106

**This rationale for agreed constraint** makes no reference to the content of anyone’s preferences. The argument **depends simply on the structure of interaction, on the way in which each person’s endeavor to fulfill her own preferences affects the fulfillment of everyone else.** Thus, **each person’s reason to accept a mutually constraining practice is independent of her particular desires**, aims and interests, **although not,** of course, **the fact that she has such concerns. The idea of a purely rational agent, moved to act by reason alone, is not**, I think, **an intelligible one.** **Morality is not to be understood as a constraint arising from reason alone on the fulfillment of nonrational preferences. Rather, a rational agent is one who acts to achieve the maximal fulfillment of her preferences, and morality is a constraint on the manner in which she acts**, arising from the effects of interaction with other agents.

Only contractarianism is consistent with individual agency and identity. Gauthier 3:  
David Gauthier, “Why Contractarianism?” p. 92-106

**In incorporating morality into deliberative justification, we recognize a new dimension to the agent’s self-conception.** **For morality requires that a person have the capacity to commit himself**, to enter into agreement with his fellows **secure** in the awareness **that he** can and **will carry out his part of the agreement** without regard to many of those considerations that normally and justifiably would enter into his future deliberations. And **[T]his is more than the capacity to bring one’s desires and interests together with one’s beliefs into a single coherent whole.** Although this latter unifying capacity must extend its attention to past and future, the unification it achieves may itself be restricted to that extended present within which a person judges and decides. But **in committing oneself to future action in accordance with one’s agreement, one must fix** at least a subset of **one’s desires and beliefs to hold in that future. The self that agrees and the self that complies must be one. “Man himself must first of all have become calculable**, regular, necessary, even in his own image of himself, **if he is to be able to stand security for his own future, which is what one who promises does!” In developing “the right to make promises,” we** human beings **have found a** contractarian **bulwark against the perishing of morality.**

The standard is CONSISTENCY WITH CONTRACTARIAN RESTRAINT.

I contend retribution is necessary to ensure each party to contracts receives what they are due. The idea of punishment for wrongdoing is at the basis of contractual formations and is thus a prerequisite to any ethical system. Nietzsche:  
Friedrich Nietzsche, “On The Genealogy of Morals”, 1887

Have these genealogists of morality up to this point allowed themselves to dream, even remotely, that, for instance, the major moral principle “guilt” [Schuld] derives its origin from the very materialistic idea “debt” [Schulden] or that punishment developed entirely as repayment, without reference to any assumption about the freedom or lack of freedom of the will—and did so to the point where it first required a high degree of human development so that the animal “man” began to make those much more primitive distinctions between “intentional,” “negligent,” “accidental,” “responsible,” and their opposites and bring them to bear when meting out punishment? That unavoidable idea, nowadays so trite and apparently natural, which has really had to serve as the explanation how the feeling of justice in general came into existence on earth—“The criminal deserves punishment because he could have acted otherwise”—this idea, in fact, is an extremely late achievement, indeed, a sophisticated form of human judgment and decision making. Anyone who moves this idea back to the very beginnings is sticking his coarse fingers inappropriately into the psychology of primitive humanity. **For the most extensive period of human history, punishment was** certainlynot **meted out because** people held the instigator of evil responsible for his actions, nor was it assumed that only the guilty party should be punished. It was much more the case, as it still is now when parents punish their children, **of anger over some harm which people have suffered**, anger vented on the perpetrator. But **[T]his anger was** restrained and **modified through the idea that every injury had some equivalent and that compensation for it could**, in fact, **be paid out, even if that was through the pain of the perpetrator.** Where did **[T]his** primitive, deeply rooted, and perhaps by now ineradicable **idea derive[s] its power**, the idea of an equivalence between punishment and pain? I have already given away the answer: **in the contractual relationship between creditor and debtor**, which is as ancient as the idea of “someone subject to law” and which, in itself, refers back to the basic forms of buying, selling, bartering, trading, and exchanging goods. It’s true that recalling this contractual relationship arouses, as we might expect from what I have observed above, all sorts of suspicion of and opposition to primitive humanity, which established or allowed it. It’s precisely at this point that people make promises. Here the pertinent issue is that the person who makes a promise has to have a memory created for him, so that precisely at this point, we can surmise, there exists a site where we find harshness, cruelty, and pain. In order to inspire trust in his promise to pay back, **in order to give his promise** a guarantee of **its** seriousness and **sanctity,** in order to impress on his own conscience the idea of paying back as a duty, an obligation, **the debtor**, by virtue of the contract, **pledges to the creditor**, in the event that he does not pay, something that he still “owns,” **something over which he** still **exercises power**, for example, his body or his wife or his freedom or even his life (or, under certain religious conditions, even his blessedness, the salvation of his soul, or finally his peace in the grave, as was the case in Egypt, where the dead body of the debtor even in the tomb found no peace from the creditor—and it’s certain that with the Egyptians such peace was particularly important). That means that the creditor could inflict all kinds of ignominy and torture on the body of the debtor—for instance, slicing off the body as much as seemed appropriate for the size of the debt. And this point of view early on and everywhere gave rise to precise, sometimes horrific estimates going into finer and finer details, legally established estimates about individual limbs and body parts. I consider it already a step forward, as evidence of a freer conception of the law, something which calculates more grandly, a more Roman idea of justice, when Rome’s Twelve Tables of Laws decreed it was all the same, no matter how much or how little the creditor cut off in such cases: "si plus minusve secuerunt, ne fraude esto" [let it not be thought a crime if they cut off more or less]. Let us clarify the logic of this whole method of compensation—it is weird enough. The equivalency is given in this way: instead of an advantage making up directly for the harm (hence, instead of compensation in gold, land, possessions of some sort or another), **the creditor is given a kind of pleasure as** repayment and **compensation—the pleasure of being allowed to discharge his power on a powerless person without having to think about it**, the delight in "de fair le mal pour le plaisir de le faire" [doing wrong for the pleasure of doing it], the enjoyment of violation. This enjoyment is more highly prized the lower and baser the debtor stands in the social order, and it can easily seem to the creditor a delicious mouthful, even a foretaste of a higher rank. **By means of the “punishment” of the debtor, the creditor participates in a right belonging to the masters.** Finally he himself for once comes to the lofty feeling of despising a being as someone “below him,” as someone he is entitled to mistreat—or at least, in the event that the real force of punishment, of inflicting punishment, has already been transferred to the “authorities,” the feeling of seeing the debtor despised and mistreated. The compensation thus consist of a permission for and right to cruelty.