I affirm and value MORALITY, defined as the conformity of an act to the standard of right conduct because ought implies a moral obligation.

The resolution posits that children ought to be treated as adults. This doesn’t imply that they need to be treated as the stereotypical adult; just as we have exceptions and relevant considerations when considering the punishment and prosecution of certain adults, those same considerations could apply to children. The difference is those rules would have to apply in the same way they do to adults and thus in the adult justice system. Thus, the affirmative advocates using the adult criminal justice system for the prosecution of all violent felonies, as the negative burden is to defend the juvenile justice system.

It’s impossible to divorce moral principles from the real world. Morality, in order to actually dictate the way to treat drug abuse and define the mindset utilized or action, demands a practical understanding of how and why people behave.

However, there is nothing external to agents’ self interest that can compel truly compel action. Mark Mercer[[1]](#footnote--1) argues

To begin: **To understand what another has done is** both **to have a** particular sort of **true description of the action he has performed**, **one that reveals it to be intentional, and to know the agent's practical reason for performing that action.** In turn, to know an agent's reason for performing some particular action involves **understanding his motivation in doing it.** An interpreter cannot, though, really understand an agent's motivation in performing an action unless she sees that motivation as a motivation, unless she is cognizant of its force as a motivation. **It is not enough,** that is to say, **to understand what a person who intentionally sips from a saucer of mud has done to note merely that he had the desire to sip from a saucer of mud,** and believed himself both possessed of a saucer of mud and able to sip from it. **An interpreter has also to comprehend what in desiring to sip from a saucer of mud was attractive to him.** Now usually, of course, there is no problem in our comprehending what it is in the desires had by people around us that attracts them as desirable. **The people around us are more or less like us in many if not most of their desires, wants and wishes**, and few of them desire to sip from a saucer of mud, **so in our day to day life we do not often have cause to turn our attention explicitly to the question from whence arrives the motivational force of their desires**. **Still, it is not exceedingly uncommon for us**, even for those of uswho are not psychologists, sociologists, or anthropologists, **to be stumped by some piece of what we take to be behaviour.** How are we to make sense of some such piece of strange behaviour? **One way is to connect that piece of behaviour to one or more of the strange agent's self-regarding ends. If we can see in sipping from a saucer of mud a way of maintaining self-respect, or even a way to delight in the taste of mud, we can understand the desire the agent had to sip from a saucer of mud.** We need not connect his self-regarding end to an intention to realize that end in or through his action; **we need only,** I think, **connect it to an expectation of realizing it.** But is this the only way we can make sense of desires we ourselves do not share and cannot, at first at least, imagine sharing? I think that it is. **Without our perceiving a connection to an intention or an expectation of realizing some self-regarding end, we cannot see in any consideration we attribute to an agent a motivation to act. The motivating force of the consideration that spurred action will remain beyond our ken, the action stemming from it unfathomable and inexplicable.**

Additionally, any motive that I can have to act must be my own motive and not someone else’s. I cannot be motivated by your desires because they have not motivated force by me, the actor. Thus, the actor must be able to perceive an internal motivation to act internal to themselves.

These principles of egoism are empirically verified. When we train children to act rightly we do so via rewards for good behavior and punishment for bad. There is no motivation to behave rightly. We condition motivation via self-motivation. All motivation is reducible to these claims. So, a purely abstractly derived ethical theory is impossible, as it can never develop any sort of basis for motivation.

Additionally, moral claims that can’t explain their relevance to agents’ self-interest are meaningless. A moral claim about how agents should act must both be able to explain the content of rules as well as the motivation to follow them. Otherwise, it fails to establish a system of right conduct as there is no reason why my conduct is constrained by moral evaluation. However, the sole basis for normative incentives to guide action must be based in our rational self-interest because otherwise agents could conclude that they should not follow moral rules as there is no incentive to do so.

Moreover, to divorce ethics from the way people actually behave is to arbitrarily hold on to the idea of morality as some sort of platonic moral ideal. Claims that morality arose by humans to hold on to abstract platonic truths is to arbitrarily exclude large sects of arguments for morality that deal with the rationality of compliance to moral rules—there is nothing external of this rationality because reasons for making decisions are the sole basis for constructing moral theories in the first place.

This derives the principles of contractarianism. David Gauthier[[2]](#footnote-0) explains:

Morals by agreement begin from an initial presumption against morality, as a constraint on each person's pursuit of his own interest. **A person is conceived as an independent centre of activity, endeavoring to direct his capacities and resources to the fulfillment of his interests.** **He** considers what he can do, but **initially draws no distinction between what he may and may not do.** How then does he come to acknowledge the distinction? How does a person come to recognize a moral dimension to choice, if morality is not initially present? Morals by agreement offer a contractarian rationale for distinguishing what one may and may not do. **Moral principles are introduced as the objects of fully voluntary ex ante agreement among rational persons.** Such agreement is hypothetical, in supposing a pre-moral context for the adoption of moral rules and practices. But **the parties to agreement are real, determinate individuals, distinguished by their capacities, situations, and concerns.** **In so far as they would agree to constraints on their choices, restraining their pursuit of their own interests, they acknowledge a distinction between what they may and may not do.** As rational persons understanding the structure of their interaction, **they recognize a place for mutual constraint, and so for a moral dimension in their affairs.** That there is a contractarian rationale for morality must of course be shown. That is the task of our theory. Here our immediate concern is to relate the idea of such a rationale to the introduction of fundamental moral distinctions. This is not a magical process. **Morality** does not emerge as the rabbit from the empty hat. Rather, as we shall argue, it **emerges** quite simply **from the application of the maximizing conception of rationality to certain structures of interaction**: Agreed mutual constraint is the rational response to these structures. Reason overrides the presumption against morality.

Thus, morality is created by appeals to the rationality of agreements by agents, independent of what is objectively in their self-interest. Rationality is determined by the individual agent, so objective concerns of harm external to perceptions do not generate obligations. Additionally, self-interest is determined at the time of the original decision to ascent to a norm of mutual self-restraint. For example, I might say that eating ice cream is in my self-interest because I’m hungry even if it will lead to a global milk depletion that gives all cows mad cow disease, who in turn infect all humans, causing extinction. So the standard is **consistency with the moral claims of rational contractarianism**.

Moreover, prefer this standard because…

**First**, contractarianism is the sole moral system that establishes the rationality of compliance to moral principles as well as providing the rational basis for those principles. Gauthier TWO[[3]](#footnote-1) continues:

**A contractarian theory of morals**, developed as part of the theory of rational choice, has evident strengths. It enables us to **demonstrate[s] the rationality of impartial constraints on the pursuit of individual interest to persons who may take no interest in others' interests. Morality is thus given a** sure **grounding in** a weak and widely accepted conception of **practical rationality.** No alternative account of morality accomplishes this. **Those who claim that moral principles are objects of rational choice in special circumstances fail to establish the rationality of actual compliance with these principles.** Those who claim to establish the rationality of such compliance **[and] appeal to a strong and controversial conception of reason that seems to incorporate prior moral suppositions. No alternative account generates morals, as a rational constraint on choice and action, from a** non-moral, or **morally neutral, base.**

**Second**, connection to rational compliance is crucial to any moral theory. Paul Voice[[4]](#footnote-2) explains:

Contractarianism connects rationality, reasonableness, and morality: **without this connection morality is at the whim of the contingent and the arbitrary.** **Contractarianism** **makes morality** fundamentally **an object of intellectual inquiry. If rationality and morality part company**, then at least two consequences follow. Firstly, **morality becomes mere** tribal **custom. Distant neighbors become beyond our moral reach, tribalized into moral aliens.** **Rationality is thus a digging tool for escape the confines of our circumstance.** Not here too that the ideas of agreement and a morality susceptible to rational reflection overlap in a fundamental way. Agreement, at least as we have characterized it, entail the rational, albeit not in quite the way that Gauthier understand this connection. **A second consequence** of disconnecting morality from rationality **is that morality ceases to have any explanatory role** in our world. **With the support of contractaranism we can say that a person’s being justified in her judgments explains her actions and beliefs. And we mean more than she merely believed that that was the right thing to do** (although we mean this as well of course). **Morality**, in escaping the reductivism of the anthropologist and aligning itself with rational deliberation, **becomes a common part of the world we all inhabit.**

**Third**, only contractarianism can supply a truly stable basis for ethics. Voice 2 argues:

Contractarianism explains how we can get things right. **The skeptic’s most powerful weapon** against moral theory **is the claim that the prescriptions** which issue **from a theory are arbitrary because there is no clear account of what secures our knowledge of them. Contractarianism offers a clear account by specifying the exact procedure by which a hypothetical agreement is set up and reached.** Getting things right is, in large part, getting the procedure right. **If the outcome is unsatisfactory, then either we have set up the procedure incorrectly or we have failed to fully occupy an objective and impartial position within the agreement procedure. In other words, we can say not only how we get things right, but also how and why things go wrong.**

Only this type of ethical analysis allows morality to correct itself in alignment with proper procedure—accounts that solely describe action itself and not the rational justification for motivation or outcome force a static conception of morality that fails to shed illegitimate ethical principles.

**I contend that the construction of ethical values via rational contractarianism demands juveniles be treated as adults.**

**First**, juvenile courts, by embracing rehabilitation, attempt to avoid the adversarial system and expand the power of judges in an inquisitorial way. Stacey Hiller[[5]](#footnote-3) explains,

Parens Patriae Facilitates Rehabilitation Following the creation of the juvenile court system, under parens patriae, children in delinquency proceedings were not treated as criminals, but as children in need of guidance and nurturing in a non-adversarial system. 124 This system was meant to nurture and ultimately rehabilitate juveniles. **As originally planned, the juvenile court system was "to be a clinic, not a court; the judge and all of the attendants were visualized as white-coated experts there to supervise, enlighten, and cure**, not to punish . . . and were surrogates, so to speak, of the natural parent." 125 These experts were supposedly motivated by "love" **and intended to** use this love to **transform troubled juveniles into normal children, saving them from careers as criminals.** 126 The early rehabilitative programs focused less on punishment and more on education and the prevention of juvenile delinquency. 127The rehabilitative goal aimed at mentally and morally preparing youths for productive roles in society upon their release. 128 **Although the juvenile court system has changed over the years, it has retained its essential goal of rehabilitation, and even today it encourages judges to use their discretion "to steer the errant child onto the right path.**" 129 The ensuing struggle between this wide discretion and the need for rational procedure, however, prompted the Supreme Court to limit the juvenile court judge's discretion [\*289] to provide the proper balance between the rehabilitative ideal and sufficient procedural protections under the U.S. Constitution. 130 **The proceedings in juvenile court differ in both form and substance from those in adult criminal trials.**

Rehabilitative systems inflate state power to control the means of individuals arbitrarily. C.S. Lewis[[6]](#footnote-4) explains:

The distinction will become clearer if we ask **who will be qualified to determine sentences** when sentences are no longer held to derive their propriety from the criminal’s deservings. **On the old view** the problem offixing **the** right **sentence was a moral problem. Accordingly, the judge** who did it **was** a person **trained in** jurisprudence; trained, that is, in a science which deals with **rights and duties,** and which, in origin at least, was consciously accepting guidance from the Law of Nature, and from Scripture. We must admit that in the actual penal code of most countries at most times these high originals were so much modified by local custom, class interests, and utilitarian concessions, as to be very imperfectly recognizable. But **the code was never in principle,** and not always in fact, **beyond the** control of the **conscience of** the **society. And when** (say, in eighteenth-century England) **actual punishments conflicted** too violently **with the moral sense of the community,** juries refused to convictand **reform was** finally **brought about.** This was possible because, so long as we are thinking in terms of **Desert,** the propriety of the penal code, being a moral question**, is a question in which every man has the right to an opinion,** not because he follows this or that profession, but because he is simply a man, a rational animal enjoying the Natural Light. But all **this is changed when we drop the concept of Desert. The only** two **question**s **we may now ask about a punishment** are**[is] whether** it deters and whether it **cures. But** these are **[this is] not [a] questions on which anyone is entitled to have an opinion** simply because he is a man. He is not entitled to an opinion even if, in addition to being a man, he should happen also to be a jurist, a Christian, and a moral theologian. **For they are not question about principle but about** matter of **fact;** and for such cuiquam in sua arte credendum. **Only the expert ‘penologist’** (let barbarous things have barbarous names), **in the light of previous experiment**, can tell us what is likely to deter: only the psychotherapist **can tell us what is likely to cure.** It will be in vain for the rest of us, speaking simply as men, to say, ‘but this punishment is hideously unjust, hideously disproportionate to the criminal’s deserts’. The experts with perfect logic will reply, ‘but nobody was talking about deserts.No one was talking about punishment in your archaic vindictive sense of the word. Here are the statistics proving that this treatment deters. Here are the statistics proving that this other treatment cures. What is your trouble? **The Humanitarian theory**, then, **removes sentences from the hands of jurists** whom the public conscience is entitled to criticize **and places them in the hands of technical experts** whose special sciences do not even employ such categories as rights or justice**.** It might be argued that since this transference results from an abandonment of the old idea of punishment, and, therefore, of all vindictive motives, it will be safe to leave our criminals in such hands. I will not pause to comment on the simple-minded view of fallen human nature which such a belief implies. Let us rather remember that **the ‘cure’ of criminals is to be compulsory**; and let us then watch how the theory actually works in the mind or the Humanitarian. The immediate starting point of this article was a letter I read in one of our Leftist weeklies. The author was pleading that a certain sin, now treated by our laws as a crime, should henceforward be treated as a disease. And he complained that under the present system the offender, after a term in gaol, was simply let out to return to his original environment where he would probably relapse. What he complained of was not the shutting up but the letting out. **On his remedial view of punishment the offender should, of course, be detained until he was cured.** And or course the official straighteners are the only people who can say when that is. **The** first **result** of the Humanitarian theory **is, therefore, to substitute for a definite sentence** (reflecting to some extent the community’s moral judgment on the degree of ill-desert involved) **an indefinite sentence terminable only by the word of those experts—**and they are not experts in moral theology nor even in the Law of Nature—who inflict it. Which of us, if he stood in the dock, would not prefer to be tried by the old system?

This is empirically verified within the juvenile system. Robert Shepard[[7]](#footnote-5) explains:

**The justification for having a**n entirely **separate juvenile system is to avoid the harshness of the adult system and provide an environment that is more conducive to rehabilitation of the youthful offender. Unfortunately, this emphasis on rehabilitation has fostered the imposition of indeterminate sentences in deference to the supposed rehabilitative expertise of juvenile authorities. As a result, juvenile offenders are often incarcerated for much longer terms than are adults for similar offenses.** The recognition of a right to punishment would force the juvenile system to either live up to the rehabilitative justification for the peculiar incarceration it imposes, or provide an alternative method of dealing with the juvenile offender that is consistent with the conceptual limitations on punishment underlying the adult system.

Thus, rational contractors would not consent to a system where sentences are indeterminate because the juvenile is obligated to the system without restrictions without regard for the specifics of action. Gauthier 2 explains,

“But **broad compliance is not a rational disposition for utility-maximizers.** Not only does **a broadly compliant person invite[s] others to take advantage of her in setting terms of co-operation**, but if some persons are broadly compliant, then others, interacting with them, will find it advantageous not to be broadly, or even so much as narrowly, compliant.**If you will comply for any benefit whatsoever, then in interacting with you I should dispose myself to comply with a joint strategy only if it offers me, not a fair share, but the lion’s share of the co-operative surplus.**  **So it is not and cannot be rational for everyone to be disposed to broad compliance.  But since no one chooses to constrain his behavior for its own sake, no person finds it rational to be more compliant than his fellows.**  Equal rationality demands equal compliance.  **Since broad compliance is not rational for everyone, it is not rational for anyone.**”

**Second**, juveniles’ position destroys their ability to modify the conditions on which they are prosecuted.

A. Defense attorneys in juvenile court are detrimental to juveniles’ right to a fair trial. Berry Feld[[8]](#footnote-6) writes,

**Juvenile defense attorneys often carry caseloads two, three, or four times higher than** those **recommended** by professional standards. Although **professional standards recommend a** maximum **caseload** **of no more than 200 delinquency cases annually per attorney**, virtually every public defender office exceeds those standards (ABA 1995). A survey of public defenders in **Washington State** found many **attorneys represented 500 delinquents or more**; one rural defender represented more than 900 delinquents annually (Ainsworth 1991). **In Minnesota,** urban **public defenders commonly carry caseloads of 600 to 800 delinquents** (Feld 1995). Court workers in several juvenile courts reported that **caseload pressures forced defense counsel into rushed appearances, inappropriate plea bargains, perfunctory trials, and ineffective representation** (Sanborn 1994). **The high volume of cases prevents attorneys from preparing adequately, filing motions, or even interviewing clients before they appear in court and poses the single greatest barrier to effective and quality representation** (ABA 1995; Ainsworth 1991)**.** Overwork combines with inexperience to exacerbate the undistinguished performance of many defense attorneys. **Public defender offices** in many jurisdictions often **assign either their least-capable or newest attorneys to juvenile courts to get trial experience. Many public defender offices regard juvenile court either as a training ground for neophytes or a place to assign senior attorneys to punish them or to minimize the damage they might do to adult defendants.** “In some defender offices, assignment to ‘kiddie court’ is the bottom run of the ladder, to be passed as quickly as possible on the way up to more visible and prestigious criminal court assignments” (Flicker 1983:2). In organizations that rotate their staff, public defenders may represent adult defendants, as well as delinquents, and may give their juvenile clients’ interests short shrift in pursuit of the “real” work of their offices (Edwards 1993). **Court-appointed counsel may feel beholden to the judges who select them and restrain their advocacy. A desire to maintain an ongoing relationship with court personnel may outweigh a commitment to** vigorously **protect the interests of their** often changing **clients.** **Court-appointed lawyers may cooperate with judges to avoid alienating them regarding other clients or pending matters or to continue receiving appointments** (Lemert 1970). Judicial commitment to a rehabilitative ideology may create a professional tension for lawyers tempted to adopt a more adversarial role. “The court officials’ hostility to counselor’s efforts has resulted in negative performance evaluations, slashed fees, and even pressure from the court to remove the offending attorneys from the panel” (Flicker 1983:4). As a result of organizational and professional constraints, many lawyers decline judicial appointments to defend delinquents.

B. Because of juveniles’ inability to vote, the creation of a separate institution to prosecute and punish them would never be rationally consented to because all agents subject to the coercive power of the system are deprived of a voice in that system. Thus, we would never consent to such an institution because it would bind us to a power to which the oppressed can never oppose. It’s thus an unequal agreement because one party can change its conditions while the other can’t. The only system that would be mutually consented to is thus one in which all parties are treated equally.

1. In Defence of Weak Psychological Egoism.: Mark Mercer. Erkenntnis (1975-), Vol. 55, No. 2 (2001), pp. 217-23 [↑](#footnote-ref--1)
2. Gauthier, David P. *Morals by Agreement*. Oxford: Clarendon, 1986. Print. [↑](#footnote-ref-0)
3. Gauthier, David P. *Morals by Agreement*. Oxford: Clarendon, 1986. Print. [↑](#footnote-ref-1)
4. Paul Voice. Morality and Agreement A defense of moral Contractarianism. 2002. Peter Lang Publishing [↑](#footnote-ref-2)
5. “THE PROBLEM WITH JUVENILE SEX OFFENDER REGISTRATION: THE DETRIMENTAL EFFECTS OF PUBLIC DISCLOSURE” Spring, 1998. 1998 The Trustees of Boston University The Boston University Public Interest Law Journal [↑](#footnote-ref-3)
6. The Humanitarian Theory of Punishment. 6 Res Judicatae 224 (1953). *God and the Dock: Essays on Theology and Ethics*. P. 287. [↑](#footnote-ref-4)
7. “Challenging the rehabilitative justification of indeterminate sentencing in the juvenile justice system: The right to punishment.” Robert E. Shepard Jr [University of Baltimore]. HeinOnline -- 21 St. Louis U. L.J. 12 1977-1978. [↑](#footnote-ref-5)
8. Barry Feld “Bad Kids: Race and the Transformation of the Juvenile Court” Oxford University Press, 1999. Pg. 132-33. [↑](#footnote-ref-6)