I value morality as ought implies a moral obligation.

Morality must concern itself with acts of justification. When I claim that my act was moral I am providing a defense of that action thus the nature of morality is the act of defense of ones actions claiming I ought to act in a particular way. Stephen Darwall[[1]](#footnote-1) explains,

**However desirable it might be from some external perspective** that someone do something, **this is a reason of the wrong kind to support** **a demand that he do it**, **and hence to support the claim that he would do wrong if he didn’t**. Unlike considerations of desirability (even moral desirability), **demands are second-personal reasons; their validity depends not on the value of any outcome or state, but on normative relations between persons, on one person’s having the authority to address the demand to another**.

This creates the necessary component of moral interrelation between people, which contractualism solves. Darwall furthers:

**To justify oneself** to someone **is** **to** **give** her **a** kind of ***second-personal authority***.11 **It is to regard** and treat **her as having a standing to claim a justification** from one (and hence to address claims to others at all). Second-personal authority of this kind is essentially tied to accountability. **Justifying oneself to someone is part of holding oneself responsible** or accountable **to her. So justification to one another is what constitutes mutual accountability. When I justify myself to you, I hold myself answerable to you, and treat you as having the standing to claim this from me.** You reciprocate and accord me the same standing when you justify yourself to me. As I understand it, therefore, **the root contractualist idea is that this standing is one that you and I share. We have an equal** (second-personal) **authority to make claims of one another,** which we respect in seeing each other as beings to whom we should be able to justify ourselves. **Understanding morality in terms of mutual accountability** **illuminates** why Scanlon can say in “Contractualism” that agreement (of this sort) is **what “morality is all about.” If moral self-regulation** essentially **involves making ourselves answerable** to one another, **then agreement** on fundamental principles **is not simply a collective epistemic achievement**, or a standard of our each doing what is right individually; **it is an essential element of** the fundamental **moral *relation***(responsibility to one another). This idea is suggested also by the passages from “Preference” and “Process” quoted above. Urgency or importance of interests is justificatory weight in warranting *claims* on others. **The question of when practices or institutions are *legitimate* in light of their “power to control or intervene” turns on when this is consistent with individuals’ legitimate claims.**

This is verified with our understand of moral justification. Darwall 3 argues,

**This interpretation is confirmed** further **by** the way Scanlon distinguishes **the concepts of reasonableness and rationality** in *What We Owe to Each Other*.12 To bring out this “familiar distinction in ordinary language,” **Scanlon describes a case in which water** **rights** **are** **being negotiated and there is a** wealthy **landowner** **who can control the negotiations**, who believes himself entitled to his vast holdings, **and who does not like having “the legitimacy of his position questioned**” (p. 192). Scanlon says that **while it would not be unreasonable** **to propose that each person is entitled to** some minimum supply of **water**, **it might not be rational to make this claim, since that might enrage the** large **landholder** **and make the situation** **worse** for everybody (p. 192). **Unlike the** concept of the **rational**, that of **the reasonable “presupposes** **a** certain **range of reasons that are taken to be relevant”** (p. 192). We can now see what this range must be. Scanlon must be taking it to be part of the very idea of the reasonable, and **hence** of **the notion of** reasonable agreement, that the relevant reasons concern, or are able to support, **legitimate *claims***. They **must be ones we could offer in justifying ourselves *to* one another.** Furthermore, **to play that role, they must be ones that we can accept consistently with what we assume in so justifying ourselves**, **namely, that we each have an equal basic second-personal authority. Since we all stand, fundamentally, in the relation of mutual accountability and have an equal standing to claim justification from one another, unequal claims must be able to be justified within that framework.** They must be supportable from a standpoint in which we regard one another, as Rawls put it, as “self-originating source[s] of valid claims.”13

Thus, the standard is consistency with our second personal demands. This is achieved when our actions can not be reasonably rejected by the demands of others.

Contention ONE: The death penalty can be reasonable rejected by juveniles.

The state can justify punishment because it extends the right to individuals to be part of the citizenship in the state. However the death penalty denies such benefit of citizenship and thus can not be utilized. Corey Brettschneider[[2]](#footnote-2) explains,

This theory, however, presents a complication. To provide security successfully, Hobbes thinks the state must retain the institution of capital punishment. **Capital punishment**, however, **is a denial of self-preservation, and thus it dissolves the** social **contract between the criminal and the state**.12 Hobbes therefore recognizes that at **the moment the state seeks to execute** an individual, **it no longer exists in a contractual relationship with that individual**. **Such a person would gain nothing** from the state an**d therefore would lack any moral obligation to obey a death sentence.1**3 For Hobbes, the state’s relationship to violent criminals is characterized not by the metaphor of contract but by that of a war between an “enemy” and the state.14 Hobbes claims that the state can justify execution to society as a whole on security grounds, but he recognizes it has no justification for capital punishment that can be addressed to or that is acceptable for the condemned.

Brettschneider continues,

Consider a second distinct argument, which appeals directly to the contractualist notion of citizenship as an ideal of justification. Rousseau offers a famous argument that because the death penalty would be agreed to when persons consider what the general will requires of them as citizens, the person convicted of a capital crime would have to acknowledge that she should consent to her own death. As a theory of what actual criminals will, this view is implausible. Namely, Rousseau’s flaw might be labeled *false attribution* because he conflates a claim about what citizens should consent to with a claim about to what persons actually do consent. However, the implausibility of Rousseau’s view is not its only problem. **Fundamental to contractualism and central to my rejection of the Hobbesian notion of punishment is the right of each person to have coercion justified to him or her *qua* citizen. This right is so fundamental that it should be considered inalienable. Moreover, citizenship presupposes a person who can be treated in accordance with the core values. Thus, the very idea that citizens would ever have reason to submit to their own destruction is problematic because such an act destroys their personhood and so violates their inalienable right to be treated as citizens.**

Contention TWO: The death penalty violates a fundamental right of due process. Brettschneider two continues,

**The** first **argument stems from the nature of the state as a fallible agent**. Ideally, a democratic state would never punish the innocent. But institutions are not ideal. They are made up of individuals who make mistakes and mechanisms that sometimes simply do not work. As recent DNA evidence has pointed out, the **state makes mistakes even when it sanctions** the most severe punishment, **death**.37 **The most obvious** necessary **condition for justifying punishments** **to** criminals *qua* **citizens** **is that they must be guilty**. Therefore, the actual innocence of individuals, despite the Rehnquist Court’s recent rulings, should be grounds for an appeal.38 **The state’s fallibility necessitates that democratic procedures** always **allow the innocent to prove that they have been wrongly punished**, and this is only possible if they are alive.39 It is easy to see how this guarantee can be made consistent with life imprisonment. **Persons in prison have the option to try to prove their innocence** through appeal, and many have done so successfully. **Yet this right of appeal is denied to prisoners after they are executed.** While the family of an executed prisoner might be able to prove his or her innocence post mortem in cases in which a mistake was made, **the state cannot make amends to the wronged party** directly. In contrast, imprisonment does not cut off the possibility of some rectification to an unfairly convicted individual**.** If such an individual can prove that he is innocent, the possibility exists for recognizing the illegitimacy of his punishment. According to this argument against capital punishment**, a procedural right to appeal presupposes an appellant who is alive. Therefore, the procedural right demands a more fundamental right: the right to life.** Many opponents of capital punishment could object to this line of reasoning because it suggests that the more fundamental substantive right of life associated with human dignity depends on a less fundamental procedural right. But nothing in the nature of contractualist justification necessitates that we always appeal to the inherent value of life or indeed to any metaphysical argument when seeking to limit state punishment. The issue here is not divine or even moral justice in general but the specific dynamic between citizen and state within a politically legitimate society. While death may be a just punishment for certain offenses in the pure theory of moral desert, this does not legitimize a penal institution that puts individuals to death without certainty that they have actually committed a crime. The fallibility of the criminal justice system suggests that what is deserved by criminals and what constitutes legitimate state conduct are distinct questions. Because state institutions do not perfectly administer justice, they should embody reasonable balances between the interests of society and those of the accused. **Since capital punishment deprives individuals of the ability to prove their innocence in a judicial system that frequently makes mistakes, it is reasonably rejected by convicted criminals.**

1. Stephen Darwall, *The Second Person Standpoint* (Cambridge: Harvard University Press, 2006): p, 103. [↑](#footnote-ref-1)
2. The Rights of the Guilty : Punishment and Political Legitimacy. Political Theory 2007 35: 175 [↑](#footnote-ref-2)