**Part 1**

It is morally permissible for the law to allow punishment of a person under 16 years of age when the punishment does not place the person punished in health-threateningly bad conditions, and is the least amount of punishment needed to rehabilitate that person, and the person punished can communicate (or would be able to, were it not for a speech impairment or other language barrier attributable to something more than just their young age). Otherwise it is morally wrong for the law to allow the punishment of people under the age of 16[[1]](#footnote-1).

Some terms require explanation. If a juvenile can “communicate,” they can, per Merriam-Webster (M-W), “transmit information, thought, or feeling so that it is satisfactorily received or understood,” whether through speech, movement, or otherwise. “Health-threateningly bad conditions” cause permanent harm to the person’s body, or kill them. “Rehabilitate” means to, again per M-W, “restore or bring [the person] to a condition of health or useful and constructive activity,” and mean that the person punished will not behave unlawfully *in this way* again. The “least amount of punishment needed” is particular to X and the extent (or curability) of X’s immorality, and would be decided by an expert panel of child psychologists.

When considering the ethics of punishing young people, the potentially relevant considerations are: giving people what they deserve, improving and protecting society, respect for autonomy, and fairness. Respect for autonomy is part of “giving people what they deserve,” because the more autonomously a person chooses to do something wrong, they more punishment they deserve, so I will treat these as one consideration. My view is concerned with giving people what they deserve and doing what is best for society. It does not treat people fairly. I will argue that fairness is less important than giving people what they deserve and doing what is best for society. I’ll start, though, by arguing that my view does a good job of giving people what they deserve and protecting society. This is because children are (in general) more easily rehabilitated than are adults.

Children are, in general, more rehabilitatable than adults. Everyone acts immorally with different levels of intention. Adults who act wrongly sometimes just don’t think clearly, but more often, they understand the seriousness of their actions. Children are different. Research in psychology and cognitive science tells us that as age increases, so, too, does the ability to reason; adults are more fully-developed moral agents than children[[2]](#footnote-2). So, while children who act wrongly could also do so with intention, ignorance is a larger factor. It follows that because children have yet to learn right from wrong, they can be *shown* the difference. If a 45-year-old steals with understanding, and a 5-year-old steals without understanding, the 5-year-old would be more influenced by an explanation that “this is wrong.” And, evidently, children *do* learn: Preschool time-outs and phone-calls home lead to certain behaviors (e.g., taking others’ school supplies) diminishing as kids age. Because children are not yet complete decision-makers, they are more malleable. They are more open to modifying corrections—or rehabilitation. This is true even through adolescence: adolescents are less rational than adults, but also better able to learn, both due to differences in neural structure between adults and adolescents.[[3]](#footnote-3)

Because of this, youthful offenders *deserve* to be rehabilitated. People do not deserve to be harmed in ways that do not benefit them if they do not fully know right from wrong. Consider a person who beats a dog for pooping indoors, knowing that the dog will learn nothing from this and won’t change their behavior. That person is a sadist and is clearly doing something morally wrong. This shows that it is wrong to harm those who don’t know right from wrong if the harm does not serve an educative function. To see that young people deserve to be educated when they do wrong, note that we look favorably upon stories of juveniles who, given second chances, improved their lives. Past juvenile convicts have sought public office, PhDs, and jobs, and we see this as a victory. We know that children are not fully intentional or rational. So, they must be taught reason so they may act interestedly. In short, youth deserve rehabilitation because it is good for *them.*

Rehabilitating children is also good for our society. A successful state needs reasoning citizens. If a moral citizen considering immigration can choose between country A, with 1 moral person, and country B, with 100, they will choose A. Moral citizens work, volunteer, and do good, which benefits everyone. Society’s interest is in educating its educable members, especially ones who cannot educate themselves. Public schools and libraries would not exist if this belief was not popular. Rehabilitating youthful criminals is thus in the long-term best interest of society.

Together, these principles suggest: young people do not deserve harmful punishment; rather, because they are still learning morality, what they deserve is helpful punishment - rehabilitation. This is also best for our society. This supports my thesis. Before I discuss fairness, I should explain some of the details of my thesis.

My thesis says that rehabilitation should focus on preventing the offender from committing the *same crime* in the future. Why? If rehabilitation sought to make culprits fully moral – preventing crimes that the offender has not already committed – what is to stop us from arresting and rehabilitating every citizen, even the innocent? That would clearly be going too far. Since it is not permissible to punish people for crimes they have not yet committed, it is only permissible to punish a thieving child to rehabilitate him for those behaviors he expressed; any worries that he might act criminally later on are irrelevant. Thus, we can only rehabilitate the behavior in question. This precise point is observable: It is the line between doing and not-doing. A child who kicks others can be said to be rehabilitated when she no longer kick others, for example. We do not cross the line and “further” rehabilitate the child “more” because punishment is unpleasant and distressing, and if the goal is to rehabilitate, then an excess of harsh punishment only hurts the already-rehabilitated child and hinders her smooth development.

My thesis focuses on 16 years olds because many U.S. states, including Missouri, choose 16 to mark the acquisition of sufficient (though not complete) decision-making ability[[4]](#footnote-4). This suggests that there is something about this age that we generally accept as important. Not every 16 year is different from every 17 year old. But the law needs to set clear, easy to recognize thresholds. 16 is a good bright line between youth and adulthood.

Why does my thesis focus on the ability to communicate? This is to set a lower limit, below which it is clearly morally wrong to punish at all. Pre-communicative children would not understand *that* they are being punished (let alone *why*), and won’t learn from it. There may be some exceptions, but the ability to communicate gives us again a clear, easy to apply legal threshold.

My thesis allows for significant unfairness, in the sense that it says different people should get different punishments for the same crime. So I have to now argue that, at least in the context of punishing young people, fairness is not as morally important as giving people what they deserve and doing what is beset for society.

One might contend that if two 11-year-olds commit the same crime, and psychologists deem one is more easily rehabilitated, it would be unfair, and thus wrong, to punish one less than the other. But, when dealing with children, fairness is less important than giving people what they deserve and doing what is best for society. We see this in a variety of situations. Think about education. Children who struggle in school receive more help and attention than children who do not struggle (at least, they *should* receive this additional help, and when the struggle is due to a disability, the law requires that they do[[5]](#footnote-5)). This is not an equal distribution of time and resources, but it is clearly what is deserved (every child deserves to get the help they need to succeed), and is clearly better for society than leaving some children by the wayside. The fact that our society has adopted this educational policy shows that we generally accept that it is more important that we adopt policies which are best for society and which give children what they deserve than policies which ensure that every children gets treated identically. Further, we apply this policy through high school, not just with very young children, just as my policy applies even to somewhat older juveniles. Of course, this educational policy deals with the allocation of good things – help and educational resources – whereas my policy deals with the allocation of bad things – punishment. For this reason, one might think that the cases are not analogous. But rehabilitative punishment should really be thought of as a form of mandatory education, since its aim is to help, not hurt, young people.

My thesis also allows another form of unfairness: treating adult and young offenders differently. This should be much less controversial than the previous form of unfairness, so I’ll only briefly discuss it. Differential treatment of adults and young people is rampant in our society, and not objected to. For example, we provide free public education only up to a certain age. This is accepted because we largely agree that the state has special obligations to protect and help young people that it does not have to protect and help adults. This is because young people deserve differential treatment, and society benefits from this differential treatment for the reasons I’ve already discussed. So, unfair disparities between the treatment of adults and young people should be morally permissible when the young people deserve it and when society benefits.

**Part 2**

Someone who endorses the rights-forfeiture view might disagree with my thesis. They might claim that if a child violated another person’s rights, say, by killing them, then they themselves forfeit all rights equal to and lesser than those they violated in another. This would make it permissible to punish the child in non-rehabilitative ways; we could do anything short of killing the offender, even if this didn’t rehabilitate, because the offender has no right to not receive this treatment.

This objection is mistaken because young people do not act as full moral agents – they do not make their choices with full autonomy. Only autonomous moral agents forfeit rights when they violate other people’s rights. For example, if a dog comes into my house without my permission, and eats a bunch of my money, it is not morally permissible to put the dog into prison, even though it would be morally permissible to put an adult human in prison for the same thing. This is because the dog does not know the difference between right and wrong, and so does not act autonomously; the dog does not forfeit their rights in the same way an adult human criminal would. Similarly, young people do not forfeit their rights in the same way adults do. It may be that some people under 16 do act autonomously. But, as argued above, we have to draw a bright legal line somewhere.

Another objection to my view that came up in class arises when the punishment needed to rehabilitate is too extreme; intuitively, such extreme punishments are morally wrong.

If the only punishment that would rehabilitate a child is extreme in a health threatening way, such as electroconvulsive therapy, my thesis would agree that this is morally wrong. Lesser, but still extreme, punishments are nearly always unnecessary, as non-extreme punishments can achieve comparable effects[[6]](#footnote-6). So, again, my thesis would say these are wrong. It would be rare that a seemingly immoral punishment would be exactly the right amount necessary to rehabilitate a young person, and so the law would almost never employ these punishments, because we would almost never have good evidence that they are appropriate.

Another objection to my view that we covered in class has to do with non-rehabilitatable youths, those whose behavior stems from a character trait that can’t be changed (e.g., psychopaths, or children suffering from serious mental illnesses). It seems wrong to let them free, as they are quite dangerous, and one might worry that my thesis says they have to go free because they can’t be helped.

But this is not really a problem for my thesis. The least amount of punishment needed to rehabilitate such an offender is a life sentence, since nothing less will do. Perhaps this seems to be too harsh, but it is what is best for society, and it does not deprive anyone of autonomy, because youths who cannot be rehabilitated can never really act autonomously.

**Part 3**

Consider the following counterexample to my view: a junior high school student is convicted of sexually assaulting a younger classmate. A board of psychologists evaluate the offender and determine that they will need several years of prison and psychiatric counseling to be rehabilitated. According to my thesis, it would be morally wrong to have laws allowing anything more than this level of punishment. But, clearly, it should be permissible to add the offender to a sex offender registry list once they are released. This would ensure that colleges, workplaces, and neighborhoods know that they are a risk.

The registry has no rehabilitative function, so my thesis cannot see it as permissible. But polling indicates that the vast majority (94%) of Americans support keeping a registry of people who sexually assault children, and all 50 states maintain such registries.[[7]](#footnote-7) This shows that almost everyone thinks it is morally permissible for the law to use sex offender registries, and thus that my thesis is implausible as applied to this situation.

**Part 4**

I deny that it is permissible to have laws allowing the offender to be put on a sex offender registry. When we consider what the offender and society deserve, we see the costs of these laws outweigh the benefits.

Adding the offender to a registry would not reduce the risk of this crime occurring again. If the punishment mentioned in part 3 is enough to actually rehabilitate them, then the risk of this person committing this crime again is vanishingly small; adding them to a sex offender registry does not protect anyone. On the other hand, if this person’s chances of committing this crime again were *not* low, then the punishment obviously was not enough to rehabilitate, and my thesis would require that more punishment be administered. If this person is *always* going to be at risk for re-offending, then they cannot be rehabilitated. In that case, my thesis would require that they be in prison forever, rather than released and put on a registry. That’s the right result – if someone really is likely to sexually assault a child, a sex offender registry is not effective enough at preventing this (research suggests that they basically do nothing to reduce these risks[[8]](#footnote-8)). So, either way, sex offender registries are not protecting anyone.

The registry *does* make things worse, however. If this person is on the registry, they will be looked over by colleges, employers, and residential communities. They will largely be relegated to an inferior class of citizens: offenders. They will almost definitely have a very hard time leading a productive, upstanding life. The costs to society of adding this person to an offender registry are extremely high, and the benefits are essentially zero. This law should require that this person be released without registration when rehabilitated, or not released if not rehabilitatable, as my thesis states.

1. This thesis was approved by Brian on March 9, 2018. [↑](#footnote-ref-1)
2. E.g., Piaget, Jean. *Judgement and Reasoning in the Child*. London, 1928. [↑](#footnote-ref-2)
3. Davidow, et al, (2016) An upside to reward sensitivity, *Neuron*, Volume 92, ISSUE 1, P93-99, October 05, 2016 [↑](#footnote-ref-3)
4. Teigen, Anne. “Juvenile Age of Jurisdiction and Transfer to Adult Court Laws.” *National Conference of State Legislatures*, 17 Apr. 2017. [↑](#footnote-ref-4)
5. See for example, Individuals with Disability in Education Action, https://sites.ed.gov/idea/ [↑](#footnote-ref-5)
6. Salt, Henry S. “The Ethics of Corporal Punishment.” *International Journal of Ethics*, vol. 16, no. 1, 1905, pp. 77–88. [↑](#footnote-ref-6)
7. https://news.gallup.com/poll/16705/Sex-Offender-Registries-Underutilized-Public.aspx [↑](#footnote-ref-7)
8. https://www.sciencedaily.com/releases/2011/08/110830165016.htm [↑](#footnote-ref-8)