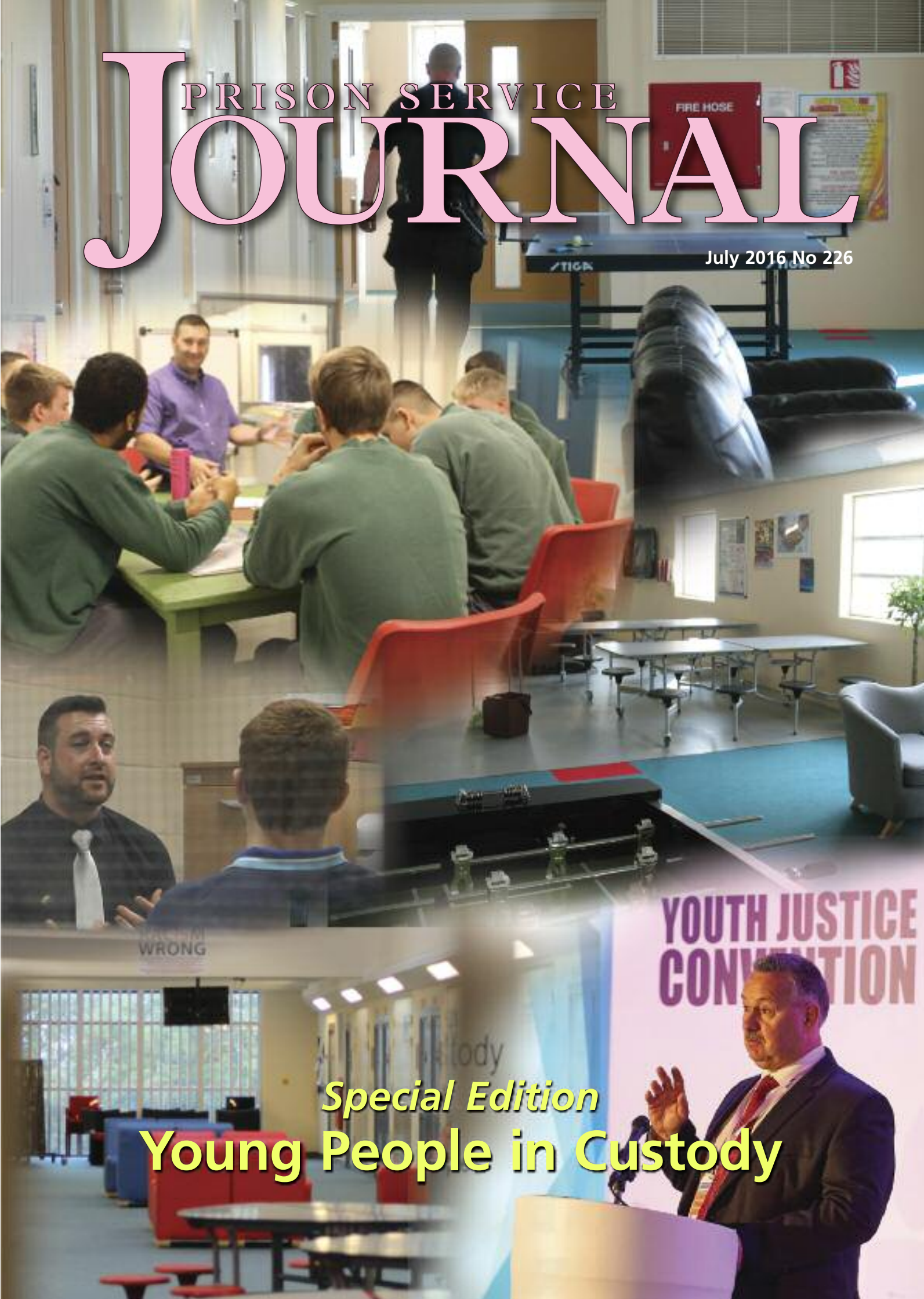


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Young People in Custody

Treatment and management of young offenders in the criminal justice system:

A European perspective

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Many British citizens have sympathy for the ‘splendid isolation’ of their country, and the recent Brexit vote may reinforce these thoughts. However, rational skepticism still requires keeping eyes open to developments in other parts of the world and, in particular, in continental Europe. In concordance with this view the editors of this special issue have asked us to contribute an article on young offenders that looks beyond the British border.

Different legal, political and social framing conditions make transnational comparisons difficult and do not allow very simple statements of what is good or bad here and there. From this point of view we address various issues of dealing with young offenders. At first, age thresholds of criminal responsibility, detention of youth and application of adult criminal law will briefly be discussed. Second, we address the often neglected group of *young adult offenders* and discuss reasons why they need more attention. The article ends with conclusions for research and practice.

Age thresholds and criminal justice for young offenders

The topic of ‘young offenders’ is somewhat vague because legal definitions of juvenile and adult offenders are internationally different. This is shown in Table 1 that contains age thresholds of criminal responsibility, application of adult criminal law, practices of detention, and legal majority. Due to space limits we only mention a few exceptions from general regulations. It should also be noted that in many countries thresholds apply to the age at the offence, whereas others refer to the age of sentencing. In most countries 14 plus/minus 1-2 years is seen as the appropriate age of criminal responsibility. Some countries such as Germany can make exceptions on the basis of the developmental state of the young offender. England and Wales are still at the lower end of the age range. Since the 1960 report of the Home Office (Ingleby) Committee on Children and Young Persons there have been repeated proposals for a change, yet the Government has no plans for raising the age threshold above 10 years.¹ International

differences are primarily based on legal and political traditions and not on clear scientific criteria for a threshold of criminal responsibility. The assumption of a definite general stage of development at a specific age is contradicted by psychological research on developmental flexibility. Research shows no clear age-related phases or stages but much inter-individual variation in cognitive, moral, physical and social development.² Taking this into account, an age of criminal responsibility between 12-15 years is most plausible from a scientific point of view. Some research seems to suggest a lower threshold because already children at age 10 understood the wrongfulness of offences such as theft.³ However, cognitive understanding in an experiment with case vignettes does not necessarily imply the ability to control behavioural impulses in real life.

From both a human rights and practical perspective it is important what measures of case management, education, treatment and protection of the public are most appropriate. In this respect, at younger ages social welfare and youth services are more suitable than pure punishment and incarceration. This is partly reflected in the large variation of detention in Table 1 and also in the use of specific institutions such as secure children’s homes. However, there are no sound international evaluations that compare the effects of such different regulations and practices on an empirical basis.

The large European differences in legal regulations and practices at the lower end of ‘youth’ are mirrored at the upper end. Although nearly all countries give full civil rights to people at age 18, countries vary substantially in the age at which criminal law treats young offenders as ‘adults’. There are countries with a relatively low threshold of 16 years whereas others have a higher limit at age 18. Many countries show some flexibility by using different age thresholds at which the young offender *can* versus *must* be treated as an ‘adult’ within the criminal justice system. In some countries this applies to a period between 15-18 years, but others have specific legal regulations and practices for young offenders up to age 21 and even beyond.

For example, in Germany criminal justice can deal with offenders at age 18-20 years at the time of the offence as ‘youth’ if their personality and live context

1. Lipscombe, S. (2012). The age of criminal responsibility in England and Wales. Standard Note SN/HA/3001. London: Library of the House of Commons.
2. Lösel, F. and Bliesener, T. (1997). ‚Zur Altersgrenze strafrechtlicher Verantwortlichkeit von Jugendlichen aus psychologischer Sicht‘ [On the age threshold of criminal responsibility: a psychological perspective]. *DVJ-Journal*, 8, 388-395.
3. Wagland, P. and Bussey, K. (2015). ‘Appreciating the wrongfulness of criminal conduct: Implications for the age of criminal responsibility.’ *Legal and Criminological Psychology*, online first, DOI: 10.1111/lcrp.12090.

Table 1: Legal age thresholds and practices of criminal justice for young offenders in various European countries^a				
Country	Age of criminal responsibility	Age when adult criminal law can/must be applied	Age range for youth detention/custody or similar forms	Age of legal majority
Austria	14	18/21	14-27	18
Belgium	18/16 ^b	16/18	welfare institution	18
Belarus	16/14 ^c	14/16	14-21	18
Bulgaria	14	18	14-21	18
Croatia	14	18/21	14-21	18
Cyprus	10	16/18/21	14-21	16-18
Czech Republic	15	18	15-19	18
Denmark	15	15/18/21	15-23	18
England/Wales	10	18	10/15-21	18
Estonia	14	18	14-21	18
Finland ^d	15	15/18	15-21	18
France	13/10 ^e	18	13-18/23	18
Germany	14	18/21	14-24	18
Greece	13/8 ^f	18/21	13-21/25	18
Hungary	14	18	14-24	18
Ireland	12/10 ^c	18	10/12/16-18/21	18
Italy	14	18/21	14-21	18
Latvia	14	18	14-21	18
Lithuania	16/14 ^c	14/16	14-21	18
Macedonia	16/14 ^c	14/16	14-21	18
Moldova	16/14 ^c	14/16	14-21	18
Montenegro	14	18/21	14-23	18
Netherlands	12	18/21	12-21	18
Northern Ireland	10	17/18/21	10-16/17-21	18
Norway ^d	15	18	15-21	18
Poland	13 ^a	15/17/18	13-18/15-21	18
Portugal	16/12 ^a	16/21	12/16-21	18
Romania	14/16 ^f	18/21	16-21	18
Russia	16/14 ^c	14/16	14-21	18
Scotland	8 ^g /16	16/21	15-21	18
Serbia	14	18/21	14-23	18
Slovakia	15	18	14-18	18
Slovenia	16/14 ^c	18	14-23	18
Spain	14	18/21	14-21	18
Sweden ^d	15	15/18	14-25	18
Switzerland	10 ^h	18	10-22/17-25/30	18
Turkey	12	18	12-18/21	18
Ukraine	16/14 ^c	14/16	14-21	18

Note. ^aSources: Council of Europe (2008). Commentary to the European Rules for juvenile offenders subject to sanctions or measures. Brussels: Council of Europe; Dünkel, F. and Pruin, I. (2012). 'Young adult offenders in juvenile and criminal justice systems in Europe.' In F. Lösel, A. Bottoms and D.P. Farrington (Eds.), *Young adult offenders: Lost in tradition?* (pp.11-38). Milton Park, UK: Routledge. ^b Only for motoring offences and exceptionally for very serious offences; ^c Only for very serious offences; ^d Only mitigation of sentencing without separate juvenile justice legislation; ^e No criminal responsibility in a strict sense, but application of the Juvenile (Welfare) Law; ^f If there is proof of no discernment at age 14; ^g Only educational sanctions (including closed residential care) and measures.

shows 1) that their intellectual and moral development is still equivalent to a typical youth, or 2) if the circumstances and motivation of the offence are typical for youth. Originally, this regulation in §105 of the German Juvenile Justice Act (JGG; 'Jugendgerichtsgesetz') was conceptualized more as an exception from the application of the general criminal law. However, over time application of §105 JGG to offenders at age 18-20 years became very frequent. There is a substantial variation between the 16 German states in this respect and in some states dealing

with 18-20 year old offenders as juveniles is more the rule than an exception.

The German Juvenile Justice Act is basically oriented towards education and contains a greater variety of community and institutional sanctions than the adult criminal law. Due to the aim of education the minimum youth prison sentence is six months. The maximum length is 5 years, with exceptions for very serious cases (10 years) and extremely serious cases for which adults would get a life sentence (15 years). However, unconditional youth prison

sentences are very rare. In 2013 they accounted for 4.3 per cent of all criminal sanctions for youth.⁴ More frequent were suspended youth prison sentences (6.6 per cent), disciplinary measures such as short youth arrest (11.9 per cent) or fines, cautions, retribution and other community sanctions (36.8 per cent) as well as educational measures such as community service, social training courses etc. (7.8 per cent). Nearly one third (32.7 per cent) of all cases were not formally sanctioned but diverted or dismissed.

According to the aim of education the practice in prisons for juveniles is more oriented towards pedagogy, vocational training and psychosocial treatment than in regular prisons for adults (although reducing reoffending/rehabilitation is also a key aim of the latter). Most recently, various German states also established social-therapeutic departments for serious sexual and violent young offenders. These follow the systems-oriented model of treatment-oriented prisons for adults in Germany.⁵ Beyond such specific developments it is common practice that offenders can stay in prisons for juveniles even when they become 21. This should enable continuity in education, vocational training and psychosocial treatment as far as necessary. Due to these regulations youth prisons in Germany are in fact institutions for young adults. In 2013, for example, only 9.4 per cent of the ca. 5,518 inmates of German youth prisons were juveniles between age 14 and 18. 46.2 per cent were between 18-20 years old, and 44.4 per cent were 21 or older.⁶

As in other countries, criminal justice for young adults in Germany is discussed controversially. In 2013 79 offenders per 100,000 of the population were incarcerated in Germany, whereas England and Wales had a rate of 148.⁷ This difference cannot simply be explained by different crime rates, but seems to express traditions of punitiveness. Similar to Germany, England and Wales have education-oriented Young Offender Institutions (YOIs) for people aged 15 to 21 (with an internal separation of youngsters under 18). However, in comparison to Germany and various other countries there is a stricter legal and practical cut at age 18 and, in particular, at age 21. Over the last decade, the 'Transition to Adulthood (T2A) Alliance', convened and funded by the Barrow-Cadbury Trust, has proposed changes in the criminal justice system that should better meet the needs of young adult offenders who are at risk to become lost in transition.⁸

Reasons for a special focus on young adult offenders

Young adult offenders are not a small group. In England and Wales 15,443 men aged between 18 and 20 were in custody, served a sentence in the community or were on licence at the end of 2013. Most of them were managed in the community by Community Rehabilitation Companies (59 per cent) or the National Probation Service (13 per cent). 28 per cent were in custody. There are many reasons why young adult offenders should not simply be dealt with like older adults. Such arguments have been put forward by T2A, and the Barrow Cadbury Trust is funding various practice projects of the police, prison and probation service for young adult offenders in Britain. In the present article we will only address a few points that are relevant internationally.

1. Socio-cultural extension of youth: Since the Second World War the situation of young people in Western societies has changed considerably. On the one hand, physical acceleration, more liberal parenting, relatively good economic circumstances, access to the internet and other changes led to an earlier onset of a youth lifestyle (e.g. going out at night, drinking alcohol, smoking, travelling with friends, having sexual relations etc.). On the other hand, coping with important developmental tasks became more extended beyond traditional 'youth' (e.g. secondary education, regular work, financial independence from parents, founding of an own family). For example, over the last 40 years the mean age at marriage in the European Union has increased from ca. 23 to ca. 28 for females and ca. 25 to 30 for males. The mean age of mother- and fatherhood increased similarly. In countries with a dual system of academic and vocational training such as Germany, in the 1950s ca. 70 per cent of youngsters left school at age 14-15, went through an apprenticeship of three years, and then most of them got a permanent job with an income that enabled an independent life. In contrast, today's young people are much longer at school and in higher education and often get only short fixed-term or trainee jobs after that. The mean age of financial independence increased to ca. 25 years. In most European countries a majority of legally 'adult' young people live at home with their parents. The recent financial crisis and high unemployment in the young population have further increased this development, particularly in Southern Europe. Youngsters with low qualification are often 'losers' on the job market. Since offending of young people is related to

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5. Lösel, F. and Egg, R. (1997). 'Social-therapeutic institutions in Germany: Description and evaluation.' In E. Cullen, L. Jones and R. Woodward (Eds.), *Therapeutic communities in prisons* (pp. 181-203). Chichester: Wiley.

6. Jehle (2015), see footnote 4.

7. Walmsley, R. (2013). *World prison population list* (10th ed.). London: King's College.

8. Barrow Cadbury Trust (Ed.) (2005). *Lost in transition*. London: Barrow Cadbury Trust. Barrow Cadbury Trust (Ed.) (2009). *Economic analysis of interventions for young adult offenders*. London: Barrow Cadbury Trust. Pruin, I. and Dünkel, F. (2015). *Better in Europe? European responses to young adult offending*. London: T2A. See also Lösel, F., Bottoms, A.E. and Farrington, D.P. (Eds.) (2012). *Young adult offenders: Lost in transition?* Milton Park, UK: Routledge.

problems of coping with transitions,⁹ lack of a stable perspective, self-efficacy and identity in young adulthood contains risks for antisocial behavior. This view is supported by analyses showing that young adults are at high risk of social exclusion.¹⁰

2. Neuropsychological development: The social-cultural extension of youth into young adulthood is mirrored by findings from neuropsychological research. Although general intelligence is more or less stable at age 18, higher executive functions of the brain that are relevant for delinquency (e.g., planning, verbal competence, time perspective and self-control) are not mature before the mid-twenties.¹¹ This seems to be particularly the case for features of temperance, that is the ability to limit impulsiveness, to control aggressive responses and risk-taking, and to thinking before acting. Such findings are in accordance with data on ongoing myelination, white matter increases and pruning of synapses in young adulthood.¹² Areas of the prefrontal cortex that are related to antisocial traits mature lately and are functionally and structurally less developed in personality-disordered criminals.¹³ Competences to plan ahead, defer gratification and exercise self-control are core constructs in evidence-based theories of delinquency.¹⁴ Such neuropsychological characteristics are not fully developed in late adolescence but grow from early youth into young adulthood.¹⁵

3. Prevalence of offending: The prevalence of offending by young adults is similarly high as for juveniles. Although the typical age-crime curve shows an increase during youth and a peak around age 18, there are differences with regard to

crime types (e.g. a later peak in violence and drug offending), measures of assessment (self-report vs. official data) and between countries.¹⁶ The prevalence of offending of young adults is not only particularly high, but various countries experience an extension from the peak in late adolescence to young adulthood. For example, in Germany the longer-term decrease in the prevalence of young suspects (per 100,000 of the respective age group) is consistent to the widely discussed international crime drop.¹⁷ However, the prevalence is no longer the highest for juveniles but for those at age 21-25 and, in particular, at age 18-20. Similar developments were reported from police statistics in the Netherlands (with some discrepancy to self-report data).¹⁸ Many social and psychological factors may be relevant for the challenging crime problems in young adulthood.

4. Continuity of offending: Numerous criminological studies have shown that there is a decrease or desistance from crime in young adulthood. However, this process is not a sudden change and different for various types of crime. For example, drug dealing and gun carrying has a relatively late onset in adolescence and many drug dealers persist into adulthood.¹⁹ Although approximately 50 per cent of official offenders desist by early adulthood, the other half is continuing and a substantial part of them exhibits even more severe offending such as violence.²⁰ There is also evidence for an increasing group of offenders with a 'late onset' in early adulthood.²¹ A peak of criminal activity in early adulthood instead of late adolescence is most probable for low, medium and high chronic

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15. Lösel, F. (1975). *Handlungskontrolle und Jugenddelinquenz: Theoretische Integration und empirische Prüfung* [Self control and juvenile delinquency: Theoretical integration and an empirical test]. Stuttgart: Enke.
16. Gottfredson, M.R. and Hirschi, T. (1990). *A general theory of crime*. Stanford, CA: Stanford University Press.
17. Steinberg, L. (2004). 'Risk taking in adolescence: What changes and why?' *Annals of the New York Academy of Sciences*, 2012, 51-58. See also F. Lösel, A. Bottoms and D.P. Farrington (2012). 'Introduction.' In F. Lösel, A. Bottoms and D.P. Farrington (Eds.), *Young adult offenders: Lost in tradition?* (pp. 1-10). Milton Park, UK: Routledge.
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25. Loeber et al. (2013), see footnote 16.
26. Piquero, A.R., Hawkins, J.D. and Kazemian, L. (2012). 'Criminal career patterns.' In R. Loeber and D.P. Farrington (Eds.), *From juvenile delinquency to adult crime: Criminal careers, justice policy and prevention*. New York: Oxford University Press

offenders.²² Those who were already more active criminals in youth have an enhanced risk of continuity into adulthood.²³ Desistance is a more or less continuous process.²⁴ Accordingly, there is no sharp developmental cut-off between 'juvenile' and 'adult' offenders at around age 18. This view is underlined by data on reoffending after official sanctions. For example, official statistics from England and Wales show only a slight decrease in reoffending rates within one year between age 18 and 30 after a custodial or community sanction.²⁵ This is supported by data from other countries. For example, in a cohort from the Netherlands, the recidivism rates of juvenile and young adult male offenders were nearly the same and some data suggest a rather late-starting desistance around age 30.²⁶

5. *Differences between young adult and older offenders:* Young adult offenders differ in various aspects from older offenders. For example, the British Surveying Prisoner Crime Reduction (SPCR) cohort study²⁷ compared 'adult offenders' (age 21 and older) with 'young offenders' (age 18-20). A much larger proportion of young offenders had received a sentence of one to four years (52 per cent vs. 29 per cent) and more had been sentenced for violent offences (22 per cent vs. 17 per cent) or robbery (11 per cent vs. 1 per cent). Before incarceration, more young offenders had lived with their parents or step-parents (59 per cent vs. 20 per cent), had been regular truants (70 per cent vs. 55 per cent) and excluded from school (52 per cent vs. 37 per cent). More young offenders reported heavy drinking (42 per cent vs. 35 per cent). The pattern for drug use was mixed, but young adult prisoners showed more use of cannabis, ecstasy and cocaine powder. A majority of young adults are sentenced for violent and acquisitive offending, more often for possession or small supply of drugs and also have higher reoffending rates than older adults.²⁸ In custody they show more violence, self-harm and other risks.²⁹ Similar differences between young and older adult offenders have been

reported in other countries. For example, a comparison in the Netherlands Probation Service showed different risk profiles between offenders at age 17-24 and age 25+. In the younger vs. older cohort the following risk domains were present or seriously present: delinquency (38 per cent vs. 26 per cent), education, training and employment (61 per cent vs. 46 per cent), relationship with friends and peers (50 per cent vs. 22 per cent), drug use (36 per cent vs. 27 per cent), thinking patterns, behaviour and skills (84 per cent vs. 77 per cent), attitudes (45 per cent vs. 37 per cent).³⁰ Since these factors were related to unsuccessful completion of supervision, the differences underline the enhanced risk of recidivism in young adults.

6. *Differences between young adult and juvenile offenders:* Although many young adult offenders are still maturing, they are not simply juveniles, but show mixed characteristics of both age periods. According to Moffitt independence from parents, an own identity, intimate relationships, and vocational issues become more important during adolescence and successful coping with such developmental tasks often lead to desistance from juvenile delinquency.³¹ In the Cambridge Study in Delinquent Development early risk factors for juvenile and young adult offending were partly similar.³² Persistence after young adult offending depended on risks such as heavy drinking or an unsuccessful life in various domains. Dutch research suggests that the pattern of risk factors for recidivism is somewhat changing over time.³³ Problems at school and in the core family became less important, whereas substance misuse, partner problems, vocational issues and criminogenic thinking/attitudes became more relevant. Although there was some change in the correlations between recidivism and peer group influences, the latter were still important in comparison to the mostly small correlations of other single risk factors. Programmes for young adults do not need to address basically new dynamic risk factors (e.g. self- and emotional control is as important as in youth and later

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24. Bottoms, A. and Shapland, J. (2011). 'Steps towards desistance among young male adult offenders.' In S. Farrall, M. Hough, S. Maruna and R. Sparks (Eds.), *Escape routes: Contemporary perspectives on life after punishment*. Milton Park, UK: Routledge.

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31. Moffitt (1993), see footnote 9.

32. Farrington, D.P. (2012). 'Childhood risk factors for young adult offending.' In F. Lösel, A. Bottoms and D.P. Farrington (Eds.), *Young adult offenders: Lost in tradition?* (pp. 65-73). Milton Park, UK: Routledge.

33. Spanjaard et al. (2012), see footnote 29.

adulthood). However, more than at older ages, treatment and management of young adult offenders should place emphasis on identity formation, resistance to peer group influence, experiences of self-efficacy, and a realistic future-orientation.³⁴

7. *Protective factors and desistance*: As mentioned, many young adult offenders still live with their family and have education and employment problems or criminogenic peer group influences. However, their criminal career is not yet as consolidated as it is the case in older chronic offenders. Therefore, young adulthood is a particular sensitive phase in which natural protective factors and experiences such as family or partner support, labour force attachment, education, new contacts and situations can contribute to desistance.³⁵ Since desistance is a longer process, it is not only necessary to promote protective factors, but also to help mastering obstacles and lapses, for example due to alcohol/drug use and influences of criminal peers.³⁶ Longitudinal research on somewhat older prisoners has shown, that regular contact and good communication with the family during imprisonment are highly important for successful resettlement, even when pre-incarceration factors were controlled for.³⁷

8. *Intergenerational transmission of crime*: The SPCR cohort study has shown that 19 per cent of young adult prisoners already had a child.³⁸ The proportion of prison inmates with young children increases quickly after age 20. Overall the SPCR data suggest that 61 per cent of all male prisoners have a child beyond age 18. Per annum, approximately 200,000 children in UK have a parent in custody. International research has shown that children of incarcerated parents have an increased risk of developing behavioural problems and becoming delinquent.³⁹ Although parental incarceration is only one factor among others that contributes to child behaviour problems, it enhances the risk

of intergenerational transmission of offending. Various studies have shown crime transmission to the second and even third generation.⁴⁰ However, the cycle of violence and antisocial behaviour is not closed.⁴¹ Therefore, focussing intervention programmes more specifically on the needs of young adult offenders can open a window of opportunity to reduce multigenerational transfer of crime and other psychosocial problems.

Conclusions

As shown above, there is a broad range in age thresholds for criminal responsibility, practice of detention of young offenders and application of adult criminal law in Europe. This variation is in sharp contrast to the nearly uniform definition of legal majority across countries. Taking the heterogeneity and difficulties of a common approach in other European policy areas into account, it is not realistic and perhaps not desirable to aim for homogeneity in youth criminal justice. However, using the available evidence and theoretical considerations, countries should try to increase the rational (and not only traditional) bases of dealing with young offenders. As often discussed in Britain, this applies to very low thresholds of criminal responsibility and early detention. On the upper end of 'youth', our article presented evidence and sound reasons that suggest more flexible and development-oriented approaches in dealing with young adult offenders. This should reduce problems in the transition between the juvenile and adult criminal justice measures and meet the specific needs of this population. More differentiated criminal justice measures during this sensible age period may not only reduce individual recidivism, but also, on the longer term, contribute to a reduction of the high incarceration rates in UK (except Northern Ireland).

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35. McNeill, F. 2006. 'A desistance paradigm for offender management.' *Criminology and Criminal Justice*, 6: 39-62. Lösel, F. and Farrington, D.P. (2012). 'Direct protective and buffering protective factors in the development of youth violence.' *American Journal of Preventive Medicine*, 43 (2S1): 8-23. Maruna, S. (2001). *Making good: How ex-convicts reform and rebuild their lives*. Washington, DC: American Psychological Association Books. See also footnote 48.

36. Bottoms and Shapland (2011), see footnote 24.

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