

Application Of the Death Penalty for Juvenile Delinquency

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Abstract. The rate of juvenile crime has been increasing in modern society, and as the cases of juvenile crime in society become more severe and younger, the age of criminality is gradually lowering, resulting in many cases of juvenile crime. Juvenile crime, due to the special nature of its "juvenile" identity, is not covered by death penalty provisions in most countries' laws. Many people believe that juvenile offenders should be sentenced to death, but there is no such provision in Chinese law, and therefore, it has been a topic of discussion whether juvenile offenders who have violated the criminal law should be executed. Compared with other countries, many countries have executed juvenile offenders in the past. Many people then ask: Why can't juvenile criminals also be included in the death penalty? Meanwhile, many people begin to question whether the juvenile protection law is truly correct or fair, and whether the death penalty is applicable to juvenile offenders who have violated the criminal law.

Keywords: Juvenile; crime; death penalty.

1. Introduction

On March 10, 2024, Wang, a junior student from Fushi District, Handan City, Hebei Province, was murdered. On March 11, the three juvenile suspects, Zhang, Li, and Ma, were all caught by the police. This case sparked heated discussions among netizens in China. Some netizens argued that criminal behavior should not be exempted just because of age, and that those who bear criminal responsibility should not be judged based on their age. On the other hand, some legal professionals explained that China's Law on the Protection of Minors stipulates that the death penalty is not applicable to minors under the age of 18, so the three suspects could not be sentenced to death. Other netizens believed that the three suspects' actions were extremely heinous and they should be executed. However, the death penalty is not applicable to juvenile suspects under Chinese law, so the issue of how to sentence juvenile offenders and whether those who commit particularly heinous crimes, such as murder, should be sentenced to death again became a topic of discussion among netizens and professionals.

Why is the death penalty not applicable to minors? Is this a form of leniency towards juvenile offenders? In some special cases, such as when minors commit particularly cruel criminal acts, can the "Law on the Protection of Minors" be bypassed to impose the death penalty on them? What is the purpose of the death penalty?

2. Sentencing of Juvenile Offenders at Home and Abroad

Article 6 of the International Covenant on Civil and Political Rights, published by the United Nations on 16 December 1966, states that the death penalty shall not be imposed on persons under the age of 18 who commit crimes. This shows that the death penalty is not applicable to minors under the age of 18. Article 14 of the International Covenant on Civil and Political Rights states that the trial of juveniles shall take into account the age of the accused and the appropriate readjustment to social life. It can be known from the international conventions published by the United Nations that the death penalty is a particularly extreme criminal law, which is not only inappropriate for minors, but also very strict standards for the punishment of death penalty for many adults who commit major crimes, and adults who are sentenced to death have the right to request amnesty and commutation of their sentences. Obviously, the United Nations hopes that minors can realize their mistakes in

sentencing, and the focus of sentencing minors does not lie in the punishment itself, and they can better return and adapt to society after reaching the prison term through the gradual increase in age.

Although there are relatively few cases of the death penalty imposed on minors in modern times because many countries do not impose the death penalty on minors, there are still some countries that impose the death penalty on minors.

For example, Iran, Saudi Arabia, Pakistan, Nigeria and Yemen still retain the death penalty for minors, but the number of juvenile executions in these countries is also decreasing. Other countries have lowered the age of criminal responsibility in order to reduce the juvenile crime rate and more reasonable sentencing of juvenile crimes. The countermeasures of other countries are more inclined to adjust the age of criminal responsibility of minors or send the delinquent minors to the asylum for ideological education.

2.1. Sentence for the “Murder of James Badger”

On February 12, 1993, there was a murder of a 2-year-old boy in Liverpool, Merseyside County, England - "James Badger murder", the perpetrators were two boys who were only 10 years old at the time, they lured a 2-year-old boy to kill him in a very cruel way, and even put James's body on the railway track, wanting to use the train to run over and create the illusion of accident death. When police found James' body on February 14, it had been crushed in two by a train. On 20 February 1993, the police charged both men with murder and kidnapping, and on 22 February 1993 they were transferred to South Sefton Juvenile Court. During the trial, the two used various methods to exonerate themselves, and finally the police pointed out the evidence before they admitted their crimes. The trial began at Preston Crown Court on 1 November 1993. In court, Dr Eileen Vizard gave Jon and Robert a series of competency tests and confirmed they were "perfectly capable of telling right from wrong". Richard Henriques QC, lead counsel for the prosecution, overturned the presumption of "child incapacity" against Jon and Robert with Eileen's conclusion.

In the end, Justice Morland found them guilty of murder, kidnapping and attempted kidnapping. Justice Morland recommended that they be sentenced to at least eight years in prison, and specified specific behaviors that should not be made after their release from prison, such as a lifetime ban on returning to Merseyside, a lifetime ban on contact between the two people, and regular check-up. Shortly after the verdict, the UK's Supreme Court chief justice Lord Taylor (Baron Taylor of Gosforth Lord Chief Justice of England and Wales) said the two sentences should be increased to at least 10 years. After that, the British newspaper The Sun gathered signatures for a petition to increase the sentence, asking the then British Home Secretary Michael Howard (Michael Howard), Mike was forced to intervene in the case, and the two men's sentences were eventually increased to 15 years. In 1999, the European court of human rights (European Court of Human Rights) think two juvenile suffered "unfair treatment", should be to decide. In 2000, their sentences were reduced to eight years for good behavior in prison.

After being released from prison, Robert and Jon start a new life with new identities. But at the age of 27, Jon went to prison for another crime.

It can be seen that when Robert and Jon committed the crime, they had the "ability to distinguish right from wrong", completely belonging to the conscious crime, but they were not sentenced to death, only 15 years in prison, and Jon of the two had other crimes after being released from prison.

2.2. Juvenile Homicide Occurred in Shahekou District, Dalian City, Liaoning Province

On October 20, 2019, the public security organs received a report, Shahekou District, Dalian City, Liaoning Province, the public security organs received a report that the victim was a 10-year-old girl who was killed and dumped on the bush by CAI XX, who was under 14 years old. Since CAI XX was under 14 years old and did not reach the age of criminal responsibility, he was not investigated for criminal responsibility according to law, and was placed in detention and reeducation for 3 years. On the afternoon of August 10, 2020, the Shahekou District People's Court of Dalian handed down a

judgment of first instance, ruling that CAI's parents made a public apology and compensated the girl's family for economic losses of more than 1.28 million yuan.

2.3. Arson attack in Kofu City, Japan, October 12, 2021

On October 12, 2021, an arson attack occurred in Kaffu City, Japan, when 19-year-old high school student Yuki Endo was rejected after confessions to female students, and was dissatisfied with breaking into the home of female students and killing their parents, beating the sister of female students, and then burning down the house. In 2022, Japan amended the law to lower the adult age of 20 to 18 years old and juvenile offenders aged 18 or 19 years old are classified as "specific minors" and can be "real-name prosecution". On January 18, 2024, the Kofu District Court of Japan deemed that Yuki Endo had committed a bad crime and had great criminal responsibility, and sentenced Yuki Endo to death, which was also the first example of "specific minors" being sentenced to death in Japan.

3. Comparative Analysis of the Judgment Results of the Above Cases

Through the sentencing results of the above three cases of minors committing major criminal responsibilities in different countries, it can be seen that although the criminals are "minors", they still have the ability to distinguish right from wrong, and it is difficult to imagine that minors will also make such bad murders. So, when a minor, with clear knowledge, commits an act that harms the lives of others, should he be regarded as a person with criminal responsibility? Should the criteria for sentencing be changed from age to whether the perpetrator was capable of discerning right from wrong at the time of the crime? The three cases occurred in different countries, which can be seen the difference in sentencing. For minors, more of them are put in prison terms or receive education in hospices so that they can reform, adapt to and return to society in the future. In Japan, the most severe punishment is given to minors who commit bad acts by adjusting national laws.

4. Analysis of the Causes of Juvenile Crime

In fact, due to the progress of modern science and technology, many teenagers can freely use mobile phones in a relatively young environment, but the news on the Internet is mixed, there are good and bad, if there is no guardian's positive guidance, it is easy for mentally immature minors to contact the information that does not belong to their age, thus affecting their mind and mentality. Moreover, because minors cannot better control the browsing content and browsing time, it is easier to cause minors to browse the content that is not suitable for their age group or cannot control the time of browsing electronic devices. Therefore, minors are more likely to browse some unhealthy information in the process of surfing the Internet alone. Over time, without correct guidance and discrimination, they are easy to rely on the Internet and be poisoned by the unhealthy atmosphere of the Internet, which is more likely to cause some minors to commit some excessive behaviors in real life. These behaviors or remarks may come from some video clips viewed by minors on the Internet, or various comments from netizens, which will gradually affect the lives of minors.

For example, in some special families, in some remote areas, areas with relatively backward education and living standards, the parents of some families will choose to go to other cities to work, and may only come back once a year, the interval is relatively long, and only the elderly and minor children are left at home. The elderly are generally more indulgent children, not too much discipline of children, more is no bottom-line indulgence. Teenagers are the age to establish correct values. Due to parents' lack of childhood ideological education and the elderly's bottomless indulgence of the younger generation, coupled with the intake of bad information on the Internet and the backward ideological education and rule of law education in remote areas, it is very easy for minors to form incorrect three views, which will lead to illegal and criminal behaviors of minors.

4.1. Psychological Analysis of Juvenile Delinquency

What is the fundamental purpose of juvenile delinquency? Looking for novelty and excitement in crime? What was the motive for the crime [1]? Under normal circumstances, juvenile crimes are often characterized by suddenness and distinct impulsiveness. Many behaviors occur when minors act out of emotion, which leads to serious consequences. Therefore, juvenile crimes are mostly not intentional and are not highly dangerous from the subjective level. At the same time, because minors are easier to receive education and guidance, they can be reformed and cultivated, if the direct use of the death penalty will deprive minors of the opportunity to reform, and will also lead to minors losing the possibility of rejoining society to gain a new life. Therefore, for the protection of minors, China's criminal law stipulates that the death penalty is not applicable to minors, which is also consistent with the direction of juvenile penalty legislation in various countries in the world [2]. Adolescence, as a key and independent stage of life development, has a transitional and formative nature. The so-called transitional refers to the rapid and significant development of the individual in the biological, cognitive, social and other aspects of adolescence, which makes the individual appear more capable of judgment and communication than children. But despite this, the adolescent individual is still immature compared to the adult in all aspects. The so-called formative means that the knowledge, abilities and interpersonal relationships acquired by adolescents have made preliminary preparations for the development of adults, forming their own views and opinions on self, others and society, and becoming more and more independent. The particularity of cognitive, psychological and social development of adolescents makes juvenile delinquency different from adult delinquency: First of all, in terms of subjectivity, juvenile delinquency has more temporary ideas, and there is often no thorough criminal plan before committing a crime, and the decision to commit a crime is very hasty and thoughtless. To explore the deep cognitive psychological reasons, it lies in the fact that teenagers are easily affected by the environment, attach importance to rewards, and underestimate risks. Although the teenager knows that fighting and stealing are wrong, based on the situation at the time, the teenager decides to commit the crime in an instant under the temptation of peer pressure or profit. Adolescents and adults also differ in their impulsive ability to control behavior and choices. The accepted wisdom is that juveniles are more reckless, reckless and daring than adults. Teenagers are more likely to fall into extreme moods quickly, but it is more difficult than adults to adjust and control emotions. When there are social conflicts with others, teenagers will be more impulsive than ordinary people, not rationally using legal means permitted by society, but emotionally using violence to solve problems, regardless of the consequences when using violence [3]. In terms of the causes of crime, the passive defense type and the passion crime caused by improper stimulation can be given a lighter punishment and a larger reduction of punishment, while the active aggression type and the passion crime caused by non-improper stimulation can be given a lighter punishment and a smaller reduction of punishment. At the same time, in practice, we should take the easy correction of passion criminals as an opportunity to deeply understand the causes of crime and the unspeakable difficulties behind the behavior of passion criminals, and correct their bad psychological defects step by step.

4.2. Analysis of Juvenile Sentencing Angle

When sentencing minors, should "age" be used as the sentencing standard? If sentencing from the Angle of "age", it will actually make some really bad minor offenders with a "fluke" mentality achieve the purpose, at present, our country is still too tolerant of minor offenders. If only because of the "age" and do not make a really severe punishment and hope in the ideological and three-view education, it will not be able to fully make them realize the bad and serious things. On the contrary, the psychological sentencing of juvenile offenders should be taken into account when sentencing juvenile offenders. For example: At the time of the crime, did you realize that your actions would endanger the lives of others? The consequences of being arrested by the police after committing a criminal act? Was there a detailed plan for the crime?

The minor's level of maturity is the first specific circumstance which the court should take into account in the process of sentencing a minor to serve time in juvenile prison [4]. It is a new term,

given that earlier regulations referred to the level of mental development. In the domestic theory, there is no unique approach to the interpretation of this term. While some believe that it corresponds to the concept of sanity in the general criminal law, implying the minor's ability to comprehend the significance of his/her acts and to control his/her actions, others deny it stating that maturity as a circumstance relevant for sentencing a minor to juvenile prison represents the so-called general and not specific maturity (sanity) as the basis of culpability. Qualifiers such as "general" and "specific" unambiguously indicate different scopes of these terms. Hence, general maturity refers to the personality as a whole, i.e., "to the level of development of organs and psychological functions of a concrete minor in relation to the social environment which surrounds him/her". The second point of view seems to be more acceptable, especially on the basis of a systematic interpretation. Starting from the assumption of coherence of the criminal law system, the arising question is why the legislator would include the notion of sanity into the process of sentencing twice: first, through a circumstance of maturity and, then, through a circumstance of the degree of culpability (given that it is already its constituent part). Even assuming that maturity (perceived in the sense of juvenile sanity) is specific and different from the sanity of adults, there would still be no justification because, as such, it would surely be included in the notion of culpability, due to the *lex specialis* principle. However, the issue that perhaps confuses legal experts does not confuse psychiatrists, who are called as experts to state their opinions on this matter. Therefore, forensic psychiatry particularly emphasizes that, in the case of older minors, the expert does not only express the opinion on a minor's bio-psycho-social maturity but also evaluates the minor's ability to understand the significance of his/her act and the ability to control his/her actions, which clearly makes a distinction between (general) maturity and sanity. A direct consequence of the described concept of general maturity leads to the fact that maturity is not observed in relation to a given criminal act, nor is it evaluated on the basis of the actual time when the act was committed, but within the framework of the minor's general behaviour and within a wider time interval. On the contrary, all theorists who claim that maturity and sanity are synonymous terms (which is a generally accepted attitude) insist on the fact that it is evaluated *tempore criminis* and in relation to the committed criminal offence. As it seems more reasonable to observe the notion of maturity in its wider sense, the court should be warned about the possible risk of digression and generalisation. The evaluation of the smallest segments of one's bio-psycho-social profile is unnecessary; therefore, all the facts that are unrelated to the evaluation of the purpose of punishment should not be of interest to the court [4]. The list of mitigating and aggravating circumstances places the degree of culpability at the top. There are no separate, special rules in the Juvenile Criminal Offenders Act for the notion of culpability; therefore, it is assumed that the general rules from Article 22 of the Criminal Code are applied here too. This necessarily implies that a minor was sane, that he/she acted with intent or negligently, and that he/she was aware or that he/she was obliged to be aware or might have been aware of the illicit nature of the criminal act. Sanity, or maturity in its narrow sense, would imply a minor's psychological capacity which enables him/her to grasp the significance of his/her act within a common causal sense, and to restrain the stimuli driving him/her to commit the criminal act. In psychological terms, it includes intellectual and emotional maturity.

The core of balanced sentencing is to give similar penalties for similar case facts, which is a fair issue of criminal law, and the focus is the same punishment for the same crime [5]. However, the difference in sentencing caused by the facts of different cases does not mean the individualization of punishment. In fact, different punishment for different crimes and same punishment for same crimes are two sides of the same problem. The individualization of penalty is the idea of imposing individual penalty according to the personality of the defendant, which is an open adjudication process [6]. The law's tolerance of minors should not only be based on age, it should go deeper into the humanity of minors, and whether crimes should be tolerated and forgiven. Unconditional tolerance is connivance, which is not only unfair to the victims, but also irresponsible to social stability.

5. Conclusion

The death penalty does not apply to minors. The sentencing range of cases applicable to juvenile criminal reconciliation should be appropriately relaxed, and on the basis of comprehensive consideration of the subjective malignancy and social harm of the offender, the original sentencing range of less than three years for intentional crimes and less than seven years for negligent crimes should be relaxed, so that the system can be applied to some cases with heavier sentences. Due to the particularity of minors, their criminal acts are often less subjective and vicious, and the social harm is relatively small, if the scope of cases stipulated in the criminal reconciliation system of our country is not differentiated, that is, intentional crimes of less than three years of imprisonment and crimes of less than seven years of theft, this is obviously unreasonable and inconsistent with the actual situation. At present, juvenile crimes show a trend of younger age, and the number of juvenile criminal suspects between the ages of 14 and 16 accepted by procuratorial organs is on the rise. The characteristics of minors, such as suggestibility, credulity, emotional exaggeration and instability, lead to the majority of juvenile crimes being impulsive crimes, often do not consider the consequences of the crime and some even do not know what the consequences will be. In dealing with juvenile crime cases, if the judicial organs mechanically apply the provisions of the criminal reconciliation system on the range of sentencing, some minor criminals with less subjective malignity will not get more suitable opportunities for reform, but will bury hidden dangers for the next crime. Therefore, the application of the juvenile criminal reconciliation system should fully listen to the willingness of the perpetrator and the victim to reconcile, comprehensively consider the offender's repentance, subjective malignancy and social harm, and try to resolve the contradictions that can be resolved through criminal reconciliation through this way, so that the judicial organs can apply flexibly under the premise of effective supervision. To give juvenile offenders a full opportunity to reform, in order to better solve contradictions and repair social relations, rather than limiting the application of criminal reconciliation to a fixed range of sentencing. In the specific sentencing, it is necessary to combine various factors, such as objective factors, such as the fact of the crime, the nature of the crime and the severity of the harm to society. Of course, the motive of the minor's crime, the age at the time of the crime, whether it is a first-time offender, occasional offender or recidivism should also be taken into account. For the justice of the judgment, we must combine the reality, according to the relevant laws and regulations, grasp the severity of the minor sentencing, persuade the minor to repent and make a new start. Moderate leniency to master the starting point and range of sentencing. Various statutory and discretionary sentencing circumstances and the actual situation of the defendant should be fully considered, in accordance with the policy of "education is the first, punishment is the supplement", according to the criminal facts of the case and the different circumstances of the sentencing circumstances, the sentencing circumstances should be determined leniently and the adjustment ratio should be determined.

Strengthen ideological and legal education, not only for young people, but also for middle-aged and elderly people. Moreover, the state should allocate educational resources in remote mountainous areas, strengthen the education level of young people in remote areas, care and psychological counseling of young people through psychological professionals, maximize the good shape of their thoughts, listen to and guide the psychological problems of young people. In terms of electronic products, the state should strengthen the audit, and shield the negative information on the Internet as much as possible for minor users, so that they can accept more positive information while browsing the Internet.

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