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

The state as an entity acts within the confines 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 due 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 Simmons[[1]](#footnote-1) explains the process and resultant obligations:

Now for Locke's third and most prominent argument: that we can-not explain the rightful punishment of aliens unless there is a natural executive right. What is striking about Locke's prominent presentation of this argument is his total failure to see how badly it fits the overall position he defends in the Second Treatise (indeed, it looks as if Locke may have simply taken the argument from Grotius without seriously considering its implications). For there seems to be an incredibly simple refutation of the argument available, one that can be found in Locke's own text. Locke is well known for his theory of tacit consent, according to which any person who has "any possession or enjoyment of any part of the dominions of any government" can be taken to have consented to the authority of that government over him, "whether this his possession be of land, to him and his heirs forever, or a lodging only for a week; or whether it be barely travelling freely on the highway; and in effect, it reaches as far as the very being of anyone within the territories of that government" (II, I I 9). The implication of these passages is clear: **any** **alien, merely by freely entering the territories of the state, can be taken to consent to its authority over him. The alien**, we might say, has **authorized the state to punish him should he violate its laws.** We can, then, explain the government's right to punish aliens entirely in terms of Locke's own account of the tacit agreement between government and alien.28 No reference to a natural executive right seems necessary. **The state's laws do "reach**" (i.e., bind) **the alien, for he is not in a state of nature with respect to the state once he enters its territories**.H e is a sort of "temporarym ember"o f the commonwealth, like any resident or visitor who has not expressly con-sented to be a full member (II, I2I-22). Even more embarrassing for Locke is the following question: if we can explain the state's right to punish aliens without reference to a natural executive right, **can we not similarly explain its right to punish citizens?** Instead of starting with the assumption that each citizen has a right to punish everyone else, which he entrusts to government, why not **assume that each citizen begins with only a right to control his own life** (as it were, he has a right only to "punish" himself). **Each citizen then entrusts a portion of this natural right of self-government to the state, authorizing government to punish him** (i.e., control his life) **for violations of its laws. The net result of all citizens so authorizing government, of course, would be that the government had the right to punish all citzens.** This is the conclusion that Locke wants to reach; but, contrary to Locke's suggestions, it seems possible to reach it without appealing to a natural executive right. **We can explain the right of governments to pun-sh both citizens and aliens without having to suppose that any "natural man” ever had the right to punish another**. And we can explain it in a way that is consistent with Locke's desire to show that all governmental rights are derived (by transfer in trust) from the citizens of the state. This alteration in Locke's program seems even more desirable when we remember that if the government's right to punish is merely its citi-zens' executive rights, suitably transferred, the government's power to punish must be limited to cases where the law of nature has been trans-gressed. This, after all, was all that the natural executive right allowed. And while much of the behavior that a state will want to make criminal surely violates natural law, some clearly does not-for instance, violation of at least some tax laws, drug and "morals" laws, traffic and parking laws, and many other regulatory statutes hardly seems naturally im-moral. How can we explain the government's right to punish in such areas? It is easy to reply that in addition to giving the state the right to punish violations of natural law, **each citizen also gives up some further portion of his right to control his life** (justifying punishment in these additional areas). This seems to be what Locke has in mind (e.g., II, I 28-3o).29 But surely, if we must appeal to transfers of our natural right of self-government to explain parts of the state's right to punish, it would be theoretically more elegant to explain all of its right to punish in these terms. We would also thus spare ourselves the effort of defending Locke's "strange doctrine" of the executive right, telling Locke's story entirely in terms of citizens entrusting to government portions of their rights to govern themselves.30

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 laws or the ability to leave society. Simmons[[2]](#footnote-2) TWO continues,

**The mere fact that you reside** (or are otherwise located) **within** the claimed territories of **a** particular just **state** **seems inadequate** **to "particularize**" any **general duties** of support and compliance to that one just state. For **mere residence** of that sort **guarantees** receipt of **none of the benefits and participation** in none of the cooperative schemes that make loyalty -- or even simple obedience to law -- appear morally compulsory. **Those within the territories of a just state who have no meaningful interaction with it surely owe it nothing more** (including even obedience to just law) **than do nonresidents**. Imagine, to take extreme cases, citizens in dangerous inner city "war zones" or in isolated or largely ignored parts of the state's territories -- both possibilities that are consistent with a state's being tolerably just on balance. In such cases, one's only duties or obligations are those of natural morality (as Locke surely ought to have stressed, rather than retreating to an inadequate account of the "tacit consent" allegedly given by all within the state's territories34). **But where citizens** (or visitors) do significantly benefit from (or in other ways **meaningfully interact** **with) a just state**, which is of course more typical, **it is** if anything this interaction, not any general duty to support or obey just states, that **grounds for them a special obligation of compliance** (or more) to that particular state. General duties to promote justice or happiness can bind me no more to, say, pay taxes to my own just state than they can to make contributions to some needier just state elsewhere.

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[[3]](#footnote-3) 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.**

This is an obligation that society must provide to reintegrate children to provide them again with access to consent. Simmons[[4]](#footnote-4) three concludes,

**The suggestion** here **seems to be that the ideal of a fully voluntary society should** of course **guide us, but the** (regrettable) **facts of political life force us to accept instead nonvoluntarist standards of legitimacy** which appeal only to (what Nagel calls) "quasivoluntariness". There is, however, something disingenuous about this suggestion.51 For **if the ideal of the fully voluntary political society were** in any way **regulative** for them **[they]**, Rawls (et al) **would be interested in restructuring political societies so as to make the choice of membership** (or non-membership) **as voluntary** at least **as circumstances** would **permit.** And there are many non-utopian possibilities available for doing this, **such as offering various classes of citizenship** (and "resident non-citizen") options, training and support to make emigration and resettlement a more realistic option, **programs to disseminate relevant information**, a more formalized choice process, **and so on.**52 Advocating and **pursuing such** **changes** only **makes sense**, of course, **if one has a genuine commitment to political voluntarism.** Few of the most prominent contemporary political philosophers, however, have shown any interest in such matters, suggesting that any allegiance they might feel to the voluntarist ideal is at best half-hearted.

1. A. John Simmons. Locke and the Right to Punish. Philosophy and Public Affairs, Vol. 20, No. 4 (Autumn, 1991). Jstor. [↑](#footnote-ref-1)
2. Justification and Legitimacy. SSRN February 16, 2009. <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1344452>. [↑](#footnote-ref-2)
3. “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-3)
4. Justification and Legitimacy. SSRN February 16, 2009. <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1344452>. [↑](#footnote-ref-4)