I affirm RESOLVED: In the United States, juveniles charged with violent felonies ought to be treated as adults in the criminal justice system.

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.

Additionally its sufficnet to prove that treating juveniles in the adult system is preferable to a juvenile one because any other conception makes renders affirmation nearly impossible. If the negative gets to pick any distinction in treatment then it forces the affirmative to prove that there is no relevant distinction between adults and childrens, this means that the only way the affirmative could ever win was to prove a universal negative which involves winning terminal defense on every argument the negative makes.

I value morality as ought implies a moral obligation

All moral obligations must link to a conception of practical reason as practical reason alone can supply an obligation. 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 reasonsfor 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 reasons; 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 o 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.

Therefore humans are necessarily ends in themselves, as they are capable of rational self-reflection. Rejecting individuals’ right to not be used as a means to and end, or outer freedom, is rationally contradictory. Engstrom[[2]](#footnote-2) continues,

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** ofothers’ **outer freedom and the extension of** their own **outer freedom**,whileon 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** areall **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.**

In order to maintain the rights of an individual we require an adversarial system. Stephan Landsman[[3]](#footnote-3) explains

A number of reasons, apart from the historical, warrant reliance on adversarial methods. **The adversary process provides litigants with the means to control their lawsuits. The parties are preeminent in choosing the form, designating the proofs, and running the process.** The courts, as a general rule, pursue the questions the parties propound. Ultimately, the whole procedure also enhances the economic efficiency of adjudication by sharply reducing impositional costs.

Landsman continues

**Party control** has another beneficial effect as well. It **affirms human individuality. It mandates respect for the opinion of each party rather than** those of his attorney, of **the court, or** of **society** at large. **It provides the litigant a neutral forum in which to air his views and promises that those views will be heard and considered.** The individualizing effect of adversary procedure has important implications besides those involving individual satisfaction. **The perceptiveness** of adversary procedure **to individual claims implies that adversary courts will take a sympathetic view of the claims of individuals against the state**.The prospect for sympathetic hearing are increased **because the judge and,** to an ever greater extend, the **jury are beyond governmental control** and cannot be taken to task for their decisions.

**These propositions** concerning the receptiveness of adversarial courts to the claims of individual citizens **are**, at least in part, **borne out by historical evidence.** For centuries **adversarial courts have served as a counterbalance to** official **tyranny** and have worked to broaden the scope of individual rights. The steady expansion of doctrines to protect minorities both in England and in the Untied States elects this fact. **When adversarial process has been ignored** in the operation of the courts, as in the days of the Star Chamber, **human rights diminished and** the **governmental repression increased.**

This voice is also key to respect individuals Philip Pettit[[4]](#footnote-4) writes,

But the primary-good status of freedom as non-domination can also be supported by reference to the reduction of strategy and subordination that it makes possible. **To be a person is to be a voice that cannot** properly **be ignored,** a voice which speaks to issues raised in common with others and which speaks with a certain authority: enough authority, certainly, for discord with that voice to give others a reason to pause and think. **To be treated properly as a person**, then, **is to be treated as a voice that cannot be dismissed without independent reason**: to be taken as someone worth listening to. The condition of **domination** would reduce the likelihood of being treated as a person in this way, so far as it **is associated with a need for strategy and a subordinate status. The dominated**, strategy-bound **person is someone with reason to watch what they say,** someone who must be assumed always to have an eye to what will please their dominators. And equally, the dominated, subordinate person is someone, by common assumption, who has reason to impress their dominators and try to win a higher ranking in their opinion. **Such a person will** naturally be presumed to **lack an independent voice,** at least in the area where domination is relevant. **They will fail to make the most basic claim on the attention of the more powerful,** for they will easily be seen as attention-seekers: they will easily be seen in the way that adults often see precocious children. They may happen to receive attention but they will not command attention; they may happen to receive respect but they will not command respect.

This violates the obligations of practical reason because we fail to treat individuals as rational agents, by making their will irrelevant, and thus the universalization of that principle would deny our own rationality. Domination denies peoples’ relevance in despite of their humanity.

Thus the standard is Maintaining an Adversarial System.

Prefer this standard additionally because

The adversarial system allows for clearly defined roles Landsman 2 argues

**The adversary process assigns each participant a single function. The judge is to serve as neutral and passive arbiter. Counsel is to act as a zealous advocate**. According to adversary theory, when each actor performs only a single function the dispute before the court will be resolved in the fairest and most efficient way. **The strength** of such a division of labor **is that individual responsibilities are clear. The possibility that a participant** in the system **will face conflicting responsibilities is minimized.** Each knows what is expected of him and can work conscientiously to achieve a specifically defined goal**.** When participants in the judicial process are confronted with conflicting obligations, it becomes difficult for them to discharge any of their duties satisfactorily. **The more frequently they face conflict, the more likely it is that they will not perform their assigned part or will not perform it in a way that minimizes conflict** rather than fully discharges their responsibilities. **Among the greatest danger in this regard are that the judge will abandon neutrality** if encouraged to search for material truth **and that the attorney will compromise his client’s interest if compelled to serve as an officer of the court** ratherthan as an advocate. In either case the probity of the process is seriously undermined.

The affirmative thesis is that the separation of Juveniles and adults has perpetuated a detrimental inquisitorial approach to justice rather than an adversarial one.

Contention 1.

Juvenile courts by embracing principle of rehabilitation attempt to avoid adversarial system and expand the power of a judge in an inquisitorial way. Stacey Hiller[[5]](#footnote-5) 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. 131**

This sort of system is incompatible with a system in which the defendant is able to speak out in defense within the proper adversarial context Federle[[6]](#footnote-6) argues:

Finally, **abolishing the juvenile court may enable us to see that children should have status as rights holders. The juvenile court's emphasis on rehabilitation** and reform not only masks the coercive effects of state intervention but also **permits the state to do things to children on the grounds that it is in the children's best interests.** Of course, coercive state interventions rarely benefit [\*35] those at whom such interventions are aimed and often do more harm than good (Federle 1994). Moreover, claiming to act on behalf of a child allows the claimant to do certain things without regard to the rights of that individual. **Consequently, children often experience coercive and even punitive sanctions under the guise of best interests** (Federle 1994). Because the state claims to act on behalf of children, the rights that children may have are often overlooked**.** If children nevertheless benefited from a more paternalistic approach, it would be difficult to argue that they needed such rights. But children have not been advantaged by the state's claims to be acting on their behalf (Federle 1995). In fact, many paternalistic interventions have not only failed to improve the lives of children but may actually have disadvantaged them (Federle 1995). Consequently, grounding claims in child protection simply underscores the need for a coherent account of the rights of children. Moreover, **rights have an independent value. To have a right is to have power; to be a rights holder is to be a powerful individual who commands respect from others** (Federle 1995). **Rights enable the rights holder to demand attention and to seek legal redress from a society in which the rights holder may have been excluded or marginalized.** Empowering children by recognizing that they have rights thus will have benefits that reach beyond the judicial system. If we recognize children as beings worthy of respect, we may actually reduce their victimization (Federle 1995). Although criticisms of the juvenile court as an inferior criminal court are valuable, ultimately they do not help us see the problems of a judicial system that does not purport to protect and vindicate the rights of children. Furthermore, proposals focusing only on abolition of the court's delinquency jurisdiction fail to account for institutional and bureaucratic realities. From a rights perspective, however, the abolition of the juvenile court may prove advantageous. By freeing us from a disabling conception of children as vulnerable and dependent, we may begin to see how rights can empower. Any discussion of abolition, then, should take into account the importance and value of rights.

This is inconsistent with an adversarial system because we treat the individual as one whom we act upon rather than an individual actor.

Contention 2. The judge based focus of juvenile proceedings is inconsistent with an adversarial system. The use of judges as a major decision maker in the court room allows the judge to insert his own ideas and beliefs into the proceeding. Barry C. Feld[[7]](#footnote-7) argues:

Quite apart from its unsuitability as a social welfare agency, **the individualized justice of a rehabilitative juvenile court fosters lawlessness** and thus detracts from its utility as a court of law as well. **Despite statutes and rules, juvenile court judges make discretionary decisions effectively unconstrained by the rule of law.** If judges intervene to meet each child's "real needs," then every case is unique and decisional rules or objective criteria cannot constrain clinical intuitions**. The idea of treatment necessarily entails** individual differentiation, indeterminacy, **a rejection of proportionality, and a disregard of normative valuations of** the seriousness of **behavior. But,** if judges possess neither practical scientific bases by which to classify youths for treatment nor demonstrably effective programs to prescribe for them, then **the exercise of "sound discretion" simply constitutes a euphemism for idiosyncratic judicial subjectivity. Racial, gender, geo- graphic, and socio-economic disparities constitute almost inevitable corollaries of a treatment ideology that lacks a scientific foundation.** **At the least, judges will sentence youths differently based on** extraneous personal **characteristics for which they bear no responsibility. At the worst, judges will impose haphazard, unequal, and discriminatory punishment** on similarly situated offenders **without effective** procedural or appellate **checks.**

This is inconsistent with the Adversarial System. Landsmen 3 contends

**The adversary system relies on a neutral** and passive **decision maker** to adjudicate disputes after they have been aired by the adversaries in a contested proceeding. **He is expected to refrain from making any judgments until the conclusion** of the contest **and is prohibited from becoming actively involved in** the gathering of evidence or **the settlement of the case.** Adversary theory suggests that **if the decision maker strays from the passive role, he runs a serious risk of prematurely committing himself to one or another version of the facts** and of failing to appreciate the value of all the evidence.

Contention 3 the movement back adult treatment is necessary to ensure that individual achieve the due process checks necessary for a functioning adversarial system.

The rehabilitative logic of Juvenile courts has undermined due process checks. Brenda Gordon[[8]](#footnote-8) writes.

In philosophy, these **juvenile courts were created as benevolent vehicles by which the state could strive to understand the total child and respond to him or her individually "as a wise and merciful father handles his own child whose errors are not discovered by the authorities**." 29 As such, the nature of the juvenile proceedings was "benign, nonpunitive and therapeutic," and rehabilitation was its fundamental goal. 30 In the words of an early commentator, "A child that broke the law was to be dealt with by the state not as a criminal but as a child needing care, education, and protection." 31 **To achieve its rehabilitative goals, the state utilized a clinical approach, whereby it would investigate, diagnose, and "formulate the plan** by which, through the cooperation, oft-times of many agencies, the cure may be effected." 32 **In formulating its plan**, however, the [\*198] **juvenile court's focus was not on the specific offense committed. 33 Instead, the court was concerned with searching deep within the juvenile delinquent's soul and discovering what the juvenile was, "physically, mentally, and morally." To** try to **obtain** **such** a level of **intimacy, juvenile courts adopted deliberately informal procedures and frowned upon the jurisprudence and encumbrances of the criminal law. 3**5 The new order was symbolized not only by relaxed criminal proceedings that were designed to eliminate any suggestion of criminal procedure, but also by a euphemistic vocabulary and a physically separate and self-contained juvenile court building that was introduced to avoid the stigma of adult prosecution or a criminal conviction. 36 In fact, **the judge often sat at a desk, rather than on a bench, with the child next to him or her, believing that physical intimacy would foster insightful and sympathetic treatment. 37** Moreover, **in the absence of an adversarial framework, there was no need for juries and lawyers--the common goal of everyone involved was not to contest, object,** or even seek the truth of the charges against the juvenile, **but simply to determine how best to treat the juvenile and his or her family, regardless of guilt** or the delicts that brought the juvenile before the court. 38 **Dispositions, therefore, were indeterminate, nonproportional, and individualized.** 39 From its inception, the juvenile court was characterized as having "an extremely wide frame of relevance and an absence of controlling rules or norms...." 40 Nevertheless, the paternalistic system that was structured appeared to offer something to everyone, since it was simultaneously "benevolent and tough-minded, helpful and rigorous, protective of the child, and altogether mindful of the safety of the community." 41 B. Park Avenue Meets Connecticut: The Due Process Revolution **In exchange for this benevolence,** which came under the guise of parens patriae, **juveniles were consistently deprived of the criminal due process protections. 42 The underpinning rationale for this deprivation was that "such** [\*199] **matters, more typical of adversarial systems, would only hinder the court in its benevolent relationship to the child and hinder the child in accepting the treatment to be provided," thus, rendering procedural safeguards unnecessary and counterproductive. 43 It was this tradeoff--the foregoing of due process in juvenile courts in return for benevolent treatment**--that impassioned lawyers on the behalf of children--a powerless minority--took issue with, as is illustrated in the context of Kent v. United States 44 and In re Gault. 45

This links to the standard because the efforts of the court are no longer to maintain and equal playing field but instead to allow other goals to interfere and thus remove the rights and restrictions necessary for an objection contest and adversarial system.

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-2)
3. Stephan Landsman. “The Adversary System. A description and Defense”. American Enterprise Institute Studies in Legal Policy. 1984. [↑](#footnote-ref-3)
4. “Republicanism: A Theory of Freedom and Government.” Clarendon. 1997. Pg. 91. [↑](#footnote-ref-4)
5. “HE 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-5)
6. ILL THE JUVENILE COURT SYSTEM SURVIVE?: Is There a Jurisprudential Future for the Juvenile Court?. 1999 The American Academy of Political and Social Science. Lexis Nexis. [↑](#footnote-ref-6)
7. Barry C. Feld. [Centennial Professor of Law, University of Minnesota Law School. Ph.D. (Sociology), Harvard University, 1973; J.D., University of Minnesota Law School, 1969; B.A., University of Pennsylvania, 1966] “Abolish the Juvenile Court: Youthfulness, Criminal Responsibility, and Sentencing Policy Source: The Journal of Criminal Law and Criminology” (1973-), Vol. 88, No. 1 (Autumn, 1997), pp. 68-136. Northwestern University <http://www.jstor.org/stable/1144075> [↑](#footnote-ref-7)
8. “ NOTE: A Criminal's Justice or a Child's Injustice? Trends in the Waiver of Juvenile Court Jurisdiction and the Flaws in the Arizona Response”. Spring, 1999. Arizona Board of Regents Arizona Law Review [↑](#footnote-ref-8)