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**Minimum Criminal Age in Europe: UK Case Law and Replies from the European
Court of Human Rights**

-

The developmental science perspective to the ECtHR judgments
on a young defendants maturity in three UK cases

2012, Venice

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Abstract

There is a discrepancy between developmental science's knowledge on maturity and the willingness of some Council of Europe Member States to adopt it in their jurisprudence, manifested in a low minimum criminal age of responsibility (MCAR) and in the decisions of the courts. It has been shown that psychological maturity related human development (somatic, cognitive and psycho-social) occur beyond the legal age of responsibility, i.e. the minimum criminal age. The multidisciplinary analysis - the legal, criminological, and developmental science point of view - of three UK cases, which have got judgment from the European Court of Human Rights (ECtHR), indicate that the ECtHR and UK judiciary weighs more heavily towards retribution, deterrence, and protection of public, than towards emphasis on rehabilitation of young offenders together with reintroducing to society. The rehabilitation approach would be economically less costly for the society in the long term in minor youth crimes. The literature examined suggests that adolescents demonstrate adult levels of cognitive capability earlier (around 15-16 years old) than they evince emotional and social maturity (developing up to 28-30 years old). Disseminating this knowledge to Council of Europe Member States is seen as a priority with a suggestion of revising the MACR.

List of abbreviations

APA	American Psychological Association
CRC	Committee on the Rights of the Child
ECHR	European Convention on Human Rights – Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	The European Court of Human Rights
MACR	Minimum age of criminal responsibility
WISC	Wechsler's Intelligence Test for Children

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1. INTRODUCTION

There is a discrepancy between developmental science's knowledge on maturity and its adoption by judiciary in Europe. This thesis analyses three United Kingdom (UK) criminal cases where very young persons have committed serious crimes, and after conviction, they have successfully appealed to the European Court of Human Rights (ECtHR). The focus of the analysis will be on the conceptual framework used by the judiciary and how much it reflects the existing developmental knowledge on psychological maturity. The topic is currently under heated discussion in the UK where society has experienced serious criminal acts by young persons related to riots in 2011. In England, Wales and Northern Ireland, the minimum age of criminal responsibility (MACR) is 10 years.¹ In Scotland, the age limit for criminal prosecutions was raised from 8 to 12 years under section 52 of the Criminal Justice and Licensing (Scotland) Act 2010. However, the age of criminal responsibility remains 8 years old, which means a child under 8 years cannot be guilty of any offence.² In most of the Council of Europe Member States it is between 14 to 16 years.³ The notion that a single line can be drawn between adolescence and adulthood for different purposes under the law is at odds with developmental science. Drawing age boundaries on the basis of developmental research cannot be done sensibly without a careful and nuanced consideration of the particular demands placed on the individual for "adult-like" maturity in different *domains of functioning*.⁴ This thesis argues that there is discrepancy between developmental science's knowledge on maturity and the will of some Council of Europe Member State's to adopt it in their jurisprudence, manifesting in a low minimum criminal age of responsibility.

Maturity is an explicit object of study in neuroscientific and psychological research, which are discussed below in the chapter "Developmental science". Maturity is less of a focus in mainstream criminology, where sociological approaches dominate with a

¹ ECtHR *V. v. The United Kingdom* ([GC], no. 24888/94, ECHR 1999-IX), para 50.

² Scotland, CJD Circular JD/2011.

³ Council of Europe Annual Penal Statistics – SPACE I, 2010, p. 63.

⁴ Steinberg, Cauffman, Woolard, Graham & Banich, 2009, p. 583.

longitudinal research on the same population. The criminological theory states commonly that ‘self-control’ is the single explanatory factor distinguishing offenders from non-offenders, but traces the capacity for self-control to socialisation processes in childhood, not to a process of individual maturation.⁵ Chapter 3, “Criminology on maturity”, discusses the relevant research on maturity and criminality, together with developmental criminological factors related to so-called ‘risk and protective factors’ in accounting for individual variations in offending behavior. These include psychological constructs such as impulsivity and empathy, but not related to a developmental concept of maturity.⁶

The review of literature is carried out in: international law and domestic law on different practices of the European countries dealing with children; philosophy of law on developing *agency* and on youth criminality; on developmental science (physiological and psychological literature), and finally three UK cases heard by the European Court of Human Rights on the matter of criminal responsibility will be discussed and analysed.⁷ On one hand, this thesis analyses, the extent of the *Courts*’ incorporation of the developmental science’s knowledge on maturity in the above mentioned cases. On the other hand, the analysis is carried out with regard to whether the UK multidisciplinary youth correction system has incorporated existing knowledge into their policies and practices. Here the analysis of the case of *S.C. v. UK* [2004] is of particular interest, since the Lord Justice’s direction on handling of children and youth in court systems in the UK, after *T. and V. v. the UK*, was available to the Crown Court since 2003. The discussion is then carried out on the relevant international guidelines and treaties on how to handle young defendants.

⁵ Prior Prior, David, Farrow Kathryn, Hughes, Nathan, Kelly, Gill, Manders, Gary, White, Sue, & Wilkinson Bernadette, 2011, p. 18.

⁶ Prior *et al.*, *ibid.*

⁷ [(ECtHR judgments in *T. v. the United Kingdom* ([GC], no. 24724/94, 16 December 1999) and *V. v. the United Kingdom* ([GC], no. 24888/94, ECHR 1999-IX); *S.C. v. UK*, 2004 ([GC], no. 60958/00, 15 June 2004) is level of comprehension case, and *T. and V. v. UK*, 1999 are separate, but same case, where two 10 year old murdered a 2 year old)].

1.1. Outline of the three UK cases with a decision from the ECtHR

There are currently three UK cases which the ECtHR has found admissible and given judgment upon. Below are a brief resume of facts of these cases, which later are analysed in detail from a developmental science point of view. The UK is selected as an example of a country where the set minimum criminal age is lower than an average in European Union Member States. Most of Member States of the Council of Europe have set the minimum age for criminal responsibility between 14 and 16 years old.⁸ The age of criminal responsibility is seven in Cyprus, Ireland, Switzerland and Liechtenstein; twelve⁹ in Scotland; thirteen in France; fourteen in Germany, Austria, Italy and many eastern European countries; fifteen in the Scandinavian countries; sixteen in Portugal, Poland and Andorra; and eighteen in Spain, Belgium and Luxembourg. See also Table 1 below.

S.C. v. United Kingdom - Violation of Article 6 § 1

The applicant, S.C., is a British national, born in 1988 and living in Merseyside, England.¹⁰

In June 1999, S.C., then aged 11, attempted with another boy to steal an 87 year old woman's bag from her, causing her to fall and fracture her arm. He was tried as an adult and sentenced to two and a half years detention.

The applicant alleged that, because of his youth and low intellectual ability, he was unable to participate effectively in his trial, contrary to Article 6 § 1 of the ECHR (right to a fair trial).

The ECtHR considered it noteworthy that the two experts who assessed the applicant before his initial court hearing formed the view that he had a very low intellectual level for his age. The applicant seemed to have had little comprehension of the role of the

⁸ ECtHR, *V. v. The United Kingdom*, 1999, para 50.

⁹ This was raised from eight to twelve years of age in 2010, see NSPCC, available at http://www.nspcc.org.uk/inform/research/questions/definition_of_a_child_wda59396.html (consulted on 20 March 2012).

¹⁰ *S.C. v. the United Kingdom* ([GC], no. 60958/00, 15 June 2004). Press release, available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=60958/00&sessionid=98419930&skin=hudoc-pr-en> (consulted on 20 March 2012).

jury in the proceedings or of the importance of making a good impression on them. Even more strikingly, he did not seem to have grasped the fact that he risked a custodial sentence, and even once sentence had been passed and he was taken down to the holding cells, he appeared confused and expected to be able to go home with his foster father. In the light of that evidence, the ECtHR could not conclude that the applicant was capable of participating effectively in his trial.

The Court held that when a decision was taken concerning a child, such as the applicant, who risked not being able to participate effectively because of his youth and limited intellectual capacity, by way of criminal proceedings rather than through proceedings directed primarily at determining the child's best interests and those of the community, it was essential that he be tried in a specialist tribunal which was able to give full consideration to and make proper allowance for his particular difficulties and adapt its procedure accordingly.¹¹

While noting that an expert had found "on balance" that S.C. did have sufficient intelligence to understand that what he had done was wrong and that he was fit to plead, the ECtHR was not convinced in the circumstances of the case, that this meant the applicant was capable of participating effectively in his trial to the extent required by Article 6 § 1.¹²

The Court held by five votes to two that there had been a violation of Article 6 § 1 and that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.¹³

T. v. the United Kingdom - Violation of Articles 6 § 1 and 5 § 4

On 12 February 1993, when he was ten years old, the applicant¹⁴ and another ten year old boy, "V" (the applicant in case no. 24888/94), had played truant from school and abducted a two year old boy from a shopping precinct, taken him on a journey of over two miles and then battered him to death and left him on a railway line to be run over.

¹¹ S.C. v. the United Kingdom, para 35.

¹² S.C. v. the United Kingdom, para 36.

¹³ It awarded the applicant EUR 5,315 for costs and expenses.

¹⁴ *T. v. the United Kingdom* ([GC], no. 24724/94, 16 December 1999).

The ECtHR decided by sixteen votes to one that there had been a violation of Article 6 § 1 of the Convention in respect of the applicant's trial,¹⁵ and decided unanimously that there has been a violation of Article 6 § 1 of the Convention in respect of the setting of the applicant's tariff sentence.¹⁶ The ECtHR also decided unanimously that there had been a violation of Article 5 § 4 of the Convention, as the applicant was deprived since his conviction in November 1993 of the opportunity to have the lawfulness of his detention reviewed by a judicial body.¹⁷

V. v. United Kingdom, Violation of Articles 6 § 1 and 5 § 4

On 12 February 1993, when he was ten years old, the applicant¹⁸ and another ten-year-old boy, “T” (the applicant in case no. 24724/94 noted above), had played truant from school and abducted a two-year-old boy from a shopping precinct, taken him on a journey of over two miles and then battered him to death and left him on a railway line to be run over.

The Court decision: *Holds* by sixteen votes to one that there has been a violation of Article 6 § 1 of the Convention in respect of the applicant's trial; *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention in respect of the setting of the applicant's tariff; *Holds* unanimously that there has been a violation of Article 5 § 4 of the Convention,¹⁹; *Holds* unanimously (a) that the respondent State is to pay the applicant, within three months, for costs and expenses, 32,000 (thirty-two thousand) pounds sterling, together with any value-added tax that may be chargeable, less 32,405 (thirty-two thousand four hundred and five) French francs to be converted into pounds sterling at the rate applicable on the date of delivery of the present judgment; (b) that simple interest at an annual rate of 7.5% shall be payable from the expiry of the above-mentioned three months until settlement.

¹⁵ *T. v. the United Kingdom*, para 128.

¹⁶ See section 2.3.1 for 'Tariff fixing', peculiar to English law with regard to a minimum sentence.

¹⁷ *T. v. the United Kingdom*, para 121.

¹⁸ *V. v. the United Kingdom* ([GC], no. 24888/94, ECHR 1999-IX).

¹⁹ *V. v. the United Kingdom*, *ibid*, Para 122.

1.1. Research questions investigated in the thesis

Research questions arising from the literature include:

To what extent have the judiciaries of the UK and the ECtHR incorporated the existing developmental science knowledge on development of maturity in their rulings?

How well have the UK youth correctional mechanisms adopted developmental science's knowledge on psychological maturity in relation to criminal age in their policies and practices while dealing with convicted young offenders?

The hypothesis of this thesis is that there is discrepancy between developmental science's knowledge on maturity and the lack of will in some of the Council of Europe Member State's to adopt it in their jurisprudence, which is manifested in a low minimum criminal age of responsibility. The United Kingdom is selected as an example of such a state and three cases that have been heard by the ECtHR are analysed. The discrepancy between developmental science's knowledge on maturity and its adoption by the judiciary in Europe is discussed from legal, criminological and psychological points of view.

2. LEGAL PERSPECTIVE ON ‘MINIMUM CRIMINAL AGE’

This chapter discusses the question: Why do the national courts in the United Kingdom need to consider international law in their rulings? *First*, this chapter starts with a clarifying discussion on the relationship between international law and domestic law. *Second*, United Kingdom domestic law is discussed in relation to the relevant international guidelines on the issue of how to handle ‘young defendants’.²⁰ UK jurisprudence is selected for this study as an example of a state whose domestic laws set a minimum criminal age of responsibility (10 years in England, Wales and Northern Ireland and 12 years in Scotland) lower than the average in the Council of Europe Member States.²¹ Despite the recent drop in the numbers of children incarcerated for criminal offences²², England and Wales still has one of the highest rates of child imprisonment in Western Europe. The *third* section examines a notion from the philosophy of law on a person developing ‘agency’ and ‘personhood’. The concept of ‘personhood’ is examined in brief, as it sets forth one fundamental criterion on legal maturity.²³ *Fourth*, the question of whether a person is “unfit to plead” at trial is related to a person’s maturity and is discussed below. In common law jurisdictions, specifically the law in England and Wales, competency to stand trial on a criminal charge is known as ‘fitness to plead’. Fitness to plead is a historical legal concept and employs an intellectual test, i.e. *Pritchard’s test*, which has evolved very little since its appearance in case law. There have been amendments, through statute, to its procedure and outcomes following a determination of being unfit to plead. However, competency to stand trial in England and Wales remains a more marginal issue than in the United States. Recent developments in domestic and European jurisprudence have been related to consideration of the requirements for a fair trial, driven by the demands of the

²⁰ The Lord Chief Justice issued a practice direction ... concerning the trial ... in the Crown Court. In it children and young persons are together called ‘young defendants’, 16 February 2000, *S.C. v. the United Kingdom*, para 22.

²¹ See Table 1 above, and a more detailed discussion below in chapter 2.3.1

²² During December 2009, the under 18 custody population decreased by 261 to 2,203, the lowest since formation of the Youth Justice Board (YJB): <http://www.yjb.gov.uk/en-gb/yjs/Custody/CustodyFigures/> (consulted on 15 June 2012).

²³ Griffin, J., 2008, p. 44.

European Convention on Human Rights.²⁴ A fair trial is also an issue related to the three UK cases introduced above. *Fifthly*, this chapter concludes with a discussion on the UK correctional system's handling of 'young defendants'. This section also examines some costs, both economic and personal, of being imprisoned at a young age. Later in chapter 5, these relevant legal issues are combined with factors from criminology and developmental sciences, whilst the three UK cases will be analysed in detail.

Table 1. AGE AND CRIMINAL RESPONSIBILITY²⁵

Country	Age of criminal responsibility	Minimal age for the application of custodial sanctions and measures	Age of criminal majority
Albania	14	14	18
Andorra	14	14	18
Armenia	14	14	18
Austria	14	14	18/21
Azerbaijan	14	14	18
Belgium	NAP	14	18
BH: BiH²⁶ (total)	14	14	18
BH: BiH (st. level)	14	14	18
BH: Fed. BiH	14	14	18
BH: Rep. Srpska	14	14	18
Bulgaria	14	14	18
Croatia	14	16	18/21
Cyprus	14	14	16
Czech Rep.	15	15	18
Denmark	14	14	18
Estonia	14	14	18
Finland	15	15	18/21
France	13	16	18
Georgia	14	14	18
Germany	14	14	18/21

²⁴ Exworthy, T., 2006, p. 466.

²⁵ Council of Europe, SPACE I 2010. Table 2.1, p. 63. NOTE: Figures for UK: England and Wales are on 30 June 2010, instead of 1 Sept. 2010. Point (I) – 80 years and over (the oldest person was aged 94). UK: Scotland Age of criminal responsibility changed to 12 years in March 2011.

²⁶ Bosnia and Herzegovina.

Table 1. Continues...

Greece	13	NA	18
Hungary	14	14	18
Iceland	15	15	18
Ireland	12	12	18
Italy	14	14	18
Latvia	14	14	18
Liechtenstein	14	14	18
Lithuania	16	14	18
Luxembourg	16	16	18
Malta	16	N/A	N/A
Moldova	14	14	18
Monaco	13	13	18
Montenegro	14	14	18
Netherlands	12	12	18
Norway	15	15	18
Poland	15	15	21
Portugal	16	16	21
Romania	14	14	18
Russian Fed.	14	14	18/21
San Marino	14	14	18
Serbia	14	14	18
Slovak Rep.	14	14	18
Slovenia	14	16	18/21
Spain (State Adm.)	14	14	18
Spain (Catalonia)	14	14	18
Sweden	15	18	18
Switzerland	10	15	18
the FYRO Macedonia	14	16	18
Turkey	12	12	18
Ukraine	14	14	18
UK: England and Wales	10	15	18
UK: Northern Ireland	10	10	18
UK: Scotland	8	8 (12)*	18/21

NOTE: Figures for UK: England and Wales are on 30 June 2010, instead of 1 Sept. 2010. Point (I) – 80 years and over (the oldest person was aged 94). *UK: Scotland Age of criminal responsibility changed to 12 years in March 2011.

Reference: Council of Europe, SPACE I 2010. Table 2.1, p. 63.

2.1. Relationship between international law and domestic law

This section discusses the essential aspects of international law, how it regulates inter-State relationships, and how it is sometimes seen as overshadowing national laws. The latter is discussed more in detail later in connection to the national criminal law of the United Kingdom (UK). International law is somewhat vague about criminal age and leaves it to States to decide within their domestic law.

International law is the set of rules generally regarded and accepted as binding in relations between states. It serves as the framework for the practice of stable and organized international relations. The primary concern of international law is the interaction of states whereas national law concerns the regulation of the activities of individuals. Several constitutional provisions have been revised in recent years in order more effectively integrate international law into the national legal order. One example is the UN Human Rights Act 1998 which, without cutting across fundamental principles of parliamentary sovereignty, provided that ‘So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the [European] Convention rights.’²⁷

The position of international law within municipal law is more complex and depends upon a country’s domestic legislation. In particular, treaties must be distinguished from customary international law. Treaties are written agreements that are signed and ratified by the parties and binding on them. Customary international law consists of those rules that have arisen as a consequence of practices engaged in by states.²⁸

The three cases cited above illustrate how there can sometimes be differences, not only of sentiments between the international court and domestic court, but also what is considered as determinative factors. Furthermore, public opinion can have an effect on domestic judges, especially in cases where the crime is sufficiently serious that public outrage and discussion are sparked. In the cases of *T* and *V*, the House of Lords ruled that the Secretary of State, like a sentencing judge, had to remain neutral from public pressures.²⁹

²⁷ C 42, s 3(1). in Denza, 2010, pp.435-436.

²⁸ Encyclopedia Britannica, available at <http://www.britannica.com/EBchecked/topic/291011/international-law/233497/International-law-and-municipal-law> (consulted on 5 June 2012).

²⁹ V. 30 Eur H. R. Rep., para 135., in Denza, 2010, pp. 435-436.

2.1.1 ‘Young defendants’ in the International treaties and UK domestic law

The UN Convention on the Rights of the Child (CRC) states that a child “means every human being below the age of eighteen years unless, under the law applicable to the child, maturity is attained earlier.”³⁰ Some researchers argue that this proves to be particularly critical in situations in which children acquire majority through marriage or criminal responsibility. Such cases, paradoxically, would not seem to be in breach of the Convention. At the same time, though, if majority is acquired at a very young age, the whole thrust of the CRC loses its meaning. Indeed, the status of these girls and boys is not clear: they are still children from a strictly psychological and physical point of view, but are already considered ‘adults’ according to the law of their country. Their childhood is denied, and so are their corresponding rights.³¹ Recently, the Committee of the Rights of the Child has clarified that “a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable”.³² However, as will be demonstrated in chapter 4 below even the CRC Committee’s clarification is not following the current developmental science knowledge on developing psychological maturity.

The ECtHR in its judgment on *T.*’s case summarises the relevant international texts related to issue of criminal responsibility and their treatment.³³

A. The UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) were adopted by the UN General Assembly? on 29 November 1985.³⁴ The UN has put a significant emphasis on rehabilitating the child and attempting to reintroduce the child into society by adopting the 1985 Beijing rules in the 1989 Convention of the Rights of the Child. These rules are not binding in international law. in the Preamble, States are invited, but not required, to adopt them. They provide, as relevant:

³⁰ Article 1, Convention on the Rights of the Child, 1989, available at [Convention on the Rights of the Child, 1989, ‘Article 1’, available at <http://www2.ohchr.org/english/law/crc.htm> \(consulted on 23 February 2012\).](http://www2.ohchr.org/english/law/crc.htm)

³¹ Melchiorre & Atkins, 2011, p. 15.

³² CRC Committee, General Comment No. 10: children’s rights in juvenile justice, UN document CRC/C/GC/10, 2007, paragraph 32.

³³ ECtHR, *T. v. the United Kingdom*, 1999, para’s 43-47.

³⁴ UN General Assembly, A/RES/40/33.

“4. Age of criminal responsibility

4.1 In those legal systems recognising the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

Commentary

The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of criminal responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.).

Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable.”³⁵

B. The UN Convention of the Rights of the Child, Treaty, was adopted by the General Assembly of UN on 20 November 1989, and has binding force under international law on Contracting States, including all member States of the Council of Europe. The UN Convention on the Rights of the Child states that a child “means every human being below the age of eighteen years unless, under the law applicable to the child, maturity is attained earlier.” (Article 1, Convention on the Rights of the Child, 1989).

³⁵ T. v. the United Kingdom, 1999, para 43.

C. The Committee on the Rights of the Child Report on the United Kingdom already on 15 February 1995, and later in 2002, noted "... the Committee recommends that serious consideration be given to raising the age of criminal responsibility throughout the areas of the UK."³⁶

D. The International Covenant on Civil and Political Rights 1966 ("ICCPR") provides in Article 14(4), which broadly corresponds to Article 6 of the ECHR, that: "In case of juvenile persons, the procedure shall be such as will take account of their age, and the desirability of promoting their rehabilitation".

E. The Committee of Ministers of the Council of Europe Recommendation no. R (87) 20 adapted by the Committee on 17 September 1987, recommended that the member states "avoid committing minors to adult courts, where juvenile courts exists."³⁷

Furthermore, the UN Economic and Social Council has passed resolution 1997/30, on 21 July 1997, on "*Guidelines for Action on Children in the Criminal Justice System*". With regard to international law it refers to the *Convention of the Rights of the Child* 1989. Particularly, relating to the issue of minimum criminal age, it sets forth:

"Notwithstanding the age of criminal responsibility, civil majority and the age of consent as defined by national legislation, States should ensure that children benefit from all their rights, as guaranteed to them by international law, specifically in this context those set forth in articles 3, 37 and 40 of the Convention."³⁸

After the ECtHR decisions on T's and V's cases, Sentlinger evaluated that there are four potential areas of conflict in determining whether a juvenile is receiving a fair trial.

They include: (1) the proceedings themselves, and whether juvenile or adult proceedings are needed or best suited for the child, (2) whether the child can effectively

³⁶ CRC/C/15/Add.188, 9 Oct 2002, para 59-62, available at <http://tb.ohchr.org/default.aspx?Symbol=CRC/C/15/Add.188> (consulted on 23 March 2012).

³⁷ *V. v. the United Kingdom*, 30 Eur. H. R. Rep, 121, 146 (1999) [quoting The Committee of Ministers of the Council of Europe Recommendations No. (87) 20 (1987), reprinted in *Council of Europe, The Rights of the Child: A European Perspective* 104 (1996)].

³⁸ ECOSOC, 1997, *Guidelines for Action on Children in the Criminal Justice System*. United Nations, para 13, Available <http://www2.ohchr.org/english/law/system.htm>, (consulted on 7 March 2012).

participate in the proceedings, (3) whether the trial was conducted in public or private, and (4) whether automatic waivers violate³⁹ a child's due process rights.⁴⁰ Of interest to this thesis, it is worth noticing that the ECtHR rulings consider the age, maturity, intelligence and emotional capacities of the juvenile important while assessing whether a child can be prosecuted in an adult criminal court. Thereby, it should have an effect on how all signatory countries of the Convention will proceed in their jurisprudence while dealing with young offenders.

2.2. Philosophy of Law – on becoming of an ‘agent’ in society

Griffin suggests that ‘*Personhood*’ offers a valid concept while discussing the human rights and of individuals.⁴¹ Personhood can be broken down to clearer components by breaking down the notion of *agency*. To be an agent, in the fullest sense of which we are capable, one must (first) choose one's own path through life (to have ‘*autonomy*’). Second, one's choice must be real and must have at least a certain minimum education and information. Then one must be able to act, meaning one has to have at least the ‘*minimum provision of resources*’ and capabilities that it takes to make best use of the resources. Third, others must also not forcibly stop one from pursuing what one sees as a worthwhile life (call this ‘*liberty*’).

The concept of personhood with agency needs further sharpening in conceptual terms.⁴² Agency can quite reasonably be seen as appearing in degrees. Children become agents in stages. Some adults are better than others at reflecting about values, or more effective at achieving them. Must a personhood account, then, imply that human rights come in proportionate degrees? Does it justify, in the end, less an egalitarian than a Platonic vision of society, with different classes having rights appropriate to their different reflective and executive capacities.⁴³

³⁹ This is related to USA/Michigan's automatic waiver statute., see for more in Sentlinger, E.D. 2000-2001, p. 134.

⁴⁰ Sentlinger, E.D. 2000-2001, p. 138.

⁴¹ Griffin, 2008, p. 44.

⁴² Griffin, J., 2008, pp. 44-45.

⁴³ Such worries have led some philosophers to give up on personhood accounts, e.g. Joel Feinberg; see his *Social Philosophy* (Englewood Cliffs, NJ): Prentice-Hall, 1973), ch. 6 s. 3. In Griffin, J., 2008, p. 287.

What we attach value to, what we regard as giving dignity to human life, is our capacity to choose and to pursue our conception of a worthwhile life. Mental defectives present difficult borderline problems here, and there is, of course, the question of when a child becomes an agent. But the vast majority of adults are capable of reaching (a factual claim) this valuable state (an evaluative claim). Anyone who crosses the borderline, anyone who rises any degree above the threshold, is equally inside the class of agents, because everyone in the class thereby possesses the status to which we attach high value.⁴⁴ It is true that, above the threshold, certain differences in degree persist, e.g.: differences in IQ; in sensitivity to and skill in characterizing what makes good life; in knowing how to realize these values, and so on. This status after its reached is called by the UN ‘the dignity of the human person’.⁴⁵ Griffin further specifies that the ‘normative agency’ consists of that particularity that agency is involved in living a worthwhile life, which involves the mentioned ability to choose and to pursue that life.⁴⁶

In conclusion, literature in the fields of philosophy of law and ethics, suggests only that most people acquire during their development the status of agency, which involves the ability to make “good” choices and not carry out wrongful deeds. It claims that after a certain threshold is achieved, thereafter the person becomes a member of that club of agents who can choose and pursue a life worth living. It further claims that most of the persons reach this stage during their development, but that there are groups whom are more problematic such as mentally defective and very young children. Hence, the children develop agency in stages.

44 John Rawls makes a similar point about his notion of ‘moral personality’ in *A Theory of Justice* (Oxford: Clarendon Press, 1972), sect. 77. In Griffin, J., 2008, p. 287.

45 Griffin discusses about the fears related to recent advances in the genetics, which has shown that the human mind is stocked with the physical bases of large array of capacities (see Interview with Steven Pinker, *New York Times Magazine*, 15 Sept. 2002), which might direct thoughts to ‘natural hierarchy of ability’. The point made by Griffin here is related to fact, that the only equality that human rights need is one that nearly all of us have – viz. being above the threshold. And there is no good reason to fear the existence (... of some persons having higher abilities than others, writers addition) simply of the threshold itself. In Griffin, J., 2008, p. 287.

46 Griffin, J., 2008, p. 45.

2.3. ‘Minimum Criminal Age’ In The UK, Related Aspects

The age of criminal responsibility is the age at which, in the eyes of the law, a child is capable of committing a crime and therefore old enough to stand trial and be convicted of a criminal offence. In England, Wales and Northern Ireland, the age of criminal responsibility is 10 years and in Scotland it is 12 years. A 2002 report from the UN Committee on the Rights of the Child criticised this low age limit and recommended that the UK Government “considerably raise the minimum age of criminal responsibility” (see paragraphs 59-62),⁴⁷ and again in the CRC report 2008.⁴⁸ The age limit in England and Wales was put into legislation by section 34 of the Crime and Disorder Act 1998 and in Northern Ireland by section 3 of the Criminal Justice (Northern Ireland) Order 1998. In Scotland, the age limit for criminal prosecution was raised from 8 to 12 years under section 52 of the Criminal Justice and Licensing Scotland Act 2010. However the age of criminal responsibility remains 8 years old (which means a child under 8 years cannot be guilty of any offence.⁴⁹ Section 42 of the Criminal Procedure Scotland) Act 1995, however, states that “No child under the age of 16 years shall be prosecuted for any offence except on the instructions of the Lord Advocate”.⁵⁰

Furthermore, the *ECtHR* refers in 2004 to the relevant domestic law of UK in the case of *S.C. v. the United Kingdom*⁵¹, with selected excerpts below:

A. Age of criminal responsibility.

19. Under section 50 of the Children and Young Persons Act 1933 as amended by section 16(1) of the Children and Young Persons Act 1963 (“the 1933 Act”), the age of criminal responsibility in England and Wales is 10 years, below which no child can be found guilty of a criminal offence.

47 CRC/C/15/Add.188, 9 October 2002.

48 CRC/C/GBR/CO/4, 2008.

49 Scotland, CJD Circular JD/2011.

50 NSPCC, www page consulted in 20.03.2012.

51 ECtHR, [GC], no. 60958/00 10 November 2004, para 19-22.

B. Procedures for child defendants.

20. Pursuant to section 24 of the Magistrates' Courts Act 1980, children and young persons under 18 must be tried summarily in the Magistrates' Court, where the trial usually takes place in the specialist Youth Court, which has an informal procedure and from which the general public are excluded. The exceptions are children and young persons charged with murder, manslaughter or an offence punishable if committed by an adult with fourteen or more years' imprisonment, who are tried in the Crown Court before a judge and jury.

21. Under section 44 of the 1933 Act, every court dealing with a child (under 14) or young person (under 18), whether as an offender or otherwise, must have regard to his or her welfare.

22. On 16 February 2000, following the Court's judgments in *T. v. the United Kingdom* ([GC], no. 24724/94, 16 December 1999) and *V. v. the United Kingdom* ([GC], no. 24888/94, ECHR 1999-IX), the Lord Chief Justice issued a practice direction concerning the trial of children and young persons in the Crown Court. This practice direction, which was not, however, in force at the time of the applicant's trial, states as follows:

“1. This practice direction applies to trials of children and young persons in the Crown Court. Effect should be given to it forthwith. In it children and young persons are together called 'young defendants'. The singular includes the plural and the masculine includes the feminine.

2. The steps which should be taken to comply with this practice direction should be judged, in any given case, taking account of the age, maturity and development (intellectual and emotional) of the young defendant on trial and all other circumstances of the case.

The overriding principle

3. Some young defendants accused of committing serious crimes may be very young and very immature when standing trial in the Crown Court. The purpose of such trial is to determine guilt (if that is an issue) and decide the appropriate sentence if the young defendant pleads guilty or is convicted. The trial process should not itself expose the young defendant to avoidable intimidation, humiliation or distress. All possible steps should be taken to assist the young defendant to understand and participate in the proceedings. The ordinary trial process should so far as necessary be adapted to meet those ends. Regard should be had to the welfare of the young defendant as required by section 44 of the Children and Young Persons Act 1933.

The UK Government's position was restated on 18 April 2012 in a government note on the age of criminal responsibility.⁵² Critics argue that this is too low and should be increased to at least 12 in accordance with the recommendations of the UN Committee on the Rights of the Child. However, the Government has said that it has no plans to raise the age of criminal responsibility from its current level,⁵³ a position that it has repeatedly stated.⁵⁴ Justice Minister Crispin Blunt made the following comments during a Westminster Hall debate on young offenders:⁵⁵

“The Government believe that children aged 10 are able to distinguish between bad behaviour and serious wrongdoing. It is entirely appropriate to hold them to account for their actions if they commit an offence, and it is important to ensure that communities know that a young person who offends will be dealt with appropriately. We have no plans to change the age of criminal responsibility. We accept, however, that prosecution is not always the most appropriate response to youth offending. Much of youth crime is addressed using out-of-court disposals and robust intervention to prevent reoffending. Indeed, we are now seriously considering widening the delivery of restorative justice and giving the police their own restorative justice interventions for the lower level of offences, which could be recorded for their own purposes. That is in addition to making sure that people both make restoration and receive punishment—the two are not alternatives—in the rest of the criminal justice system”.

2.3.1. Tariff fixing

In the UK, the Lord Chief Justice issued on 16 February 2000 a practice direction concerning the trial of children and young persons in the Crown Court. It followed the *ECtHR's* judgments in the cases *T. v. the United Kingdom*, *V. v. the United Kingdom*,

⁵² See Lipscombe, S., 18 April 2012, Home affairs, The age of criminal responsibility in England and Wales, available at <http://www.parliament.uk/briefing.../SN03001.pdf>, (consulted in 8 June 2012).

⁵³ Lipscombe, S., *Ibid*.

⁵⁴ See for example HL Deb 20 December 2010 cc815-7, HC Deb 20 July 2011 c1107-8W and HC Deb 11 August 2011 c1086.

⁵⁵ HC Deb 8 March 2011 c171WH.

and *S.C. v. the United Kingdom*. Moreover, this chapter discusses some peculiarities of the UK judicial system like tariff fixing by the Secretary of State, and current discussion in society after the Riots in 2011 resulting in a criminal conviction of an 11 year old. Tariff fixing is related to grave criminal offences that need the Secretary of State's discretion as to whether to release offenders sentenced to life in imprisonment. In short, the tariff approach involves breaking down the life sentence into component parts: retribution, deterrence and protection of the public. The "tariff" represents the minimum period which the prisoner will have to serve to satisfy the requirements of retribution and deterrence.

UK domestic law contains a specific measure of fixing a "Tariff" for a young offender convicted of murder and detained during Her Majesty's pleasure. The policy was reviewed in 1997, with the Secretary of State fixing the Tariff after he or she has sought advice of the trial judge and that of Lord Chief Justice in deciding what punishment is required in any case of a person convicted under section 53(1) of the Children and Young Persons Act 1933⁵⁶.

2.3.2. Fitness to plead and "Pritchard's test"

Recent developments in domestic and European jurisprudence have been related to consideration of the requirements for a fair trial, driven by the demands of the European Convention on Human Rights.⁵⁷ Fitness to plead is concerned with mental state *at the time of trial* as opposed to what it may have been at the time of the alleged offence.⁵⁸

The test to evaluate fitness to plead is based on the case of *R v. Pritchard*⁵⁹:

"There are three points to be enquired into: first, whether the prisoner is mute of malice or not; secondly, whether he can plead to the indictment or not; thirdly, whether he is of sufficient intellect to comprehend the course of the proceedings in the trial so as to make a proper defense - to know that he might challenge any of you to whom he may object - and to comprehend the

⁵⁶ *T v. the UK*, 1999, para 42.

⁵⁷ Exworthy, T., 2006, p. 466.

⁵⁸ Exworthy, T., *ibid*.

⁵⁹ *R v Pritchard*, 1836, 7 Carrington & Payne 303.

details of the evidence, which in a case of this nature must constitute a minute investigation." The defendant was deaf and mute. Alderson B set the test to apply in deciding fitness to plead. The jury were directed that they were to find him unfit to plead if in their opinion there was no certain mode of communicating the details of the trial to the prisoner, so that he could clearly understand them and be able properly to make his defense to the charge.⁶⁰

The test has crystallized into four main areas: an appreciation of the charges and potential consequences (including the significance of the potential pleas), an ability to understand the trial process, a potential for the defendant to participate in that process, and the ability to work collaboratively with his lawyer on his defense. The effect a defendant's mental condition has on his ability to comprehend proceedings is the relevant factor rather than the mere existence of that condition. Amnesia for the alleged offence, for example, would not lead to a finding of being unfit, as it would not affect the defendant's ability to comprehend the course of the trial.⁶¹ If the individual is of insufficient intellect to comprehend the court proceedings, he is said to be unfit to plead, or "under disability".⁶²

An accused is "unfit to plead" if by reason of a disability, such as mental illness, he has "insufficient intellect to instruct his solicitors and counsel, to plead to the indictment, to challenge jurors, to understand the evidence, and to give evidence".⁶³ The question whether or not a defendant is fit to plead must be decided by a jury upon the written or oral evidence of at least two medical experts. Where a jury has found the defendant unfit to plead, either the same or another jury may be required to proceed with the trial and decide whether the accused committed the act or made the omission charged against

⁶⁰ *Rex v. Prithchard*, 1836, England and Wales High Court (King's Bench Division) Decisions, available at <http://www.bailii.org/ew/cases/EWHC/KB/1836/1.html> (consulted on 23 March 2012).

⁶¹ *R v. Podola* (1959) Cr. App. R. 220; [1960] 1 Q.B. 325.

⁶² Exworthy, T., 2006, p. 467.

⁶³ *R. v. Robertson*, 52 Criminal Appeal Reports 690.

him as the offence, in which case the court may make a hospital order against him.⁶⁴ Alternatively, the trial may be postponed indefinitely until the accused is fit to plead.⁶⁵

2.3.3. The UK correctional system

The UK correctional system of young defendants is divided to three categories: a) less than 18-years-old, b) more than 18-years-old, and c) over 21 years of age. The UK Government has recently argued that there is no need to change the minimum criminal age in legislation.⁶⁶ They believe that the current multi-disciplinary youth correctional system works well. If a person who is less than 18 years and has been found guilty, then he or she is sent to a Children's home or other institution meeting the developmental demands of a young person. If a person who is found guilty and is more than 18 years, then he or she is sent to a Young Offenders Institution. If a person is over 21 years, a person found guilty is to be sent to an institution for adult offenders.

The Standing Committee for Youth Justice (SCYJ)⁶⁷ believes that the use of custody for children could and should be greatly reduced. While a small number of children do commit very serious offences where a period of detention is inevitable, for most, custody exacerbates the damage to already damaged and vulnerable children, will be ineffective in addressing their offending, and is costly both in terms of the public purse and the detrimental effect on the lives of each of the children incarcerated. They refer to recent custody figures from the Youth Justice Board (YJB)⁶⁸ of the United Kingdom and note that the number of children sentenced to custody has more than tripled since 1991, and the child custody population increased by 795% from 1989 to 2009. SCYJ argues that while the principal purpose of the youth justice system in England and Wales is the prevention of offending or reoffending, the statistics show that despite all

⁶⁴ Criminal Procedure (Insanity) Act 1964, sections 4, 4A and 5.

⁶⁵ *S.C. v. the United Kingdom*, paragraph 23.

⁶⁶ BBC reporting from the House of Lords or the Parliament 2011.

⁶⁷ The Standing Committee for Youth Justice (SCYJ) works for reform of the youth justice system in England and Wales for the benefit of children and young people and the community at large.

⁶⁸ The Youth Justice Board for England and Wales (YJB) is an executive non-departmental public body. Its board members are appointed by the Secretary of State for Justice. '20 Years on: The impact of the 1989 Children Act', *Children and Young People Now*, 29 October 2009, in SCYJ, 'Custody for Children: The Impact – A Position paper on the impact of the overuse of custody for children in England and Wales', February 2010, p. 2.

efforts, 75% of the children released from custody do reoffend within a year of their release.⁶⁹ Furthermore, they illustrate the costs of the custody by comparing the average cost of locking up a child in any type of custody for one year could provide a child with an education at Eton College for six years.⁷⁰ Based on the YJB 2009 cost estimate figures cost/place in three category of custodial institutions are divided as⁷¹:

1. 60,372 GBP(Foyer Federations estimate is nearer 100,000 GBP) - places at the Young Offenders Institutions (YOIs). The majority of children in custody are placed here. They are operated by the Prison Service and private sector providers on an adult prison model;
2. 160,080 GBP - places in Secure Training Centre (STCs). Children aged 12 to 14 are normally placed here, with STCs run by private sector operators;
3. 215,496 GBP - places in Secure Children's Homes (SCHs). Children aged 10-11 who have committed a serious offence are placed here.

SCYJs review of literature shows, of relevance to this thesis, prevalence of some psychological factors amongst children in custody than they are in the child population in general, for instance: They have 50% more abuse experiences than other Youth Offending Team cases, and of these, 30% of children had experienced or witnessed domestic violence compared to 8% of others; 31% have a recognized mental health disorder, compared to 10% of the general population; 15% have a statement of special education needs, compared to 3% of the general population; 88% of boys and 89% of girls in YOIs have been excluded from school, in comparison to 6% of the general population; 8% of the young persons in custody aged 12, 13, and 14 serving a Detention and Training Order had attempted suicide at some time in their young lives.⁷² In assessing the psychiatric symptoms of imprisoned children and young people, the YJB commissioned study found that 19% of 13-18 year olds in custody had depression, 11%

⁶⁹ SCYJ, 2010, pp. 2-4.

⁷⁰ Barnardo's, London, 'Locking up or giving up – is custody for children always the right answer? In SCYJ, 2010, p. 4.

⁷¹ SCYJ, 2010, pp. 2-4.

⁷² The number of subjects in the study was 216.

anxiety, 11% post-traumatic stress disorder and 5% psychotic symptoms.⁷³ Children in custody, come in the main from the most disadvantaged families and communities, whose lives are frequently characterized by deprived social landscapes, neglect and abuse. The criminological account of these factors will be discussed in the next chapter. The psychological factors and their significance on defining psychological maturity are discussed more in detail in chapter 4. SCYJ's position on the custody of children states that "The Government should take urgent steps to reduce the use of custody for children and provide adequate support for those leaving custody."⁷⁴

⁷³ Chitsabesan *et al.*, 2006, pp. 534-54

⁷⁴ See for more, SCYJ, 2010, pp. 9-10.

3. CRIMINOLOGY ON MATURITY

This chapter introduces sociological concepts that are interesting for the purpose of evaluating legal maturity. In the criminal system of England and Wales, young defendants, as discussed above, are dealt with through the youth justice system, which provides a range of responses specific to that age group. The research related to this age group is concerned with relationship between maturity and ‘juvenile crime’. Persons who are younger than 18 are seen as people who live in communities, which might share certain values over others, meaning that it is also important to understand the life context of these young defendants. Later in chapter 5, young defendants’ life-contexts will be shown to form a particular vulnerability, ‘group pressure’, to behave anti-socially if immediate reward will be available together with minimal risk of getting caught”.⁷⁵ As the normative development of a child into adulthood includes a significant period of late-childhood and adolescence, it is illustrative to look at this period from a sociological perspective.

In contrast to neuroscientific and psychological research on offending behaviour, ‘maturity’ has not featured as an explicit concept in *criminological research*. Criminological theory commonly states that ‘self-control’ is the single explanatory factor distinguishing offenders from non-offenders, but traces the capacity for self-control to socialization processes in childhood, rather than to a process of individual maturation.⁷⁶

Developmental criminology employs a wide range of ‘*risk and protective factors*’ in accounting for individual variations in offending behaviour. These include psychological constructs such as impulsivity and empathy, but are not related to a developmental concept of maturity.⁷⁷ In 2005 the Youth Justice Board (YJB) published a

⁷⁵“Often the crimes at young age are committed in situations where there are no immediate negative consequences and immediate rewards are obvious”, Steinberg, *et al.*, 2008, p. 593.

⁷⁶Prior, D., *et al.*, 2011, p. 18.

⁷⁷*ibid.*

summary of the commissioned review that was carried out by *Communities that Care*, on risk and protective factors that are known to predict a subsequent involvement in youth crime, and the protective factors that buffer children and young people against the risks to which they are exposed.⁷⁸ The relationship between risk and protective factors, and the precise ways in which they interrelate is uncertain. It is, however, clear that risk factors cluster together in the lives of the most disadvantaged children. The chances that those children will become anti-social and criminally active increases in line with the number of risk factors. Young people who have been exposed to the greatest risk are between five and twenty times more likely to become violent and serious offenders than those who have not.⁷⁹

The YJB summary report defined within four ‘domains’ 20 different risk factors, such as:

- *Family* (poor parental supervision and discipline, conflict, history of criminal activity, parental attitudes that condone anti-social and criminal behavior, low income, poor housing);
- *School* (low achievement beginning in primary school, aggressive behaviour – including bullying, lack of commitment – including truancy, school disorganisation);
- *Community* (living in a disadvantaged neighbourhood, disorganisation and neglect, availability of drugs, high population turnover and lack of neighbourhood attachment);
- *Personal* (hyperactivity and impulsivity, low intelligence and cognitive impairment, alienation and lack of social commitment, attitudes that condone offending and drug misuse, early involvement in crime and drug misuse, friendships with peers involved in crime and drug misuse).

⁷⁸Youth Justice Board for England and Wales, 2005, pp. 2-6.

⁷⁹YJB, p. 2.

The YJB summary report defined within three ‘domains’ 11 *protective factors*, such as:

- *Individual factors* (female gender, resilient temperament, sense of self-efficacy, positive and outgoing disposition, high intelligence).
- *Social bonding* (stable, warm, affectionate relationship with one or both parents; link with teachers and with other adults and peers who hold positive attitudes and ‘model’ positive social behaviour).
- *Healthy standards* (prevailing attitudes across a community; view of parents; promotion of healthy standards within school; opportunities for involvement, social and reasoning skills, recognition and due praise).

The YJB summary concludes that children and young people can be influenced by the prevalent behaviour, norms and values held by those to whom they feel attached. Thus parents, teachers and community leaders who lead by example and hold clearly stated expectations regarding young people’s behaviour help to protect them against risk.⁸⁰ The summary states in connection to crime statistics and its use in determining situations and times when offending most likely is to occur, that methodological flaws prevent this kind of evaluations due to two reasons: “only a small proportion of crime is reported”, and there is “a widely held view that the youngest respondents to self-report studies are unlikely fully to understand and/or answer honestly questions about their offending behaviour”. Furthermore, by using the ASSET method discussed above, Youth Offending Team (Yot) practitioners rated the following as being most closely linked with risk of reoffending: thinking and behaviour, lifestyle, statutory education. Young offenders themselves identified lack of training or qualifications as the most important factor, although problems with thinking and behaviour, lifestyle and neighbourhood

⁸⁰YJB, *ibid.*

were also rated highly. The other social and cultural factors include socialisation processes, peer relations, and neighborhood influences.

The vast majority (78,1 %) of youth offending occurs in the afternoon and evening. The evidence highlights the period immediately after children leave school (3pm to 6pm) as a peak time for offending, with 30% of offences taking place during these three hours.⁸¹ For these reasons, there exists a rationale to plan social programming for the risk group children accordingly. The aim would be to direct their post-school hour activities into constructive ones. Therefore, it would be beneficial to organise structured leisure time activities that are aimed at the children and adolescents who are considered to be most at risk, or to deprived communities.⁸² The structured leisure time activities have been shown to be an important element in designing support systems for youth in the USA. Moreover, there is a growing collection of academic research and program evaluations that converge on the same conclusion—youth participation in out-of-school time (OST) activities *does* matter in important ways, for academic success and it matters in social development.⁸³ In the last few decades, there has been a surge of public and research interest in the impact of youth participation in out-of-school time (OST) activities. Researchers and practitioners argue that high quality, structured OST programs are environments that have the potential to support and promote youth development because they: (a) situate youth in safe environments, (b) prevent youths from engaging in delinquent activities, (c) teach youths general and specific skills, beliefs, and behaviors, and (d) provide opportunities for youths to develop relationships with peers and mentors. In fact, there is increasing evidence that a young person's participation in quality OST activities influences their current outcomes, which, in turn, impact outcomes into adulthood.⁸⁴

The challenge probably lies in the recruitment of these children into the programs. Those children who voluntarily seek these OST activities are probably high functioning

⁸¹YJB, 2005, p. 7.

⁸²Eccles & Barber, 1999, p. 10-49.

⁸³Simpkins, S., 2003, p. 2.

⁸⁴Gambone, M. A., Klem, A. M., & Connell, J.P., 2002. In Simpkins, S., 2003, p. 2.

individuals, with perhaps higher socio-economic-status backgrounds. Overall, youth's participation in OST activities are often predictive of academic success as measured through test scores, absenteeism, school dropout rates, homework completion, and school grades.⁸⁵ For example, in a study on low-income children's afterschool care it was found that academic activities with adult OST staff predicted children's school grades for conduct and most subject areas.⁸⁶ Furthermore, participation matters in social development as well. Several studies have noted that OST activity participation is associated with multiple aspects of youth friendships, including the number of friends, the quality of those friendships, and who those friends are.⁸⁷ In addition, participation is linked to fewer feelings of loneliness and depression and less problem behavior.⁸⁸

3.1. 'Risk And Protective' Factors In Criminology

Developmental criminology employs a wide range of '*risk and protective* factors' in accounting for individual variations in offending behaviour; these include psychological constructs such as impulsivity and empathy, but not related to a developmental concept of maturity.⁸⁹ In 2005 the Youth Justice Board (YJB) published a summary of the commissioned review, which was carried out by *Communities that Care*, on risk and protective factors that are known to predict a subsequent involvement in youth crime, and the protective factors that buffer children and young people against the risks to which they are exposed.⁹⁰ The relationship between risk and protective factors, and the precise ways in which they interrelate is uncertain. It is, however, clear that risk factors cluster together in the lives of the most disadvantaged children. The chances that those children will become anti-social and criminally active increases in line with the number of risk factors. Young people who have been exposed to the greatest risk are between

⁸⁵ Eccles & Barber, 1999; Gore, Farrell, & Gordon, 2001; Marsh, 1992.

⁸⁶ Posner & Vandell, 1994, p. 440.

⁸⁷ Eccles & Barber, 1999, pp. 10-49.

⁸⁸ Gore *et al.*, 2001, p. 119.

⁸⁹ Prior, D., *et al.*, *ibidem*.

⁹⁰ Youth Justice Board for England and Wales, 2005, pp. 2-6.

five and 20 times more likely to become violent and serious offenders than those who have not.⁹¹

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⁹¹ YJB, 2005, p. 2.

The YJB summary concludes within that children and young people can be influenced by the prevalent behaviour, norms and values held by those to whom they feel attached. Thus parents, teachers and community leaders who lead by example and hold clearly stated expectations regarding young people's behaviour are helping to protect them against risk.⁹² The summary states in connection to crime statistics and its use in determining situations and times when offending most likely is to occur, that methodological flaws prevent this kind of evaluations due to two reasons: "only small proportion of crime is reported, and there is widely held view that the youngest respondents to self-report studies are unlikely fully to understand and/or answer honestly questions about their offending behaviour. Furthermore, by using the ASSET method discussed above Youth Offending Team (Yot) practitioners rated the following as being most closely linked with risk of reoffending: thinking and behaviour, lifestyle, statutory education. Young offenders themselves identified lack of training or qualifications as the most important factor, although problems with thinking and behaviour, lifestyle and neighbourhood were also rated highly. The other social and cultural factors include: socialization processes, peer relations, and neighborhood influences.

The vast majority (78,1 %) of youth offending occurs in the afternoon and evening. The evidence highlights the period immediately after children leave school (3pm to 6pm) as a peak time for offending, with 30% of offences taking place during these three hours.⁹³ For these reasons, the rationale exists to plan social programming for the risk group children. The aim would be to direct their post-school hour activities into constructive ones. Therefore, it would be beneficial to organise structured leisure time activities, which are aimed at the children and adolescents who are considered to be most at risk, or to deprived communities.⁹⁴ The structured leisure time activities have been shown to be an important element in designing support systems for youth in the USA. Moreover, there is a growing collection of academic research and program evaluations that converge on the same conclusion—youth's participation in out-of-school time (OST)

⁹² YJB, 2005, p. 7.

⁹³ YJB, *ibidem*.

⁹⁴ Eccles & Barber, 1999, p. 10-49.

activities *does* matter in important ways, for academic success and it matters in social development.⁹⁵ In the last few decades, there has been a surge of public and research interest in the impact of youth's participation in out-of-school time (OST) activities. Researchers and practitioners argue that high quality, structured OST programs are environments that have the potential to support and promote youth's development because they: (a) situate youth in safe environments, (b) prevent youth from engaging in delinquent activities, (c) teach youth general and specific skills, beliefs, and behaviors, and (d) provide opportunities for youth to develop relationships with peers and mentors. In fact, there is increasing evidence that youth's participation in quality OST activities influences their current outcomes, which, in turn, impact outcomes into adulthood.⁹⁶

The challenge probably lies in the recruitment of these children into the programs. Those children who voluntarily seek these OST activities are probably high functioning individuals, with perhaps higher socio-economic-status backgrounds. Overall, youth's participation in OST activities is often predictive of academic success as measured through test scores, absenteeism, school dropout rates, homework completion, and school grades.⁹⁷ For example, in a study on low-income children's afterschool care it was found that academic activities with adult OST staff predicted children's school grades for conduct and most subject areas.⁹⁸ Furthermore, participation matters in social development as well. Several studies have noted that OST activity participation is associated with multiple aspects of youth's friendships, including the number of friends, the quality of those friendships, and who those friends are.⁹⁹ In addition, participation is linked to fewer feelings of loneliness and depression and less problem behavior.¹⁰⁰

⁹⁵ Simpkins, S., 2003, p. 2.

⁹⁶ Gambone, Klem, & Connell, 2002. In Simpkins, S., 2003, p. 2.

⁹⁷ Eccles & Barber, 1999; Gore, Farrell, & Gordon, 2001; Marsh, 1992.

⁹⁸ Posner & Vandell, 1994, p. 440.

⁹⁹ Eccles & Barber, 1999, pp. 10-49.

¹⁰⁰ Gore *et al.*, 2001, p. 119.

3.2. Assessing Maturity in the Criminal Justice System

‘Maturity’ is a highly complex conceptual construct whose meaning is not settled even in those research literatures that make extensive use of it. Moreover, it contains strong normative elements that are likely to undermine attempts to render it objectively measurable.¹⁰¹ There are two principal assessment tools used in the criminal justice system: Asset, for offenders under 18 years, and OASys for over 18s. Both tools adopt a structured professional judgment approach in assessing dynamic risk factors, that is, they are not based on the idea that these concepts can be easily measured with simple ratings but require the judgment of the assessor.¹⁰² This has implications for any attempt to develop an ‘objective’ approach to measuring maturity.¹⁰³

In the UK there is third measure, the “Gillick test” of competency, relate to a young person's capacity to consent to medical treatment.¹⁰⁴ In the UK - they but have been discussed more widely as a standard for assessing maturity, competence in decision-making etc.¹⁰⁵ Gillick test originates from the judgment in the High Court in 1983, which laid down a criterion for establishing whether a child, irrespective of age, had the capacity to provide valid consent to treatment in specified circumstances.¹⁰⁶ The criteria were approved in the House of Lords and became widely acknowledged as “Gillick test,” after the name of mother who had challenged health service guidance that would have allowed her daughters aged under 16 to receive confidential contraceptive advice without her knowledge. The Gillick test has provided clinicians with an objective test of competence. This identifies children under 16 who have the legal capacity to consent to medical examination and treatment, providing they can demonstrate sufficient maturity

¹⁰¹Prior *et al.*, 2011, p. 28.

¹⁰²Baker *et al.* 2003, pp. 9-10.

¹⁰³Prior *et al.*, p. 28.

¹⁰⁴ Gillick v. West Norfolk & Wisbech AHA & DHSS [1985] 3 WLR (HL).

¹⁰⁵ E-mail from Kerry Baker, Research Associate, University of Oxford, 8 July 2012.

¹⁰⁶ Gillick v. West Norfolk & Wisbech AHA & DHSS [1983] 3 WLR (QBD).

and intelligence to understand and appraise the nature and implications of the proposed treatment, including the risks and alternative courses of actions.¹⁰⁷

The Asset assessment tool has 12 sections in the core profile, each asking about specific clusters of risk factors; no one section is specifically about maturity, but questions relevant to concepts of maturity developed in the research literature are found in a number of sections. Examples are also found in the section on positive factors, also part of the core profile. The assessor is asked to make a judgment about each of the areas of dynamic risk and to decide, using these elements among others, to what extent that section as a whole is relevant to the offending behaviour. In addition assessors are provided with guidance which sometimes clarifies the concepts further. Table 2 provides a summary of the sections and specific questions that have some relevance to maturity, an indication of the relevant maturity factor identified in the research literature, and, in some instances, relevant comments from the official Asset guidance.¹⁰⁸ The Asset tool was developed by Prior et al. in 2001, and they found it to contain four central factors related to maturity research: Impulsivity, Temperance, Responsibility and Perspective.¹⁰⁹ In a review of literature the Asset tool was found to contain four central factors related to psychological maturity research: Impulsivity, Temperance, Responsibility and Perspective¹¹⁰, which will be discussed in section 4.2.2. below.

¹⁰⁷ See also Wheeler's Editorial article in BMJ, where he discusses the related but narrower "Fraser guidelines", where Lord Fraser is seen as addressing a narrower dilemma of providing contraceptive advice to girls without the knowledge of their parents. Wheeler, Robert, 2006, p. 807.

¹⁰⁸Baker, K. *et al.*, 2003, p. x.

¹⁰⁹Prior *et al.* 2008, p. 28.

¹¹⁰ See for definitions below in section 4.2.2 where they are discussed in relation to psychological research on maturity. Prior *et al.* *ibid.*

Table 2. ASSET ASSESSMENT AND MATURITY FACTORS

Asset section and question	Relevant maturity factors in research	Comment
<p>Section 5. Lifestyle Participation in reckless activity.</p>	Impulsivity	Asset guidance makes it plain this is not just about offending behaviour.
<p>Section 7. Physical Health Physical immaturity / delayed development. Health put at risk through own behaviour (e.g. hard drug use, unsafe sex, prostitution).</p>	Temperance	Guidance talks about decisions to ignore known consequences of behaviour.
<p>Section 9. Perception of Self and Others Difficulties with self identity. Difficulties with self-esteem. (e.g. too high or too low). Displays discriminatory attitudes.</p>	Responsibility Perspective	Guidance links in part to effects of family. Guidance gives racism as an example.
<p>Section 10 Thinking and Behaviour Lack of understanding of consequences (e.g. immediate and longer term outcomes, direct and indirect consequences, proximal and distal consequences). Impulsiveness. Need for excitement. Poor control of temper. Aggression towards others.</p>	Temperance Temperance	Guidance differentiates between what is to be expected of younger and older young people but is not precise about this.
<p>Section 11 Attitudes to offending Lack of understanding of the effect of his/her behaviour on victims (if 'victimless', on society). Lack of understanding about the effects on family/carers. Motivation to change. Understand the consequences for self and further offending. Positive factors. A sense of self-efficacy (e.g. that she/he can take action to change things, displays optimism. Resilience (e.g. copes well with difficulties, knows when to seek help, and seems to spring back quickly from adversity). Vulnerability. Risk taking.</p>	Perspective Temperance Responsibility Temperance	Guidance differentiates between lack of understanding and understanding but not caring. Asset is largely deficit focused but this section does take a more positive approach: these strengths may indicate greater maturity.

4. DEVELOPMENTAL SCIENCES ON MATURITY

Physiological/neurological and psychological literature shows that the development of maturity continues between 2 to 10 years after the average threshold of the age of criminal responsibility age in Europe of 14 -years. This chapter examines the relevant physiological and psychological research on maturity, e.g. the developmental sciences view on development of maturity. A distinction is made in the psychological research literature between cognitive maturity and psychosocial maturity, where the former refers to an individual's 'capacity for thinking, reasoning, understanding' and the latter to 'aspects of development and behaviour that involve personality traits, interpersonal relations and affective experience.'¹¹¹ Maturity can be viewed, in relation to offending at young age, as a measure of the capacity to take decisions that would be regarded as appropriate to adults, and is thus fundamentally a normative construct.¹¹² This is referred to as 'socially responsible decision making',¹¹³ or 'maturity of judgment'.¹¹⁴

The chapter begins with a glance to the recent advanced developments in the neurological and neuropsychological knowledge on maturation and information processing capabilities of human brains, with a notion of the advances in the methodological aspects in this field. A strong caution is given here against jumping directly to application of this knowledge into programming and services. The second section will first give a brief overview of the concept of psychological maturity, and then consequently divides that into cognitive development and psycho-social development. The central issues to be discussed here include the role of 'psychosocial factors' in decision making and the role of 'moral reasoning' in offending behaviour. The third section presents Moffit's thesis on 'maturity gap', which serves well to explain the male youth 'age-crime' curve, which has found a lot of support. The fourth section discusses the psychological evaluation of maturity in criminal court proceedings.

¹¹¹ Steinberg & Cauffman, 1996, p. 250.

¹¹² Prior *et al.*, 2011, p. 9.

¹¹³ Cauffman & Steinberg, 2000, pp. 741-760.

¹¹⁴ Modecki, 2008, pp.78-91.

The development of maturity and its relationship with crime is traditionally approached in the developmental sciences from four perspectives: physical maturity/immaturity, intellectual maturity, together with emotional and social development. The latter two are considered to be of greatest relevance to the way the maturity of young adults should be considered within the criminal justice system.¹¹⁵ However, for the interest of this thesis it is to be noted, that intellectual abilities continue to develop to around 16 years of age and thereafter it levels out to that what an individual will have as an adult. There are broadly accepted views that an individual's intellectual abilities will have matured to adult levels before the age of 17.¹¹⁶ One has to understand also that a child or a young adult may have intellectual capacities significantly below the adult norm, indicated by low IQ scores and a range of potential learning disabilities. Given the research evidence of a strong association between IQ and delinquency,¹¹⁷ this is a major issue for the criminal system in its own right.

The central aim of this chapter is to show the reader the foundations for the existing discrepancy between the legal and the developmental sciences knowledge base on the issue of minimum criminal age. In addition, the previous chapter on 'criminology on maturity' introduced two approaches that are using concepts that are closely related to the psychological concept of maturity. The two criminological approaches introduced were: first, the 'general theory of crime', which proposes that 'self-control' is the key explanatory concept in accounting for criminal behaviour; and secondly, the 'risk-factors' approach of developmental criminology, in which individual or 'personality' factors such as 'impulsivity', 'empathy' or 'moral judgment' are deployed alongside social and cultural factors such as socialization processes, peer relations and neighbourhood influences. These approaches are based on sociological frameworks, which work with the same population over time in a longitudinal setting.

The present chapter will relate to criminological approach, but takes the individual development of maturity as a reference point. In contrast, the psychological disciplines

¹¹⁵ Prior *et al.*, 2011, p. 4.

¹¹⁶ Steinberg & Swartz, 2000, pp.-9-31.

¹¹⁷ Rutter, *et al.*, 1998, pp. x-xx.

work mostly with individuals or groups of people, studying the individual processes or group dynamics either in cross-sectional or a longitudinal setting. Although these two disciplines offer a good multidisciplinary framework to study the relationship between development of psychological maturity and crime, the disciplinary divide between psychology and sociological criminology has been quite profound, with often little cross-reference between the two approaches.¹¹⁸

4.1. Physiological Development of the Brain

Recent research shows that there is significant development in human brains up to 20-years of age, particularly in the areas which are considered to take part in so-called executive functions, i.e. the evaluating, planning, executing and monitoring of the higher mental functions.¹¹⁹

Before entering more detailed discussion about the development of the brain, it serves well to remember that the gravest offences are committed by the persons with antisocial personality disorder (ASPD), and the so-called “psychopaths”. There are average differences between them and the general population in the functioning of the brain.¹²⁰ Psychopathy is not included in either of the main classification systems (International Classification of Diseases, ICD-10 or Diagnostic Statistical Manual, DSM-IV). However, research has now extended the concept of psychopathy to childhood and has produced evidence that it is meaningfully distinct from antisocial personality disorder (ASPD) and related behaviour. It is proposed by Prof. Rutter, as a private researcher – although simultaneously chairing of the committee for revising the ICD, that psychopathy should be accepted as a meaningful diagnosis in childhood.¹²¹

Researchers have found that, overall, gray matter volume increased at earlier ages, followed by sustained loss and thinning starting around puberty, which correlates with advancing cognitive abilities. Scientists think this process reflects greater organization

¹¹⁸ See Hollin, 2002, p. 149 on what he refers to as ‘parting of the ways’ between the psychology and criminology. In Prior *et al.*, p. 6.

¹¹⁹ Royal Neuroscience Society, 2007, p. 1. Society for Neurosciences, Jan 2007, ‘*Brain Briefings – Adolescent brain*’, p. 1. Available at <http://www.sfn.org/briefings> (consulted on 15 March 2012).

¹²⁰ BBC Radio 4 Neurosciences Press Briefing on 13 December 2012.

¹²¹ Rutter, Michael, 2012, p. 1.

of the brain as it prunes redundant connections, and increases in myelin, which enhances transmission of brain messages.¹²² Furthermore, research demonstrates that different rates of growth in these different parts of the brain exist between individuals during adolescence, as well as variations between boys and girls which may indicate gender differences in brain capacity to process reactions to fear, threats and emphatic responses. For the interest of this thesis, however, is that the development of the frontal lobes in the prefrontal cortex show marked differences as people mature, particularly in the area affecting inhibitory control. These differences are implicated in explanations of attitudes, abilities and behaviour during adolescence. These changes are most likely to account for teenage behaviour, mood and cognition.¹²³

The key finding of the neurological research is that the ‘higher executive functions’ of the brain are located in the frontal lobes and that these are ‘among the last areas of the brain to mature, and they will not be fully developed until halfway through the third decade of life’.¹²⁴ Current evidence indicates that in the prefrontal cortex, which coordinates higher-order cognitive processes and executive functions, myelinisation does not occur until the stage of young adulthood.¹²⁵ Completion of the three stages – production, pruning and sheathing – leads to consistent ability to carry out executive functions such as the control of impulses. Emotional maturity (the ability to regulate and interpret emotions) is associated with the establishment of robust connections between the cognitive processes of the prefrontal cortex and the emotional processing performed by another part of the brain known as the amygdala. The evidence shows that this process of cognitive and emotional integration ‘continues to develop well into adulthood’.¹²⁶

New evidence points to the possibility that children often develop antisocial personality disorder as a result of environmental as well as genetic influences. The individual must be at least 18 years of age to be diagnosed with this disorder (ASPD Criterion B), but

¹²² Society for Neuroscience, 2007, p. 1.

¹²³ Edwards, 2009, p. 432.

¹²⁴ Johnson *et al.*, 2009, p. 216.

¹²⁵ *Ibid.*, p. 218.

¹²⁶ Johnson *et al.*, 2009, p. 218.

those commonly diagnosed with ASPD as adults were diagnosed with conduct disorder as children. The prevalence of this disorder is 3% in males and 1% in females.¹²⁷

Psychologically, adolescents are not fully responsible individuals and are shown to take risks in irresponsible manner. Hereditary genetic traits together with a violent background with childhood abuse contribute to serious criminal acts.¹²⁸

Its worth noting, that since one of the diagnostic criteria for hyperactivity (Hyperactivity Disorder, HD) is that it has existed before the age of seven in a behavioural level, it can therefore be expected that these children can be detected already in the school attendance years. Diagnosis is usually based on thematic clinical interviews of parents and preschool or school teachers together with behavioral analysis of the child. Neuropsychological testing is not needed since the disorder can be fairly reliably detected on behavioral grounds. Therefore, the fact that the brain continues to develop until 20 years of age is as such interesting, but clinically the detection of the hyperactivity and the related problems in the executive functions can be made earlier. However, since the increase of use of MRI-method with improved theories the last frontier in this field is yet open. The related problems can be manifested in other learning difficulties, conduct problems or psychiatric problems of depression and or anxiety disorder. This is called co-morbidity. In conclusion, brain development occurs until the mid-thirties and goes together with the knowledge on cognitive maturation, which is discussed below in section 4.2.1., and is related to the development of so-called executive functions.

While the neuroscientific evidence is highly relevant to the concerns of criminal justice, policy makers should be alert to the dangers of drawing easy conclusions for policy and practice.¹²⁹ One reservation to be included to these new but robust findings relates to the functions of MRI scanners, which are not an indicator of ‘real world’ performance: they

¹²⁷ American Psychiatric Association, 2000, pp. 645–650.

¹²⁸ BBC Radio 4 Neurosciences Press Briefing on 13 December 2012.

¹²⁹ Prior *et al.*, 2011, p. 8.

cannot detect lies, innocence, true intentions, and so on.¹³⁰ Nevertheless, in a review, a researcher considers the potentially progressive implications:

“Neuroscience could reasonably be conscripted in defense of a diversionary model of youth justice, one in which all but the most serious crimes are routed out of the system due to belief that their offending is likely to be adolescent limited...reconfiguring the bulk of youth crime as developmental in nature and thus, by definition, transient”.¹³¹

Walsh argues also for more creative responses to offending, such as restorative justice, on the grounds that brains can be moulded (and remoulded) by social experience.¹³² She is alert to potentially regressive uses of neuroscience in the justice field, in particular that it might be used as a predictive tool to detect the criminogenic brain and could lead policymakers away from a focus on social and environmental factors such as poverty, schooling, housing etc. She describes neuroscience as being in ‘dual use dilemma’, where research findings may be utilized in support of conflicting policy objectives. Furthermore, Professor Mackintosh, of the Royal Society, asserts that “claims that criminals can be identified by imaging their brains, or that there could be a gene for psychopathy are ‘wide of the mark’.” However, he also said that it was for policy makers to decide on altering the age of responsibility, but the changing science meant it should at least be reviewed. Furthermore, Mackintosh believes that with regard to setting the age of criminal responsibility, “the extent to which scientific evidence wasn’t well known 10, 15 years ago, then it suggests that things do need looking at again.”¹³³

¹³⁰ Johnson *et al.*, 2009, p. pp. 261-221.

¹³¹ Walsh, C., 2010, p. 4.

¹³² *Ibid*, p. 9.

¹³³ Mackintosh, Nicholas, 2011. In BBC News UK, 13 Dec 2011, ‘Age of criminal responsibility ‘too low’, experts say’. Available at <http://www.bbc.co.uk/news/uk-16153045> (consulted on 13 Dec 2011).

4.2. Psychological Maturity

The American Psychological Association (APA) has recently discussed in 2009¹³⁴ the question of cognitive maturity and psycho-social maturity. APA has taken a position on these topics in three different cases in *Amicus Curiae* briefs in: *Hodgson v. Minnesota* [1987];¹³⁵ *Ohio v. Akron Center for Reproductive Health, Inc.* [1989]¹³⁶, a case where it was held that a 16 year old is cognitively mature to make independent informed decisions on termination of a pregnancy without her parents; and *Roper v. Simmons* [2004]¹³⁷, a murder case where the US Supreme Court held an adolescent to be less mature than an adult in ways that mitigate criminal responsibility, consequently leading to the abolishment of the adolescent death penalty in the USA. The implications of the literature review above for the psychological maturity and offenses of young people are discussed in this section.

As an opening remark for this section we might start with a conclusion. In 2009, Steinberg et al.'s extensive review "*Are Adolescents Less Mature Than Adults? – Minors Access to Abortion, the Juvenile Death Penalty, and the Alleged APA 'Flip-Flop'*", which states that the notion that a single line can be drawn between adolescence and adulthood for different purposes under the law is at odds with developmental science. Drawing age boundaries on the basis of developmental research cannot be done sensibly without a careful and nuanced consideration of the particular demands placed on the individual for "adult-like" maturity in different domains of functioning.¹³⁸ Moreover, it has been put forward that "we do not measure (nor *can* one) measure maturity of judgment directly".¹³⁹ There are two main lines of inquiry in the psychological research literature on maturity and offending: the role of 'psychosocial

¹³⁴ Steinberg, Cauffman, Woolard, Graham & Banich, 2009, p. 583.

¹³⁵ APA, filed 1987 March 16 (US Court of Appeals *Hodgson v. Minnesota*, 497 U.S. 417, 1990).

¹³⁶ APA, filed 1989 September 1 (U.S. Supreme Court in *Ohio v. Akron Center for Reproductive Health, Inc.*, 497, 1990).

¹³⁷ APA, filed 2004 July 19 (U.S. Supreme Court 543, 2005).

¹³⁸ Steinberg, Cauffman, Woolard, Graham & Banich, 2009, p. 583.

¹³⁹ Cauffman & Steinberg, 2000, p. 745.

factors' in decision making (often referred to as 'maturity of judgment'), and the role of 'moral reasoning' in offending behaviour.¹⁴⁰

Evaluation. In order to evaluate a person's psychological maturity, assessments ought to involve methods for evaluation of a) the cognitive level, b) the level of emotional maturity, and c) clinical interviews on the development of the child and particularly, moral development, i.e. the ability to differentiate between right or wrong behaviour, with a subtle difference being whether person also understands the consequences of his or her behaviour. In addition, a somatic study of the brain would be needed in order to eliminate developmental defects, which might be a major source for causing the problematic behaviour. Furthermore, usually a child's parents and their teachers provide valuable information on the development of a child and their current psycho-social maturity. In criminal or forensic investigations, child welfare officers together with the police, are informants as well, but have different goals.

The UK domestic law sets the rule that two medical doctor's views ought to be present before a jury can make a decision on the responsibility of a defendant. Hence, during the investigation, two medical doctors, often in criminal case it is forensic psychiatrists, make an assessment, with forensic/clinical psychologists carrying out the investigation. Psychologists conduct testing and their own interviews from psychological and psychometrical points of view. These interviews include the young defendant and often their parents. In grave cases, the evaluation lasts about 4-6 weeks in a closed psychiatric environment, and a round-the clock setting, with observations also carried out by other health care personnel such as psychiatric nurses etc.

4.2.1. Cognitive Maturity

APA researchers have presented evidence that adolescents demonstrate adult levels of cognitive capability earlier (Figure 1) than they evince emotional and social maturity (Figure 3).¹⁴¹ They argue that it is entirely reasonable to assert that adolescents possess the necessary skills to make an informed choice about terminating a pregnancy but are

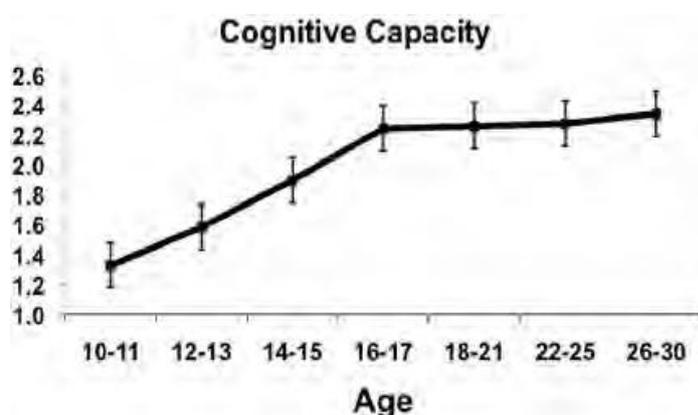
¹⁴⁰ Prior *et al.*, 2011, p. 9.

¹⁴¹ Steinberg, *et al.*, *ibidem*.

nevertheless less mature than adults in ways that mitigate criminal responsibility. Figure 1 indicates that age differences in cognitive capacity were evident during the first part of adolescence but not after age 16 – just the opposite from the pattern to be seen with respect to psychosocial maturity, below in Figure 2 in section 4.2.2.

Figure 1

General Cognitive Capacity (Standardized Composite Scores) as a Function of Age (in Years)¹⁴²



Rutter *et al.* found that there is a strong association between low Intelligence Quotient (IQ) and delinquency, which is a major issue for the criminal justice system in its own right.¹⁴³ The Wechsler’s Intelligent Test for Children (WISC)¹⁴⁴ – Version III or IV, is usually a basic test to evaluate different domains of cognitive functioning. It produces an overall intelligence quotient, and is divided into verbal reasoning and non-verbal reasoning parts. If the case of a young defendant’s history shows signs for learning difficulties, then further neuropsychological testing might take place. Furthermore, childhood hyperactivity and conduct disorder showed equally strong prediction of antisocial personality disorder (ASPD) and criminality in early and mid-adult life.

¹⁴² Note. Figures 2 to 5 are reprinted with permission from the first author prof. Laurence Steinberg, Department of Psychology, Temple University by e-mail 8 July 2012. Reprints reprinted appear in Steinberg, Cauffman, Woolard, Graham & Banich, 2009, p. 590-591.

¹⁴³ Rutter *et al.*, 1998, pp. 3-12.

¹⁴⁴ Wechsler, 2002, Wechsler Intelligence Scale for Children – Fourth Edition.

Lower IQ and reading problems were most prominent in their relationships with childhood and adolescent antisocial behaviour.¹⁴⁵

4.2.2. Psycho-social maturity and moral reasoning

The second part of forensic psychological investigation, run parallel with cognitive assessment, is to assess the subject's level of emotional maturity. Psycho-social maturity can be assessed by using parts of the above WISC method in order to evaluate the everyday reasoning abilities, and other interview methods. For emotional maturity of children, projective techniques can be used that indirectly allows children to express their internal emotional processes without intimidating them too much. The younger the child or lower the intelligence level, the more indirect methods are needed.

Adolescents are more impulsive and susceptible to peer pressure than adults and studies show that psycho-social development continues mature these capacities well into young adulthood.¹⁴⁶ Figure 2 indicates, that age differences in psychosocial maturity did not in this study emerge until mid-adolescence and early adulthood. In neither case, above on cognitive maturation and here in on psychosocial maturation, was there a significant interaction between age and gender, indicating that the patterns were the same among males and females.¹⁴⁷

¹⁴⁵ Simonoff, *et al.*, 2004, pp. 118–127.

¹⁴⁶ Steinberg & Scott, 2003. pp. 1009-1018.

¹⁴⁷ Reprinted from Steinberg, Cauffman, Woolard, Graham & Banich, 2009, p. 591.

Figure 2

Psychosocial Maturity (Standardized Composite Scores) as a Function of Age (in Years)¹⁴⁸



As Figure 3 indicates, general cognitive capacity reaches adult levels long before the process of psychosocial maturation is complete. The main instrument used to assess these capacities was the MacArthur Competence Assessment Tool – Criminal Adjudication (MacCAT-CA), a standardised interview that measures respondents’ understanding of and reasoning about their legal situation.¹⁴⁹ Although the abilities necessary for competence to stand trial are not identical to those necessary for competent decision making about abortion, they are conceptually similar in that both involve being able to understand and reason with facts and appreciate the nature of one’s situation. What comes to decision making, adolescents are likely to be just as capable of mature decision making as adults, at least by the time they are 16, when health care, legal and research practitioners can provide objective information about the cost and benefits of alternative courses of action. In contrast, in situations that elicit impulsivity, that are characterised by high levels of emotional arousal or social coercion, or that do not encourage or permit consultation, adolescents’ decision making, at least until they have turned 18, is likely to be less mature than adults’.¹⁵⁰

¹⁴⁸ Steinberg, Cauffman, Woolard, Graham & Banich, 2009, p. 590.

¹⁴⁹ Poythress *et al.*, 1999, in *ibid.*

¹⁵⁰ Steinberg, Cauffman, Woolard, Graham & Banich, 2009, p. 592.

Figure 3

Proportion of Individuals in Each Age Group Scoring at or Above the Mean for 26- to 30-Year-Olds on Indices of Cognitive Capacity and Psychosocial Maturity¹⁵¹

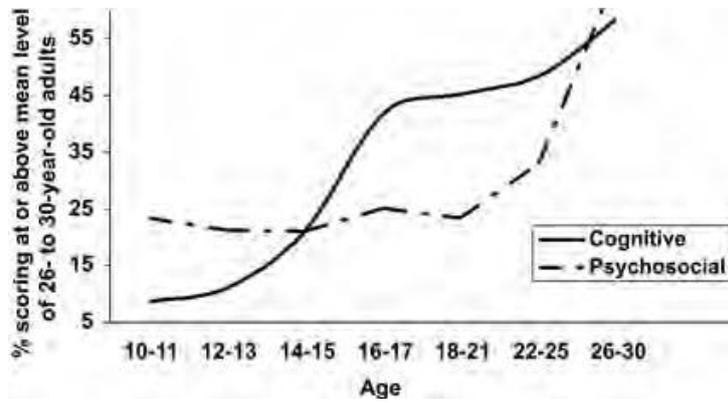
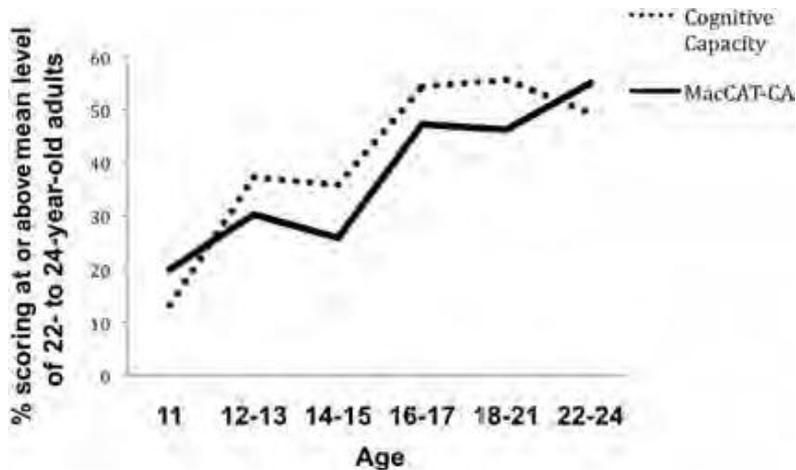


Figure 4

Proportion of Individuals in Each Age Group Scoring at or Above the Mean for 22- to 24-Year-Olds on Index of Cognitive Capacity and on a Measure of Abilities Relevant to Competence to Stand Trial¹⁵²



Note. MacCAT-CA = MacArthur Competence Assessment Tool—Criminal Adjudication, Understanding and Reasoning subscales. MacCAT-CA data are from Grisso et al (2003).

¹⁵¹ Ibid. p. 591.

¹⁵² Ibid, 591-592.

Figure 4 illustrates, the pattern of age differences in abilities relevant to competence to stand trial is virtually identical to the pattern seen with respect to general cognitive capacity as reported in Figure 2 above.¹⁵³ On both indices, scores increased between ages 11 and 16 and then leveled off, with no improvement after this age. Furthermore, “our reanalysis of Grisso et al. (2003) data supports the argument that adolescents reach adult levels of cognitive maturity several years before they reach adult levels of psychosocial maturity.”¹⁵⁴

The literature identifies three main psychosocial factors that are held to influence the maturity with which young people judge situations and make decisions about how to act: responsibility, temperance and perspective.¹⁵⁵ Drawing on Steinberg and Cauffman’s 1996 review of psychosocial factors, Prior et al 2011, updated the accumulated knowledge on these factors.¹⁵⁶ They are now defined as:

- Responsibility: the ability to act independently, be self-reliant and have a clear sense of personal identity.
- Temperance: the ability to evaluate the consequences of different courses of action before making a decision to act in response to the assessment of a situation; to limit impulsivity and control aggressive responses and risk-taking.
- Perspective: the ability to understand and consider the views of others before taking a decision to act and to understand the wider context in which the decision to act is made.

Young people do not mature at the same time, but do so within the ages surrounding the arbitrary cut-off for adult court at 18¹⁵⁷ - i.e. some do not mature until they are past the age of 18.¹⁵⁸ Moreover, research suggests that while the three psychosocial factors above develop towards maturity (leading to less likelihood of influencing decisions to

¹⁵³ Ibid.

¹⁵⁴ Ibid.

¹⁵⁵ Steinberg & Cauffman, 1996, pp. 249-272; Cauffman & Steinberg, 2000, pp. 741-760; Cruise *et al.*, 2008, pp. 178-194; Bryan-Hancock & Casey, 2010, pp. 69-78.

¹⁵⁶ Prior *et al.*, 2011, p. 10.

¹⁵⁷ Bryan-Hancock & Casey, 2011, p. 74.

¹⁵⁸ Prior *et al.* 2011, p. 11.

offend) at different rates, with responsibility and perspective becoming relatively settled after around 18 years, emotional factors may continue to influence the ability to exercise temperance in decision making through into the mid to late twenties.¹⁵⁹ In a US study of convicted young people aged 11-17 years, the importance of ‘temperance’ in influencing offending behaviour was highlighted.¹⁶⁰

In contrast to the above discussion, the existing minimum age of criminal responsibility in the Council of Europe member states starts to settle in a rather peculiar light. In this context the legal cut-off point, let’s say at 14-years of age, and expectations set for a young defendants to be able to control their moral decision making in real live situations, and after being accused of an offence, to be able to give guidance to a lawyer and understand the court proceedings seems rather challenging indeed.

Furthermore, as an example of the interconnectedness of cognitive and psychosocial processes and of the maturational aspects henceforth, we can look at the ‘ability to appreciate the long term consequence of an action’ as an example. This ability is an important element of perspective, but requires the cognitive ability to weigh risks and benefits and is related to the ability to forego immediate gratification, which is an element of temperance.¹⁶¹

Moral reasoning. There are some parallels between the psychosocial concepts above (responsibility, temperance and perspective) and ‘moral reasoning’ studies by Palmer¹⁶² and Barriga et al.¹⁶³ The concepts concern the capacity of individuals to make moral decisions, have a clear sense of personal identity, to recognize and respond to the feelings of others, and to think through/evaluate different choices. Both sets of approaches employ these concepts within a developmental view of maturity.¹⁶⁴

¹⁵⁹ Modecki, 2008, pp. 78-91.

¹⁶⁰ Cruise *et al.*, 2008, pp. 178-194.

¹⁶¹ Cauffman & Steinberg, 2000, p. 745.

¹⁶² Palmer, 2003, pp. 165-174.

¹⁶³ Barriga *et al.*, 2009, pp. 253-264.

¹⁶⁴ Prior *et al.*, 2011, pp. 13-14.

The main findings from the review of literature suggest:¹⁶⁵

- Offenders can be distinguished from non-offenders by their less mature capacity for moral reasoning.
- Individuals vary in the development of their moral reasoning capacity, with significant variations between individuals during adolescence and early adulthood.
- Immaturity in moral reasoning results from cognitive distortions, which, for some individuals, can become habituated and persist into adulthood.
- While there are similarities to the psychosocial factors, the moral reasoning approach adds further complexity to the concept of maturity.

4.2.3. Moffit's maturity gap thesis

For the sake of this thesis, it is important to try to understand thoroughly the relationship between maturity and crime, as maturity seems to be central to the question of where to set the minimum age of criminal responsibility. Moffit set forth in the early 1990s an influential 'maturity gap thesis' thesis to explain the relationship between two types of offenders: life-course persistent (LCP) and adolescence-limited (AL).¹⁶⁶ According to this thesis, the LCP offenders behave anti-socially in childhood, offend during adolescence and continue as serious offenders during adulthood. In contrast, AL offenders only start to offend as they enter adolescence and stop as they become mature adults. The latter view is known as 'age-crime curve', and is supported with results of several criminological studies across cultures.¹⁶⁷ The causes of LCP offending are traced to neuropsychological and environmental factors combining in early childhood. The earlier risk-factor approach is compatible with this knowledge and points to the need for policies and services directed at early identification and intervention. AL-offending is explained by Moffit in terms of the 'maturity gap' – the difference between an adolescent's level of biological maturity (which may be that of an adult) and their social maturity (which means that they are subject to social, cultural and legal

¹⁶⁵ Prior *et al.*, 2011, p. 14.

¹⁶⁶ Moffit, E.T., 1993, pp. 674-701.

¹⁶⁷ See for more: Gottfredson & Hirschi, 1990.

restrictions preventing them from doing many of the things an adult is permitted to do). Moffit's thesis is that AL offenders become involved in crime by copying the actions of their LCP peers who ignore the social restrictions and engage in adult-like behaviours that result in offending. For ALs, following the 'lead' given by the LCP group in pursuing illicit activities is a way of demonstrating independence and autonomy, i.e. it is a way of closing the maturity gap. But as adolescents get older, the social restrictions are gradually lifted, they are able to act legitimately like independent adults and the anti-social behaviour ceases.¹⁶⁸

The 'maturity gap' thesis has been studied by many scholars and aspects of the thesis have been refined, but some have questioned its basic theoretical and empirical soundness.¹⁶⁹ Moffit carried out a review of literature in conjunction with this body of research and found general support for the proposition that LCP offending originates in neuropsychological issues such as low IQ or hyperactivity. These issues are inappropriately dealt with by poor parenting practices and rejection at school, leading to a reinforcement of offending behaviour that continues throughout the individual's life.¹⁷⁰ Another large-scale survey study in the US in 2010 looked at young people up to 18-years of age. The study found that the existence of a maturity gap did predict minor forms of delinquency among males, but did not predict serious offending.¹⁷¹ Thereby, it supported Moffit's original hypothesis that a clear distinction could be made between the two groups of AL and LLCPP male offenders. It did not, however, find evidence to support the application of the 'maturity gap' to offending by females.¹⁷²

4.3. Assessing Maturity in the Criminal System

A study examining the validity, reliability and administrative ease of use of some of the psychological assessment scales used to measure aspects of maturity implies that many different instruments would be necessary to achieve a full assessment of individual

¹⁶⁸ Prior *et al.*, 2011, p. 15.

¹⁶⁹ Skardhamer, 2009, pp. 863-878.

¹⁷⁰ Moffit, 2006, pp. 277-311.

¹⁷¹ Soderstrom, I.R., *et al.*, 2001, pp. 300-328.

¹⁷² Prior *et al.*, *ibid.*

maturity, and that some of these are very lengthy and demanding to use.¹⁷³ For example, to develop a tool to measure cognitive and psychosocial deficits that would enable legal assessment of an individual's maturity as a factor in their offending behaviour remains unclear. As such, it has been put forward that "we do not measure (nor *can* one) measure maturity of judgment directly".¹⁷⁴

5. ANALYSIS OF THE THREE ECtHR JUDGMENTS

This chapter analyses the three relevant UK cases heard by the ECtHR¹⁷⁵. Table 3 draws together the key criminological and developmental science factors related to criminal behaviour at a young age. It illustrates the possible arguments used in case judgments and how they relate to criminological and psychological factors. The second part of the analysis draws together clinical psychological notions arising from the case judgments. One would expect to find the ECtHR using more criminological factors and less so the psychological concepts. The author discusses this table for each case, in line with the concepts that were referred to either directly or usage of which was implied, if not using the exact content of the factor.

The analysis will first be carried out by evaluating the process whereby the judiciary assesses the maturity of a person who is under 18 years old and has committed a serious crime. Secondly, a comment is made upon the notion of how the multidisciplinary youth teams acted, or could have acted, in order to prevent such a grave offence as the one committed in the case of T and V.

Furthermore, section 5.1 analyses in detail the judgments from a clinical psychological point of view. It discusses and evaluates the extent to which the ECtHR uses developmental science's knowledge on psychological development in reaching maturity. The forensic evaluation processes in the cases are then analysed, together with the roles of medical experts in trial processes. The latter refers particularly to medical experts roles in presenting their opinion to jurors who must determine whether a

¹⁷³ Soderstrom, I.R., *et al.*, 2001, pp. 300-328.

¹⁷⁴ Cauffman & Steinberg, 2000, p. 745.

¹⁷⁵ CASES of the EctHR: *S.C. v.*; *T. v.*; *V. v. the United Kingdom*, 2004, 1999 and 1999 respectively.

defendant is 'fit to plead' in relation to the charges levelled against the defendant. In section 5.2. the findings of this chapter are summarised so that they may be of assistance to the UK judiciary to incorporate into their policies and day-to-day handling of young defendants. Similarly, Council of Europe member states could also disseminate existing developmental science knowledge and initiate within their own domestic legal systems discussions as to whether in the longer term they ought to raise the minimum age of criminal responsibility according to their domestic circumstances and services available.

Legislators ought to be made aware of the existing discrepancy between the difference in approaches as between judiciaries and developmental scientists' knowledge on the development of psychological maturity. Young defendants ought to be dealt with in a manner that makes them recognise what they have done, but in a constructive way without stigmatizing them or introducing them to criminal culture, and by helping them to increase protecting factors and reducing the risk factors in their lives while remedying the wrong they have done. The risk of being penalized in sensitive teenage years is to be introduced to a part of the population which has a high risk of reoffending and predilection to a criminal lifestyle. Early teenage years are the time of formation of personality and research shows how important the peer group is for a teenager at this point in time. Society should put more emphasis on rehabilitation of young offenders and their reintroduction to society. This would be according to the guidelines of the United Nations. The above approach is very well suited to handle less serious crimes.

In contrast, in case of crimes that are in their nature considered grave the society has got clearly more retributive demands. The greater social good of reducing reoffending in the future are not felt higher in priority than that of societys need for protection and creation of deterrent. The principle that victims will get justice is important for them and their relatives, helps state in prevention of social disorder. Hence, these issues need to discussed in relation of revising of laws, for example the minimum age of criminal responsibility.

The main findings from the Youth Justice Board's Summary suggests that the risk factors for youth offending and substance abuse overlap to a very large degree with

those for educational underachievement, young parenthood, and adolescent mental health problems. Protective factors can be defined as those that moderate the effects of exposure to risk. All 14 risk factors significantly increase the odds of being excluded, while the protective factors all serve to reduce them.¹⁷⁶

Table 3. FACTORS ON 'MATURITY' AND OFFENDING BEHAVIOUR

DISCIPLINE/Factor

CRIMINOLOGY

- **“Self-control”**
 - Impulsivity
 - Responsibility
 - Temperance
 - Perspective
-

RISK FACTORS

FAMILY

- Poor parental supervision and discipline
- Conflict
- History of criminal activity
- Parental attitudes that condone anti-social and
- criminal behaviour
- Low income
- Poor housing

SCHOOL

- Low achievement beginning in primary school
 - Aggressive behaviour (including bullying)
 - Lack of commitment (including truancy)
 - School disorganisation
-

¹⁷⁶ YJB Summary, 2003, pp. 2-5.

Table 3 continues...

COMMUNITY

- Living in a disadvantaged neighbourhood
- Disorganisation and neglect
- Availability of drugs
- High population turnover, and lack of neighbourhood Attachment

US Research shows also community risk factors:

- availability of firearms
- community laws and norms favouring drug use, firearms and crime
- media portrayals of violence

PERSONAL

- Hyperactivity and impulsivity
- Low intelligence and cognitive impairment
- Alienation and lack of social commitment
- Attitudes that condone offending and drug misuse
- Early involvement in crime and drug misuse
- Friendships with peers involved in crime and drug misuse

PROTECTIVE FACTORS

INDIVIDUAL FACTORS

- Female gender
- Resilient temperament
- Sense of self-efficacy
- Positive, outgoing disposition
- High intelligence

SOCIAL BONDING

- Stable, warm, affectionate relationship with one or both parents
 - Link with teachers and with other adults and peers who hold positive attitudes, and 'model' positive social behaviour
-

HEALTHY STANDARDS

- Prevailing attitudes across a community
 - Views of parents
 - Promotion of healthy standards within school
 - Opportunities for involvement, social and reasoning skills, recognition and due praise
-

DEVELOPMENTAL SCIENCES:

A. PHYSIOLOGICAL DEVELOPMENT

Brain myelinisation, related to “executive functions”, i.e. the evaluating, planning, executing and monitoring of the higher mental functions.

B. PSYCHOLOGY

COGNITIVE MATURATION

- Intelligence, relevant is to notice that so called “Intelligence/emotional age” can be lower/higher than a person’s chronological age.
- Executive functions, i.e. the evaluating, planning, executing and monitoring of the higher mental functions

PSYCHO-SOCIAL MATURATION

- Impulsiveness
- Susceptibility to peer pressure

PERSONALITY

- Anti-social personality disorder (ASPD)
-

5.1. ANALYSIS OF 3 UK CASES

The analysis of these cases raises some questions as to the rationale of the ECtHR in its judgments.¹⁷⁷ The three relevant cases analysed below can be found from the European Court of Human Rights database.¹⁷⁸ The overarching perception after careful examination of the ECtHR judgments indicates insufficient incorporation of developmental science's knowledge in the passing of judgments. However, there have been improvements in the UK judicial process, particularly due to the practice direction issued by Lord Chief Justice Bingham on 16 February 2000 concerning the trial of children and young persons in the Crown Courts in response to the ECtHR judgments in *T. v. UK* and *V. v. UK*. The most recent ECtHR judgment, that of *S.C. v. UK* in 2004 is however discussed first, as it incorporates the *ECtHR's* latest remarks on procedural improvements and its own deliberations upon the handling of young defendants.

5.1.1. Analyses of the ECtHRs' judgment of case *S.C. v. the UK*, 2004

The facts of the case, in short, are that two boys of 11 years old, S.C., the applicant, and his friend L.A., 14-years-old, robbed an 84-year-old lady. S.C. grabbed the bag from the lady who fell down and broke her arm. After grabbing the bag, S.C. ran away while L.A. remained at the scene.

The *ECtHR* held that when a decision was taken to deal with a child, such as the applicant, who risked not being able to participate effectively because of his young age and limited intellectual capacity, by way of criminal proceedings rather than through proceedings directed primarily at determining the child's best interests and those of the community, it was essential that he be tried in a specialist tribunal which was able to give full consideration to and make proper allowance for his particular difficulties and adapt its procedure accordingly. While noting that an expert had found that "on balance", S.C did have sufficient intelligence to understand that what he had done was wrong and that he was fit to plead, the ECtHR was not convinced in the circumstances

¹⁷⁷ Methodical note. HUDOC database search produced 3 relevant (and 1 inadmissible) cases heard by the ECtHR, checked on 19.03.2012 using keywords: "criminal age child adolescent UK".

¹⁷⁸ <http://cmiskp.echr.coe.int>

of the case that it followed that he was capable of participating effectively in his trial to the extent required by Article 6 § 1 of the ECHR.¹⁷⁹ The ECtHR therefore held by five votes to two that there had been a violation of Article 6 § 1.¹⁸⁰

Analysis. The author's *first* conclusion from the *ECtHR* judgment relates to the forensic psychiatric inquiry process. ECtHR rulings consider the age, maturity, intelligence and emotional capacities of the juvenile important while assessing whether a child can be prosecuted in an adult criminal court. Despite of this opinion, the judgments do not sufficiently reflect what a contemporary common knowledge in development science tells us about psychological maturation, and how technical the inquiry process has become. Standard procedure in a forensic investigation is that the team conducting a psychiatric evaluation is led by one or two psychiatrists. They have at their disposal all the information gathered by the psychologists and psychiatric nurses who have examined the defendant. Furthermore, in the gravest cases the evaluation takes place in closed wards. *Secondly*, there is no mention or consideration of the role of somatic development of brain, which occurs until 20 years of age, and the ability of children and adolescents to control their behaviour which is related to the functioning of the so-called executive functions. These areas are associated with an individual's skills to plan, execute, and monitor their behaviour,¹⁸¹ and are important factors in ability to exercise self-control. With a good intent one might include discussion about levels of intelligence of the defendants to belonging to somatic area. However, as below will be shown the significance of having a low intelligence do correspond to individuals ability to comprehend consequences of actions.

The *third* conclusion arises through consideration of the dissenting opinion of *ECtHR* president Judge Pellonpää, as joined by Sir Nicholas Bratza,¹⁸² on the role of medical practitioners in law and relates to the ability of judges to understand psychological test

¹⁷⁹ S.C. v. the United Kingdom, para 36.

¹⁸⁰ S.C. v. the United Kingdom ([GC], no. 60958/00, 15 June 2004), available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=60958/00&sessionid=98419930&skin=hudoc-pr-en> (consulted on 23 March 2012).

¹⁸¹ Cogtay, N. *et al.*, 2004, *Ibid.*

¹⁸² Judge Bratza succeeded Pellonpää as the president of the court and was the British judge presiding in the case.

results. The dissenting opinion pointed out that the rule of domestic law states that the evidence of two medical practitioners would have been needed before a jury could have been invited to find the accused unfit to plead. Furthermore, their opinion states that “there was no medical evidence that the applicant was unfit to plead – that is, that he had insufficient intellect to instruct his solicitors and counsel, to plead to the indictment, to challenge jurors, to understand the evidence, and to give evidence (paragraph 23) – and no plea to that effect was in the event put forward on his behalf during the proceedings.” It seems to the author of this thesis that this reflects a misinterpretation of a section from the report of the psychologist Baines’s report. The fact that Pellonpää ignores the clinical forensic psychologists’ statement, where Baines had very clearly written (with emphasis added at the relevant points) that the applicant was:

“...presenting with a significant degree of learning delay. His Verbal IQ is slightly higher than his Performance IQ, but both fall at or below the first percentile. ... His scores on the remaining subtests were more significantly below average, reflecting poorly developed verbal reasoning skills. His approach to tasks that were reliant on the appreciation of visuo-spatial relationships was noticeably immature and he did not always attend to the relevant features.”¹⁸³

Furthermore, in summary Baines concluded on the applicant that at the time he was:

“presenting with a significant degree of learning difficulty that is most apparent in his ability to carry out visually based tasks. ...If looked at in terms of age equivalents, his cognitive abilities cover a range from below 6 years 2 months up to 8 years and 2 months, **which will mean that his ability to reason is noticeably restricted. ...**”

The author would like to put the above into common language. To fall below 1st centile is very hard without a person having serious difficulties in reasoning, a point which is totally neglected in the dissenting opinion with reliance placed instead upon the section

¹⁸³ Baines, 2004 in S.C. judgment, para 13.

from the psychiatrist's recommendation (para 1 below) where he uses the expression of '*on balance*':

It is difficult to assess issues concerning [the applicant's] fitness to plead since his discussion of the offence with me was limited. However, based on the information available to me and the findings of the psychological testing I would conclude that [the applicant] **on balance was aware of his actions and that they were wrong. His understanding of their consequences however may have been adversely affected by his learning difficulties and impaired reasoning skills.** Overall I would consider that [the applicant] is sufficiently capable of entering a plea though obviously the court process would have to be explained carefully in a manner commensurate with his learning difficulties.¹⁸⁴

Moreover, Pellonpää neglected Dr. Brennan's opinion of the applicant's understanding of the consequences of his actions which "may have been adversely affected by his learning difficulties and impaired reasoning skills." The above example shows on the one hand, that despite medical practitioners' traditionally strong professional status, the legislation lacks sufficient accuracy in how to explain the opinions of those experts needed to aid jurors in order to find the accused unfit to plead. On the other hand, developing greater knowledge in developmental science requires more specific skills necessary for analysing expert reports. This represents another point in favour of updating the domestic law in UK, and perhaps the knowledge base of the judges at the *ECtHR*.

Fourthly, a more procedural conclusion from the judgment arises with regard to the apparent lack of effort by Dr. Brennan to organize an another possibility to interview the applicant, since the only contact between them lasted 20 minutes, and thereafter S.C. refused to cooperate further and expressed a desire to end the interview. Although this is telling of the capacities of the defendant for evaluating what is in his best interest, withdrawal also shows that there was probably poor rapport between the psychiatrist

¹⁸⁴ Brennan, 2004, in Case *S.C. v. the UK*, 2004, para 12.

and the applicant. While refusal happens to everybody in the profession at some point, this is usually settled with another attempt at conducting an interview. Whether a re-interview time was suggested is not possible to determine from the judgment.

Fifthly, a point worth noting relates to the fact that this boy S.C. seemed to have a very low IQ. This gives indication that the applicant may have met the criteria for classification as being mentally disabled. That severe a mental disability would have been in its own right a serious mitigating factor. Given that the Dr. Brennan also took the position that the “boys persistent pattern of disruptive and socially inappropriate behaviour would be consistent with a diagnosis of conduct disorder of the unsocialised type”.¹⁸⁵ These clinical evaluations are in stark contrast to the trial judge’s opinion of the boy being merely a ‘streetwise’ child, whose intellectual impairment is largely the result of spending two of his critical formative years outside the education system.”¹⁸⁶

5.1.2. Analyses of the ECtHR judgements in cases of *T. & V. v. the UK*, 1999

This is a case where two ten year old boys “*T.*” and “*V.*” murdered a two year old in 1993. The ECtHR found no violation of Article 3 (on trial and sentencing), Article 14, or Article 5(1). There had been a violation of Article 6(1) however in respect of the applicants’ trial and in the setting of the applicants’ tariffs, as well as Article 5(4) as the applicants had been deprived, since their conviction in November 1993, of the opportunity to have the lawfulness of their detention reviewed by a judicial body.¹⁸⁷

Overall, the implication to be drawn from both cases is that the judgment raises question of whether there was in some extent a failure in cooperation between the school and social services, reporting of possible child welfare concerns and a failure to detect the level of deprivation in the living conditions of these boys’ families. The ECtHR judgment notices the presences of risk factors in living environment: “...these two boys came from homes and families with great social and emotional deprivation. They grew up in an atmosphere of matrimonial breakdown where they were exposed to, saw, heard, or suffered abuse, drunkenness and violence. I have no doubt that both boys saw video

¹⁸⁵ *S.C. v. the United Kingdom*, 1999, para 12.

¹⁸⁶ *S.C. v. the United Kingdom*, 1999, para 14.

¹⁸⁷ *T. v. the United Kingdom*, 1999, para 121.

films frequently showing violent and aberrant activities”.¹⁸⁸ One could argue that this level of deprivation would have been expressed in the boys’ behaviour at school. Child welfare reporting systems had apparently failed in these cases. This leads to a degree of relativity in these evaluations, since some states set higher thresholds before intervening than others.

The *ECtHR*’s judges differed in their opinions as to whether there was a violation of the ECHR. Particularly, while the dissenting opinions relate to the legal elements of the case, they also inform about the judges’ knowledge and understanding of maturity, which will be analysed below, as well as putting forth some layman attitudes on maturity. Similarly, the overall discussion of the judgments incorporation of developmental science’s knowledge on maturity in their argumentation is evaluated.

The central issue on maturity in murder cases relates to whether the accused did understand that they acted wrongfully. The trial judge gave instructions to jury members of their task, “*inter alia, that the prosecution had to prove beyond reasonable doubt, in addition to the ingredients of the offences charged, that the applicant and T. knew that what they were doing was wrong.*”¹⁸⁹

In V’s case, Dr. Bentovim interviewed him and stated “that V. showed evidence of immaturity, behaving in many ways like a younger child emotionally, and recommended that, whatever happened, he was likely to need therapeutic care in a residential context.”¹⁹⁰ The doctor also found that V. “showed post-traumatic stress effects and extreme distress and guilt, with fears of punishment and terrible retribution.”¹⁹¹ However, Dr. Bentovim did not give evidence or testify at trial.¹⁹²

Did these boys have the capability understand the consequences of their wrong doing at the time? In V’s judgment Judge Baka’s partly dissenting opinion illustrates the tacit knowledge and understanding of a judge of the cognitive level of maturity of a 11 year old young offender (bold emphasis is by writer):

¹⁸⁸ *T. v. the United Kingdom*, para 19.

¹⁸⁹ *V. v. the UK*, 1999, para 14.

¹⁹⁰ *Ibid*, para 132.

¹⁹¹ *Ibid*, para 131.

¹⁹² *Ibid*.

“Psychology of facing the charges in the court, sometimes first time. Under these circumstances, when the ordinary court procedure had been tailored to take into account his young age, it is difficult to say that the applicant did not receive a fair trial under Article 6. If the applicant was unable to participate effectively in the proceedings, it was not because his case was tried publicly by an adult court but rather because his position objectively was not significantly different from that of accused persons who are lacking legal knowledge, suffering mental disease or of low intelligence, such that they can be said to be subjects of the criminal process rather than active participants in it. In this situation, fairness of a criminal trial cannot mean much more than ensuring that the child is defended adequately by highly trained professional counsel and that the necessary facilities for the defense are fully provided – as they were in the present case. **In terms of fairness of criminal proceedings, it is rather illusory to expect that a child of this age could give any legally relevant instruction to his or her lawyer in order to facilitate his or her defense.** On the above basis, I found no breach of Article 6 § 1 as regards the fairness of the trial.¹⁹³”

Without taking stand at this point to other arguments set by Judge Baka above, it is adequate to add that the majority of the ECtHR relied heavily on the argument that the applicant's public trial in the Crown Court in the present case was “intimidating for a child of eleven” and that “in the tense courtroom and under public scrutiny” the applicant was unable to participate effectively in the criminal proceedings against him.¹⁹⁴ The Baka’s highlighted statement above, on the cognitive maturity of a young defendant at the age of 11, is supported by psychological research, which was discussed in detail in a chapter 4.2.1. above.

Sir Michael Rutter, Professor of Child Psychiatry at the Institute of Psychiatry, University of London, evaluated, in February 1998, the likely mental and emotional

¹⁹³ Baka, A. B., 1999, in “Partly dissenting opinion in *Case V. v. the UK*”, para 6.

¹⁹⁴ *V. v. the UK*, 1999, para 88.

effects on children in general, and on V. particular of the prolonged trial process being in public¹⁹⁵:

“I have also been asked to comment on the likely mental and emotional effects on children in general, and on [V.] in particular, of the prolonged trial process being in public. In my opinion there are two negative aspects of the trial process as they apply to children of [V.'s] age. First, one serious consequence of the long time involved in a trial means that there is an inevitable delay in providing the psychological care and therapeutic help that is needed. A child of ten has many years of psychological development still to come and it is most important that there is not a prolonged hiatus when this is impeded by the trial process. In particular, when children have committed a serious act, such as killing another child, it is most important that they are able to come to terms with the reality of what they have done and with all that that means. That is not possible at a time when a trial is still under way and guilt has still to be decided by the court. Thus, I conclude that the very prolonged nature of the trial process is bound to be deleterious for a child as young as ten or eleven (or even older).

The fact that the trial process is held in public and that the negative public reactions (often extreme negative reactions) are very obvious is a further potentially damaging factor. While it is crucially important for young people who have committed a serious act to accept both the seriousness of what they have done and the reality of their own responsibilities in the crime, this is made more difficult by the public nature of the trial process ...”

The public opinion at the time of T's and V's trials was strongly requiring for harder sentencing, than the trial court was recommended to set tariff of eight years.¹⁹⁶

¹⁹⁵ *V. v. the UK*, 1999, para 19.

5.2. POLICY RECOMMENDATIONS AND SUGGESTIONS FOR FUTURE RESEARCH ON MINIMUM CRIMINAL AGE

The first suggestion derived from the analysis of three UK cases is to disseminate the existing knowledge within developmental science on maturity to the judiciary, and train judges and legislators on these issues. Secondly, the literature and analyses suggests that there is still a need for an adjustment of the legislation and procedures how to handle ‘Young defendants’ in the courts of the Council of Europe Member States. Particularly, the complexities of modern forensic psychiatric evaluation processes need to be understood. For example, there is a need to include within ‘medical practitioners’ other professional groups than medical doctors, who could guide jurors as to whether a person is fit to plead (participate meaningfully in the court proceedings), or be able to comprehend the consequences of a wrongful act committed at a young age.

One of the central problems arising from raising the minimum age of criminal responsibility centres on the issue of life-course persistent offenders, presented in the criminology chapter. They are hard to rehabilitate and to redirect within society, since they might come from sub-cultures of society, which have within their culture a "normative" life-course expectancy to spend some time in prisons: their family members, relatives, and community members having done so. These sub-cultures and gang lifestyles offer codes of conduct that are very different from the majority of the population in terms of law abiding norms. Examples in the shape of autobiographies of former members of gangs or criminal organisations offer vivid descriptions of their lifestyles. The recent book “Siberian Education”¹⁹⁷ by Russian Nikolai Lilit in 2010 offers a good description of how children grow into criminal professions, and are first broken in to youth groups and often by the age of 13-14 have their first criminal conviction. During their upbringing they need to learn a code of Siberian Criminal law – not one based upon the constitution, but one based upon the traditional way of life.

¹⁹⁶ Sentlinger, M. D. pp. 127-128.

¹⁹⁷ Lilit, 2010, pp. 20-22.

Another problem arising from the literature is the handling of child psychopaths. They might be included within that group of "life-course persistent" (LCP) offenders, since after all they probably fit in that group eventually or at least have high probability to commit grave crimes in their life time. The problem of course would be to be able to identify them for counseling purposes before they commit crimes, together with other individuals from high risk communities.

In contrast, some teenage gang members might be 'transient' in their offending behaviour, as Walsh suggested, and by the time of reaching maturity, they would leave offending behaviour behind. Usually this happens either by being in contact with the prosecution system or just being able legally to do some things that before were illegal for them. If the minimum age of criminal responsibility was raised in accordance with literature on developmental science indicates ought to happen,¹⁹⁸ this youth offending restricted group might benefit greatly. In that way, they wouldn't need to face the possibly stigmatizing prosecution process but still could remedy and face what they have done together in fulfilling the expectations of society they ought to be punished for their criminal acts. Penal system could direct resources to preventive and more focused rehabilitation, with redirection to activities in society.

In the aftermath of the judgments in V and T, it was suggested that both the United Kingdom and the United States of America should adopt laws that require competency hearings to be held prior to subjecting children to prosecution in adult criminal courts.¹⁹⁹

YJBs "What works?" report summarises specific examples of successful schemes to reduce offending that are given in the full report on which this summary is based.²⁰⁰

¹⁹⁸ Royal Society report, Dec 2011, pp. 1-34, and Steinberg *et al.* 2009, i.e. APA 2009

¹⁹⁹ Sentlinger, E. D., 2000-2001, p. 120.

²⁰⁰ Programmes that can reduce offending, by reducing risk or increasing protection, can be identified in all these fields: reduction of the known risk factors, ability to strengthen protective factors, intervention, at the appropriate stage, in children and young people's development, early intervention, ability to reach those at greatest risk, sensitivity to the needs of different racial, cultural and economic groups, ability to make a significant contribution to the overall reduction of risks. YJB, 2003, p. 15.

Many studies of Out of School Time (OST) programs are cross-sectional and correlational. These types of studies and other non-experimental evaluations contribute to our understanding of the associations between program participation and outcomes, program quality, and continuous program improvement. However, more rigorous designs are essential to address selection effects and differentiating program effects from normal development.²⁰¹ Like other social science disciplines, in order to understand the impact of activities on outcomes, the field needs to continue to use rigorous designs, such as experimental, quasi-experimental, and longitudinal studies.

Early identification of individuals with high risk due to personal, familial and environmental factors would serve societies well. There is also a strong economic argument to support this approach combined with the alleviating the consequential human suffering resulting from offending behaviour both to victims and the vulnerable young offenders. The research above show and gives indications that most of the offending at young age stops after the first time. Therefore, it is advisable to offer services that meet the requirement of society to get restorative justice together with serious offenders getting punishment.

Recommendations of the Royal Society in Dec 2011²⁰²:

Recommendation 1: An international meeting should take place every three years to bring together those working across the legal system with experts in neuroscience and related disciplines. The aim of this meeting should be to discuss the latest advances in areas at the intersection of neuroscience and the law to identify practical applications that need to be addressed.

Recommendation 2: The systems used by legal professionals to identify, access and assess the quality of expertise in specific scientific areas should be reviewed by the judiciary and the Bar Council to ensure the latest advice is made available. This should be carried out in consultation with learned societies such as the British Neuroscience Association, and other specialist societies as appropriate.

²⁰¹ Beckett *et al.*, 2001, pp. 61-62.

²⁰² The Royal Society, Dec 2011, pp. 33-34.

Recommendation 3: University law degrees should incorporate an introduction to the basic principles of how science is conducted and to key areas of science such as neuroscience and behavioural genetics, to strengthen lawyers' capacity to assess the quality of new evidence. Conversely, undergraduate courses in neuroscience should include the societal applications of the science.

Recommendation 4: Relevant training should be made available where necessary for judges, lawyers and probation officers. This should count towards Continual Professional Development (CPD) requirements for lawyers, and for judges might be administered through the Judicial College's programme of seminars.

Recommendation 5: Further research is needed on areas including:

- The National Institute for Health Research (NIHR) should encourage neuropathology studies to characterize Non-Accidental Head Injury (NAHI) and distinguish it from accidental or natural causes.
- The Economic and Social Research Council (ESRC) should encourage studies into the relative efficacy of different models of risk assessment in the context of probation, and a possible role for neuroscience to be used in combination with existing approaches.

In conclusion, legislators ought to be made aware of the existing discrepancy between the difference in approaches as between judiciaries and developmental scientists' knowledge on the development of psychological maturity. Young defendants ought to be dealt with in a manner that makes them recognise what they have done, but in a constructive way without stigmatizing them or introducing them to criminal culture, and by helping them to increase protecting factors and reducing the risk factors in their lives while remedying the wrong they have done. The risk of being penalized in sensitive teenage years is to be introduced to a part of the population which has a high risk of reoffending and predilection to a criminal lifestyle. Early teenage years are the time of formation of personality and research shows how important the peer group is for a teenager

at this point in time. Society should put more emphasis on rehabilitation of young offenders and their reintroduction to society. This would be according to the guidelines of the United Nations. The above approach is very well suited to handle less serious crimes.

In contrast, in case of crimes that are in their nature considered grave the society has got clearly more retributive demands. The greater social good of reducing reoffending in the future are not felt higher in priority than that of society's need for protection and creation of deterrent. The principle that victims will get justice is important for them and their relatives, helps state in prevention of social disorder. Hence, these issues need to be discussed in relation of revising of laws, for example the minimum age of criminal responsibility.

6. CONCLUSIONS

There is a discrepancy between developmental science's knowledge on maturity and the willingness of some Council of Europe Member States to adopt it in their jurisprudence, manifested in a low minimum criminal age of responsibility and in the decisions of the courts. It has been shown that psychological maturity related human development (somatic, cognitive and psycho-social) occur beyond the legal age of responsibility, i.e. the minimum criminal age. The literature examined suggests that adolescents demonstrate adult levels of cognitive capability earlier (around 15-16 years old) than they evince emotional and social maturity (developing up to 28-30 years old). The multidisciplinary analysis - the legal, criminological, and developmental science's point of view - of three UK cases, which have been heard by the European Court of Human Rights (ECtHR), indicate that the ECtHR and UK judiciary weighs more heavily towards retribution, deterrence, and protection of public (in T and V murder case; the other case was by default comprehension case due to applicants low intelligent quota), than towards emphasis on rehabilitation of young offenders together with reintroducing them to society. The rehabilitation approach would be economically less costly for the society in the long term, particularly so in minor offences. Disseminating the current developmental sciences knowledge to Council of Europe Member States is seen as a priority with a suggestion of revising the minimum criminal age of responsibility.

In England, Wales and Northern Ireland, the minimum age of criminal responsibility (MACR) is 10 years.²⁰³ In Scotland, the age limit for criminal prosecutions was raised from 8 to 12 years under section 52 of the Criminal Justice and Licensing (Scotland) Act 2010. However, the age of criminal responsibility remains 8 years old, which means a child under 8 years cannot be guilty of any offence.²⁰⁴ In most of the Council of Europe Member States it is between 14 to 16 years.²⁰⁵ The notion that a single line can be drawn between adolescence and adulthood for different purposes under the law is at

²⁰³ ECtHR *V. v. The United Kingdom* ([GC], no. 24888/94, ECHR 1999-IX), para 50.

²⁰⁴ Scotland, CJD Circular JD/2011.

²⁰⁵ Council of Europe Annual Penal Statistics – SPACE I, 2010, p. 63.

odds with developmental science. Drawing age boundaries on the basis of developmental research cannot be done sensibly without a careful and nuanced consideration of the particular demands placed on the individual for “adult-like” maturity in different *domains of functioning*.²⁰⁶

The criminal age in UK is low in comparison to majority of Member states of Council of Europe, and on the basis of literature it would be advisable, to revise the Minimum Criminal Age of Responsibility (MCAR) in Council of Europe member states periodically, as the societies and scientific knowledge about maturity change over time.

The UN has put a significant emphasis on rehabilitating the child and attempting to reintroduce the child into society by adopting the 1985 Beijing rules in the 1989 Convention of the Rights of the Child. Being able to remedy in a constructive way, and to gain insight and counseling during this process can save also society a lot in economic terms, while needing less amount of places in the rather expensive youth penal system, foster homes, and secure young person homes. The economic argument to support the treatment of young defenders is strong, instead of deterrence by locking up a young defendant. For example, one year in a secure children’s home cost as much as 6 years in Eton College.²⁰⁷ Since many offenders have learning difficulties, we can learn from studies on the effect of early interventions and treatment of learning difficulties help to prevent marginalization. The non-institutional treatment of young offenders also prevent them being stigmatized, and enables them to have support from their social network instead of being separated from the society.

There are some environmental risk-factors which are related to criminal behaviour at an young age, which were discussed in chapter 3, and it looks like that there are some neuropsychological factors, which are evident in connection to crime and were discussed in chapter 4. The criminality related neuropsychological factors include a low IQ and hyperactivity disorder. The criminality related personality factors include an anti-social personality disorder and psychopathy (also in childhood, which is likely to be included into the ICD-11 in future). Since these individuals are possible to screen

²⁰⁶ Steinberg, Cauffman, Woolard, Graham & Banich, 2009, p. 583.

²⁰⁷ The Standing Committee for Youth Justice (SCUJ), 2010, p. 4.

early in the pre-school and elementary school age, it follows that society would benefit by increasing efforts to find the ones who belong to high-risk group of future offenders and giving them more focused preventive services. This would in turn, make it possible with certain degree of freedom, to raise the minimum age of responsibility closer towards 16 years of age.

Furthermore, since it seems to be a rather small amount of individuals who commit the most serious crimes, one could argue that while society supports the welfare approach to children, to use more resources to identify those children who have high risk for offending behaviour, means it could develop these early intervention services further. In the field of learning difficulties advocacy, it has been shown that preventing a child from taking the pathway leading to marginalisation and further use of society's welfare money, it would be less costly to society to intervene early. Saving a single child from marginalisation would generate indirect savings to society worth one public sector worker's life-time salary.

Analysis of ECtHR judgments from development sciences point of view. This thesis studied three ECtHR decisions of the UK cases, where young children were convicted in criminal courts in the UK. The evaluation of the decisions was carried out on point of view of examining how the judgments included/ignored current developmental science's knowledge on developing maturity. Where clear differences emerge, the given reason was reflected against the courts given reasoning, or its perceived duty in regard to retribution, deterrence, and protection of public. The main findings on the developmental science knowledge can be summarised as such: The physical development of brain develops until around 20 years of age.²⁰⁸ The developmental science literature suggests that adolescents demonstrate adult levels of cognitive capability earlier (around 15-16 years old) than they evince emotional and social maturity (developing up to 28-30 years old). The skills and abilities necessary to make

²⁰⁸ See for example, Royal Society report on advances of neuroscience. In BBC News UK, 13 Dec 2011, 'Age of criminal responsibility 'too low', experts say', available at <http://www.bbc.co.uk/news/uk-16153045> (consulted on 13 Dec 2011); Royal Neuroscience Society, 2007, p. 1. Society for Neurosciences, Jan 2007, '*Brain Briefings – Adolescent brain*', p. 1., Available at <http://www.sfn.org/briefings> (consulted on 15 March 2012).

an informed decision about a medical procedure are likely to be in place several years before the capacities necessary to regulate one's behaviour under conditions of emotional arousal or coercive pressure from peers.²⁰⁹ Steinberg et al. demonstrated that intellectual maturity is reached several years before psychosocial maturity.

In addition, a body of childhood literature suggests that the UK continues to prioritise the well-being of the child over the rights and interests of others. One way the courts have done this is by holding that whenever a case relates to the child's upbringing, promoting the child's welfare automatically constitutes a legitimate reason under Article 8(2) to restrict a claim under Article 8(1).²¹⁰ Similarly, criticism has been aimed at the English courts willingness in the post-human rights Act era to continue to prioritise the welfare of the child over the convention rights of the child himself.²¹¹ Also the English court's persistence in viewing the interests of the child in terms of welfare, not rights is considered.²¹²

6.1 To what extent is there incoherence between the European Court of Human Rights (ECtHR) and UK legal system judgments with these main findings on between maturity and of criminal behavior?

The criminal age in Europe has often been set between 14-16 years of age. The age of criminal responsibility in UK is rather low in comparison to the other Council of Europe Member States. The preliminary conclusion indicates that the *ECtHR* and UK judiciary weighs more heavily towards retribution, deterrence, and protection of public, and less towards rehabilitation, which would be based on the individual's strengths. There is a phenomenon known as desistance, which occurs in late adolescence among many offenders and is shown in the behaviour of leaving offending behind them. The most relevant concepts for explaining continuing offending relate to self-control, temperance, and social context. The author analysed in this thesis from a developmental science point of view three UK cases, which have been heard by the *ECtHR*. Of particular

²⁰⁹ Steinberg, *et al.*, 2008, p. 593.

²¹⁰ Hollingsworth, Kathryn, 2007, p.42.

²¹¹ Referring here to the ECHR, *ibidem*.

²¹² Fortin, J., 2006, pp. 299-326.

interest was to evaluate whether Courts judgments reflect the existing literature on criminal maturity (neurological, psychological, criminological literature) of young defendants.

The ECtHR found a violation of Article 6 “fair trial” in *T. and V. v. the United Kingdom*, a murder case. In the rulings, it considered the age, maturity, intelligence and emotional capacities of the juvenile important when assessing whether a child can be prosecuted in an adult criminal court. Thereby, it should have an effect on how all signatory countries of the Convention will proceed in their jurisprudence while dealing with young offenders. In the milder criminal offence case of the *S.C. v UK*, the *ECtHR* put very little weigh on the two expert opinions. The ECtHR’s judgment put emphasis not upon treatment but upon the deterrence and protection of public. The UK has improved the handling of young defendants in the courts after adoption of the UN Committee of the Convention of the Rights of the Child in 2002 and the *ECtHR*’s handling of the T. and V.’s cases.

The current research has shown that gravest acts of crime are conducted by psychopaths. Children and youth have been shown being in greater risk of being influenced by group pressure and still have physiologically developing brains that partly leads them to less than adult capacity for the so-called executive functions of the brain. Recently, there has been a case where a 11-year-old who convicted in a Crown Court in UK for the offence of breaking a window during the riots of 2011. This case is poignant to those particular characteristics which make young adolescents lack of maturity vulnerable towards committing immature behaviour. As the *ECtHR* promotes the fundamental human rights and freedoms of the citizens of the Council of Europe Member States they should update their knowledge of maturity and reviewing the processes that who constitutes as an expert in evaluation of maturity in the trial. The main suggestion derived from this analysis is to train the judges on developmental science knowledge on developing maturity, which indeed should have consequences for the minimum age of criminal responsibility, leading to the need for adjustment of legislation in Council of Europe Member States. It can also lead to more out-of-court settlements within retributive justice systems where a offender who has committed a

minor offence can remedy what he or she has done but still be punished as well. The advantage being in this case that the young offender avoids the experience of being prosecuted, and often leaves offending behaviour behind and with an identity that is not in unnessessary proportion been stigmatized.

In conclusion, the lawyers, politicians and other seeking answers on specific age boundaries in legal matters should always put cases into context, and evaluate the situation and whether the skills needed were likely to have been developed and whether an informed decision was possible. Often the crimes at young age are committed in situations where there are no immediate negative consequences and immediate rewards are obvious. This kind of situation requires more developed executive skills and psychosocial maturity from the agent. Therefore, this information can and should be taken into policy level debate while remembering that developmental science cannot “prove” or “disprove” various policy decisions, but merely inform the debate. While applying the scientific findings in policy choices one should always exercise careful and nuanced consideration of the particular demands placed on the individual for “adult-like” maturity in different domains of functioning. Finding a line between different purposes of law needs to consider the asynchronous nature of psychological maturation, especially during periods of dramatic and rapid change across multiple domains of functioning.²¹³

The UK legislation’s needs for a review of the minimum age of criminal responsibility to take place. The analysis signals that there might be a need to revise the domestic law in the UK, as wellll as, in a matter of fact, most of the Council of Europe Member States, in regards to the minimum age of criminal responsibility. Secondly, the analysis showed how detailed the modern evaluation process of maturity has become, that there might be a need to expand the formulation of who can give advice to jurors on matter of ‘fit to plead’, or stand trial. One suggestion would be to include the psychologist to the list of ‘medical experts’, while reviewing the rule on the matter. This discussion leads to the ancient division of labour in health care, which is led by the medical doctors. However,

²¹³ Steinberg, *et al.*, *ibidem*.

the psychological theoretical and methodological advancements require high specialization in interpreting the findings and explaining them to professionals and general public. The third suggestion would be to disseminate the existing developmental science knowledge on relationships between maturity and crime to the judiciary, and then train the judges and legislators on the above issues.

Literature and analyses suggests that there is still a need for an adjustment of the legislation and procedures on how to handle ‘Young defendants’ in the courts of the Council of Europe Member States. Particularly, the complexities of modern forensic psychiatric evaluation processes need to be understood. For example, there is a need to include within ‘medical practitioners’ other professional groups, who could guide jurors in defining whether a person is fit to plead (whether a young defendant is able to participate meaningfully in the court proceedings), or be able to comprehend the consequences of an action at young age during the claimed offence.

As times changes, so ought the laws change too to reflect the developments in society. The current approach of municipalities in the United Kingdom is one of “out of sight, out of mind”, which has led to the growth of an industry of children’s homes and other detention forms.

Finally, it might be informative to have a fresh look at the UK Minister Crispin Blunt’s comments, that were made during a Westminster Hall debate on young offenders²¹⁴:

“The Government believe that children aged 10 are able to distinguish between bad behaviour and serious wrongdoing. It is entirely appropriate to hold them to account for their actions if they commit an offence, and it is important to ensure that communities know that a young person who offends will be dealt with appropriately. We have no plans to change the age of criminal responsibility. We accept, however, that prosecution is not always the most appropriate response to youth offending. Much of youth crime is addressed using out-of-court disposals and robust intervention to prevent reoffending. Indeed, we are now seriously considering widening the

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delivery of restorative justice and giving the police their own restorative justice interventions for the lower level of offences, which could be recorded for their own purposes. That is in addition to making sure that people both make restoration and receive punishment—the two are not alternatives—in the rest of the criminal justice system”.

In light of this thesis, several comments arise that need attention. It is a welcome approach by the government to put more weight upon restorative justice in an out-of-court setting while dealing with young defendants in minor crimes. Similarly the aim of prevention of reoffending and efforts to reach this goal is welcome. The government also sees that prosecution is not always the most appropriate response to youth offending. In contrast, one must note that the Government’s position of not considering changing the age of criminal responsibility is in stark contrast with the existing scientific knowledge about the development of maturity.

The recent report of the Royal Society clearly states the current understanding of the issue at hand, and its recommendations are listed below. Similarly, on the other side of the Atlantic, the American Psychological Association (APA) have presented in two *amicus curiae* briefs to the US Supreme Court the related findings, and discussed in 2009 in detail the two views held in the *amicus curiae* briefs on development of cognitive maturity and psycho-social maturity. As an illustration of the significance of these briefs, specially the latter APAs 2004, the US Supreme Court abolished the juvenile death penalty in 2005 largely due to APA stating the “adolescents are developmentally immature”.²¹⁵ Therefore, policy-makers and parliamentarians should pay attention to the existing knowledge on the matter. Similarly, as already suggested the dissemination of this knowledge outside of professional circles is also important. The general public needs to know about it, because they create the ‘public pressure’ for politicians. Often in grave crimes committed by young offenders, this pressure is tense

²¹⁵ American Psychological Association. (2004, July 19). [Amicus curiae brief filed in U.S. Supreme Court in *Roper v. Simmons*, 543 U.S. 551 (2005)]. Available at <http://www.apa.org/pubs/journals/releases/amp-64-7-583.pdf> (consulted on 23 March 2012).

and is likely to affect all involved. Thus, it might prevent any attempts to change the existing laws.

Criminology shows the existence of two groups of young offenders, e.g. the one time offenders and the life-course-persistent offenders. The former are considered being 'transitional' in nature in their offending. While they reach the age of legal responsibility they have stopped criminal offending after getting involved with the penal system. Many activities are also now legal to them, for example drinking alcohol, buying tobacco and having sex. However, while considering raising the minimum age of criminal responsibility, the latter group of life-course-persistent ones are the likely ones to re-offend in the future. They have most likely conduct problems in childhood, and their first grave criminal offences are committed during their youth after having served multiple sentences in prison system as adults. Within this group, one could differentiate at least two major groups of offenders. The first group consists of persons with anti-social personality disorders and psychopaths. The psychopaths are not yet diagnosed at childhood, but there is recent article written in March 2012 by prof. Michael Rutter, in British Medical Journal, which shows that there is sufficient research today available for extending the psychopathy in children's diagnostics. Thus, it's likely this diagnosis will be included in to the next International Classification of Diseases, the version ICD-11. The second group of young offenders who would arguably prove to be as difficult to be rehabilitated and redirected to society are those children who belong to high risk background, have joined a youth gang in their area or belong to sub-group of society where criminality plays a significant role as a pattern of identity. In the UK context, one could mention from the recent history the so called post-code gangs in London. There are also vivid descriptions by usually ex-gang members of the initiation rites and life-style of these gangs, like Tony Scott, aka Sanyika Shakur, Los Angeles Crips.²¹⁶ Furthermore, Nikolai Lilit's autobiography "Siberian Education"²¹⁷ illustrates how the whole identity of his ethnic group of Siberian Urkas is based on idea of being 'honorable criminal'. This way of criminal life has existed since there was trading

²¹⁶ See for example, Shakur, 1993.

²¹⁷ Lilit, 2010, pp. 20-22.

routes in the present Russia to India and China. The ‘normative life-course’ of these people, mainly men, involves periods spent in prisons as natural as the majority population talks about passing military service or other age cohort related obligation, depending of the cultural context.

Consequently, returning to the topic, these life-course-persistent offenders also allegedly commit the gravest crimes. However, they could be identified early on the basis of existing knowledge on the criminological risk-factors and in cases of anti-social personality disorders and psychopathy the conduct problems could lead to identification and counseling early on. This type of preventive work would serve society for creating more protection for the public in the long run. At the same time, if we accept the view that most of the youth crime is ancient, we would save also human suffering by settling out-of-court most of the crimes committed in youth years.

Weaknesses of this review of literature and a qualitative analysis of the ECtHR decisions of three UK cases in connection to existing knowledge in them on developmental aspects of maturity. Some of the issues related to youth crime have not been discussed here such as, psychological literature on drug use, addiction and criminality, which are issue related to an obsessive compulsive behavior. Although this problem was briefly discussed in the criminology chapter as being related to the risk-factors for offending behavior.

To conclude, the discrepancy between the minimum age of criminal responsibility and developmental science’s contemporary knowledge on developing maturity is well founded in recent scientific literature: in the UK, the Royal Society issued a report on the matter in 2011, while in the USA the American Psychological Association published an article in the *American Psychologist* in 2009.²¹⁸ The knowledge that is now available to policy developers and parliamentarians requires at least revision of the existing legal minimum age of criminal responsibility in the Council of Europe Member States. Professor Mackintosh, of the Royal Society, asserts that “claims that criminals can be identified by imaging their brains or that there could be a gene for psychopathy is “wide

²¹⁸ See The Royal Society, 2011, pp. 1-34, and Steinberg *et al.* 2009, pp. 583-594.

of the mark”. However, he also said that it was for policy makers to decide on altering the age of responsibility, but the changing science meant it should at least be reviewed. Furthermore, “but the extent to which scientific evidence wasn’t well known 10, 15 years ago, then it suggests that things do need looking at again”.²¹⁹ This applies to the United Nations as well, most notably in this connection the Committee on the Rights of the Child. The Committee should also reflect this significant development in knowledge of maturity in their Concluding Comments for the Periodic Country reports.

The policy implications of the present knowledge might include more emphasis on restorative justice with punishment as an element, with an assumption that during teenage years through to adolescence, most criminal offending is likely to be transient phenomenon, and would cease to exist while an individual comes to be confronted with an appropriate judicial system that incorporates their developing psychosocial moral maturity. This approach would enable the penal court to focus their resources more to the rehabilitation of the so called life-course persistent offenders, with the aim of rehabilitating them back to society.

While the neuroscientific evidence is highly relevant to the concerns of criminal justice, policy makers should be alert to the dangers of drawing easy conclusions for policy and practice.²²⁰ One reservation to be included as to these new but robust findings relates to the conditions at the MRI scanners, which are not an indicator of ‘real world’ performance: it cannot detect lies, innocence, true intentions, and so on.²²¹ Nevertheless, in a review a researcher considers the potentially progressive implications:

“Neuroscience could reasonably be conscripted in defense of a diversionary model of youth justice, one in which all but the most serious crimes are routed out of the system due to belief that their offending is likely to be adolescent limited...reconfiguring the bulk of youth crime as developmental in nature and thus, by definition, transient”.²²²

²¹⁹ Mackintosh, Nicholas, 2011. In BBC News UK, 13 Dec 2011, ‘Age of criminal responsibility ‘too low’, experts say’, available at <http://www.bbc.co.uk/news/uk-16153045> (consulted on 13 Dec 2011).

²²⁰ Prior *et al.*, 2011, p. 8.

²²¹ Johnson *et al.*, 2009, p. 216.

²²² Walsh, C., 2010, p. 4.

Recommendations of the Royal Society in Dec 2011²²³:

Recommendation 1: An international meeting should take place every three years to bring together those working across the legal system with experts in neuroscience and related disciplines. The aim of this meeting should be to discuss the latest advances in areas at the intersection of neuroscience and the law to identify practical applications that need to be addressed.

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²²³ The Royal Society, Dec 2011, pp. 33-34.

studies into the relative efficacy of different models of risk assessment in the context of probation, and a possible role for neuroscience to be used in combination with existing approaches.

BIBLIOGRAPHY

Baker, K., Jones, S., Roberts, C., & Merrington, S., 'The Evaluation of the Validity and Reliability of the Youth Justice Board's Assessment of Young Offenders: Findings from the first two years of the use of ASSET'. pp. 9-10. London: Youth Justice Board, 2003.

Barriga, A. Q., M. Sullivan-Cosetti, et al. 'Moral cognitive correlates of empathy in juvenile delinquents,' pp. 253-264, in *Criminal Behaviour and Mental Health*, 19(4), 2009.

BBC Radio 4 Neurosciences Press Briefing on 13 December 2012.

Beckett, M., Hawken, A., & Jackowitz, A., 2001, 'Accountability for after-school care: Devising standards and measuring adherence to them'. Santa Monica, CA: RAND Corporation, pp. 1-126.

Bryan-Hancock, C. & S. Casey, 'Psychological maturity of at-risk juveniles, young adults, and adults: Implications for the justice system', pp. 57-69, in *Psychiatry, Psychology and Law*, 17(1), 2010.

Cauffman, E., & Steinberg, L., '(Im)maturity of judgement in adolescence: Why adolescents may be less culpable than adults', pp. 741-760, in *Behavioral Sciences and the Law*, 18, 2000.

Chitsabesan et al., 2006, 'Mental health needs of young offenders in custody and in the community', *British Journal of Psychiatry*, vol. 188, pp. 534-540.

Gillick v. West Norfolk & Wisbech AHA & DHSS [1983] 3 WLR (QBD).

Gillick v. West Norfolk & Wisbech AHA & DHSS [1985] 3 WLR (HL).

Convention on the Rights of the Child, 1989, 'Article 1', available at <http://www2.ohchr.org/english/law/crc.htm> (consulted on 23 February 2012).

Committee on the Rights of the Child, 2002, CRC/C/15/Add.188, 9 Oct 2002, para 59-62, available at <http://tb.ohchr.org/default.aspx?Symbol=CRC/C/15/Add.188> (consulted on 23 March 2012).

Committee on the Rights of the Child, 2007, General Comment No. 10: children's rights in juvenile justice, UN document CRC/C/GC/10, 2007, paragraph 32.

Committee on the Rights of the Child, 2008, CRC/C/GBR/CO/4, 2008, Available <http://www.unhcr.org/refworld/publisher,CRC,GBR,4906d1d72,0.html> (consulted on 23.3.2012).

Communities that Care, 2005, available at <http://www.yjb.gov.uk/Publications/Resources/Downloads/RPF%20Report.pdf> (consulted on 15 June 2012).

Cruise, K. R., K. Fernandez, et al., 'The influence of Psychosocial maturity on adolescent offenders' delinquent behaviour', pp. 178-194, in *Youth Violence and Juvenile Justice*, 6(2), 2008.

DSM-IV-TR, 'Antisocial personality disorder' – *Diagnostic and Statistical Manual of Mental Disorders Fourth edition Text Revision*, pp. 645–650 American Psychiatric Association, 2000.

Eccles, J., & Barber, B. L., 1999, 'Student council, volunteering, basketball, or marching band: What kind of extracurricular participation matters?' *Journal of Adolescent Research*, 14(1), pp. 10–43.

ECOSOC, 1997, *Guidelines for Action on Children in the Criminal Justice System*. United Nations, para 13, Available <http://www2.ohchr.org/english/law/system.htm>, consulted on 7.3.2012.

Exworthy, T., 'Commentary: UK Perspective on Competency to Stand Trial'. *Journal of American Academy of Psychiatry Law*, 34, pp. 466–71, 2006.

Forting, J., 'Accommodating Children's Rights in a Post Human Rights Act Era', pp. 299-326, in *Modern Law Review*, 69, No. 3, May 2006.

Gambone, M. A., Klem, A. M., & Connell, J. P. (2002). Finding out what matters for youth: Testing key links in a community action framework for youth development. Unpublished manuscript, Philadelphia: Youth Development Strategies, Inc. and Institute for Research and Reform in Education, In Simpkins, S., 2003, p. 2.

Gore, S., Farrell, F., & Gordon, J., 'Sports involvement as protection against depressed mood', pp.119–130, in *Journal of Research on Adolescence*, 11, 2001.

Gottfredson, M.R. & T. Hirshi, 'A general theory of crime', pp. 1-316, Stanford, CA: Stanford University Press, 1990.

Griffin, James, *On Human Rights*, pp. 43-51, New York: Oxford University Press Inc., 2008.

Grisso, T., Steinberg, L., Woolard, J., Cauffman, E., Scott, E., Graham, S., *et al.*, 2003, 'Juveniles' competence to stand trial: A comparison of adolescents' and adults' capacities as trial defendants', pp. 333–363, in *Law and Human Behavior*, 27.

Hirschi, T. & M.R. Gottfredson, 'In defence of self-control', pp. 55-69, in *Theoretical Criminology* 4(1), 2000.

Johnson, S.B., R.w. Blum, et al., 'Adolescent maturity and the brain: The promise and pitfalls of neuroscience research in adolescent health policy', pp. 216-221, in *Journal of Adolescent Health* 45(3), 2009.

Mackintosh, Nicholas, 2011. On the publication of the Royal Society report on advances of neuroscience. In BBC News UK, 13 Dec 2011, 'Age of criminal responsibility 'too low', experts say', available at <http://www.bbc.co.uk/news/uk-16153045>, (consulted on 13 Dec 2011).

Melchiorre, A. & Atkins, E., 'At what age? ...are school-children employed, married and taken to court? Trends over time', 2011, Right to Education Project, pp. 6-9, available at http://www.right-to-education.org/sites/r2e.gn.apc.org/files/At%20What%20Age_.pdf (consulted on 23 March 2012).

Modecki, K. L., 'Addressing Gaps in the Maturity of Judgement literature: Age differences and delinquency', pp. 78-91, in *Law and Human Behavior*, 32(1), 2008.

Moffit, T.E., 'Adolescence limited and life-course persistent antisocial behaviour', pp. 674-701, in *Psychological Review*, 100(4), Oct 1993.

Moffit, T.E., 'A Review of research on the Taxonomy of the life-course persistent versus adolescence-limited anti-social behavior', pp. 277-311, in ed. T.E. Moffit '*Taking Stock*', New Brunswick, NJ: Transaction, 2006.

National Society for the Prevention of Cruelty to Children (NSPCC), 2012 March 'Legal Definition of a Child', http://www.nspcc.org.uk/Inform/research/questions/definition_of_a_child_wda59396.html (consulted on 20.3.2012).

Denza, E., 'VI. Conclusion: Elements of a happy relationship', pp. 435-437, in Evans, M. N. (ed.), *International law – third Edition*, NY: OUP, 2010.

Palmer, E. J., 'An overview of the relationship between moral reasoning and offending', pp. 165-235, in *Australian Psychologist*, 38(3), 2003.

Posner, J. K., & Vandell, D. L., 1994, 'Low-income children's afterschool care: Are there beneficial effects of after-school programs?' pp. 440–456, in *Child Development*, 65(2).

Prior, David, Farrow Kathryn, Hughes, Nathan, Kelly, Gill, Manders, Gary, White, Sue, & Wilkinson Bernadette, '*Maturity, young adults and criminal justice: A literature review*' 2011, Institute of Applied Social Studies School of Social Policy, University of Birmingham, pp. 18-xx, available <http://www.t2a.org.uk/wp-content/uploads/2011/09/Birmingham-University-Maturity-final-literature-review-report.pdf> (consulted on 13 March 2012).

Rutter, M., Giller, H. & A. Hagell, '*Antisocial Behavior by Young People - A Major New Review*', pp. 3-12, Cambridge: Cambridge University Press, October 1998.

Rutter, Michael, 'Predictors of antisocial personality continuities from childhood to adult life', pp. 118–127, in *The British Journal of Psychiatry*, 200, 2004,

Rutter, Michael, 'Psychopathy in childhood: is it a meaningful diagnosis?' pp. 175–176, in *The British Journal of Psychiatry*, 200, 2012.

Sanyika, Shakur, '*Monster – The Autobiography of an L.A. Gang Member*', New York: Penguin Books, 1993.

S.C. v. the United Kingdom ([GC], no. 60958/00, 15 June 2004).

Sentlinger, Eric D., 'V. v. United Kingdom: Is It a New Deal for Prosecuting Children as Adults', *16 Conn. J. Int'l L.* 117 (2000-2001), available at:

<http://heinonline.org/HOL/Print?collection=journals&handle=hein.journals/conjil16&id=137> (consulted on 20.6.2012).

Simonoff, Emily; James Elander, Janet Holmshaw, Andrew Pickles, Robin Murray, Society for Neuroscience, 2007 Jan. 'The Adolescent Brain', p. 1, *Brain Briefings*, <http://www.sfn.org>, (consulted on 13 March 2012).

Simpkins, Sandra, 'Does Youth Participation in Out-of-School Time Activities Make a Difference?', pp. 2-3, in *Harvard Family Research Project, The Evaluation Exchange – A Periodical on Emerging Strategies in Evaluation. Volume IX, Number 1, Issue Topic: Evaluating Out-of-School Time*, Spring 2003.

Skardhamer, T., 'Reconsidering the theory of adolescent-limited and life-course persistent anti-social behaviour,' pp. 863-878, in *British Journal of Criminology*, 49(6), 2009.

Society for Neurosciences, Jan 2007, 'Brain Briefings – Adolescent brain', p. 1, available at <http://www.sfn.org/briefings> (consulted on 15 March 2012).

Soderstrom, I. R., Castellano T.C., *et al.*, 'Measuring 'mature coping' skills among adult and juvenile offenders: a psychometric assessment of relevant instruments', pp. 300-328, in *Criminal Justice and Behavior*, 28(3). 2001.

Standing Committee for Youth Justice (SCYJ), '*Custody for Children: The Impact – A position paper on the impact of the overuse of custody for children in England and Wales*', p. 4, February 2010, available at <http://www.scyj.org.uk> (consulted on 15 June 2012).

Steinberg, Laurence, & Gauffman, Elizabeth, 'Maturity of judgement in adolescence: Psychosocial factors in adolescent decision making.' pp. 249-272, in *Law and Human Behavior*, 20(3), 1996.

Steinberg, Laurence, Cauffman, Elizabeth, Woolard, Jennifer, Graham, Sandra & Marie Banich, 'Are Adolescents Less Mature Than Adults? Minors' Access to Abortion, the

Juvenile Death Penalty, and the Alleged APA “Flip-Flop”, pp. 583-594, in *American Psychologist*, vol 64 (7), October 2009.

Steinberg, L. & Schwartz, R. G. ‘Developmental psychology goes to court’. In *Youth on Trial. A Developmental Perspective on Juvenile Justice*, eds T. Grisso & R. G.

Schwartz, pp. 9–31, Chicago, IL: University of Chicago Press, 2000.

Steinberg, Laurence, & Scott E., ‘Less guilty by reason of adolescence: Developmental immaturity, diminished responsibility, and the juvenile death penalty’, pp. 1009-1018, in *American Psychologist*, 58, No. 12, 2003.

T. v. the United Kingdom ([GC], no. 24724/94, 16 December 1999).

UN General Assembly, *A/RES/40/33*, available at <http://www.un.org/documents/ga/res/40/a40r033.htm> (consulted on 23 March 2012).

V. v. the United Kingdom ([GC], no. 24888/94, ECHR 1999-IX).

Walsh, C. ‘Youth justice and neuro-science: A dual-use dilemma’, pp. 21-39, in *British Journal of Criminology*, 51(1), 2010.

Wheeler, R., ‘Gillick or Fraser? ‘A plea for consistency over competence in children - Gillick and Fraser are not interchangeable,’ p. 807, in *Editorial, British Medical Journal*, 332, 8 April 2006.

Youth Justice Board for England and Wales, ‘*Risk and protective factors - Summary report*’, pp. 2-6, 2005, available at <http://www.yjb.gov.uk/publications/Resources/Downloads/Risk%20Factors%20Summary%20fv.pdf> (consulted on 15 June 2012).

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