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The American University in Cairo

**School of Global Affairs and Public
Policy**

**THE LAW IN CONFLICT WITH HUMAN RIGHTS
OF YOUNG ADULTS:
INTERNATIONAL, REGIONAL AND COUNTRY PRACTICES
OF YOUNG ADULT OFFENDERS**

A Thesis Submitted to the

Department of Law

**in partial fulfillment of the requirements
for the degree of Master of Arts in
International Human Rights Law**

By

Jessica Rau

May 2011

The American University in Cairo
School of Global Affairs and Public Policy
Department of Law

THE LAW IN CONFLICT WITH HUMAN RIGHTS OF YOUNG ADULTS:
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OF YOUNG ADULT OFFENDERS

Jessica Rau

Supervised by Professor Tanya Monforte

ABSTRACT

Law has traditionally relied on age markers to distinguish between juvenile and adult offenders, while ignoring the category of young adult offenders. This article defines young adults, young adult offenders and young adulthood as the ages between 18 and 24. Young adulthood is a social category, but it is affected by ongoing psychological and neurological development. Age-crime theories have demonstrated that the age of young adulthood creates a risk factor for criminal behavior. The same behavioral and developmental components that put young adults at risk of coming into contact with the law simultaneously support their potential for rehabilitation; an argument closely linked to why children are adjudged by the juvenile justice system. Scholars and scientists have recommended the adjudication of young adult offenders in systems separate from adult criminal procedures and sanctions, but few human rights and criminal justice systems have applied these findings to young adult offenders. This article examines regional systems recommendations on young adult offenders and certain European states' systems such as Germany who have accounted for young adult offenders within the juvenile jurisdiction or created a separate category for young adult offenders. On the contrary, international human rights law and international criminal law cling to the Straight 18 approach, segregating children under 18 years from adults, and ignoring the category of young adults. Additionally, the U.S. works with a less strict interpretation of the Straight 18 approach within its juvenile jurisdiction by promoting some juveniles to the adult criminal system. Such practices make it difficult to then acquire a third category for young adult offenders or expand the juvenile jurisdiction to incorporate those under 25 years. International human rights law and criminal law jurisdictions should reflect the social and scientific findings on young adulthood by either including young adults under 25 years within the juvenile jurisdiction or implementing a third category for young adult offenders.

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Introduction

Human rights has overlooked the distinct transitional phase of young adulthood and the protections of this vulnerable age group, particularly, in regard to the treatment of young adult offenders. Young adulthood has been defined by scholars, social scientists, medical scientists and within the Ibero-American Youth Rights Convention (IAYRC) as individuals in their teens to mid-twenties. This article defines young adults, young adult offenders and young adulthood as the ages between 18 and 24. These age parameters for young adults are based on social and scientific research; and legal precedence within certain regional and domestic legal systems.

Defining childhood, adulthood and other “age-hoods” within the dynamic universal human rights system is tricky because of varying ideas about childhood and adulthood and the age markers associated with these terms. Nonetheless, law has traditionally relied on age to distinguish between children and adults; meanwhile, most international, regional and domestic systems have not accounted for the young adult category. International human rights law has inappropriately grouped young adults with adults, a fall out from international doctrines such as the Convention on the Rights of the Child (CRC) that defines the age of a child as anyone under 18 years¹ and by default those 18 years and over are considered adults. “In general, humanitarian and human rights organizations have adopted the so-called ‘Straight 18’ position, which sets forth a universal age of childhood as beginning at birth and ending at age eighteen.”² “The Straight-18 approach is very ambitious in that it advocates the creation of a single comprehensive definition of childhood in a world where ideas about childhood and the legal rights of children vary significantly.”³ The Straight 18 approach has also influenced the more recent discourse of international criminal law, which has wrestled with how to adjudge juveniles for international crimes related to human rights violations, while positioning young adults under the jurisdiction of adult criminal liability for international crimes.

¹ The Convention on the Rights of the Child art. 1, Nov. 20, 1989, 1577 U.N.T.S. 3, *available at* <http://www2.ohchr.org/english/law/crc.htm> [hereinafter CRC].

² David M. Rosen, *Who Is A Child? The Legal Conundrum of Child Soldiers*, 25 CONN. J. INT’L L. 81, 96 (2009-2010).

³ *Id.*

The Straight 18 approach typically separates juvenile from adult offenders. It is helpful in that it defines a juvenile system and protects youth; however, it could be modified to include young adults under 25 years, or legal systems could maintain the juvenile jurisdiction and create a third jurisdiction for young adult offenders between 18 and 24 years. These optional legal systems exist in some European states such as Germany and Austria.

By virtue of their stage of development, young adults test boundaries and demonstrate impetuous behaviors which at times are more similar to their juvenile counterparts than that of a seasoned adult. These menacing actions can result in contact with the law, law that imposes long-lasting punitive effects on individuals' lives and does not differentiate between a young adult, and an adult. In many regards, teenagers and young adults want to be treated as full-fledged adults, yet in certain sectors such as criminal law, where the loss of liberty (during pre-trial detention or confinement sentencing) interrupts the transition to adulthood and the loss of life (by death penalty— an irrevocable life-altering consequence), are areas of law in which neither children nor young adults should assume full adult responsibilities because they have not attained adult psychosocial development and neurological functioning. Moreover, scholars urge that “[c]rimes committed by still-developing young people [...] are less blameworthy than equivalent acts by adults; further, youths’ developmental plasticity makes them more likely to stop offending – if, that is, we provide them with conditions conducive to rehabilitation.”⁴

Young adulthood is an intrinsically complicated phase as young people attempt to find their route to the adult world through social and economic responsibility, while psychological and neurological attributes finalize development. Social and scientific research cannot delineate a specified age marking the exact onset of adulthood because of the respective developmental processes, but it can provide age ranges in which these functions mature. Technological advances in brain imaging shows that neurological development continues into the twenties and this evidence correlates with behavioral

⁴ Terry Mahoney, *The False Promise of Adolescent Brain Science in Juvenile Justice*, 85 NOTRE DAME L. REV. 89, 90 (2009).

research indicating that adulthood is reached during the twenties.⁵ Few regional and domestic legal systems have relied on behavioral and neuroscience findings on young adulthood. In fact, most legal systems are out of touch with the current research, which is clear in the limited amount of rights and protections directed at young adults. Collectively using sociology, psychology and neuroscience research on young adulthood could guide legal systems to define young adult offenders, as those between 18 and 24 years deserving of non-adult criminal procedures and sanctions, by either promoting young adults' inclusion within the juvenile jurisdiction; or creating a third category, or jurisdiction, that renders young adults less culpable than adult offenders.

Where the universal system of human rights has failed to identify and make recommendations for young adults, regional systems and certain European states have taken the initiative to recognize the unique phase of young adulthood and adjudicate young adult offenders under a different set of penal standards. The age range of young adult offenders varies among European states, but the upper age range is between 21 and 25 years.⁶ This has been achieved by one of two ways: including young adults within the juvenile jurisdiction or adjudicating young adult offenders under a less punitive penal jurisdiction than the adult criminal system. It is necessary to offer background on the logic behind juvenile systems to understand the reasoning for the inclusion of young adult offenders within this jurisdiction. The minimum age of criminal responsibility (MACR) describes the lowest age limit for the application of juvenile law,⁷ while terms such as “the age of penal majority” or “the age of criminal responsibility” typically define the lowest age limit for adult culpability under adult criminal law.⁸ For example, in Germany the minimum age of criminal responsibility is 14 years, a much higher

⁵ Claudia Dreifus, *A Conversation with Laurence Steinberg: Developmental Psychologist Says Teenagers are Different*, N. Y. TIMES, Nov. 30, 2009, available at http://www.nytimes.com/2009/12/01/science/01conv.html?_r=1.

⁶ TRANSITION TO ADULTHOOD, YOUNG ADULTS AND CRIMINAL JUSTICE: INTERNATIONAL NORMS AND PRACTICES 3 (2010), available at <http://www.t2a.org.uk/publications> [hereinafter T2A, YOUNG ADULTS AND CRIMINAL JUSTICE: INTERNATIONAL NORMS AND PRACTICES].

⁷ DON CIPRIANI, CHILDREN'S RIGHTS AND THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY: A GLOBAL PERSPECTIVE 117 (Farnham: Ashgate 2009).

⁸ *Compare* Merriam-Webster Dictionary of Law, <http://dictionary.reference.com/browse/age+of+majority> [hereinafter Dictionary, Age of Majority] (“age of majority” is “the age at which a person is granted by law the rights (as ability to sue) and responsibilities (as liability under contract) of an adult.”) *with* Law-Glossary.com, <http://www.law-glossary.com/definition/age-of-criminal-responsibility.html> (“age of criminal responsibility” is “the age at which a person is considered to be capable of committing a crime”).

minimum age of criminal responsibility than “the emerging international standard of a minimum of 12 years”⁹ and much higher than many countries that include a younger child population within juvenile law.¹⁰ In Germany “[t]urning 18 does not automatically lead to the application of adult criminal law.”¹¹ Germany’s juvenile justice system is applicable for young people between the ages of 14 and 21,¹² and the courts are allowed discretion to sentence young adults between the ages of 18 and 21 under juvenile or adult laws.¹³ German legislation includes young adults within the juvenile jurisdiction because it recognizes that often times the majority of young adult offenders are developmentally similar to juveniles and imposing adult sanctions could negatively impede rehabilitation.

On the contrary, young adults in the United States (U.S.) are treated as adults within the federal and state criminal justice systems; however, there are some states’ jurisdictions in which juveniles under 18 years are transferred to the adult system. In the U.S. 15 states’ juvenile jurisdictions have established minimum ages of criminal responsibility ranging between six and ten years, while the remaining states and the federal juvenile justice system are devoid of minimum ages of criminal responsibility.¹⁴ In the U.S. “47 states use 17 or 18 as the age at which most minors are treated as adults. North Carolina, Connecticut and New York draw the line of adulthood for criminal culpability even at the age of 16.”¹⁵ The U.S. has taken an opposite position to some European states; and a similar approach to international human rights instruments and the Straight 18 approach by categorizing those 18 years and over within the adult group, but also inappropriately promoting juveniles under 18 years to the adult criminal system.

⁹ DON CIPRIANI, *supra* note 7, at 117.

¹⁰ *See generally id.* at 187-224 (the following countries: Bahrain, Cambodia, Cuba, Democratic Republic of the Congo, France, Luxembourg, Malaysia, Marshall Islands, Mauritius, Micronesia, Mozambique, Nauru, Nepal, Pakistan, Poland, Solomon Islands, Somalia, Sudan and the United States have either MACR of 0 years or do not have a MACR).

¹¹ HORST ENTORF, IZA DISCUSSION PAPER NO. 5434, TURNING 18: WHAT A DIFFERENCE APPLICATION OF ADULT CRIMINAL LAW MAKES 2 (Jan. 2011), *available at* <http://ftp.iza.org/dp5434.pdf>.

¹² DEFENCE FOR CHILDREN INTERNATIONAL THE NETHERLANDS, KIDS BEHIND BARS 55 (Stan Meuwese ed., Stenco Amsterdam 2003), *available at* <http://www.defenceforchildren.org/juvenile-justice/jj-resources.html>.

¹³ T2A, YOUNG ADULTS AND CRIMINAL JUSTICE: INTERNATIONAL NORMS AND PRACTICES, *supra* note 6, at 3.

¹⁴ DON CIPRIANI, *supra* note 7, at 117-118.

¹⁵ HORST ENTORF, *supra* note 11, at 2 (citation omitted) (transfer from juvenile to adult court is based on certain offender and offense requirements).

This article examines international, regional and national definitions of young adult and legal practices on the adjudication of young adult offenders, or the lack thereof as is the situation in the U.S. The purpose of this article is to elucidate on ideas and practices of including young adult offenders within the juvenile jurisdiction by raising the upper age to include young adults under 25 years; or creating a third category to adjudicate 18 to 24 year olds in a system that has similar principles as juvenile justice and is less punitive than adult criminal law. The article begins in Part I with the foundation on the distinctiveness of young adulthood by reviewing social and scientific research on young adult development. These theories are rooted in regional doctrines and state laws which have recognized that young adulthood is different from adulthood. Part II looks at regional efforts by Europe and Ibero-America to recognize young adults and reviews certain European states' jurisdictions that exclude young adults from adult criminal law by incorporating young adult offenders within the juvenile jurisdiction or adjudicating young adult offenders in a jurisdiction separate from juvenile and adult criminal law. Part III examines how international human rights law has promoted the Straight 18 approach within juvenile justice and international criminal law, while omitting the category of young adult offenders. The U.S. criminal justice system provides a contrasting example of a state that maintains a less strict interpretation of the Straight 18 approach by promoting juveniles to adult criminal court. Part IV analyzes the consequences of adult criminal law on young adults' transition to adulthood. Lastly, the conclusion suggests minimal recommendations on the treatment of young adult offenders within either the juvenile jurisdiction or a separate category.

I. Young Adult Development: Between teen and adult

A. Criminology Theories Define Young Adults

Many of us can recall a time in our teens or even in our twenties when impulsivity, poor judgment and lack of foresight about prospective consequences resulted in a bad choice. Understanding why young adults engage in criminal activity has been traditionally researched by social scientists with many of the research results corroborating across social science discourses. Interestingly, criminologists and crime statisticians have historically categorized adolescence and young adult age groups and examined these groups' propensity to commit crime. It is here the discussion on young adults and crime begins with the popular age-crime curve theory which argues that young adults typically age out of crime. The age-crime theory supports that the majority of young adults involved in criminal behavior are not lifetime persistent offenders, but rather individuals in a stage of impulsivity and risk-taking that is governed by under developed psychosocial characteristics and neurological functions.

“Most criminologists agree that people commit less crime as they age”¹⁶ and in some countries this theory is substantiated by crime statistics. “Criminological research [has] consistently [...] confirmed that (the proportion of) the population involved in crime tends to peak in adolescence or early adulthood and then decline with age. This age-crime relationship is remarkably similar across historical periods, geographic locations, and crime types.”¹⁷ The age-crime theory is broad and steady; “and it can be viewed as a universal phenomenon in all countries”¹⁸ making its theoretical application a useful incorporation into international and regional human rights laws, which rely on wide-reaching theories and recommendations that are malleable to changing temporal periods and numerous disparate nations' practices.

¹⁶ LARRY J. SIEGEL, CRIMINOLOGY THEORIES, PATTERNS, AND TYPOLOGIES 53 (Wadsworth, Cengage Learning 10th ed. 2010) (citation omitted).

¹⁷ DARRELL STEFFENSMEIER & JEFFERY ULMER, AGE AND CRIME – AGE-CRIME PATTERNS FOR THE U.S., VARIATIONS IN THE AGE CURVE, VARIATIONS IN CRIMINAL CAREERS, *available at* <http://law.jrank.org/pages/479/Age-Crime.html>.

¹⁸ Frieder Dünkel & Ineke Pruin, *Young adult offenders in the criminal justice systems of European countries*, in JUVENILE JUSTICE SYSTEMS IN EUROPE: CURRENT SITUATION AND REFORM DEVELOPMENTS 1557, 1562 (Frieder Dünkel, Joanna Grzywa, Philip Horsfield & Ineke Pruin eds., Forum Verlag Godesberg 2010) (citation omitted) [hereinafter Dünkel & Pruin, *Young adult offenders in the criminal justice systems of European countries*].

Research on the age-crime theory is also supported by crime statistics. This article will use statistics from Germany and the U.S. since they are the main countries of comparison with opposing penal practices on the treatment of young adult offenders. In a study examining a one hundred year span of the age-crime curve in Germany, results showed that in 1900, 1970 and 1980 the peak age of crime was between 18 and 21 years.¹⁹ In 1990 the peak increased to 25 years²⁰ and in 2000 and 2006 the peak age of crime maintained around 25 years.²¹ “[T]he age-crime-curve has not changed since the beginning of the last century, but the peak [...] has continuously moved to the right, i.e. to the age group of 21-25.”²² One explanation for the older age parameters may be a longer period of young adulthood in Germany, which is understood through discourses on socioeconomic trends and young adult psychological and neurological development.

The U.S. has experienced a similar trend with young adult offenders. Official records such as the U.S. Federal Bureau of Investigation’s (FBI) Uniform Crime Report (UCR) demonstrate young adults’ majority percentage within the criminal justice system. “The UCR includes both crimes reported to local law enforcement departments and the number of arrests made by police agencies.”²³ The UCR is useful because it tallies the number of arrests by age; however, it does not report the number of arrests that led to convictions and it excludes the number of arrests from traffic violations.²⁴ The 2009 UCR “Arrests by Age” exemplifies the stark increase in arrests for those between 18 and 24 years over other age groups, and confirms the age-crime theory within this sample. In 2009, 1,515,586 (14.1%) of those arrested were under 18 years; but the arrest rate doubled for 18 to 24 year olds with 3,167,733 (29.4%) arrests; and declined for 24 to 29 year olds with 1,556,740 (14.5%) arrests.²⁵ Within these U.S. based statistics it appears that young adults (18 to 24 years) are more likely to come into conflict with the law than

¹⁹ *Id.* at 1562.

²⁰ *Id.*

²¹ *See id.* (figure: 2 Conviction rates according to age groups, Germany 1886-2006 (per 100,000 of the age group)).

²² *Id.* (citation omitted).

²³ LARRY J. SIEGEL, *supra* note 16, at 30.

²⁴ *Id.*

²⁵ *See* Federal Bureau of Investigation, U.S. Department of Justice, *Arrests by Age, 2009* (Sept. 2010), http://www2.fbi.gov/ucr/cius2009/data/table_38.html#overview [hereinafter FBI, *Arrests by Age, 2009*] (arrests numbers and percentage for the age range, 18 to 24 years, was tallied by adding the “Total” and the “Total percent distribution” for the following age categories: 18, 19, 20, 21, 22, 23 and 24 years in the *Arrests by Age, 2009* table).

other age groups, and it suggests that the transition to young adulthood has lengthened, as well.

The German and U.S. based statistics indicate that young adults are a significant population within these criminal systems. Since this age group generally ages out of crime they demand consideration under a non-adult system, either by including those under 25 years within the juvenile jurisdiction, or situating 18 to 24 year olds within a third category that is separate from adult criminal law.

1. Age-graded Theory of Informal Social Control: Aging out of crime during the transition to adulthood

The age-graded theory of crime suggests that “[a]s people mature, the factors that influence their propensity to commit crime change.”²⁶ Many of these factors are related to responsibility which is influenced by psychosocial maturity. Criminologists Robert Sampson and John Laub carried out a study on the “age-graded theory of informal social control”²⁷ and examined factors affecting desistence and persistence of crime.²⁸ Some of the key points affecting Sampson and Laub’s age-graded theory of informal social control included:

- “individual traits and childhood experiences;”²⁹
- “[e]xperiences in young adulthood and beyond [that] can redirect criminal trajectories or paths;”³⁰
- “positive life experiences and relationships [that] can help a person become reattached to society;”³¹
- “[p]ositive life experiences such as gaining employment, getting married, or joining the military create informal social control mechanisms that limit criminal behavior opportunities;”³² and

²⁶ LARRY J. SIEGEL, *supra* note 16, at 291.

²⁷ *Id.* at 279.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

- “[a] vital feature that helps people desist from crime is ‘human agency’ or the purposeful execution of choice and free will.”³³

These age-graded factors of informal social control illustrate the differentiation between young adults and adults. These factors are affected by “[r]ecent social, economic, and demographic changes [that] have afforded many youth a lengthened transition to adulthood.”³⁴ Social markers that were traditionally attained in the late teens and early twenties are occurring later. For example, extended educational careers have delayed other social markers, such as work, marriage and childbearing.³⁵ Additionally, “[a] declining fraction of young adults enters full-time work before their early 20s and an increasing number do so only toward the end of their 20s.”³⁶ These types of social attainments are important factors assisting maturation and instrumental in desistance because they regulate young adults’ social behaviors. Consequently, some young adults with socioeconomic problems or dysfunctional families are disproportionately affected and therefore more vulnerable during the transition to adulthood.³⁷

“All over Europe, [...] a prolongation of the transitional phase from youthfulness to adulthood has gradually taken place [...] and [t]he reasons for this are manifold.”³⁸ For example, there are higher rates of unemployment and higher job qualifications and the attainment of such skills delay youths’ entry into the work force and consequently their financial independence.³⁹ “[T]hroughout Europe, with the exception of *Finland*, about 50% of 20 to 24 year-old young adults [...] still live with their parents.”⁴⁰ Also, the average age of marriage and the age of a mothers’ first birth has increased considerably.⁴¹ This extended transition to adulthood also increases “[t]he mean age at which episodic criminal behavior discontinues.”⁴² With social markers occurring at later ages and in turn

³³ *Id.* at 280.

³⁴ Stephanie Cosner Berzin, *Vulnerability in the transition to adulthood: Defining risk based on youth profiles*, 32 CHILD. YOUTH SERVICES REV. 487, 487 (2010).

³⁵ Richard A. Settersten, Jr., *Passages to Adulthood: Linking demographic change and human development*, 23 EUR. J. POPULATION 251, 252 (2007).

³⁶ *Id.*

³⁷ Larry J. Siegel, *supra* note 16, at 273.

³⁸ Dünkel & Pruin, *Young adult offenders in the criminal justice systems of European countries*, *supra* note 18, at 1557.

³⁹ *Id.*

⁴⁰ *Id.* at 1566.

⁴¹ *Id.*

⁴² *Id.* at 1568.

delaying maturation it subsequently raises the age at which more young adults are likely to desist from criminal activity. These socioeconomic cues may indicate a need for European states to expand the juvenile jurisdiction or young adult category to include young adults in their mid-twenties.

The point of differentiation between young adults and adults is complicated by informal social controls that assist in decreasing the propensity to engage in youthful criminal activity; however, “[i]n adulthood, people strengthen their ability to delay gratification and forgo the immediate gains that law violations bring. They also start wanting to take responsibility for their behavior and to adhere to conventional norms, such as establishing long-term relationships and starting a family.”⁴³ Criminology theories and crime statistics on young adults reiterate the need to find juvenile or criminal justice measures that recognize the propensity for young adults to come in contact with the law and how to appropriately adjudicate this age group based on their young adult development. The criminology research on young adults’ propensity to engage in criminal behavior is further explained by psychological and neurological findings.

B. Psychological and Neurological Findings on Young Adults

Discussions on psychological and neurological development are predominately discussed in two phases: teenagers and adults, with minimal emphasis on the stage in between. A rudimentary analysis of behavioral and neuroscience findings on young adult development is insightful to understand how their developmental traits are more similar to adolescents. The understanding of young adulthood is referenced in the logic behind certain regional definitions of young adult and some European states’ jurisdictions decisions to treat young adult offenders similarly to juveniles.

1. Young Adults’ Psychological Traits

For years, U.S. juvenile justice advocates have supported their arguments for a strict interpretation of maintaining under 18 year olds within the juvenile jurisdiction, using psychological and neurological research. The argument goes that juveniles’ youthful evolving processes are deserving of remedial treatment, rehabilitation and immunity from

⁴³ LARRY J. SIEGEL, *supra* note 16, at 53 (citation omitted).

lifelong stigmas associated with disclosure of criminal histories, which can hinder educational and employment attainment. The behavioral research behind these arguments played a key role in the decision of the U.S. Supreme Court case *Roper v. Simmons*, which abolished the juvenile death penalty for offenders who were under the age of 18 years at the time of the offense.⁴⁴ The Court found three differences between juveniles and adults that render them outside the scope of the harshest end-all of sanctions, the death penalty. First, “[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions;”⁴⁵ secondly, “juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure;”⁴⁶ and lastly, “the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.”⁴⁷

These general theories on psychosocial maturity explain why adolescents and young adults engage in criminal activity and eventually desist; moreover, these behavioral theories provide explanations as to why juveniles and young adults are afforded protections from certain adult criminal procedures and penalties. “Psychosocial maturation [...] [involves] increases in self-control, stronger resistance to peer influence, and the willingness to forsake immediate gratification in order to achieve future goals.”⁴⁸ Psychologists Laurence Steinberg and Elizabeth Cauffman suggest that self-control is a component of psychosocial maturation, and the foundation of desistance.⁴⁹ Similarly, criminologists Michael Gottfredson and Travis Hirshci also posit that the lack of self-control is a main contributor to antisocial behavior.⁵⁰ This underscores the age-graded theory of informal social control that as youths become more psychologically mature they are less likely to behave in an antisocial manner.⁵¹

⁴⁴ *Roper v. Simmons*, 543 U.S. 1, 25 (2005).

⁴⁵ *Id.* at 15.

⁴⁶ *Id.*

⁴⁷ *Id.* at 16.

⁴⁸ Kathryn C. Monahan, Laurence Steinberg, Elizabeth Cauffman, & Edward P. Mulvey, *Trajectories of Antisocial Behavior and Psychosocial Maturity From Adolescence to Young Adulthood*, 45(6) DEVELOPMENTAL PSYCHOL. 1654, 1654 (2009) [hereinafter Monahan et. al.] (citation omitted).

⁴⁹ *Id.* at 1655.

⁵⁰ *Id.*

⁵¹ *Id.*

In a 2009 study, Kathryn Monahan et. al. examined psychosocial maturity, specifically, impulse control, suppression of aggression, future orientation, consideration of others, personal responsibility and resistance of peer influence among serious juvenile offenders (14 to 22 years) and their ability to persist and desist from antisocial behavior as they transitioned to adulthood.⁵² The findings demonstrated that during the transition to adulthood, desistance of antisocial behavior was achieved by gains of impulse control and suppression of aggression.⁵³

Psychologist and researcher Terrie Moffitt has tested numerous hypotheses on desistence in adolescence-limited offenders and life-course-persistent offenders over the developmental phases to adulthood. One result has remained constant over her decades of research and correlates with the age-crime theory: “[m]ost individuals who engage in antisocial behavior in adolescence (regardless of when such behavior began) discontinue it as they become adults, and only a small portion of deviant adolescents will develop into deviant adults.”⁵⁴ This is an indication that young adult offenders behavior is changing and effected by various developmental factors and social attainments.

As these psychological functions mature an overwhelming majority of young adults desist and age out of behaviors that are likely to bring them into conflict with criminal law. This developmental phase, which makes young adults susceptible to influence, also makes them amenable to positive influences, change and more responsive to rehabilitation than a developed adult. Furthermore, these behavioral traits have been supported by neuroscience, which provides medical findings on the correlation of emotional and cognitive reasoning to brain functions. In other words, neuroscience offers a physiological explanation to the adolescent-like behaviors such as risk-taking and impulsivity demonstrated by young adults.

⁵² *Id.* at 1654.

⁵³ *Id.* at 1664.

⁵⁴ *Id.* at 1656.

2. Young Adults' Neurological Functioning

Neuroscientists have linked young adults' cognitive processes with brain function.⁵⁵ Developments in Magnetic Resonance Imaging (MRI) have produced images showing that brain structure and function continue developing into the twenties.⁵⁶ Research results vary on the completion of these processes with estimations throughout the twenties. The pre-frontal lobe, a section within the frontal lobe, is the epicenter of the brain's cognitive functions⁵⁷ for reasoning and judgment.⁵⁸ Developments within the pre-frontal cortex effect self-reliance, susceptibility to peer influence and empathy; additionally, impulse control and planning are correlated with the growth of the dorsolateral prefrontal and parietal cortices areas of the brain.⁵⁹ According to some neuroscientists "cognitive maturity, that is, the point where [brain] patterns indicate fully developed adult reasoning and judgment may not occur until the mid-twenties."⁶⁰ Myelination is the developing of white matter that works as circuitry to provide efficient and precise brain operations;⁶¹ and "many of the nerves connecting different processing centers in the brain don't finish myelinating until the early twenties."⁶²

Studies of brain development show that brain volume, which reflects the combination of white and gray matter, continues to increase until around age twenty, and that the ratio of white to gray matter continues to change at least into the mid-twenties, with later development for males than females. Moreover, this research indicates that the development of different parts of the brain occurs at different times. The last parts of the brain to mature are the frontal lobes, regions of the brain associated with planning, attention, and social interactions.⁶³

⁵⁵ June Carbone, *Age Matters: Class, Family Formation, and Inequality*, 48 SANTA CLARA L. REV 901, 903 (2008).

⁵⁶ *Id.* (citation omitted).

⁵⁷ JUVENILE JUSTICE CENTER, AMERICAN BAR ASSOCIATION, CRUEL AND UNUSUAL PUNISHMENT: THE JUVENILE DEATH PENALTY ADOLESCENCE, BRAIN DEVELOPMENT AND LEGAL CULPABILITY 1 (Jan. 2004).

⁵⁸ June Carbone, *Age Matters: Class, Family Formation, and Inequality*, 48 SANTA CLARA L. REV 901, 903 (2008) [hereinafter JUVENILE JUSTICE CENTER, CRUEL AND UNUSUAL PUNISHMENT] (citation omitted).

⁵⁹ Monahan et. al., *supra* note 48, at 1666.

⁶⁰ June Carbone, *supra* note 55, at 901.

⁶¹ JUVENILE JUSTICE CENTER, CRUEL AND UNUSUAL PUNISHMENT, *supra* note 57, at 2.

⁶² SHANNON BROWNLEE, INSIDE THE TEEN BRAIN IN ADOLESCENT PSYCHOLOGY 31 (Anita M. Meehan & Eileen Astor-Stetson eds., McGraw-Hill/Dushkin 3rd ed. 2001).

⁶³ June Carbone, *supra* note 55, at 903 (citations omitted).

Neurological studies on young adults received noteworthy reference in the criminal case, *Gall v. United States*. The facts before the Supreme Court began when a district court judge decided to sentence Gall, a young college student, to 36 months of probation for distributing ecstasy as part of a drug conspiracy during his sophomore year in college.⁶⁴ This was a diametric decision by the court compared to the prosecutor's suggestion, based on a pre-sentence report's recommendation of a custodial sentence of 30 to 37 months.⁶⁵ The federal case was eventually appealed. "The Eighth Circuit reversed [the district court's decision] on the ground that a sentence outside the Federal Sentencing Guidelines range must be – and was not in this case – supported by extraordinary circumstances."⁶⁶ In essence, the appeal court disbelieved that there were circumstances justifying a substantially reduced sentence. Nonetheless, the Supreme Court reversed the appellate court's judgment and sided with the sentencing court. The Court's opinion underscored the district court judge's views on the petitioner's development and maturity when considering its decision.

Recent studies on the development of the human brain conclude that human brain development may not become complete until the age of twenty-five... [T]he recent [National Institute of Health] report confirms that there is no bold line demarcating at what age a person reaches full maturity. While age does not excuse behavior, a sentencing court should account for age when inquiring into the conduct of a defendant.⁶⁷

The district judge's decision to implement a probationary sentence, also hinged on the cessation of Gall's criminal behavior based on his post-offense conduct to lead a new life;⁶⁸ therefore, the judge felt that "[a]ny term of imprisonment in this case would be counter effective."⁶⁹ The indictment in this case came about three and a half years after Gall withdrew from the conspiracy⁷⁰ and this allowed the court to examine a longer period of Gall's transition to adulthood. Gall's post-offense behaviors outline his achievement of social markers demonstrating maturation on the pathway to adulthood.

⁶⁴ *Gall v. United States*, 552 U.S. 1, 1 (2007).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 19-20.

⁶⁸ *Id.* at 5-6.

⁶⁹ *Id.* at 5.

⁷⁰ *Id.* at 3.

For example, prior to joining the conspiracy Gall used marijuana, ecstasy and cocaine, but discontinued drug use a few months after joining the conspiracy, and withdrew from the conspiracy within six to seven months after joining.⁷¹ Gall's decisions to "lead a new life" (prior to the indictment), included completing his college degree and becoming a master carpenter.⁷² While under indictment Gall started his own business in the construction industry because he was free on his own recognizance.⁷³ The *Gall* case and the rulings by the district judge and the Supreme Court, exemplify the research and arguments sociologists, psychologists and neurologists have concluded about young adults' transitional phase to adulthood. It also highlights the importance of no pre-trial detention and non-custodial sentences, either of which could have set Gall back from educational and professional advancements during the case process.

According to author June Carbone, who discusses the affects of neuroscience research in age related laws, agrees that the growing scientific research on brain development is useful for understanding how societal changes affect different age groups;⁷⁴ in particular, risk-taking in young adulthood.⁷⁵ She warns her audience about the counter effects of using neuroscience as the sole reasoning for age based laws because developmental neuroscience is limited by "its inability to inform individual assessment. [For example,] [i]maging studies that show group trends in structural maturity – such as relative levels of myelination in [the] prefrontal cortex – do not show that all individuals in the group perfectly reflect the trend."⁷⁶ This is an important point and reminder that legal reform should not be based solely on neuroscience. Instead, it is important to view the social and scientific discourses as a coalescence to provide well-rounded information on young adulthood in order to develop criminal law reforms that are appropriate to the dynamic developmental phase of young adult offenders between 18 and 24 years.

⁷¹ *Id.* at 2.

⁷² *Id.* at 2-3.

⁷³ *Id.* at 3.

⁷⁴ June Carbone, *supra* note 55, at 915.

⁷⁵ *Id.* at 901.

⁷⁶ Terry A. Maroney, *supra* note 4, at 102 (citation omitted).

II. Regional and European States' Systems Recognizing Young Adults

A. European and Ibero-American Regions Consider Young Adults

Regionally, Europe and Ibero-America⁷⁷ have categorized young adults as those between adolescence and adulthood. The Council of Europe, the European Union (EU) and the Ibero-American Youth Rights Convention (IAYRC) recommend legal protections for young adults, including young adult offenders. These documents explain why young adults need particular rights and protections based on their unique transitional phase of development.

In 2003 the Council of Europe recommended new methods for European juvenile justice systems with Rec(2003)20, which suggests embracing young adults into the juvenile jurisdiction. The Council defined juveniles as those who have reached the age of criminal responsibility and are below the age of majority;⁷⁸ however, the term “juveniles” may also include those immediately over the age of majority.⁷⁸ The Council’s language reflects the numerous legal systems differing ages of criminal responsibility and age of majority, but it also signifies that those over the age of majority (which typically marks the onset of adult responsibility) are welcomed within juvenile justice. The Council based its proposition on including young adults within the juvenile jurisdiction because “the age of legal majority does not necessarily coincide with the age of maturity.”⁷⁹ This statement supports the social and neuroscientific discourses findings that young adults are not necessarily mature adults. The Council proposed that “[c]ulpability should better reflect the age and maturity of the offender, and be more in step with the offender’s stage of development, with criminal measures being

⁷⁷ See generally Reference.com, <http://www.reference.com/browse/wiki/Ibero-America> (“**Ibero-America** is a term which started to be used in the second half of the 19th century to refer collectively to the countries in the Americas which were formerly colonies of Spain or Portugal. Spain and Portugal are themselves included in some definitions, such as that of the Ibero-American Summit and the Organization of Ibero-American States. The Organization of Ibero-American States also includes Equatorial Guinea, in Central Africa, but not the Portuguese-speaking African countries.”).

⁷⁸ Council of Europe, *Recommendation of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice*, 853rd meeting, Rec(2003)20, at § Definitions (Sept. 23, 2003).

⁷⁹ *Id.* at ¶ 6.

progressively applied as individual responsibility increases.”⁸⁰ One response by the Council was to use methods comparable to juvenile justice to adjudicate young adults.⁸¹

The Council reasoned that the extended transition to adulthood impacted their decision to recommend including young adults under 21 years within the juvenile jurisdiction. They based this decision on criminological, psychological and sociological research and changes in young adults’ lifestyles over the last 50 years.⁸²

Reflecting the extended transition to adulthood, it should be possible for young adults under the age of 21 to be treated in a way comparable to juveniles and to be subject to the same interventions, when the judge is of the opinion that they are not as mature and responsible for their actions as full adults.⁸³

Lastly, the Council duly considered the negative consequences of an adult conviction for young European adults. The Council noted in order “[t]o facilitate [...] [young adults’] entry into the labour market, every effort should be made to ensure that young adult offenders under the age of 21 should not be required to disclose their criminal record to prospective employers, except where the nature of the employment dictates otherwise.”⁸⁴

A more recent regional treaty on the liberties of young adults is the IAYRC, which contains provisions on young adults that are not found in any other treaty.⁸⁵ “The IAYRC builds on the [...] [CRC] to extend legal protections beyond the age of 18 to young adults.”⁸⁶ The IAYRC was developed for young people between 15 and 24 years.⁸⁷ This is an expansive age bracket that incorporates young adults between 18 and

⁸⁰ *Id.* at ¶ 9.

⁸¹ *Id.* at ¶ 6.

⁸² Dünkel & Pruin, *Young adult offenders in the criminal justice systems of European countries*, *supra* note 18, at 1560.

⁸³ Council of Europe, *supra* note 78, at ¶ 11.

⁸⁴ *Id.* at ¶ 12.

⁸⁵ Rodolfo Alban Guevara, *Ibero-American countries set progressive youth rights agenda*, 23 CHILD RTS. INFO. NETWORK (CRIN) 14 (Oct. 2009).

⁸⁶ *Id.*

⁸⁷ *Id.*

24 years. Unfortunately, its application is limited to “nationals or residents in any Iberoamerican country.”⁸⁸

The IAYRC recognized similar conclusions about young adult development as the Council of Europe. The Preamble of the IAYRC stated that psychosocial, physical and identity traits categorized young people separately from adults.⁸⁹ These factors define the “social sector” of young adults⁹⁰ as the phase “in which personality, acquisition of knowledge, self-esteem and projection of future are formed and consolidated.”⁹¹ The Preamble also points out that young peoples’ development or “comprehensive formation”⁹² is jeopardized when they are deprived of certain rights like education, employment, housing and health.⁹³

In terms of criminal justice the IAYRC requires state parties “to guarantee a legal procedure which takes into account the young condition”⁹⁴ and “their age and the need to promote their re-socialisation through alternative measures to the application of the penalty.”⁹⁵ Furthermore, it calls for state parties, who prescribe death penalty sanctions, to prohibit the death penalty for young people who were within the Convention’s jurisdictional age at the time of the commission of the crime.⁹⁶ The IAYRC is the only regional instrument to clearly demand protection from the stark recourse of adult criminal law and sanctions on young adults.

The EU is also examining the role of young adults within its scheduled Human Security doctrine, a name which presupposes an all-encompassing legislation on human rights. The EU typically defines young adults as those aged 15 to 25 years.⁹⁷ Author Jenny Kuper reviewed the proposal of the doctrine and argued that young people, those 25 years and younger, should be a recognized age group within the proposed EU Security

⁸⁸ Iberoamerican Young Organisation, *Iberoamerican Convention on Rights of Youth*, at art. 1 (Oct. 10-11, 2005).

⁸⁹ *Id.* at Preamble.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at art. 13 (2).

⁹⁵ *Id.* at art. 13 (3).

⁹⁶ *Id.* at art. 9 (2).

⁹⁷ Jenny Kuper, *A Minor Matter? The Place of Young People in an EU Human Security Doctrine*, 18 INT’L J. CHILD. RTS. 127, 128 (2010) (citation omitted).

Doctrine.⁹⁸ Kuper believes the Human Security doctrine is relevant to young adults because “[m]any of those affected by severe insecurity abroad are of course young, and the majority of migrants into the EU are [...] those aged 15-24 [...] [and] many [are] accused of ‘terrorism’ and involved in crime and trafficking.”⁹⁹ Kuper argues the age old phenomenon that young people are the future and therefore the beneficiaries of current human security protections.¹⁰⁰ A human security doctrine broadens the ideals of young adults by recognizing the affects of conflict on their vulnerable developmental phase.

Europe and Ibero-America have raised awareness on young adulthood and young adult offenders at the regional human rights level, but inclusion of young adults within the universal system remains to be seen. It is within the European region that a majority of states have taken initiative to categorize young adults separately from adults within the criminal justice system.

B. European States Considering Young Adult Offenders

Certain European states have implemented legislation addressing the special developmental phase of young adulthood and made concessions for this age group within juvenile and criminal laws. Juvenile justice traditionally treats youth as a developing age group with greater rehabilitation potential than adults.

The principal reason for a separate juvenile justice system is the idea that educational measures are more appropriate than traditional punishment, because young persons are in a stage of continuous personal development where educational efforts are deemed a promising strategy. Therefore, in all European countries juvenile legislation provides for special education measures and sanctions in order to avoid compromising the developmental process of young persons in the transitional stage from youthfulness to adulthood.¹⁰¹

Many European countries have raised the upper age limit of the juvenile jurisdiction to include older populations of young adults. Even in Scandinavian countries,

⁹⁸ *Id.* at 128-129.

⁹⁹ *Id.* at 131.

¹⁰⁰ *Id.* at 133.

¹⁰¹ Dünkel & Pruin, *Young adult offenders in the criminal justice systems of European countries*, *supra* note 18, at 1557.

which do not have a juvenile justice system,¹⁰² adolescents and young adults have been segregated from adult criminal law with graded penal procedures and sentencing schemes.

European juvenile justice researchers Frieder Dünkel and Ineke Pruin stress how young adults are more similar to juveniles than adults¹⁰³ and that “young adult offenders is one of the most important areas of juvenile justice reform in Europe as it influences the scope of separate juvenile justice systems considerably.”¹⁰⁴ In their study, Dünkel and Pruin reviewed 35 European legal systems and discovered a clear trend that more European states are widening the scope of juvenile jurisdictions to accommodate young adults.¹⁰⁵ Dünkel and Pruin recommend that countries change their legislations and practice, so that young adult offenders receive alternatives to incarceration and rehabilitative sanctions¹⁰⁶ – sentencing measures that are commonly associated with juvenile justice. The authors allude in their recommendation that young adult offenders are in a stage of development that also makes them more amenable to rehabilitation.

For young adults (as for juveniles) tentative/cautious penal interventions with flexible, supportive and rehabilitative provisions are more advisable than predominantly repressive measures with their known disintegrative effects. Such an integrative approach will better promote the development of an individual personal identity as well as the attainment of a certain degree of stability, which results in the desistance from episodic criminal behavior that is ‘typical for young people’.¹⁰⁷

Adjudicating young adults separately from adult offenders has been practiced for over 50 years in countries such as Germany, while other countries have recently adopted the practice. Reasons behind these legal implementations draw on theories about young adults’ youthful stage of development and the negative impact of adult criminal procedures on their developmental stage. Many of the European countries provide

¹⁰² *Id.* at 1559.

¹⁰³ *Id.* at 1557.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 1568 (citation omitted).

educational and rehabilitative sanctions within the juvenile justice system,¹⁰⁸ which has grown to include a range of young adults from 18 to 25 years. There are multiple ways in which young adult offenders have been considered within juvenile and criminal law. This is achieved by 1) using a third category or jurisdiction that is separate from adult criminal law; 2) including young adults within the juvenile jurisdiction; or 3) including young adults within adult criminal law, but using age as a mitigating factor in sentencing. The following European case examples provide state specific adjudication practices of young adult offenders.

1. Germany

According to authors Dünkel and Pruin, “[t]he German legislation and practice is probably the most far-reaching extension of the scope of juvenile justice to encompass young adults in Europe.”¹⁰⁹ Approximately, two thirds of young German adult offenders are sentenced as juveniles.¹¹⁰ Germany’s progressive approach permits the juvenile justice or adult criminal systems to determine young adults’ liability.¹¹¹ “Unlike the U.S. system and other European countries, all individuals below 18 are strictly treated under juvenile penal law [in Germany].”¹¹² Even those young adults who come into conflict with the adult criminal system are overall treated in a less reprehensible manner than compared to young adult offenders in the U.S., in part, because the German criminal justice system is an “inquisitorial procedure”¹¹³ rather than an “accusatory”¹¹⁴ one.

In 2000 and 2006 the peak age of crime in Germany was around 25 years.¹¹⁵ However, conviction rates demonstrate a slightly younger age range. From 1997 to 2007, 18 to 20 year olds had higher rates of conviction than 14 to 17 year olds or young adults

¹⁰⁸ *Id.* at 1572.

¹⁰⁹ *Id.* at 1559.

¹¹⁰ T2A, *YOUNG ADULTS AND CRIMINAL JUSTICE: INTERNATIONAL NORMS AND PRACTICES*, *supra* note 6, at 3.

¹¹¹ *Id.*

¹¹² HORST ENTORF, *supra* note 11, at 2.

¹¹³ Dietrich Oberwittler & Sven Hofer, *Crime and Justice in Germany: An analysis of recent trends and research*, 2 (4) *EUR. J. CRIMINOLOGY* 465, 468 (2005).

¹¹⁴ *Id.*

¹¹⁵ See Dünkel & Pruin, *Young adult offenders in the criminal justice systems of European countries*, *supra* note 18, at 1562 (figure: 2 Conviction rates according to age groups, Germany 1886-2006 (per 100,000 of the age group)).

over 21 years.¹¹⁶ “Germany [tends to have] [...] the lowest juvenile incarceration rate in Europe, despite an increase in juvenile crime in Germany and public outcries against leniency.”¹¹⁷

Since 1953, the German system has included young adults between 18 and 21 years,¹¹⁸ if they meet the following requirements under Section 105 of the Youth Courts Law:

1. the overall assessment of the perpetrator’s personality, taking account of his living environment, demonstrates that at the time of the act he was still equivalent to a youth in terms of his moral and intellectual development, or
2. the type, circumstances and motives of the act indicate that it constituted youth misconduct.¹¹⁹

Young adults whose maturity is doubted are by default often accepted into the juvenile system due to a wide interpretation on the regulations applicable to young adults by the courts.¹²⁰ For example,

[t]he Supreme Federal Court (*‘Bundesgerichtshof’*, BGH) held that a young adult has the maturity of a juvenile if *‘elements demonstrate that a considerable development of the personality is still to be seen’*. This is the case in the majority of young adult offenders. Thus the court does not rely on an imaginative (prototype of) juvenile, but aspects of each individual’s personal development.¹²¹

German practice tends to rely on the least punitive options in the majority of young adult cases and commonly errs on the side of fines over imprisonment to foster young adults away from future contact with the law. The maximum penalty for youths

¹¹⁶ *Id.* at 1561.

¹¹⁷ Edith Palmer, The Library of Congress, *Children’s Rights: Germany* at §Age Requirement for Bearing Criminal Responsibility (Apr. 2007); <http://www.loc.gov/law/help/child-rights/germany.php#JuvenileJustice>.

¹¹⁸ PROF. DR. FRIEDER DÜNKEL, UNIVERSITY OF GREIFSWALD, JUVENILE JUSTICE IN GERMANY 25 (May 2005), available at <http://www.rsf.uni-greifswald.de/fileadmin/mediapool/lehrstuehle/duenkel/JuvenileJustice.pdf>.

¹¹⁹ Jugendgerichtsgesetz [JGG] [Youth Courts Law] Aug. 4, 1953, Bundesgesetzblatt [BGBl] 1212, as amended, § 105, ¶ 1, sentence 1 & 2, translated in Chris Pavis & Neil Mussett, Federal Ministry of Justice in cooperation with juris GmbH (2009), http://www.gesetze-im-internet.de/englisch_jgg/youth_courts_law.pdf [hereinafter JGG].

¹²⁰ PROF. DR. FRIEDER DÜNKEL, *supra* note 118, at 25.

¹²¹ *Id.* (citation omitted).

under youth criminal law is ten years¹²² and the maximum penalty for young adults under general criminal law is ten to 15 years in place of life imprisonment.¹²³ In practice “juvenile prosecutors, particularly in some Federal States, [...] tend to apply the general [adult] criminal law in cases of traffic offences that are usually sanctioned with fines.”¹²⁴ Albeit 90% of serious crimes, such as murder, rape, and robbery are sentenced under juvenile law which protects young adults from longer adult sentences.¹²⁵ Adjudication of young adults under juvenile law is beneficial because the juvenile court is familiar with the educational and development needs of young people, and are much better equipped at applying juvenile sanctions based on the offenders’ individual needs.¹²⁶

Young adults adjudicated within the juvenile jurisdiction are spared from certain collateral consequences associated with adult convictions. For example, offenses are stricken from young adults’ criminal records if resolved within the juvenile jurisdiction.¹²⁷ “For offenses committed by children and young adults, only sentences of two or more years are recorded in ‘certificates of good standing’.”¹²⁸ This allowance protects young adults from future social exclusions and stigmas associated with criminal convictions.

After extensive research on Germany’s juvenile justice system, Dünkel suggests that the scope of the juvenile court should expand to incorporate those under 25 years.¹²⁹ However, in a later recommendation in 2009, Dünkel and Junger-Tas reference neurological and psychological findings on maturation and suggest a more conservative age range of 18 to 21 years for the age of criminal majority.¹³⁰ However, Dünkel’s initial suggestion to include those under 25 years is in line with many other studies on psychological and neurological development on young adults; thus, his initial

¹²² JGG, *supra* note 119, at § 105, ¶ 3, sentence 1 & 2.

¹²³ *Id.* at § 106, ¶ 1, sentence 1 & 2.

¹²⁴ Dünkel & Pruin, *Young adult offenders in the criminal justice systems of European countries*, *supra* note 18, at 1571.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ JGG, *supra* note 119, at § 111, sentence 1 & 2.

¹²⁸ PROFESSOR FERIDUN YENISEY, AGE OF CRIMINAL RESPONSIBILITY IN TERMS OF COMPARATIVE LAW AND ALTERNATIVE SANCTIONS FOR CHILDREN UNDER THE AGE OF CRIMINAL RESPONSIBILITY 17 (2007).

¹²⁹ *Id.* at 25.

¹³⁰ Josine Junger-Tas & Frieder Dünkel, *Reforming Juvenile Justice: European Perspectives*, in REFORMING JUVENILE JUSTICE 215, 224 (Josine Junger-Tas & Frieder Dünkel eds., 2009) [hereinafter Junger-Tas & Dünkel, *Reforming Juvenile Justice*].

recommendation should be re-examined. Dünkel's initial suggestion allows for a larger range of developing young adults into the juvenile jurisdiction, while courts retain the judicial discretion to choose between juvenile and adult criminal law to find the best means of rehabilitating young adult offenders.

2. Austria

The Austrian juvenile jurisdiction applies to all offenders between 14 and 18 years.¹³¹ The Federal Act of Austria was amended in 2001¹³² to introduce “young adults” – those under 21 years at the time of the alleged criminal act – into national legislation.¹³³ The Austrian legislation was concerned with certain criminal procedures negative effects on youth development, and resolved this conflict by creating a special jurisdiction to adjudicate young adults.¹³⁴ This jurisdiction for young adults maintains certain qualities of the juvenile system such as limiting the use of pre-trial detention based on the rule of proportionality.¹³⁵ Furthermore, young adults are allowed

the right to the presence of a person *in the position of trust* when being interrogated by police; the prohibition of trials *in absentia*; a limited right to demand a *trial with the public excluded*; and the rule that special juvenile investigations shall help finding out about the individual circumstances relevant to the judgement about the social, psychological and physical situation of the suspected guilty person.¹³⁶

The age of the young adult (between 18 and 21 years) is recognized as a mitigating circumstance in sentencing.¹³⁷ Young adults are not sentenced to life imprisonment and the maximum confinement sentence is 20 years.¹³⁸ There is also limited disclosure of criminal records for young adults. Young adults, who committed crimes while under 21 years and who were sentenced up to 360 day fines and/or prison

¹³¹ Frank Höpfel, *Austria: Criminal Responsibility of Minors*, 75 INT'L REV. PENAL L. 121, 129 (2004).

¹³² *Id.* at 127.

¹³³ *Id.* at 130 (citation omitted).

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* (citation omitted).

¹³⁷ *Id.* at 131.

¹³⁸ *Id.* at 130-131.

term of up to six months, criminal records are only disclosed to police, prosecutors and courts.¹³⁹

3. Switzerland

“In Switzerland young adults can be treated like juveniles until they are 25.”¹⁴⁰ The Swiss system is similar to Germany’s treatment of young adults in that it allows courts to choose between juvenile and adult criminal law. The determination for juvenile adjudication in Switzerland is “dependent on the existence of specific preconditions. For instance, there is often the requirement for a predictive assessment of the effectiveness of the applicable sanctions in order to determine whether adult or juvenile criminal law is to be applied.”¹⁴¹

4. Scandinavian Countries

The Scandinavian countries do not have a juvenile system, but maintain a second category for juveniles and young adults, which vary from 15 to 21 years.¹⁴² The purpose of this second or “intermediate legislation” is to separate youth from adult offenders and adult criminal law.¹⁴³ The adult criminal sentencing codes in Sweden and the Netherlands demonstrate how flexible responses to young adult offenders are capable of existing within adult criminal law.¹⁴⁴

The Netherlands’ courts assess whether or not a young adult should be adjudicated under the juvenile or adult penal system based on preconditions or an assessment of the relative sanctions.¹⁴⁵ Young adults, 18 to 21 years, are applicable under juvenile law if the personality of the offender or the facts of the case are similar to a juvenile.¹⁴⁶ Professor Doreleijers, a child psychiatrist in the Netherlands, argues for

¹³⁹ *Id.* at 131.

¹⁴⁰ T2A, YOUNG ADULTS AND CRIMINAL JUSTICE: INTERNATIONAL NORMS AND PRACTICES, *supra* note 6, at 3.

¹⁴¹ Dünkel & Pruin, *Young adult offenders in the criminal justice systems of European countries*, *supra* note 18, at 1572.

¹⁴² Junger-Tas & Dünkel, *Reforming Juvenile Justice*, *supra* note 130, at 223.

¹⁴³ *Id.*

¹⁴⁴ Dünkel & Pruin, *Young adult offenders in the criminal justice systems of European countries*, *supra* note 18, at 1572.

¹⁴⁵ *Id.*

¹⁴⁶ DEFENCE FOR CHILDREN INTERNATIONAL THE NETHERLANDS, *supra* note 12, at 77.

young adults, aged 23 and younger, to receive childhood protections and treatment as juveniles, since most of the accused in the Netherlands are between 18 and 23 years of age and their behaviors resemble juveniles, not adults.¹⁴⁷

In Sweden offenders under the age of 18 are categorized separately from young adults between the ages of 18 and 20.¹⁴⁸ Swedish law does not include young adults within the juvenile jurisdiction. Instead, the legislation found other ways to relieve young adults from full adult criminal liability with graded sentencing schemes. Those under 21 years are immune from life imprisonment¹⁴⁹ and mandatory minimum sentences can be disregarded,¹⁵⁰ instead fines and imprisonment are stratified according to the offenders' age.¹⁵¹ Factors used in deciding penalties are "the penal value, previous criminality, equity reasoning, and the age of the offender at the time of the offence."¹⁵² In order to determine the penal value of the case, criminal conduct of the minor or young adult must demonstrate a "lack of development, experience, or capacity for judgement."¹⁵³

Graded sentencing is used with fines and custodial sanctions. For example, day fines for 15 to 17 year olds are reduced to half the amount applied for 21 year olds, and fines for 18 to 20 year olds are reduced to two thirds the amount for 21 year olds.¹⁵⁴ Custodial sentences are also graded based on age. "[I]f the offender at the time of the offence was 15 years, the prison term is one fifth of the normal term; at 16 years, one fourth; at 17 years, one third; at 18 years, half; at 19 years, two thirds; at 20 years, three quarters."¹⁵⁵ Moreover, offenders who committed a crime before the age of 21 are immune from life imprisonment sentences.¹⁵⁶

Finland also has special age based practices for youth serving confinement sentences. All offenders who were under 21 years at the time of the crime are treated as

¹⁴⁷ Philip E. Veerman, *The Ageing of the UN Convention on the Rights of the Child*, 18 INT'L J. CHILD. RTS. 585, 588 (2010).

¹⁴⁸ Nils Jareborg, *Sweden Criminal Responsibility of Minors*, 75 REVUE INTERNATIONALE DE DROIT PENAL 511, 513 (2004).

¹⁴⁹ *Id.* at 519.

¹⁵⁰ *Id.* at 522.

¹⁵¹ T2A, YOUNG ADULTS AND CRIMINAL JUSTICE: INTERNATIONAL NORMS AND PRACTICE, *supra* note 18, at 3.

¹⁵² Nils Jareborg, *supra* note 148, at 522.

¹⁵³ *Id.*

¹⁵⁴ T2A, YOUNG ADULTS AND CRIMINAL JUSTICE: INTERNATIONAL NORMS AND PRACTICES, *supra* note 6, at 3.

¹⁵⁵ *Id.* (citation omitted).

¹⁵⁶ Nils Jareborg, *supra* note 148, at 519.

juveniles within the prison system.¹⁵⁷ The Finish law holds similar reasoning to other domestic jurisdictions that this age group needs special care during imprisonment because of their age and development.¹⁵⁸

5. Greece

In Greece young adults are adjudicated under adult criminal law; however, the court considers the young adult offenders age as a mitigating circumstance in determining the type and length of the sentence.¹⁵⁹ Offenders who were 18 to 20 years at the time of the offense are subject to the mitigated sentencing provisions found in Article 83 of the Greek Criminal Code.¹⁶⁰

These state based practices of young adult offenders provides a brief synopsis of the various age parameters defining young adult offenders and the methods available to protect young adults from full adult criminal procedures and sentencing.

¹⁵⁷ T2A, YOUNG ADULTS AND CRIMINAL JUSTICE: INTERNATIONAL NORMS AND PRACTICES, *supra* note 6, at 4.

¹⁵⁸ *Id.*

¹⁵⁹ Interview by International Juvenile Justice Observatory (IJJO) News, *Mrs. Angelika Pitsela. Faculty of Law, Economic and Political Sciences of the Aristotle University of Thessaloniki. Greece*, at § How have the educational and socio-reintegrational measures, provided for in Greek juvenile law, been implemented? Can you please give us some information about the situation of young adults? (May 25, 2010) *available at* http://www.oijj.org/news_oijj_ficha.php?idioma=en&rel=SI&pag=050300&cod=284 [hereinafter IJJO].

¹⁶⁰ *Id.*

III. Young Adults in International Law and the U.S. Legal System

International human rights law designed age-based criteria to protect the vulnerable stage of childhood¹⁶¹ and it generally relies on the universalist Straight 18 approach as the bright line between children and adults, while ignoring the category of young adults. U.S. criminal law follows a parallel approach, with the exception of some under 18 years who are eligible for transfer from the juvenile jurisdiction to the adult criminal system.

This article's purpose is to raise awareness for legal recognition of young adults and more specifically for young adult offenders between 18 and 24 years; however, there are downfalls of age-based criteria. Age-based criteria undermines individual assessment, creates limitations and presents anomalies across legal discourses, yet age markers are frequently used in a world reliant on law to define terms. Age criteria can compromise other age based rights by creating inconsistent age limits, an inflexible approach and contradictory laws.¹⁶² Such arguments about paradoxical age based laws are present within international human rights law, specifically, international criminal law which attempts to work within the human rights agenda to address criminal liability within conflict and post-conflict situations; and similar age-based anomalies are present in U.S. law, as well. This section highlights the influence of the Straight 18 approach within international human right law, which has championed rules on international juvenile justice and affected the system of international criminal law. This section closes with an analysis of the U.S. system which has similarly ignored the importance of young adulthood, and failed to account for this age category within criminal law.

A. Young Adults within International Standards on Juvenile Justice

Where regional human rights systems and certain European states' penal systems have afforded young adults provisions based on their age and maturity, the international legal system has not taken a prevalent stance on the category of young adults, despite their

¹⁶¹ See Prinslean Mahery, Children's Institute at the University of Cape Town, *The Right to Access Healthcare: A matter of age or maturity?*, 23 CHILD RTS. INFO. NETWORK (CRIN) 10 (Oct. 2009) ("One of the main arguments in favour of the age-based approach is that it serves to protect children from their own lack of experience.").

¹⁶² *Id.* at 10-11.

growing population within the global community.¹⁶³ Much of the international discussion on “age-hoods” has been situated within children’s rights and juvenile justice. While juvenile law is one of the ways in which young adult offenders can be included into a system more in line with their development, there is little discussion about this within international human rights.

The “Convention on the Rights of the Child (CRC) is the cornerstone for children’s rights around the world, detailing the moral claims to which children are entitled both as people and because of their special status.”¹⁶⁴ The CRC defines anyone under the age of 18 years as a child¹⁶⁵ and reiterates the Straight 18 approach. By default those over 18 years are adults, with no mention of a young adulthood category. As one of the most influential documents defining “age-hoods” the CRC has created an epoch for children and juveniles, but on the contrary it has ignored the similar youthful characteristic of young adults.

Philip Veerman, a psychologist and expert on juvenile courts, has criticized the CRC as an outdated document that does not reflect the quickly changing modern world or current reflections of childhood.¹⁶⁶ Veerman argues that Article 1 of the CRC needs to be reviewed because of new findings from neuroscience, which argues for childhood protection until the age of 24 years.¹⁶⁷ Today, young people behave as adults, particularly, in their access to technology, but this does not mean that they know how to make the right choice.¹⁶⁸ Veerman states that “it is time to [...] find remedies for where the U.N. Convention on the Rights of the Child does not give protection to children.”¹⁶⁹ One of these remedies could be redefining the age parameters of the child to include an older population of young adults. This would require a revision of Article 1 to include those under 25 years. A second option to include young adults within international human rights law would be the creation of a young adult treaty, similar to the IAYRC.

¹⁶³ See Jenny Kuper, *supra* note 97, at 129 (“In a number of countries in the South over 50% of the population is under 18, and *ipso facto* an even greater proportion under the age of 25.”).

¹⁶⁴ DON CIPRIANI, *supra* note 7, at 19.

¹⁶⁵ CRC, *supra* note 1, at art. 1.

¹⁶⁶ Philip E. Veerman, *supra* note 147, at 18.

¹⁶⁷ *Id.* at 585.

¹⁶⁸ *Id.* at 586.

¹⁶⁹ *Id.* at 613.

In 2007, the Committee on the Rights of the Child issued a General Comment expanding on children’s rights under the juvenile justice heading. The Committee reiterated its position that “[c]hildren differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law.”¹⁷⁰

The Committee [...] recommends that those States parties which limit the applicability of their juvenile justice rules to children under the age of 16 (or lower) years, or which allow by way of exception that 16 or 17-year-old children are treated as adult criminals, change their laws with a view to achieving a non-discriminatory full application of their juvenile justice rules to all persons under the age of 18 years.¹⁷¹

In essence the Committee reiterated its desire for states to maintain juvenile justice systems based on the Straight 18 approach. However, the Committee also expressed its “appreciation that some States parties allow for the application of the rules and regulations of juvenile justice to persons aged 18 and older, usually till the age of 21.”¹⁷² This comment insinuates that the Committee recognizes offenders between 18 and 21 years would be better served in the juvenile jurisdiction than the adult criminal system.

In 1965, the Third United Nations Congress analyzed criminality and social change.¹⁷³ The United Nations Congress considered “[s]pecial preventive and treatment measures for young adults,” under which it discussed at length the definition of ‘young adult’ offender.”¹⁷⁴ At that period in time the United Nations Congress found two categories of age criteria for young adults: firstly, the range was “the upper age limit for

¹⁷⁰ Committee on the Rights of the Child, *General Comment No. 10 (2007)*, § 10, CRC/C/GC/10 (Apr. 25, 2007).

¹⁷¹ *Id.* at § 38.

¹⁷² *Id.*

¹⁷³ A.D. Viccica, *The Promotion and Protection of Children’s Rights through Development and Recognition of an International Notion of Juvenile Justice and its Child-Centered Perspective in the United Nations*, 58 NORDIC J. INT’L L. 68, 85 (1989).

¹⁷⁴ *Id.*

juvenile delinquents (usually between 15 and 18 years) to a maximum of 21 years;”¹⁷⁵ or secondly, young adults between 15 and 17 years.¹⁷⁶

The United Nations Congress noted that most countries defined young adults “either by statute or some other means.”¹⁷⁷ The “other means” of defining this age group developed from a variety of sources such as tradition, physiological maturity, cultural expectation, and social and economic responsibility.¹⁷⁸ Ideas about a Straight 18 approach were weak at this time, and in fact, a Straight 24 approach received much praise as the way forward.

The Third Congress concluded that ‘the trend seemed to be toward a raising of the upper age limit to 24 years’. Moreover, ‘the traditional institutional approach to the treatment of young adult offenders was consistently and strongly criticized and emphasis was placed on devising methods which could resolve the young adults’ delinquency problems within the community’. Non-institutional treatment was to be given preference.¹⁷⁹

In 1975, The Fifth United Nations Congress focused on criminality in terms of development and “noted that ‘special attention should be paid to the factors contributing to the violent behavior of many young persons in various parts of the world, and, in particular, to the extent to which this behavior, in its myriad manifestations, reflected a failure or absence of youth policies’.”¹⁸⁰

In a recommendation by the World Congress of the International Congress on Criminal Law, members offered reasons for the exclusion of young adults from full adult criminal responsibility.

The participants of the 17th World Congress of the International Congress on Criminal Law in 2002, considered that: ... *the state of adolescence can be prolonged into young adulthood (25 years) and that, as a consequence, legislation needs to be adapted for young adults in a similar manner as it*

¹⁷⁵ U.N. Secretariat, Department of Social & Economic Affairs, *Third United Nations Congress on the Prevention of Crime and Treatment of Offenders*, 26, U.N. Doc. A/CONF .26/7 (Aug. 16, 1965) [hereinafter U.N. Secretariat, *Third United Nations Congress*].

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 26-27.

¹⁷⁸ *Id.* at 26.

¹⁷⁹ A.D. Viccica, *supra* note 173, at 85.

¹⁸⁰ *Id.*

*is done for minors. In particular the Congress resolved that: The administration of educational measures or alternative sanctions that focus on rehabilitation may be extended, at the demand of the concerned individual, to the age of 25.*¹⁸¹

In 1985, the international community encouraged young adults' inclusion into the juvenile category through soft law. Rule 3.3 of the Beijing Rules states that “[e]fforts shall also be made to extend the principles embodied in the Rules to young adult offenders.”¹⁸² The deficit with Rule 3.3 lies in the absence of a definition of “young adult offender” and it also does not provide guidance as to an acceptable age range or conservative age range for young adult offenders. Instead, the Beijing Rules rely on states' parties to define these terms and set age parameters. The reluctance to define young adults resembles a similar instance in the Beijing Rules attempt to define juvenile. The Beijing Rules Commentary stated:

it should be noted that age limits will depend on, and are explicitly made dependent on, each respective legal system, thus fully respecting the economic, social, political, cultural, and legal systems of Member States. This makes for a wide variety of ages coming under the definition of ‘juvenile’ ranging from 7 years to 18 years or above.¹⁸³

The Beijing Rules conservative attempt to recognize young adult offenders in Rule 3.3 and its reference in the Commentary to include those “18 years or above” within the term “juvenile” demonstrates a subtle initiative by the international community to recommend the inclusion of young adults within juvenile justice. Meanwhile, there is currently no indication of the anticipated Straight 24 approach emerging within international human rights law.

B. Age-based Anomalies in International Criminal Law

International human rights' definition of children and juveniles has impacted the more recent discourse of international criminal law. International criminal law is a response to

¹⁸¹ T2A, YOUNG ADULTS AND CRIMINAL JUSTICE: INTERNATIONAL NORMS AND PRACTICES, *supra* note 6, at 10.

¹⁸² United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), G.A. Res. 40/33, at art. 3.3 (Nov. 29, 1985) [hereinafter The Beijing Rules].

¹⁸³ *Id.* at Commentary Rule 2.2.

human rights violations often committed during civil or international conflicts. Today, these conflicts have grown to include young adults. “An estimated 300,000 young soldiers, most of who are between the ages of 10 and 24, currently risk their lives in the course of armed conflicts.”¹⁸⁴ Such conflicts foster situations for young adults to potentially come into contact with international criminal law. For the purpose of this analysis of international criminal law, juveniles and young adults will be discussed within the jurisdictions of international tribunals and international courts and the core international crimes: genocide, crimes against humanity, war crimes and aggression.¹⁸⁵

According to author Jenny Kuper young people are a vulnerable group “who are also prone to being coerced into becoming combatants or otherwise participating in armed conflict.”¹⁸⁶ Developmental factors of impressionability and vulnerability in young adults is not limited to participation in street crimes, but also evident in their participation in conflict, since young adults “often play a significant role as actors in situations of conflict and post-conflict.”¹⁸⁷ Any actions amounting to international crimes could bring lawful or unlawful young adult combatants within the jurisdiction of international criminal law.

In constructing the Rome Statute, the International Criminal Court (ICC) chose to exclude those under 18 years at the time of the alleged crime from their jurisdiction.¹⁸⁸ The ICC’s Straight 18 approach to indict individuals 18 years and older upholds the demarcation set by international human rights law and the neighboring CRC. The ICC’s jurisdiction also reiterates the age-based line between juvenile justice and adult criminal liability; therefore, according to the Straight 18 approach the Court’s jurisdiction is centered on adult criminal liability. The ICC decision not to involve the court in juvenile justice matters may be a result or combination of the following arguments. Firstly, “that international crimes have such onerous *mens rea* requirements that children will always

¹⁸⁴ United Nations Youth and Conflict, *United Nations World Youth Report* 374 (2003), available at <http://www.un.org/esa/socdev/unyin/documents/ch14.pdf>.

¹⁸⁵ ROBERT CRYER, HAKAN FRIMAN, DARRYL ROBINSON & ELIZABETH WILMSHURST, *INTRODUCTION TO INTERNATIONAL CRIMINAL LAW AND PROCEDURE 2* (Cambridge University Press 2007) [hereinafter ROBERT CRYER ET. AL.].

¹⁸⁶ Jenny Kuper, *supra* note 97, at 133.

¹⁸⁷ *Id.* at 134.

¹⁸⁸ Rome Statute of the International Criminal Court, A/CONF. 183/9, at art. 26 (July 1, 2002) [hereinafter Rome Statute].

lack capacity to commit them.”¹⁸⁹ Secondly, children often assume a dual role as victims and offenders. Thirdly, “[p]rosecuting minors would have required the provision of a special regime [(statute and court)] and was not a sensible use of the court’s slender resources.”¹⁹⁰ Lastly, “there is a high degree of national variation in assessing when a child reaches the age at which they are mature and should be criminally responsible;”¹⁹¹ thus, respecting sovereignty of domestic jurisdictions¹⁹² ability to prosecute minors for international crimes.¹⁹³

The Rome Statute has contributed to the list of contradictions about age-based laws and children. For example, Article 8 undermines the idea of childhood by defining only those under 15 years as children exempt from conscription or enlistment into states’ armies and their active participation in hostilities;¹⁹⁴ meaning any person who is 18 years, including young adults, who recruited a child under 15 years is liable for war crimes under the Court’s jurisdiction. It has been proposed “that the ICC should [...] raise the legal age of child recruitment, enlisting or “use” from fifteen to eighteen.”¹⁹⁵ This maneuver would enhance protection from taking part in conflict for under 18 year olds and it would obviously not affect the current situation for young adults’ ability to come into contact with international criminal law. Such a decision by the ICC to raise the age of recruitment to 18 years, creates future anomalies within international human rights law to redefine the term “child” and the juvenile jurisdiction to include those beyond 18 years. However, the current utilization of the Straight 18 approach creates potential for opening a third category to adjudicate young adult offenders separately from adults within the ICC.

Inconsistencies on the definition of “children” and “juvenile” stem from state parties sovereign decisions on the age of conscription, and also state parties ability to

¹⁸⁹ Matthew Happold, *The Age of Criminal Responsibility in International Criminal Law 2*, in INTERNATIONAL CRIMINAL ACCOUNTABILITY AND CHILDREN’S RIGHTS (Karin Arts & Vesselin Popovski, eds., Cambridge Univ. Press 2006).

¹⁹⁰ ROBERT CRYER ET. AL., *supra* note 185, at 137.

¹⁹¹ David M. Rosen, *supra* note 2, at 113.

¹⁹² *Id.*

¹⁹³ ROBERT CRYER, ET. AL., *supra* note 185, at 137.

¹⁹⁴ Rome Statute, *supra* note 188, at art. 8(2)(b)(xxvi).

¹⁹⁵ THE REDRESS TRUST, VICTIMS, PERPETRATORS OR HEROES? CHILD SOLDIERS BEFORE THE INTERNATIONAL CRIMINAL COURT 1 (2006).

criminalize non-state actors for recruitment.¹⁹⁶ “Humanitarian and human rights groups have been successful in preventing the prosecution of any child soldier under age eighteen.”¹⁹⁷ Thus, human rights groups have not advocated on the behalf of young adult offenders accused of human rights violations amounting to international crimes.

Generally, juveniles have been regarded as children and protected from international tribunals. “The statutes of the International Criminal Tribunals for the Former Yugoslavia and Rwanda did not include any provisions governing the age of criminal responsibility and neither tribunal has indicted any person below the age of eighteen.”¹⁹⁸ In defining the age of criminal responsibility at the Special Court for Sierra Leone (SCSL), “[t]he non-governmental organizations’ strategy was to prevent holding anyone under age eighteen judicially accountable.¹⁹⁹ In the end, SCSL had jurisdiction of those 15 years and over.²⁰⁰ However, the SCSL was definitive in their decision to exclude those under 18 years from prosecution. “[T]he Prosecutor stated that, as a matter of policy, he did not intend to indict persons for crimes committed when children.”²⁰¹ Additionally, the SCSL did not include life sentences²⁰² in their statute signaling the desire for rehabilitation and re-entry for all offenders, including young adults.

Curiously, the defendant information of those currently indicted by the ICC support the notion that the handful of defendants are well into their adult years.²⁰³ Among the international scene of tribunals the composition of defendants also appears to be seasoned adults with extensive work histories in government and military; however, there are a few tribunal cases of young adult offenders. The International Criminal Tribunal of

¹⁹⁶ David M. Rosen, *supra* note 2, at 85.

¹⁹⁷ *Id.* at 84.

¹⁹⁸ Matthew Happold, *supra* note 189, at 6 (citation omitted).

¹⁹⁹ David M. Rosen, *supra* note 2, at 113.

²⁰⁰ Statute of the Special Court for Sierra Leone, S.C. Res 1315 (2000), art.7 (Aug. 14, 200), *available at* <http://www.sc-sl.org/LinkClick.aspx?fileticket=uClnD1MJeEw%3D&>.

²⁰¹ Matthew Happold, *supra* note 189, at 9 (citation omitted).

²⁰² MARK A. DRUMBL, *ATROCITY, PUNISHMENT, AND INTERNATIONAL LAW* 52 (Cambridge University Press 2007).

²⁰³ *Cf.* International Criminal Court, <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Cases/> [hereinafter ICC website] (the ICC website lists all defendants and case history including those remaining at large. In some case profiles the defendants’ dates of birth are listed, while some defendants’ pedigree information is missing. According to the current listing (as of February 26, 2011) Germain Katanga is the youngest ICC defendant, born April 28, 1978. He was 29 years old when the Prosecution submitted an application of his arrest warrant in June 2007. Despite the missing dates of birth information for many of the ICC defendants, the photos of the accused suggest that the majority of defendants are African males well into their adult years).

Rwanda's (ICTR) youngest defendant, **Arsène Shalom** Ntahobali,²⁰⁴ was approximately 27 years old at the time of his arrest for genocide, crimes against humanity and violations of Common Article 3 to the Geneva Conventions and Additional Protocol II.²⁰⁵ As of May 2011 this case had not reached a judgment.²⁰⁶

In a notable decision by the International Criminal Tribunal for the former Yugoslavia (ICTY), the Court used age as a mitigating factor in sentencing for one of its young adult offenders. Defendant Esad Landžo, was arrested in 1996, at the age of 23 years.²⁰⁷ He was found guilty on 17 counts for three murders, torture, causing great suffering or serious injury and inhumane conditions²⁰⁸ while working as a prison guard at the Čelebići prison-camp.²⁰⁹ At sentencing the Trial Chamber found:

*While we have dismissed his defence of diminished responsibility, we have noted his young age at the relevant time and his impressionability and immaturity, as well as his particular personality traits and the effect that the armed conflict in his home town had upon him. It is these factors which have led us to impose a less severe sentence than the seriousness and cruelty of his crimes would ordinarily require. The Trial Chamber does not, however, accept that Mr. Landžo was the mere instrument of his superiors, lacking the ability to exercise independent will.*²¹⁰

The Landžo case is an extreme example of a young adult who committed violent international crimes. Landžo was sentenced to 15 years imprisonment,²¹¹ yet the Court's decision to recognize Landžo's age and immaturity within the context of the crime and account for this in sentencing is remarkable. The Court's decision also references points

²⁰⁴ Hironnelle News Agency, *Oldest trial at ICTR slowly coming to an end*, ARUSHA TIMES, Oct. 4-10, 2008, available at http://www.arushatimes.co.tz/2008/39/un_tribunal_1.htm.

²⁰⁵ Cf, International Criminal Tribunal for Rwanda, <http://www.unict.org> (follow "Cases" hyperlink; then follow "Status of Detainees" hyperlink) [hereinafter ICTR website] (the website lists defendant **Arsène Shalom** Ntahobali's year of birth as 1970 and his date of arrest on July 24, 1997).

²⁰⁶ Cf, *id.* (follow "Cases" hyperlink; then follow "Cases in Progress" hyperlink).

²⁰⁷ COMMUNICATIONS SERVICE/MEDIA OUTREACH WEB, ICTY CASE INFORMATION SHEET, "ČELEBIĆI CAMP" (IT-96-21) MUCIĆ ET AL. 3, http://www.icty.org/x/cases/mucic/cis/en/cis_mucic_al_en.pdf [hereinafter ICTY CASE INFORMATION SHEET].

²⁰⁸ Press release, International Criminal Tribunal for the former Yugoslavia, *Celebici case: the Judgement of the Trial Chamber. Zejnil Delalic acquitted, Zdravko Mucic sentenced to 7 years in prison, Hazim Delic sentenced to 20 years in prison, Esad Landzo sentenced to 15 years in prison* Nov. 16, 1998, <http://www.icty.org/sid/7617> [hereinafter Press release, ICTY].

²⁰⁹ ICTY CASE INFORMATION SHEET, *supra* note 207, at 2.

²¹⁰ Press release, International Criminal Tribunal for the former Yugoslavia, *supra* note 208.

²¹¹ ICTY CASE INFORMATION SHEET, *supra* note 207, at 2.

made by social and scientific discourses on young adulthood (i.e. impressionability and immaturity). Lastly, its decision reflects certain domestic legal practices that use age as a mitigating factor at sentencing for young adult offenders.

1. The Straight 18 Approach of International Criminal Law Influenced by the Laws of War

The Straight 18 approach has influenced the age of adult criminal responsibility within international criminal law, yet the approach is actually rooted in the classical debate on children's roles in war. The following discussion centers on a younger age group of actors in war (between 15 and 18 years), but its review is noteworthy since humanitarian and human rights law collaborated to define the roles of children in war. The results of these debates were impressed upon the later discourse of international criminal law; meanwhile, ignoring the prevalence of young adults in conflict situations or foreshadowing their potential criminal liability for breaches of laws regulating war.

“Advocates of the Straight-18 position have [...] helped shape a wide variety of treaties that call for restrictions on the use of child soldiers as part of a more general recognition of children's rights.”²¹² This “universalist approach perceives all under-18 recruitment into armed groups as offensive.”²¹³ Nonetheless, the Straight 18 approach defining children was compromised within a few international treaties.

There is, however, an ironic consequence to the disagreement over the age at which a person is no longer considered to be a child: under international humanitarian law, children between the ages of fifteen and eighteen can be lawfully recruited to be soldiers under the same terms and conditions as adults. However, unlike adults, if they commit war crimes they are not subject to international criminal prosecution because of their age.²¹⁴

The 1977 Geneva Conventions Additional Protocols were the “first attempt to indirectly introduce the Straight-18 position into the laws of war.”²¹⁵ “[T]he drafters hoped that the prohibition on child soldiers could ultimately be broadened beyond this

²¹² David M. Rosen, *supra* note 2, at 96.

²¹³ Mary-Jane Fox, *Child Soldiers and International Law: Patchwork Gains and Conceptual Debates*, 7(1) HUM. RTS. REV. 27, 42 (2005).

²¹⁴ David M. Rosen, *supra* note 2, at 84.

²¹⁵ *Id.* at 96.

age [of 18 years],” but similar to the speculated trend of a Straight 24 approach in criminal law, this too, has not come to fruition.

Since the drafting of the 1977 Geneva Conventions Additional Protocols humanitarian and human rights ideals have diverged on defining children, specifically, the age of recruitment by states’ armies.²¹⁶ One of the most contentious debates during the drafting of the CRC was over “the age in which children should be permitted to take part in armed conflict.”²¹⁷ Non-governmental organizations and many governments were against under 18 years taking part in direct hostilities, even if states could recruit 15 years and over into their militaries.²¹⁸ There were also other states, most notably the U.S., which refused to give protection to 15 to 17 year olds.²¹⁹ In the end, the opposing parties were in essence agreeing on 15 years. “[S]ince there was no consensus on the upper age limit and no delegation was arguing for an age-limit under fifteen,”²²⁰ the debate was closed and never reopened due to concerns that a review of Article 38 would raise debates on many other articles.²²¹ It was determined then that Article 38 would prevent those under 15 years from taking part in direct hostilities and recruitment into states’ armies.²²²

The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (CRCAC) also defines ages of certain military involvements. The CRCAC prohibits signatory states armed forces from allowing those below 18 years to take part in direct hostilities²²³ and prohibits states’ parties from compulsory recruiting those below 18 years into their armed forces.²²⁴ “The main purpose of the CRCAC was to modify Article 38 of the CRC by raising the

²¹⁶ David M. Rosen, *supra* note 2, at 84.

²¹⁷ DEFENCE FOR CHILDREN INTERNATIONAL, THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: A GUIDE TO THE “TRAVAUX PRÉPARATOIRES” 26 (Sharon Detrick ed., Martinus Nijhoff Publishers 1992) [hereinafter DEFENCE FOR CHILDREN INTERNATIONAL, A GUIDE TO THE “TRAVAUX PRÉPARATOIRES” FOR THE CRC].

²¹⁸ *Id.*

²¹⁹ *Id.* at 26-27.

²²⁰ *Id.* at 27.

²²¹ *Id.*

²²² CRC, *supra* note 1, at art. 38.

²²³ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, G.A. Res. A/RES/54/263, at art. 1 (May 25, 2000), *available at* <http://www2.ohchr.org/english/law/crc-conflict.htm>.

²²⁴ *Id.* at art. 2.

minimum age of military involvement to eighteen.”²²⁵ On the contrary, the Geneva Conventions Additional Protocols I and II prevent the use of children under the age of 15 years from recruitment and participation in hostilities,²²⁶ but it does not prevent those between 15 and 17 years from certain forms of military service.²²⁷ This gap designed by human rights and humanitarian laws creates a category of children vulnerable to military involvement. The use of children in armed forces undermines children’s rights, the purpose of the CRC and the Straight 18 position. It also invokes a false sense of maturity associated with those under 18 years; and upsets categories of children and young adults when adolescents – a younger age group – can lawfully partake in states’ armies, responsibilities that appear more appropriate for adults than adolescents.

The paradoxes of age criteria in international human rights law – and its relative discourses of international criminal law and children’s roles in war – resemble similar age-based anomalies created by U.S. law.

C. The Situation for Young Adult Offenders in U.S. Law²²⁸

Young adult development is situated between a teen and an adult, yet in the U.S., this group is treated by criminal courts in a parallel manner to adult offenders, with some offenders under 18 years transferred to adult courts. The concern about what to do with young adult offenders is triggered by the appalling number of detainees in the U.S.²²⁹

²²⁵ Christopher Dore, *Employee Benefits Law Symposium: Comment: What to do with Omar Khadr? Putting a Child Soldier on Trial: Questions of International Law, Juvenile Justice, and Moral Culpability*, 41 J. MARSHALL L. REV. 1281, 1285 (2008).

²²⁶ ADVISORY SERVICE ON INTERNATIONAL HUMANITARIAN LAW, ICRC, *Legal Protection of Children in Armed Conflict* 1 (Feb. 2003), available at http://www.icrc.org/eng/assets/files/other/ang03_03_juridique_newlogo.pdf.

²²⁷ Compare CRC, *supra* note 1, at art. 38 ¶2 (the CRC undermines its own definition of “child” by offering protection to children involved in combat. It is here that humanitarian law inserts itself into a classical human rights document and provides an exception to “take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities”) with David M. Rosen, *supra* note 2, at 96 (therefore, the CRC allows children between 15 to 17 years to take part in militaries. This difference creates unsettled categories for the definition of “child” and hinders the universal argument, or “Straight 18” position, which sets forth a universal definition of childhood as beginning at birth and ending at age eighteen.”).

²²⁸ See generally Transition to Adulthood Alliance, <http://www.t2a.org.uk/publications> (the U.S. is one of many countries needing legislative reform, but states like England and Wales are also in need of restructuring. See for reports and case studies on young adults in England and Wales).

²²⁹ The purpose of this discussion is solely an examination of young adults (as an age group) that are in conflict with the law. There are subsequent issues involving young adult offenders who are also minorities and/or individuals from lower socioeconomic classes which also amount to disproportionate numbers

“More than 9.8 million people are held in penal institutions throughout the world, mostly as pre-trial detainees (remand prisoners) or as sentenced prisoners.”²³⁰ More specifically, as of March 2010, the U.S. accounted for 2.29 million prisoners,²³¹ around a quarter of the world’s prison population, which “costs billions of dollars each year.”²³² These gross statistics beg the question, is mass incarceration in the U.S. unnecessarily confining young adult offenders who would be better rehabilitated in a non-custodial setting? Could reform redirect a majority of young adult offenders to non-custodial sanctions, which might then decrease the U.S.’s egregious number of prisoners? Prison reform advocates would argue that certain offenders should not be held in pre-trial detention or sentenced to imprisonment, and the same is true of some types of offenses, like drug possession, or other forms of non-violent crimes. This argument could be applied to young adults as certain offenders who are better served by non-confinement because of their developmental stage, traits which also make young adults likely candidates for rehabilitation. The methods in which these non-confinement sentences and other reductions in adult criminal procedures could be attained is by drawing from recommendations by the IAYRC and practices used in Europe: by either expanding the juvenile jurisdiction to include young adult offenders under the age of 25, or creating a third category for young adult offenders between 18 and 24 years that uses a lesser form of criminal procedures and sanctions than adult criminal law.

The current situation of the U.S. criminal justice system’s reliance on incapacitation, anomalies in general age-based criteria, varying ages of criminal responsibility and a juvenile justice system that is not up to international standards poses challenges for alternative methods to adjudicating young adult offenders. In particular, juvenile justice has acquired certain procedures of adult criminal law and juveniles can be transferred to the adult system. The lack of a true juvenile justice system poses challenges

within the criminal justice system, particularly, in countries like the U.S. However, the author chose to focus the discussion on the age of young adult offenders.

²³⁰ ROY WALMSLEY, INTERNATIONAL CENTRE FOR PRISON STUDIES, KING’S COLLEGE LONDON, *World Prison Population List 1* (International Centre for Prison Studies 8th ed. 2009), available at http://www.kcl.ac.uk/depsta/law/research/icps/downloads/wppl-8th_41.pdf.

²³¹ INTERNATIONAL CENTRE FOR PRISON STUDIES, KING’S COLLEGE LONDON, ENTIRE WORLD - PRISON POPULATION TOTALS (Mar. 2010), available at http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_stats.php?area=all&category=wb_poptotal.

²³² LARRY J. SIEGEL, *supra* note 16, at 117.

to then either expand the delinquent system to include young adults; or allow for the creation of a third category, since the juvenile system lacks a clear cut Straight 18 approach to adjudge all those under 18 years within its jurisdiction.

1. Arbitrary Age Criteria within General Laws and Regulations

In the U.S. many teenagers eagerly await their eighteenth birthday because this date traditionally marks the passage to adulthood, symbolizing the beginning of adult freedoms and citizenship responsibilities. Adult society reflects this view in the adaptation of state and federal laws allocating the “age of majority”²³³ or age based liberties. The most historical age based law is found in the 26th Amendment, which gives those 18 years and older the right to vote.²³⁴ Common law practice set the age of majority at 21 years, but now it is set by states’ statutes and most states have chosen 18 years as the age of majority.²³⁵ Eighteen also marks participation in other adult practices, such as military, jury duty, nicotine purchase and pornography and does not necessarily correspond with the age of majority.²³⁶

However, 18 years does not mark a complete rite of passage to all adult freedoms. Depending on state laws, alcohol use is prohibited until 21 years. In order to be elected as a member in the House of Representatives individuals must be 25 years or older²³⁷ and 30 years to be a senator.²³⁸ The private sector also sets age restrictions, car rental agencies have varying minimum ages of renters, usually 18 or 21 years, and many require a surcharge for drivers under 25.²³⁹ Similar fee increases are used amongst car insurance companies, which charge higher premiums for teens and young adult drivers. The anomaly of such age based criteria is that the physical, psychological and social transformations from youth to adult are not completed at a specified age and vary

²³³ See Dictionary, Age of Majority, *supra* note 8 (“Age of Majority” is “the age at which a person is granted by law the rights (as ability to sue) and responsibilities (as liability under contract) of an adult.” “NOTE: At common law, the age of majority was 21. Age majority is now set by statute, in most states at 18. The age at which a person may perform various acts, as legally drink alcoholic beverages, make a binding contract, or make a valid will, does not necessarily correspond with the age of majority.”).

²³⁴ U.S. CONST. amend. XXVI.

²³⁵ Dictionary, Age of Majority, *supra* note.

²³⁶ *Id.*

²³⁷ U.S. CONST., *supra* note 234, at art. I, § 2.

²³⁸ *Id.* art. I, § 3.

²³⁹ Vroom, Vroom, Vroom, <http://www.vroomvroomvroom.com/Teens-and-Rental-Cars.asp> (comparing U.S. car rental agencies policies).

amongst young adults. While many rights are reserved for those 18 years and over, criminal law has made exceptions for those under 18 years and forced adult consequences upon a young age group that is clearly not adult.

2. Negative Consequences for Young Adults in Contact with U.S. Criminal Law

Young adults not only make up a significant portion of arrests,²⁴⁰ but also a significant portion of sentencing and incarceration rates. The age category of young adults continues to be a particular interest to criminal statisticians studying conviction rates. In a 2004 study by the U.S. Department of Justice on state felony convictions, 20 to 29 year olds comprised the largest age group at sentencing, around 40%; whereas, under 20 year olds was 7% and 30 to 39 years was 27%.²⁴¹ In 2008, approximately 244,700 young adults between the ages of 18 and 24, out of approximately 1,540,100 inmates, were detained by state and federal corrections.²⁴² This is approximately 15%²⁴³ of the adult prisoner population. These statistics do not provide a complete perspective on incarceration rates and recidivism since they fail to reference the number of prisoners with prior convictions and confinement sentences received as young adults, factors contributing to recidivism.

²⁴⁰ *Cf.*, FBI, *Arrests by Age, 2009*, *supra* note 25 (arrests numbers and percentage for the age range, 18 to 24 years, was tallied by adding the “Total” and the “Total percent distribution” for the following age categories: 18, 19, 20, 21, 22, 23 and 24 years in the *Arrests by Age, 2009* table) (in 2009 the arrest rate for 18 to 24 year olds was 3,167,733 (29.4%) arrests; and declined for 24 to 29 year olds with 1,556,740 (14.5%) arrests).

²⁴¹ MATTHEW R. DUROSE & PATRICK A. LANGAN, U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS BULLETIN, FELONY SENTENCES IN STATE COURTS, 2004 2 (2007), *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/fssc04.pdf> (the study included the following felony offenses: violent, property, drug, weapon, and other listed under the category of “all” offenses. “Note: Detail may not sum to total because of rounding. Data on [. . .] age for 85%.”).

²⁴² *Cf.*, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS ONLINE, ESTIMATED NUMBER AND RATE (PER 100,000 U.S. RESIDENT POPULATION IN EACH GROUP) OF SENTENCED PRISONERS UNDER JURISDICTION OF STATE AND FEDERAL CORRECTIONAL AUTHORITIES: BY SEX, RACE, HISPANIC ORIGIN AND AGE GROUP, UNITED STATES, 2008, *available at* <http://www.albany.edu/sourcebook/pdf/t6332008.pdf> (“Note: These data are compiled by yearend census of prisoners in State and Federal correctional institutions.” “Sentenced prisoners are defined as those serving sentences of more than 1 year under the jurisdiction of State and Federal correctional authorities.”) (total sum of prisoners between the ages of 18 to 24 was calculated by adding the following age groups of males: 18 to 19 years (23,800) and 20 to 24 years (208,400); and females: 18 to 19 years (1,000) and 20 to 24 years (11,500). The combined sum of male and female prisoners between the ages of 18-24 equaled 244,700 prisoners. The total number of male and female prisoners was calculated by adding the “Number, total” within the “male” (1,434,800) and “female” (105,300) categories. The sum of all prisoners equaled 1,540,100).

²⁴³ *Cf.*, *id.* (percents were calculated using the 1,540,100 total prisoners’ population and 244,700 of prisoners between 18 and 24 years).

It is unsurprising that those with a prior confinement sentence are more likely to be incarcerated again either as young adults or as adults. “The more prior incarceration experiences inmates have, the more likely they are to recidivate (and return to prison) within 12 months of their release.”²⁴⁴ “Of those recently released, nearly two-thirds will be charged with new crimes, and more than 40 percent will return to prison within three years.”²⁴⁵ Decreasing the use of non-custodial sentences for certain offenses and offenders could decrease the U.S. prison population, and would not necessarily increase crime. A similar result occurred in Germany. For example, in the 1980s Germany decreased its prison population when it implemented non-custodial sentences more frequently in youth law.²⁴⁶ The U.S. has also experienced a correlation with stable or lower levels of crime and lower levels of incarceration.

Many states have lowered their incarceration rates and still experienced a drop in crime. Between 1998 and 2007, states that had the greatest increases in incarceration rates did not necessarily see a corresponding drop in crime rates. In some states, the opposite was true: they reduced their incarceration rates and their crime rates fell.²⁴⁷

The affects of criminal court procedures on young adults begins at arraignment, or first court appearance. If the young adult is remanded, or cannot afford bail, then they remain in custody until they are able to pay the bail fee or the case is resolved. Pre-trial detention is the first interruption of the young adult offender’s life. Pre-trial detention is not geared to rehabilitate offenders, since they have not been convicted, but it is the break in education, work and familial responsibilities and confinement with more experienced criminals.

If convicted and imprisoned then life course maturation is handicapped for longer periods, and the opportunities to develop and expand skills are hampered by the prison system. In the U.S.’s state prisons, the median length of imprisonment is approximately

²⁴⁴ LARRY J. SIEGEL, *supra* note 16, at 117 (citation omitted).

²⁴⁵ DEVAH PAGER, *MARKED: RACE, CRIME, AND FINDING WORK IN AN ERA OF MASS INCARCERATION 2* (The University of Chicago Press 2007).

²⁴⁶ Dietrich Oberwittler & Sven Hofer, *supra* note 113, at 474.

²⁴⁷ JUSTICE POLICY INSTITUTE, *FOR IMMEDIATE RELEASE: HOW TO SAFELY REDUCE PRISON POPULATIONS AND SUPPORT PEOPLE RETURNING TO THEIR COMMUNITIES 2* (Justice Policy Institute, June 2010) (citation omitted).

28 months.²⁴⁸ This is a substantial amount of time for a young person to be absent from school and work. Custodial facilities attempt to provide basic education qualifications which are important for young adults' life course. "[M]ore than half of all inmates participate in some additional schooling while in prison, with over a quarter completing their GED [General Equivalency Diploma]."²⁴⁹ The options for education beyond a GED are less available, but important to development and the acquisition of skills. Very few prisons offer inmates access to college education courses. If courses are available then someone from the outside must pay the inmate's tuition. Since inmates are unemployed and many come from impoverished backgrounds, or do not have a long enough work history and savings to afford tuition they are unable to afford education in prison or soon after re-entry.

Once released, former young adult offenders face new sets of challenges from their convictions within the U.S. First, an adult criminal record is a public document and "can be widely accessed by prospective employers, landlords, and creditors."²⁵⁰ This public document follows the young adult throughout the rest of their life. Society expects ex-offenders to become productive citizens upon release, but once released social exclusions based on the criminal conviction reduce chances for former prisoners to become self-reliant. Many state and federal laws prevent those with convictions from accessing student loans for higher education, jobs, housing, and mental health and substance abuse services.²⁵¹ The collateral consequences stemming from a conviction can be devastating to young adults' transition to adulthood and affect opportunities in adulthood.

3. Varying Ages of Criminal Responsibility in the U.S.

The U.S. criminal justice system is applied at the federal and state levels; and juveniles and young adults can come into conflict with either, with no inclusion of a young adult

²⁴⁸ DEVAH PAGER, *supra* note 245, at 30.

²⁴⁹ *Id.* at 32 (citation omitted).

²⁵⁰ *Id.* at 58.

²⁵¹ JUSTICE POLICY INSTITUTE, *supra* note 247, at 8.

category for those between 18 and 24 years.²⁵² The division between federal and state liability is as follows:

Under the U.S. Constitution, the power to impose criminal liability is reserved primarily to the states, with federal authority limited to the prohibition and punishment of those unusual crimes specially related to federal interests [...]. The vast bulk of most crimes and essentially all ‘street’ crimes—homicide, rape, robbery, assault, and theft—fall under jurisdiction of one of the fifty state criminal codes or the code of the District of Columbia.²⁵³

U.S. federal laws do not provide a minimum age limit to adjudicate juveniles as delinquent,²⁵⁴ but the U.S.’s criminal code chapter on juvenile delinquency describes an upper age limit for juveniles. The upper age limit of juvenile law creates a demarcation between juvenile and adult federal criminal liability.

[A] ‘juvenile’ is a person who has not attained his eighteenth birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday, and ‘juvenile delinquency’ is the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult or a violation by such a person of section 922(x).²⁵⁵

States have their own statutes for juveniles and adults who are in conflict with state laws. Each state has jurisdiction over “which children are eligible for the juvenile justice system, which will be sent to the adult criminal justice system, and, [...] [s]tates may set different ages for a child’s entry in to the juvenile system (as young as seven, as

²⁵² NEW YORK CRIMINAL PROCEDURE, Youthful Offender Procedure, § 720.10 (“Youth” means a person charged with a crime alleged to have been committed when he was at least sixteen years old and less than nineteen years old or a person charged with being a juvenile offender as defined in subdivision forty-two of section 1.20 of this chapter.”) (therefore, an 18 year old could receive youthful offender status and subject to criminal procedures similar to juveniles and reduced sentencing) *see also* § 720.15 (youthful offender procedure; sealing of accusatory instrument; privacy of proceedings; preliminary instructions to jury).

²⁵³ PAUL H. ROBINSON & MARKUS DIRK DUBBER, AN INTRODUCTION TO THE MODEL PENAL CODE 1, available at <http://www.law.upenn.edu/fac/phrobins/intromodpencode.pdf>.

²⁵⁴ DON CIPRIANI, *supra* note 7 at 222.

²⁵⁵ 18 U.S.C. § 5031 (2010).

old as ten) or exit from the system (as young as sixteen, as old as twenty-five).”²⁵⁶ In 31 states, and the District of Columbia, there is either no minimum age for the juvenile jurisdiction or no minimum age of adult criminal responsibility.²⁵⁷ In theory, the absence of age criteria could allow court’s discretion to choose between the two systems, but it also allows younger offenders who should be judged as juveniles to be tried as adults.

State and federal laws have yet to address young adults who make up a considerable percentage of arrests and convictions by incorporating this age group within the juvenile practice or creating a third category. In the U.S. young adults are not immune from death penalty or life without parole sentences since they are considered adults under criminal law. However, the State of Florida has implemented sentencing guidelines and correctional procedures for young adult offenders (between 18 and 21 years).

4. The U.S. Juvenile Justice System

A review of the U.S. juvenile justice system is necessary to understand how its age parameters have been modified to include those under the international Straight 18 approach within adult criminal law; and the background is useful for understanding how the U.S. could expand juvenile law to include those under 25 years or create a third category for young adult offenders.

The U.S.’s juvenile justice system was designed to address delinquent behavior by children and teens, while reserving general criminal law for adults. The juvenile justice system is primarily legislated by the 50 federated states and the District of Columbia.²⁵⁸ Juvenile laws are remarkably different than criminal laws since youths are accused of delinquent acts rather than criminal offenses.²⁵⁹ When the first juvenile court opened in 1899 the purpose “was to investigate the factors that caused youths to go astray and then devise a package of sanctions and services that would set them back on the right

²⁵⁶ YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE 15 (Thomas Grisso & Robert G. Schwartz eds., University of Chicago Press 2000) [hereinafter YOUTH ON TRIAL].

²⁵⁷ DON CIPRIANI, *supra* note 7, at 222.

²⁵⁸ *Id.* at xiii.

²⁵⁹ Jeffrey A. Butts & Ojmarrh Mitchell, *Brick by Brick: Dismantling the Border between Juvenile Justice and Adult Justice in Boundary Changes*, in 2 BOUNDARY CHANGES IN CRIMINAL JUSTICE ORGANIZATIONS 167, 168 (Charles M. Friel ed., U.S. Department of Justice, Office of Justice Programs, National Institute of Justice 2000).

track.”²⁶⁰ The intention of the juvenile justice system was to treat infractions by youths in judicial-like settings “designed to recognize the special needs and immature status of young people and to therefore emphasize rehabilitation over punishment.”²⁶¹

Experts in neuroscience, social science and psychology agree that the same immaturity and flexibility that make teenagers more susceptible to outside influences also make them strong candidates for rehabilitation. Many studies show that adolescents are more capable of rehabilitation than adults, either as a result of natural maturation or through the intervention of criminal justice sanctions.²⁶²

Over the last few decades, juvenile justice advocates have relied on social and scientific research in arguing that children and teens are not fully developed adults and therefore, deserve procedural methods and sanctions relevant to their level of functioning. Recent advances in social and scientific research have expanded their initial findings among children and teens to include young adults. These results on young adult development subsequently warrant young adults’ similar differential treatment from adult offenders – an age old line of reasoning and practice amongst certain European states which include young adults within the juvenile jurisdiction.

However, the courts have gone in the opposite direction than the intention of the founding system of juvenile justice. The punitive adult trends in the adult criminal court have transcended into the juvenile justice system, where juveniles can be prosecuted as adults. The mission has shifted away from recognizing juveniles growing stages and rehabilitation potential towards penalizing juveniles under adult criminal law. Certain states have implemented a “youthful offender” category for those under 18 years.²⁶³ Youthful offender provisions allow juveniles to be sentenced to harsher standards than juvenile sentencing, but are less restrictive than adult sentencing standards;²⁶⁴ a category that seems more relevant for young adults rather than the younger juvenile age group. In the U.S. there has been an increase in juvenile cases transferred to adult criminal

²⁶⁰ *Id.*

²⁶¹ YOUTH ON TRIAL, *supra* note 256, at 9.

²⁶² Carolyn B. Lamm, Op-Ed, *Youth Offenders Deserve a Chance for Rehabilitation*, ROLL CALL, Nov. 11, 2009, at ¶ 7, available at <http://www.rollcall.com/news/-40524-1.html>.

²⁶³ T2A, YOUNG ADULTS AND CRIMINAL JUSTICE: INTERNATIONAL NORMS AND PRACTICES, *supra* note 6, at 3.

²⁶⁴ *Id.*

courts.²⁶⁵ Between 1992 and 1999 every state, except for Nebraska, amended its laws allowing juveniles to be prosecuted as adults.²⁶⁶ The turnabout appears to mirror reforms in criminal law. Between the mid-1980s and the late 1990s, harsh sentencing guidelines increased the use of prison sentences and the length of sentences, even though serious crime remained stable during this period.²⁶⁷

One way juveniles are transferred to adult criminal courts is “to lower the upper age of original juvenile court jurisdiction, which then lowers the age of criminal responsibility. One change in State law sends a whole cohort of arguably ‘juvenile’ offenders into the auspices of the criminal court, regardless of other factors.”²⁶⁸ This practice negatively affects juveniles by forcing adult consequences on teens whose age and other criteria elevate them to adult criminal law and ignore their developmental phase. It also positions a larger group within the adult system by lowering the age of criminal responsibility.

Blended sentences also usher youth into the adult penal system. In some states lawmakers “gave judges the power to ‘blend’ criminal courts’ sentences with juvenile court dispositions. Instead of choosing between sentencing a youth in juvenile or adult court, judges can draw on both systems.”²⁶⁹ Blended sentencing occurs in three ways: firstly, juvenile or criminal court judges can place youthful offenders in either juvenile or adult correctional facilities; secondly, juveniles serving custodial sentences are confined to juvenile facilities until they reach the age of maturity then they are transferred to an adult correctional facility; or thirdly, a juvenile can receive a juvenile and adult sentence simultaneously,²⁷⁰ which means “[u]pon completion of the juvenile justice sanction, the adult portion of the sanction is suspended, contingent on the offender’s compliance with the particular conditions of the disposition.”²⁷¹

“By the late 1990s, all fifty states had adopted mandatory minimum sentences, which mandate incarceration for particular offenses, and sentencing enhancements, which increase the certainty and severity of punishment when an offense is accompanied with

²⁶⁵ YOUTH ON TRIAL, *supra* note 256, at 10.

²⁶⁶ DON CIPRIANI, *supra* note 7, at 119.

²⁶⁷ DEVAH PAGER, *supra* note 245, at 17.

²⁶⁸ Jeffrey A. Butts & Ojmarrh Mitchell, *supra* note 256, at 186.

²⁶⁹ *Id.* at 187 (citation omitted).

²⁷⁰ *Id.* at 187-188.

²⁷¹ *Id.* at 188.

specific behaviors or traits.”²⁷² This determinate sentencing also reared in the juvenile justice system. In some jurisdictions, juveniles can be tried in criminal court and susceptible to adult sentencing guidelines within the realms of the juvenile courts for delinquent cases.²⁷³ “These laws require [...] juvenile court dispositions to be consistent with a predefined sentencing menu largely base[d] on the youth’s most recent offense and prior record.”²⁷⁴ On one hand, determinate sentencing prevents discrimination by the court toward offenders, while on the other hand it takes discretion away from the judge and prohibits adjudicating a case on its individual merits.

It could be argued that the U.S. states’ legislation to transfer juveniles to adult courts violates the international standards of juvenile justice and the ICCPR. Article 14(4) of the ICCPR states that “[i]n the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.”²⁷⁵ Transferring a juvenile to the adult criminal court imposes adult sanctions and repercussion which violates the juveniles’ right to rehabilitation.

“In one study comparing the recidivism of youth waived to criminal court with those retained in juvenile court, the research found that those in the ‘adultified’ group were more likely to be re-arrested and to commit more serious new offenses; they also re-offended more quickly.”²⁷⁶ With an increase in under 18 year olds receiving adult criminal convictions, there is a larger group of offenders facing social exclusion upon completing their sentences. “Only very recently have states begun to reconsider these policies [i.e. transferring juveniles to the adult system], in light of the overwhelming evidence of negative and criminogenic effects of adult trials and sentencing of children.”²⁷⁷

²⁷² DEVAH PAGER, *supra* note 245, at 16-17.

²⁷³ Jeffrey A. Butts & Ojmarrh Mitchell, *supra* note 256, at 188-189.

²⁷⁴ *Id.* at 189.

²⁷⁵ International Covenant on Civil and Political Rights art. 14 (4), Mar. 23, 1976, 999 U.N.T.S. 171 [hereinafter ICCPR].

²⁷⁶ THE CAMPAIGN FOR YOUTH JUSTICE, THE CONSEQUENCES AREN’T MINOR: THE IMPACT OF TRYING YOUTH AS ADULTS AND STRATEGIES OF REFORM 2-3 (Mar. 2007), available at http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/JPI014-Consequences_exec.pdf.

²⁷⁷ DON CIPRIANI, *supra* note 7, at 119.

When youth leave jail or prison, are on probation, or have completed their adult sentences, they carry the stigma of an adult criminal conviction. They may have difficulty finding a job or getting a college degree to help them turn their lives around. [...] The consequences of an adult conviction aren't minor; they are serious, long-term, life-threatening, and in some cases, deadly.²⁷⁸

Consequentially, adult sanctions can bring adolescents sentenced under adult criminal law right back to the criminal justice system – and the revolving doors of the adult criminal justice system begin.

5. Young Adult Sentencing in the State of Florida

The phrase “youthful offender” typically refers to offenders under 18 years who are transferred to adult court, but in Florida this phrase refers to sentencing of young adult offenders in their late teens to mid-twenties. In 1978, the State of Florida passed the Florida Youthful Offender Act, “to improve the possibility of rehabilitating and reintegrating young offenders into society by preventing their association with older, more experienced criminals in prison.”²⁷⁹ The youthful offender provisions employ community supervision programs and reduced confinement sentences for young adults between 18 and 21 years.²⁸⁰ The act categorizes youthful offenders as a sentenced defendant who

- Is at least 18 but less than 21 years of age at the time of sentencing, or is under 18 years of age but was prosecuted as an adult pursuant to chapter 985 F.S.;
- Has been found guilty of or has pled nolo contendere or guilty to a felony, unless he or she was found guilty of a capital or life felony; and
- Has not previously been classified as a youthful offender.²⁸¹

The State of Florida’s implementation of measures to address the appropriateness of young adults in conflict with the law is a small step forward toward devising judicial

²⁷⁸ THE CAMPAIGN FOR YOUTH JUSTICE, *supra* note 276, at 13 (citation omitted).

²⁷⁹ Committee on Criminal Justice, The Florida Senate, *Youthful Offender Designation in the Department of Corrections*, INTERIM REP. 2011-114, 1 (Oct. 2010) [hereinafter Committee on Criminal Justice, The Florida Senate].

²⁸⁰ T2A, YOUNG ADULTS AND CRIMINAL JUSTICE: INTERNATIONAL NORMS AND PRACTICES, *supra* note 6, at 3.

²⁸¹ Committee on Criminal Justice, The Florida Senate, *supra* note 279, at 1 (citation omitted).

measures relevant to young adulthood. Unfortunately, it only affords measures associated with confinement sentencing leaving young adults vulnerable to all other aspects of the criminal process, such as pre-trial detainment, custodial sentences and public criminal records. The sentencing options for Florida youthful offenders are similar to juvenile and adult methods: “incarceration, community supervision, or a split sentence.”²⁸² The Act also provides sentencing limits, for example, the sentence “cannot be longer than six years or the maximum sentence for the offense if the maximum sentence is less than six years.”²⁸³ Despite a six year maximum confinement sentence, young adults are at risk of being detained for the majority of young adulthood and scarred by institutional living which interrupts normative social, educational and career development.

The Youthful Offender Act accounts for the protection of young adults by “require[ing] the department [of corrections] to designate separate institutions and programs for youthful offenders and requires personnel be specially qualified by training and experience to operate the institutions and programs.”²⁸⁴ The separation of youthful offenders from adult offenders provides security for this age group that is absent in many other U.S. jurisdictions.

The Youthful Offender Act also places sanctioning discretion in the hands of the Department of Corrections. For example, inmates who are younger than 25 years can be classified by corrections as youthful offenders, if the inmate met the youthful offender criteria, but was not sentenced by the court as such;²⁸⁵ or if an inmate is less than 25 years old and was ineligible for youthful offender status because they were over 21 years at the time of sentencing and were sentenced to a term of 10 years or less than corrections can place them as youthful offenders.²⁸⁶ In a review of the youthful offender program, The Florida Senate Committee on Criminal Justice found a greater use of youthful offender status by corrections rather than the courts. As of June 30, 2009 approximately 68% (2,885 young adults) were designated as youthful offenders by the Department of

²⁸² *Id.* (citation omitted).

²⁸³ *Id.* (citation omitted).

²⁸⁴ *Id.* at 2 (citation omitted).

²⁸⁵ *Id.* at 1-2 (citation omitted).

²⁸⁶ *Id.* at 2 (citation omitted).

Corrections; whereas, the court designated 31% (1,340 young adults) as youthful offenders.²⁸⁷

The Florida Senate's review of recidivism rates amongst youthful offenders is similar to what general research about confinement sentences portray: those with a prior incarceration are more likely to recidivate. The overall recidivism rate for youthful offender inmates released between 2001 and 2008 is 33% within a period of 36 months of release, and inmates under 25 years had the highest rate of recidivism out of all age groups.²⁸⁸ Within the youthful offender custodial programs there was a 5% lower recidivism rate for inmates who participated in the Extended Day Program (for longer sentenced prisoners) and attained Blue Cap status over inmates released from the Basic Training Program (for shorter sentenced prisoners).²⁸⁹ The report attributes lower recidivism amongst Blue Cap inmates to the longer confinement sentence of the Extended Day Program which allows more time spent in educational and betterment programs to aid in re-entry.²⁹⁰ The report does not suggest that confinement was the reason for lower rates of recidivism, but rather a lengthened opportunity to participate in education and betterment programs. The results also suggest that shorter custodial sentences are just as fervently detrimental to young adults as lengthier sentences. A 5% difference between the custodial programs is hardly a substantial reduction in recidivism, which suggests that any length of confinement, even custodial sentences offering programs to aid in re-entry, does not overshadow the long lasting impact of living in an institution.

The Florida Youthful Offender Act provides criminal court sentencing limits and correctional care for young adults because of their age, an approach which is used by a fraction of other U.S. state prison systems and some European states. For example, in California, juveniles who have been sentenced to prison are detained in juvenile facilities until their twenty-fifth birthday,²⁹¹ at which point they are transferred to an adult institution to serve their remaining sentence.

²⁸⁷ *Id.* at 4.

²⁸⁸ *Id.* at 7.

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ T2A, YOUNG ADULTS AND CRIMINAL JUSTICE: INTERNATIONAL NORMS AND PRACTICES, *supra* note 6, at 4.

V. Consequences of Adult Criminal Law on Young Adult Offenders

The following is a brief overview of general collateral consequences from adult criminal procedures and sanctions that disproportionately affect young adults (rather than adults) because of their age and developmental phase. Young adults are at risk of coming into contact with punitive adult criminal procedures and sanctions that perpetuate criminal behavior and diminish future opportunities. “International evidence has consistently shown that punitive policies yield little of their much sought-after and fervently promised effect in reducing criminal recidivism.”²⁹² While punitive measures and collateral consequences vary by country, or jurisdiction, this section discusses the negative aspects of confinement, public criminal records and the death penalty on young adult offenders. The consequences deprive young adults of opportunities and create stigmas before reaching adulthood.

Young adults’ underdeveloped psychological and neurological functions make this age group more sensitive to adult criminal procedures and sanctions than adults. Young adults are at risk of social exclusions from contact with the criminal justice system. Certain adult criminal law consequences such as pre-trial detention, confinement sentences and public access to criminal records negatively affects the transition to adulthood, including developmental maturation, and social attainments (education, work, family, etc.). Depending on the country’s law, criminal convictions can exclude certain young adults from jobs, social services, housing, government education and bank loans. Criminal convictions stigmatize former offenders as people who are eternally dangerous, untrustworthy or unreliable; and these stigmas can affect employment attainment.

Detention, either as pre-trial detainment or as a sanction, interrupts psychological maturation and social responsibilities that aid in the transition to adulthood. The prison system perpetuates reliance on authorities and institutions. Instead of encouraging independence and self-reliance, which is important for young adult maturation, prisoners are forced to rely on institutions to provide basic necessities, while other key life skills, such as education, work, fiscal management and family responsibilities are stunted. Confinement is also more problematic for young adults than adults because young adults

²⁹² JAMES MCGUIRE, *COMPARING COERCIVE AND NON-COERCIVE INTERVENTIONS 5* (Transition to Adulthood 2010).

are usually in the middle or at the end of their educational careers; and at the beginning of their work histories. Even a short confinement and break in education or work can have negative lifelong impacts on young adult offenders as they struggle upon re-entry to pick up where they left off or begin anew with the stigma of an ex-offender.

Detention also fosters criminal activity especially among impressionable young adult offenders. “[T]he prison experience exposes young, first-time offenders to higher-risk, more experienced inmates who can influence their lifestyle and help shape their attitudes.”²⁹³ For example, sentenced violent inmates teach sentenced non-violent inmates to use violence as power and as a method of survival within institutions. Even short term sentences designed to “incapacitat[e] criminals is negated if the prison experience has the long-term effect of escalating frequency of criminal behavior upon release.”²⁹⁴

Many countries restrict access to information about individual’s experiences with the law, but the U.S. allows for public access to court records.²⁹⁵ This transparency makes certain socioeconomic attainments more challenging, such as education loans, public housing assistance and employment. For example, “the credential of a criminal record provides an official marker of status and suitability for employment that can be used as an easy screening mechanism by employers.”²⁹⁶ Where some countries have protected young adult citizens from public disclosure of criminal records, there remain social stigmas associated with contact with the criminal justice system and convictions. Young adults, or adults that received a conviction during their young adult years, grapple with this lifelong mark of questionable character.

The death penalty is the harshest and most conclusive of all sentencing practices, and although the human rights community seeks abolition its practice remains in use by many countries and young adults are not necessarily exempt. Article 37(A) of the CRC

²⁹³ LARRY J. SIEGEL, *supra* note 16, at 117.

²⁹⁴ *Id.*

²⁹⁵ DEVAH PAGER, *supra* note 245, at 155 (citation omitted) *see also id.* (“ In France, for example, information is safeguarded within a single centralized government controlled database (*le casier judiciaire*). Certain employers have the right and/or are required to obtain criminal background information on prospective employees (e.g. those working in child care, in hospitals, etc.); the vast majority of employers, however, and other private citizens, have no ground for accessing this information.”).

²⁹⁶ *Id.* at 71.

and Article 6(5) of the ICCPR prohibit the death penalty for those under 18 years.²⁹⁷ The IAYRC is the only treaty requiring states to prohibit the death penalty for those under 25 years based on their developmental phase of young adulthood.²⁹⁸

Generally, the death penalty contributes little to deterrence. For example, in comparative research studies on “the murder rates in jurisdictions that have abolished the death penalty with the rates of those that employ the death penalty”²⁹⁹ results have routinely demonstrated that death penalty sentences did not effect the homicide rate.³⁰⁰ Similar research has been conducted between countries with the death penalty and those who prohibit its use. There was “little evidence that countries with a death penalty have lower violence rates than those without.”³⁰¹ The absence of the deterrence effect of the death penalty and the developmental phase of young adulthood supports the IAYRC recommendation to abolish its use for young adults.

²⁹⁷ Compare CRC *supra* note 1, at art. 37(A) with ICCPR, *supra* note 275, at art. 6(5).

²⁹⁸ Iberoamerican Young Organisation, *supra* note 88, at art. 9(2).

²⁹⁹ LARRY J. SIEGEL, *supra* note 16, at 114.

³⁰⁰ *Id.*

³⁰¹ *Id.*

Conclusion

Author June Carbone poses an essential reflective question regarding the transition to adulthood: “if fully independent decision-making is unlikely before the mid-twenties, what is the best way to guide the transition throughout the years likely to shape adult prospects and potential?”³⁰² Furthermore, what is the best way to guide young adult offenders through the criminal justice system to shape current development and potential?

Young adulthood is a social category underscored by a biological component.³⁰³ Age, is one of the biological components, and it is also a risk factor for criminal behavior³⁰⁴ – a characteristic that young adult’s cannot abandon. Explanations for young adults’ behaviors, situated between a teen and adult, are supported by developmental psychology and neuroscience. Developmental psychology indicates that areas of the brain associated with many aptitudes of development continue to formulate between adolescence and young adulthood.³⁰⁵ Neuroscience has supported these claims with brain images, which “reinforces [...] that, as a group, young people differ from adults in systematic ways directly relevant to their relative culpability, deterrability, and potential for rehabilitation.”³⁰⁶

Given the underlying behavioral and developmental science components of young adulthood, scholars and scientists have recommended the adjudication of young adults separately from adult criminal procedures and sanctions. Some laws and jurisdictions have enacted measures that address the stage of young adulthood by including young adults within the juvenile jurisdiction or creating a separate category for young adult offenders that relies on less punitive criminal justice measures than the adult system. As arbitrary and paradoxical as age criteria may be, it remains necessary to design parameters of adjudication that are aligned with the current research on childhood and young adulthood. As the IAYRC has recommended and jurisdictions within Europe have demonstrated there are options for young adult offenders; preferably the inclusion of

³⁰² June Carbone, *supra* note 55, at 915.

³⁰³ RICHARD GARSIDE, FROM CRIMINAL JUSTICE TO SOCIAL JUSTICE: RETHINKING APPROACHES TO YOUNG ADULTS SUBJECT TO CRIMINAL JUSTICE CONTROL 9 (Transition to Adulthood 2010).

³⁰⁴ OPEN SOCIETY INSTITUTE, MOVING TOWARD A MORE INTEGRATIVE APPROACH TO JUSTICE REFORM 21 (Feb. 2008).

³⁰⁵ Terry A. Maroney, *supra* note 4, at 92 (citation omitted).

³⁰⁶ *Id.* at 91.

those under 25 years within the juvenile jurisdiction or a third category for young adults, which protects young adults from the adult criminal scheme.

In order to have special procedures for adjudicating young adults there must be a clear cut juvenile justice system in place. The juvenile system must decide between including those under 25 years; or maintaining an upper age limit for under 18 years (as directed by the Straight 18 approach) and not transferring juveniles to the upper system, so a third category for young adult offenders could be in place. The goal of resolving young adult offender cases should focus on young adults' amenability to rehabilitation, and aim to protect them from the consequences of the adult system that interrupt life course development and sanctions that create social exclusion that follow them through life.

Drawing on research on young adult development, regional and domestic practices, and recognizing the life altering consequences of criminal procedures and convictions on young adult offenders, the author recommends to international human rights law and domestic jurisdictions that young adult offenders between 18 and 24 years are protected from: mandatory minimum sentences, life without parole sentences, the death penalty, public disclosure of criminal records and confinement sentences should be resorted to as a last option. These recommendations not only bring about changes for young adult offenders, but also society.

The potential benefits from a more effective response to offending by Young Adults can be split into various types, principally:

- benefits to young adult prospective offenders enabled to follow a more constructive and engaged life path
- benefits to the Government from reduced spending on the Criminal Justice System and
- benefits to households and the private sector from reduced victimization rates, reduced fear of crime and lower spending on crime prevention as offending falls.³⁰⁷

Criminal law is adaptable and it “is constantly evolving in an effort to reflect social and economic conditions.”³⁰⁸ It may “also change because of shifts in culture and

³⁰⁷ Roger Bowles & Rimawan Pradipto, *Young Adults in the Criminal Justice System: Cost and Benefit Considerations* (CENTRE FOR CRIMINAL JUSTICE ECONOMICS AND PSYCHOLOGY, UNIVERSITY OF YORK & BARROW CADBURY FOUNDATION) Nov. 10, 2005, at 4, available at <http://www.costsofcrime.org/PolicyApplications/pdf/final%20report%20to%20Barrow%20Cadbury.pdf>.

³⁰⁸ LARRY J. SIEGEL, *supra* note 16, at 21.

social conventions, reflecting a newfound tolerance of behavior condemned only a few years before.”³⁰⁹ Research shows that there have been shifts in social, cultural and economic practices thus extending the transition to adulthood; furthermore, behavioral and scientific evidence demonstrate that young adults are not full-fledged adults despite their inclusion in certain responsibilities and consequences. International human rights law and criminal law should reflect the social and scientific findings on young adulthood by either including young adults under 25 years within the juvenile jurisdiction or implementing a third category for young adult offenders.

³⁰⁹ *Id.*