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

The state as an entity acts within the confine of social coercion; it removes rights and imprisons individuals via criminal justice. This assumes that the state acts out of authority to do so. Thus the standard is consistency with government authority

I contend that the logic of adult punishment can’t apply to children do to their position in the social contract.

Governments are not rationalistic entities in the conventional sense, and thus do not have some moral obligation that arises from an autonomous nature but are instead a tool created by individuals. John Locke explains the process and the process and the resultant obligations.

**IF man in the state of Nature be** so free as has been said, if he be **absolute lord** **of** **his own person** and possessions, equal to the greatest **and subject to nobody**, **why** will he **part with** his **freedom**, this empire, and subject himself to the dominion and control of any other power? **To which it is obvious to answer, that though in the state of Nature he hath such a right, yet** the **enjoyment** of it **is very uncertain** and constantly exposed to the invasion of others; for all being kings as much as he, every man his equal, and the greater part no strict observers of equity and justice, the enjoyment of the property he has in this state is very unsafe, very insecure. **This makes him willing to quit this condition which, however free, is full of fears and continual dangers; and it is not without reason that he seeks out and is willing to join in society with others who are already** **united, or have a mind to unite for the mutual preservation of their lives**, liberties and estates, which I call by the general name - property. **§ 124.** The great and chief end, therefore, of men uniting into commonwealths, and putting themselves under government, is the preservation of their property; to which in the state of Nature there are many things wanting. Firstly, **there wants an established, settled, known law, received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all controversies between them.** For though the law of Nature be plain and intelligible to all rational creatures, yet men, being biased by their interest, as well as ignorant for want of study of it, are not apt to allow of it as a law binding to them in the application of it to their particular cases. § 125. Secondly, in the state of Nature there wants a known and indifferent judge, with authority to determine all differences according to the established law. For every one in that state being both judge and executioner of the law of Nature, men being partial to themselves, passion and revenge is very apt to carry them too far, and with too much heat in their own cases, as well as negligence and unconcernedness, make them too remiss in other men's. § 126. Thirdly, in the state of Nature there often wants power to back and support the sentence when right, and to give it due execution. They who by any injustice offended will seldom fail where they are able by force to make good their injustice. Such resistance many times makes the punishment dangerous, and frequently destructive to those who attempt it. **§ 127.** Thus mankind, notwithstanding all the privileges of the state of Nature, being but in an ill condition while they remain in it are quickly driven into society. Hence it comes to pass, that we seldom find any number of men live any time together in this state. The inconveniencies that they are therein exposed to by the irregular and uncertain exercise of the power every man has of punishing the transgressions of others, make them take sanctuary under the established laws of government, and therein seek the preservation of their property. It is this that makes them so willingly give up every one his single power of punishing to be exercised by such alone as shall be appointed to it amongst them, and by such rules as the community, or those authorised by them to that purpose, shall agree on. And in this we have the original right and rise of both the legislative and executive power as well as of the governments and societies themselves. **§ 128.** **For in the state of Nature to omit the liberty he has of innocent delights, a man has** two **powers**. The **first** is **to do whatsoever he thinks fit for the preservation of himself** and others within the permission of the law of Nature; by which law, common to them all, he and all the rest of mankind are one community, make up one society distinct from all other creatures, and were it not for the corruption and viciousness of degenerate men, there would be no need of any other, no necessity that men should separate from this great and natural community, and associate into lesser combinations. **The** **other** **power a man has in the state of Nature is the power to punish the crimes committed against that law. Both these he gives up when he joins in a private, if I may so call it, or particular political society, and incorporates into any commonwealth separate from the rest of mankind.** § 129. **The first power -** viz., of doing whatsoever he thought fit for the preservation of himself and the rest of mankind, **he gives up to be regulated by laws made by the society,** so far forth as the preservation of himself and the rest of that society shall require; **which laws of the society in many things confine the liberty he had by the law of Nature.** § 130. Secondly**, the power of punishing he wholly gives up, and engages his natural force, which he might before employ in the execution of the law of Nature, by his own single authority, as he thought fit, to assist the executive power of the society as the law thereof shall require.** For being now in a new state, wherein he is to enjoy many conveniencies from the labour, assistance, and society of others in the same community, as well as protection from its whole strength, he is to part also with as much of his natural liberty, in providing for himself, as the good, prosperity, and safety of the society shall require, which is not only necessary but just, since the other members of the society do the like. **§ 131.** But though men when they enter into society give up the equality, liberty, and executive power they had in the state of Nature into the hands of the society, to be so far disposed of by the legislative as the good of the society shall require, **yet it being only with an intention in every one the better to preserve himself, his liberty and property** (for no rational creature can be supposed to change his condition with an intention to be worse), **the power of the society or legislative constituted by them can never be supposed to extend farther than the common good,** **but is obliged to secure every one's property by providing against those three defects above mentioned that made the state of Nature so unsafe and uneasy. And so, whoever has the legislative or supreme power of any commonwealth, is bound to** govern by established standing laws, promulgated and known to the people, and not by extemporary decrees, by indifferent and upright judges, who are to decide controversies by those laws; and to employ the force of the community at home only in the execution of such laws, or abroad to prevent or redress foreign injuries and secure the community from inroads and invasion. And all this to be directed to **no other end but the peace, safety, and public good of the people.**

Thus the state garners the authority to punish individuals via the criminal justice system by the submission of individuals will to the state by their agreement to live in society. However children lack the proper methods of consenting to a society because society does not provide them with the necessary rights such as the ability to vote to influence the laws or the ability to leave or move out of society. This is consistent with how society treats juveniles. Katherine L. Evans[[1]](#footnote-1)

**There seems to be a current trend** **toward being harsher** toward **on juvenile offenders**. 88 **Yet, this policy is inconsistent with society's knowledge about** the intellectual, moral, and psychological development of **the juvenile**. 89 In areas other than crime and punishment, **society treats youths as less mature** than adults and as if youths have a lower level of judgment than adults. 90 For example, most **states have a minimum age** requirement **before a person can work, drive, quit school, get married, vote, drink alcohol or join the military**. 91 **The reason** for these requirements **is that society recognizes that youths go through stages of maturity** before they reach adulthood. 92 The Supreme Court has recognized the difference between children and adults stating that, "i**nexperience, less education, and less intelligence make a teenager less** able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult." 93 A youth's stage of development has a direct bearing on his capability [\*112] of being **culpable**. 94 Due to a thought process called egocentrism, a youth may see the world from a point of view quite different from an adult's point of view. 95 The egocentric stage of a person's development directly affects that person's capacity for moral culpability, criminal intent, mature judgments and many other mental concepts. 96 Egocentrism is common in youths, but can be noticed in adults. 97 Youths who are egocentric in their thinking see things from a subjective point of view and sometimes may even think their point of view is the only one anybody can have. 98 Each stage of egocentrism involves behavior that can be used to identify it.

Thus by excluding juveniles from society it is inconsistent with the government’s authority to punish them in retributivist terms. The justification for punishment utilized by the criminal justice proceedings cant function because children with no say in making or conforming to laws are not accountable to them.

Second, the juvenile system is consistent with the justifications for punishment. When a child commits a crime society must seek a proper redress to protect members of society that it holds an obligation to. Juvenile courts both best achieve that social protection and help to reintegrate juveniles in society so that they can act within the benefits of the social contract until old enough to truly consent to the law. Enrico Pagnanelli[[2]](#footnote-2) explains

**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. “COMMENT: Trying Juveniles as Adults: Is the Short Term Gain of Retribution Outweighed by the Long Term Effects on Society” Mississippi Law Journal Spring, 1992 [↑](#footnote-ref-1)
2. “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)