I negate and value morality, as ought implies a moral obligation.

Only ethical theories that appeal to practical rationality give agents a normative reason to act on moral statements. Other moral rules that appeal to an external standard not predicated on rational choice fail to guide action because agents can simply question why they ought to act morally. This implies that reason is a fact from which all obligation is derived. David Velleman[[1]](#footnote--1) explains:

As we have seen, **requirements that depend for their force on some external source of authority turn out to be escapable because the authority behind them can be questioned. We can ask, “why should I act on this desire?” or “why should I obey the** U.S. **government?” or** even “Why should I obey **God?”** And as we observed in the case of the desire to punch someone in the nose, **this question demands a reason for acting. The authority we are questioning would be vindicated, in each case, by the production of a sufficient reason.** What this observation suggests is that any purported source of practical authority depends on reasons for obeying it—and hence on the authority of reasons. Suppose, then, that we attempted to question the authority of reasons themselves, as we earlier questioned other authorities. Where we previously asked “Why should I act on my desire?” **let us now ask. “Why should I act for reasons?”** shouldn’t this question open up a route of escape from all requirements? As soon as we ask why we should act for reasons, however, we can hear something odd in our question. **To ask “why should I?” is to demand a reason; and so to ask “why should I act for reasons?” is to demand a reason for acting for reasons. This demand implicitly concedes** the very authority that it purports to question—namely, **the authority of reasons.** Why would we demand a reason if we didn’t envision acting for it? **If we** really **didn’t feel required to act for reasons, then a reason for doing so** certainly **wouldn’t help.** So **there is something self-defeating about asking for a reason to act for reasons.**

Additionally, to determine the stringency of duties derived from a maxim, all rational agents must be able to will the maxim, since there is no reason to reject a maxim for one person while making it sufficient to guide the actions of another. If ethics are based in rationality, any state of affairs or actor-specific concern is irrelevant because they don’t appeal to the practical reason of humans. This leaves only maxims that can be applied as universal law as action guiding for rational agents.

Denying individuals’ independent choice, or outer freedom, is rationally contradictory. Steven Engstrom[[2]](#footnote-0) writes,

Now on the interpretation we have been entertaining, **applying the formula of universal law involves considering whether it is possible for every subject** capable of practical judgment **to share the practical judgment asserting the goodness of every subject’s acting according to the maxim in question**. Thus in the present case the **application** of the formula **involves** considering **whether it is possible for every** such **subject to deem good every subjects acting to limit others’ outer freedom**, where practicable, with a view to **augmenting their own outer freedom.** Since here all subjects are on the one hand **deeming good both the limitation of others’ outer freedom and the extension of their own** outer freedom, **while** on the other hand, insofar as they agree with the similar judgments of others, **also determining good the limitation of their own outer freedom and the extension of others’** outer freedom, **they** are **all deem**ing **good both the extension and the limitation of both their own and others’ outer freedom. These judgments are inconsistent insofar as the extension of a person’s outer freedom is incompatible with the limitation of the same freedom.**

Thus, actions that are illegitimately coercive are immoral. Arthur Ripstein[[3]](#footnote-1) explains,

First, some preliminaries. For Kant, coercion is the interference with external freedom. The best way to understand that idea, I suggest, is that external freedom is a matter of being able to set and pursue **your own ends**. The sense in which freedom is a central issue for political philosophy is relational: **to be free is to** be independent, that is, to **not be subject to the choice of another person. If I require your leave to use the means that I have, I am** for that reason unfree. In the same way, **if you can use my means without my consent, I am also unfree.** So a slave is always unfree, because his or her decision about what ends to pursue is always subject to the will, or grace, of his or her master. Even with a benevolent master, and a wide space of actual options, the slave is no less unfree, because any choices remain at the master's discretion.12 **Anything another person does that interferes with the capacity to set ends for yourself is therefore coercive,** because it makes the question of which ends you will pursue depend upon the choice of that person. Another person can do that in three ways: by depriving you of the means you use in pursuit of those ends, or making you pursue ends you do not share, or using your means to pursue those ends. For Kant, **external freedom contrasts with internal freedom-the capacity of the will to follow its own law**. Some have doubted that internal freedom, as Kant conceives it, is possible at all. I do not want to address that issue here because external freedom is so plainly of independent normative and philosophical interest. The ability to set an end for myself, and the ability to pursue it, are distinct, but cannot be separated entirely. A necessary condition of my setting something as one of my ends, rather than, for example, wishing or hoping for that thing, is for me to take up means towards it.13 **The capacity to set ends for myself is** not simply the capacity to entertain an end, a capacity which I might be able to exercise while in chains, but rather, **the capacity to take steps toward its achievement.** I can only do that provided that I take myself to have some means with which to pursue it, that I be able to do something that counts as taking steps towards achieving it. Otherwise, I have not made it my end at all-I have only wished for it. This way of making the point is perhaps too instrumental: the point is not that I need particular means in order to pursue whatever ends I happen to have. Instead, the connection goes in the opposite direction. If I am to be the one who sets ends for myself, I must have means fully at my disposal, **so that I am the one who decides which purposes to use them for.** The point here is contrastive: I am free to use my means to set ends only if my ability to do so does not depend on what others might have to say about it. It is perhaps worth contrasting this conception of external freedom with another, perhaps more familiar from the Millian tradition, according to which freedom is a matter of getting to do what you want. Such an account of freedom contrasts with the Kantian view under consideration here in two ways. It conceives of freedom in a way that it narrower in some respects but broader in others. The Millian view is narrower insofar as it regards only some of the wrongs against which it supposes citizens to need protection as violations of their freedom. Thus for Mill and those who follow him, injury and property damage are things to be prevented because they are harmful, but not because they are violations of freedom as such. Again, for Mill the various wrongs commonly characterized as invasions of privacy, illegal searches and the like, have nothing to do with freedom as such. For Kant, by contrast, rummaging through my home or my goods for purposes that I do not share violates my ability to be the one that determines the purposes to which they will be put.l4 Second, the Millian view is broader, inasmuch as it at least implicitly regards success in pursuing one's particular ends as just as important as the capacity to set and pursue them. The Millian tradition is not monolithic on this question, but, according to one current within it, an act that makes some course of action more costly thereby compromises the freedom of those for whom the act becomes, as we say, "prohibitively expensive." Within the Millian camp, there is a debate about whether, and when, to consider such limits as implicating freedom. By contrast, on the Kantian view, external freedom is not implicated in my success or failure at achieving my ends. If we start with a picture like the one that Mill offers us, we are likely to pose the question of external freedom in the wrong way from the outset, because we are likely to start with the idea that we are asking when "we" are allowed to interfere with some person's pursuit of his or her own purposes. Or, put differently, we are likely to ask when the state is allowed to stop someone from, or aid someone in, doing something that he or she would like to do. But that is the wrong question. The right question can only be asked and answered provided that we begin with a picture different from the one that Mill offers us. If we accept Mill's picture of norms as prohibitions on the individual, and political philosophy as concerned with which restrictions we should impose, it looks like we can just say "we should have as few restrictions as possible." But if we look at them as reciprocal limits on what private parties may do to one another, any increase in my freedom thereby decreases yours. With that idea in mind, we need to shift our focus. Instead of asking about the beleaguered individual in the face of the powerful state, we ask instead about how a plurality of separate persons with separate ends could be free to pursue their own ends, whatever they might be, to the full extent that is compatible with a like freedom for others. The pursuit of separate purposes, in turn, requires reciprocal limits on freedom that reflect the different ways in which separate persons interact. For the limits to be reciprocal, they must bind all in the same way; that is to say, they must be "in accordance with a universal law. The idea of reconciling competing freedoms, and the related idea that coercion is always at issue in the way free persons treat each other, can be brought into focus by considering the ways in which freedom might be interfered with. Kant addresses this problem by identifying three ways in which something can be "one's own," where being one's own is a contrastive concept; **to say that something is mine is to say** that it is mine, not yours, that is, **that you wrong me by interfering with my having of it: one can be entitled to an object, be entitled to the performance of a specific deed by another person**, or have what Kant calls "a right to a person akin to a right to a thing." Underlying these divisions is the intuitive idea that separate persons who are free to set their own purposes can interact in three basic ways. Sometimes they pursue their separate ends separately, which requires rights to person and property. Sometimes they pursue them interdependently. If they do so consensually, they give each other rights by contract. If they do so nonconsensually, their relationship is one of status.

Thus, the standard is consistency with a non-coercive basis for state power.

Ripstein TWO explains the legitimate basis for state power:

**Contract enables parties to transfer rights, so that one person is entitled to depend upon the specified deed of another.** If you and I make a contract, each of us agrees to confer a benefit upon the other, and each of us transfers the right to expect that benefit to the other. **We act interdependently and consensually.** Through our agreement, I do not acquire an external thing, but your deed.19 People may rely upon the behavior of others in a variety of ways; **contract** is distinctive because it **creates an entitlement: you can complain if I fail to perform, because I have failed to give you something to which you have a right.** Without a contract, you cannot complain if your expectations are frustrated. In the case of a contract, I do not possess you: I only have the use of your powers in the manner specified by the contract.20 As a rightful relation, contract also makes a distinctive type of wrong possible. **I wrong you if I deprive you of a means, my performance, to which I have given you a right.** Where you have a right to my performance, should I fail to perform, I thereby deprive you of something to which you have a right. Put slightly differently, the wrong consists in my failure to advance your ends in a way that you have a right to have me advance them. **That limits your external freedom, because you had a means toward some end, and I deprived you of it.** It is coercive for the same reason. Because I acquire your deed, I have a right in contract only against you. So **I have no right against a third person who does something that prevents you from performing your part of the contract**. I have only recourse against you (though you may have recourse against the third person). Again, although third parties may benefit from our completion of the contract, they have no rights in virtue of it. Precisely because contract is a way in which two of us may give each other rights, it has no bearing on the rights of anyone else; for the same reason, two persons may not enter into a contract to limit the rights of a third. Status The third category, which Kant calls "domestic right," has generated the most attention from commentators.21 I do not want to get drawn into those disputes, so I will begin by describing the category somewhat differently. The category of status is made up of those relationships in which people interact interdependently but not fully consensually. The best way to think about this category is by considering the more general role of consent in private right. **Consent** is significant from the standpoint of external freedom because it **can make otherwise wrongful acts rightful**. But those acts can be wrongful in two very different ways. Sometimes, consent makes an interaction rightful **because one person permits another to do something that would otherwise be an interference with his or her person or property.** I invite you to dinner at my home. Without my consent, you would be interfering with my property by consuming my food. Having invited you, I render what would have been wrongful rightful. Thus our **interaction is reciprocal** because bilateral. I invite, you accept. But consent does not only prevent that type of wrong. The other type of wrong that **it is able to right is the wrong of use,** which, from the standpoint of external freedom, we can understand as **forcing a person to act for an end that she does not share. If you permit me to use your dishes at the dinner party, my use of them to pursue my own ends is not wrongful,** for, by consenting to that use, you have made my use of your things one of your ends. **There is no interference with your external freedom. But** if I use you to pursue my ends in other ways, **without your consent, I** thereby **wrong you. Suppose that I break into your home and eat dinner at your table while you are out.** (I bring my own food, and clean up after myself.) **I do not harm you in any way, but I help myself to a benefit to which I am not entitled. I use your property in pursuit of one of my own ends**, an end **that you do not share.** In so doing, I wrong you. Of course, if you consent, I do you no wrong. But the wrong in question, the wrong that consent serves to make right, is depriving you of your freedom to be the one who sets the ends that you will pursue, or that will be pursued with your goods. **I thereby** also **violate reciprocity, for I enlist you in support of ends you do not share in a way that you cannot enlist me in support of ends I do not share.** This is particularly evident in cases of status, where the party who is incapable of consent is not in a position to enlist the other party in anything at all. I should perhaps pause at this point to remark that it is easy to be seduced by the idea of consent, and to suppose that it is a self-standing source of moral significance. This is certainly the view of many libertarians, for example. But I do not think that consent works that way at all. Consent can render rightful what would otherwise be wrongful, as between private parties. But we do not worry about the lack of consent except where we are concerned with an action that would be wrongful but for the presence of consent. So if you want to know what is wrong with exploitative relationships, say, it is not that they are nonconsensual. It is that they are exploitative. It is just that consent can make a relationship in which one person pursues the ends of another nonexploitative, precisely because the former has made the latter's ends her own. As we shall see, the fact that a wrongdoer does not consent to the redress to which his victim is entitled does not make that redress wrongful. Nor do we determine the nature of that redress by asking what the parties would have agreed to in advance. Instead, we need to ask what would right the wrong. I said earlier that for Kant the starting point for political philosophy concerns the ways in which people may be forced to treat each other. We are now in a position to see his answer to that first question. There are three limits on the ways in which people may treat each other. First, one person may not interfere with another's person or property without the latter's consent.Second, **where one has, through contract, transferred to another one's right to something, one must follow through on that transfer.** Third, one person may not enlist another in pursuit of his or her own ends without the latter's consent. **To violate any of these limits is to coerce the other person.**

Thus, I contend that treating juveniles as adults is inconsistent with state power. Children are in a unique non-consenting situation, which removes the power to prosecute them. Ripstein THREE continues,

This now brings us to the category of status. **There are some situations in which one person is unable to consent to certain kinds of use.** Of the examples Kant discusses, **the case of children is the clearest**. Kant notes that **parents bring children into the world without their consent.**22 As a result, **they are nonconsenting parties to a relationship in which they find themselves.** Precisely because they are nonconsenting parties parents may not use their children in pursuit of their own ends. Instead, they may only act for the benefit of those children. **Parents have possession of their children, but they do not have the right to use them**.23 **The category of status is just the category of cases in which persons find themselves in a relationship in which one party is not in a position to consent to the modification of the terms of that relationship. As a result, the other party is not allowed to enlist the nonconsenting party in the pursuit of his or her own ends.** In this, the situation is no different from other cases of nonconsent. **It is just a feature of the relationship that makes consent impossible, rather than, as in the ordinary case, consent simply being absent.**

This negates in two ways: First, because children lack a right to vote or the ability to leave society, they cannot be treated as adults as adults can legitimately consent to the system while children cannot, making prosecution and the control of means legitimate for adults but not children. Second, the juvenils system is therefore legitimate because the agents take upon themselves the role of helping, not coercing children. Enrico Pagnanelli[[4]](#footnote-2) concludes,

The juvenile court system has many positive characteristics that help rehabilitate young offenders and reduce recidivism. n79 **Many young offenders who engage in chronic delinquency often fail to develop the relationships and attachments crucial to the process of socialization**. n80 **Juveniles in the juvenile system are able to develop positive relationships with individuals involved in their care, such as judges, practitioners, and case workers.** n81 **These relationships**, in conjunction with the nurturing of the juvenile system's rehabilitation process **stimulate the development of trust, core values, and character in juveniles and aid their effective reintegration into society.** n82 One could argue that because a child has the legal right to many "adult decisions," treating juveniles as adults makes sense. n83 However, this argument is a fatal misconstruction. That juveniles now enjoy some of the legal rights enjoyed by adults has no bearing on a juvenile's capacity to stand trial. The utilitarian goals of our justice system should not be ignored. The experience of childhood is necessary to socialize juveniles. It is essential that a justice system recognize this and cater to the many social and psychological deficits in the lives of juvenile [\*186] offenders. **Because of** the negative effects of transfer, including **increased post-transfer recidivism, and the juvenile system's focus on nurturing and re-socialization, the juvenile court system is the most appropriate forum for juvenile offenders**--even violent offenders--**and**, ultimately, **the most effective means of protecting the public.**

1. David. Velleman. Self To Self. 2006. Cambridge University Press. [↑](#footnote-ref--1)
2. Engstrom. Universal Law as the Form of Practical Knowledge. 18. [↑](#footnote-ref-0)
3. Authority and Coercion. Philosophy and Public Affairs, Vol. 32, No. 1 (Winter, 2004), pp. 2-35. [↑](#footnote-ref-1)
4. “NOTE: CHILDREN AS ADULTS: THE TRANSFER OF JUVENILES TO ADULT COURTS AND THE POTENTIAL IMPACT OF ROPER V. SIMMONS” 2007 American Criminal Law Review American Criminal Law Review Winter, 2007 [↑](#footnote-ref-2)