

Reflections on Lowering the Minimum Age of Criminal Responsibility: With Comments to Article 1 of the Amendment to Criminal Law (XI)

Hao Li

College of Humanities and Law, South China Agricultural University, Guangzhou, Guangdong
510000, China

Abstract. The revision of the age of criminal responsibility is a major breakthrough in the Amendment to the Criminal Law of People's Republic of China (XI) (hereinafter referred to as the Amendment to Criminal Law (XI)). The first provision of the amendment reduces the minimum age of criminal responsibility from 14 to 12, which has aroused great controversy in the society and the academic circle. This move is a legislative response to the phenomenon of vicious violent crimes committed by minors and a reasonable consideration of the public's passionate public opinion, but there are still some problems worth discussing in its provisions. At present, there are many theoretical studies on the age of criminal responsibility in the academic circle. Based on this, this paper systematically sorts out the social background, theoretical viewpoints and extraterritorial legislation of the age of criminal responsibility, compares and analyzes the advantages and disadvantages of different theories, and refers to the legislative experience of countries with the minimum age of criminal responsibility under 14, and accordingly puts forward relevant legislative adjustment suggestions and supporting measures to improve them, expecting to promoting the continuous optimization of China's juvenile crime prevention and control system and reducing the juvenile crime rate.

Keywords: Minimum age of criminal responsibility; Criminal capacity; Amendment to criminal law; Prevention and treatment of juvenile delinquency.

1. Origin of the Problem: Serious Phenomenon of Lowering Ages of Crimes

In recent years, vicious violence incidents among young minors are common. In the public news reports during the period from 2017 to 2020, the cases that aroused great public reaction include the case that a 13-year-old boy killed a 73-year-old woman in Longhui, Hunan, the case that a 12-year-old boy murdered his mother with a knife in Yuanjiang, Hunan, the case that a 13-year-old boy killed a 10-year-old girl in Dalian, and the case that a 12-year-old boy killed a 10-year-old cousin in Anhui and dumped her body. Moreover, according to the Juvenile Delinquency in the Special Report of Judicial Big Data issued by the Supreme Court in November 2017, the White Paper on Prosecutorial Work of Minors (2021) issued by the Supreme People's Procuratorate in June 2022 and the Report of the Supreme People's Procuratorate on the Prosecutorial Work of Minors by the People's Procuratorate issued in October 2022, it can be seen that the number of juvenile delinquency is generally on the rise during the period from 2015 to 2021. Juvenile offenders account for a high proportion of all criminals, and younger juvenile offenders account for a high proportion of all juvenile offenders. Among them, some minors under the age of 14 commit vicious crimes such as intentional homicide and intentional injury, causing serious injury or death. The circumstances are extremely bad and caused strong social reactions. It is clear that the problem of juvenile delinquency has not been alleviated, and timely measures need to be taken to deal with it.

In the face of the vicious crimes committed by young minors from time to time and the voices of people's doubts, the national legislature made full consideration, and the National People's Congress Standing Committee officially passed the Amendment to Criminal Law (XI), which individually lowered the absolute exemption clause for minors under 14 years of age on the basis of the "Criminal Law of 1997", that is, lowered the minimum age of criminal responsibility for committing vicious crimes. If the Supreme People's Procuratorate approves the prosecution according to law, those who

decide not to be approved after examination will be urged to send them to special schools for strict correction and education. Although the public and some scholars affirmed that the institutional arrangements made by the criminal law legislation are according to the actual situation and social reality, many scholars questioned the rationality of lowering the minimum age of criminal responsibility.

2. Dispute over the Lower Limit: An Analysis of the Rationality of Lowering the Minimum Age of Criminal Responsibility

2.1 The maintenance theory

The core view of the maintenance theory is that the starting point of the age of criminal responsibility should not be lowered, but the status quo should be maintained. At present, the mainstream thought in the criminal law field is still that the punishment in the world is becoming more and more lenient and non-punitive, and the criminal law should embody humanitarianism and should not lower the lower age limit of criminal responsibility. Judging from the current social situation, if the minimum age of criminal responsibility remains unchanged at 14 years old, it will not be able to meet the public's psychological expectations for the effect of criminal law. The vicious crimes committed by minors under the age of 14 have emerged one after another, and the current legislation and social environment have not given a satisfactory solution mechanism to the families of the victims, which has led to the failure to effectively uphold individual fairness and justice, and has caused controversy over lowering the minimum age of criminal responsibility. It can be seen that its social effect is just ordinary, which is different from the current social situation in China. It emphasizes the stability and generality of the law too much and is not suitable for China's criminal law.

2.2 The lowering theory

The core view of the lowering theory lies in reducing the existing age of criminal responsibility and responding to the reality of the younger age of crime. In view of the reality that serious criminal offences are getting younger at present, some scholars in China believe that the situation of juvenile delinquency in China is getting worse and worse, so they suggest lowering the lower limit of the age of criminal responsibility, but there is controversy about the specific age. The significance of lowering the age of criminal responsibility is mainly as follows: First, lowering the age of criminal responsibility is more in line with the principle of adapting crime to punishment. Lowering the age of criminal responsibility for minors who commit specific criminal acts and curbing and deterring them by investigating criminal responsibility are the practice of the principle of suiting crime to punishment. Second, lowering the age of criminal responsibility better reflects judicial justice. Some underage minors commit serious crimes, causing great harm to the victims and posing a great threat to social order. Lowering the minimum age of criminal responsibility is conducive to safeguarding social public interests and judicial justice. Third, lowering the age of criminal responsibility is more conducive to correcting the behavior of minors. In today's society, bad information on the Internet has a great influence on minors. Some minors lack correct social cognition, the ability to identify bad social information, and their self-restraint ability is not strong. Therefore, to investigate the criminal responsibility of some serious juvenile offenders through legal means can make rigid corrections, and at the same time guide minors to form a sense of the rule of law, which is conducive to forming an upward and good social atmosphere and better guiding the healthy growth of minors.

2.3 Flexibility theory

The core view of the flexibility theory is that "the ability of imputation should be individualized", and the specific legal minimum age of criminal responsibility is uncertain, only the age range that can fluctuate up and down is stipulated. Criminal responsibility can also be prosecuted for some

criminal juveniles who commit crimes with cruel means, serious consequences and bad circumstances and are similar in age when they act. Some scholars believe that setting a specific age of criminal responsibility is not conducive to judging the existence and quantity of criminal responsibility ability, and age should not be the absolute limit of cognitive discrimination ability in the field of consciousness. Setting a rigid minimum age of criminal responsibility system has inherent institutional defects. The flexibility theory emphasizes individual differences. By setting a flexible age of criminal responsibility, it is beneficial to correct the system deviation, implement the criminal policy of combining leniency with severity, and finally achieve a real "concrete analysis of specific problems". Compared with other theories, the flexibility theory is a compromise view. On the basis of maintaining the minimum age of criminal responsibility, it seeks for a relatively moderate solution. For example, the individual lowering of the age of criminal responsibility stipulated in the Amendment to Criminal Law (XI) is to uphold the position of the flexibility theory and realize the criminal policy of "education first, punishment second". However, the flexibility theory is not conducive to maintaining the overall stability and systematization of the law, and it is not specific and clear enough for conviction and sentencing, which may increase the workload of judicial practitioners and is not completely suitable for China with codification as its legislative tradition. Therefore, it needs further consideration.

2.4 The raising theory

The core view of the raising theory is to oppose lowering the minimum age of criminal responsibility and support the starting point of raising the age of criminal responsibility. Some scholars believe that teenagers are not deeply involved in the world, and their special mental state means that it is easier to discipline and reform them, and the lower age limit of criminal responsibility should be raised instead of harsh punishment, so as to conform to the general trend of the leniency of criminal law in the contemporary world. For example, Japan raised the age of criminal responsibility from 14 to 16 when legislating. Although the raising theory is beneficial to protect the legitimate rights and interests of minors and emphasizes the principle of highlighting education over punishment, it does not conform to the legislative system of China's criminal law, and it cannot guarantee social fairness and justice. At present, only few scholars advocate the raising theory, which is not the mainstream view in the academic circle, but also runs counter to the current legal provisions and does not conform to the current social development trend and historical development law, so this paper will not give prominence to it.

2.5 Malice compensates age theory

The core view of the malice compensates age theory is that the subjective malice of young minors has the effect of overthrowing young minors from taking criminal responsibility. That is to say, for juvenile offenders who have not reached the age of criminal responsibility, if the evidence presented by the prosecution can prove that minors have some malice when committing criminal acts and have the ability to distinguish good from evil, then they can be considered as having the ability to bear criminal responsibility and can be prosecuted for criminal responsibility. The key point of this theory lies in "malice", which makes minors bear criminal responsibility according to the degree of "malice". From the perspective of pursuing social effects and fairness and justice, the theory of malice compensates age has its merits, which can guarantee individual fairness and justice, meet the public's psychological expectation of the effect of criminal law, and better protect the legitimate rights and interests of most non-malicious criminal minors, so as to achieve "concrete analysis of specific problems." However, the theory originated from Roman law, germinated and grew in the soil of Anglo-American legal system, which may not be suitable for China's national conditions. Moreover, the implementation of this theory requires a lot of judicial and social costs, and it is difficult to put into practice, and the regional differences are obvious, so it cannot be transplanted and used. Therefore, it can only be used for reference.

To sum up, compared with the other four theories, the lowering theory not only conforms to the basic spirit of China's criminal law system, alleviates the urgency of short-term practical needs and saves various costs of system reform, but also conforms to the psychological expectation of the public to punish criminals and the scientific law of historical development. It is conducive to safeguarding individual fairness and justice, and is not difficult to implement in the judicial system. It is a legislative strategy suitable for China's national conditions and worth exploring. Combined with the relevant provisions of Amendment to Criminal Law (XI) and the serious trend of younger crimes, this paper supports and advocates the lowering theory, and suggests that the current minimum age of criminal responsibility be lowered to 12 years old. That is, the 14-year-old "eight major criminal acts" standard will be applied to the 12-year-old perpetrators in parallel, including the use of particularly cruel means, causing serious harm as the results and other bad circumstances, and the conviction and sentencing will be unified in combination with the case.

3. Extraterritorial Legislation: Regulations on the Minimum Age of Criminal Responsibility in Other Countries

Juvenile delinquency is becoming more and more serious, and the crime rate of juvenile delinquency in other countries in the world is also on the rise. In the prevention and treatment of juvenile delinquency, from a global perspective, the provisions of the minimum age of criminal responsibility vary greatly among countries. Due to factors such as legal system, geographical location and historical tradition, countries with different legal systems and different historical backgrounds have different minimum age of criminal responsibility.

3.1 The provisions of the American criminal law.

The federal and state regulations on the age of criminal responsibility in the United States are different, but they generally follow the strict legislative spirit, that is, no matter what age, as long as people commit crimes as adults do, they should be responsible for their actions as adults. According to the data of the U.S. Ministry of Justice, judging from the starting point of the age of criminal responsibility stipulated by 27 States in the United States, there is a big gap among the minimum ages of criminal responsibility. Although there is no minimum age of criminal responsibility in some states, judges are given discretion, and the specific circumstances are treated differently. About half of the states in the United States follow the common law rules. The common law sets the minimum age of criminal responsibility at 7 years old, and at the same time stipulates that the age of 7-14 years old applies the rule of "malice compensates the age of responsibility", that is, in principle, it is presumed that the actor at this age stage does not have criminal responsibility unless the prosecution has evidence to prove that his behavior is malicious.

3.2 The provisions of the British criminal law.

The British common law initially set the minimum age of criminal responsibility at 7 years old, and the Children and Young Persons Act of 1933 and the revised Children and Young Persons Act of 1963 successively raised it to 8 years old and 10 years old. In short, children under the age of 10 in Britain are completely irresponsible, which is much lower than that in most European countries. Although the minimum age of criminal responsibility is very low, its treatment measures are mild and non-custodial measures, which reduces the disadvantages of setting the minimum age of criminal responsibility too low and helps to avoid the moral crisis caused by it to some extent, such as remedial order, unconditional release, conditional release, compensation order, referral order, bound over guarantee, fine, suspended judgment and juvenile rehabilitation order.

3.3 The provisions of French criminal law.

The current Code pénal does not stipulate the minimum age of criminal responsibility. Previously, the minimum age of criminal responsibility in France was 13 years old. According to relevant research,

France makes specific judicial decisions through the system of "age of responsibility for crimes". Based on this, whether minors have the ability to distinguish and control becomes the basis of whether they bear criminal responsibility, and age only affects the degree of criminal responsibility they bear and the way to realize criminal responsibility. For example, within the minimum age of criminal responsibility, France has taken different measures according to age groups, and divided the punishment measures into educational measures, educational punitive measures and penalties, which protected the interests of minors to a certain extent. In essence, it adopts a flexible legislative model, which realizes the linkage and cooperation of the "legislation + judicature" model and better embodies the spirit of the general principle of legislation on the minimum age of criminal responsibility.

To sum up, in the context of the increasingly serious trend of younger crimes, the "number" of the minimum age of criminal responsibility is of great significance, and whether the minimum age of criminal responsibility system is perfect, reasonable and appropriate still needs examination of other factors, especially the "treatment measures". This paper believes that we can learn from the criminal law provisions of countries with relatively mature legislative models, adjust and optimize the provisions on the minimum age of criminal responsibility in China's criminal law, and trace back to the previous criminal law provisions according to the current social situation and needs. For example, the Guiding Principles of Criminal Law (the first draft) issued in 1954 in China once took 12 years old as the starting point of criminal responsibility. If the minimum age of criminal responsibility is uniformly lowered to 12 years, the conditions for applying criminal law are strictly limited, and the judicial practice is flexible, it is believed that the system will achieve good social results.

4. The Optimization Path: Determination of the Minimum Age of Criminal Responsibility in China

4.1 Legislative adjustment proposals

The Amendment to the Criminal Law (XI) lowers the age of criminal responsibility to 12 years old, and stipulates that the types of crimes for which minors over 12 years old but under 14 years old bear criminal responsibility can only be violent crimes with serious circumstances. Since the scope of lowering the age of criminal responsibility is limited to the extremely vicious crimes committed by minors, the legislative lowering of the starting point of the age of criminal responsibility itself will not affect the outcome of most juvenile delinquents, and they will still be punished by education rather than punishment through the juvenile justice system. Therefore, this paper suggests that the minimum age of criminal responsibility be lowered to 12 years old in the form of criminal law amendment, without setting special circumstances of individual downward adjustment. If there are individual extreme crimes, other disciplinary measures other than penalty methods can be adopted to deal with them.

Judging from China's current national conditions, on the one hand, with the development of society, people's living standards are constantly improving, and the phenomenon of precocious puberty among teenagers is more common. On the other hand, with the continuous development of Internet technology, information has spread rapidly in society through traditional media and emerging self-media, making it easier for teenagers to understand basic legal knowledge and understand the legal consequences of illegal and criminal acts. To sum up, on the basis of comprehensive consideration of different theories and foreign legislative experience, this paper suggests that the minimum age of criminal responsibility should be lowered in integrity, to the middle value of 12 years old stipulated by various countries in the world. In addition, the Convention on the Rights of the Child solemnly puts forward and suggests that the minimum age of criminal responsibility of all contracting parties should not be lower than 12 years old. From the numerical setting of the minimum age of criminal responsibility, it is reasonable to lower the minimum age of criminal responsibility to 12 years old.

4.2 Improve the supporting measures

The causes of juvenile delinquency are often common, such as incomplete family, left-behind children and lack of education. Therefore, it is necessary to improve the relevant legal system and form a comprehensive prevention and control system combining the state, society, schools and families, which can be started from the following aspects.

4.2.1 Fully implement special corrective education

The Amendment to Criminal Law (XI) and the Law on the Prevention of Juvenile Delinquency also stipulate special corrective education, forming a dual regulation model of "punishment" and "protective punishment" for juvenile delinquency. However, there are still some shortcomings in its provisions, which need to be further improved. First of all, make the applicable conditions of special corrective education clear. From the meaning of special corrective education, the applicable conditions of it should include two aspects: first, teenagers have committed criminal illegal acts with substantial illegality, but they cannot be punished by the criminal law because they do not meet the requirements of the age of criminal responsibility. Second, it can only be applied when necessary. In addition, according to the relevant provisions of the Law on the Prevention of Juvenile Delinquency, it can be known that education and correction of different types of juvenile bad behaviors are conducive to maximizing the effect of corrective education, thus implementing the system of graded treatment of juvenile delinquents.

Secondly, reasonable application of educational disciplinary measures. Drawing lessons from the legislative experience of France, it divides punishment measures into educational measures, educational punitive measures and penalties, and imposes educational measures on people under the age of 10, which are not penalties but protective measures. Protective punishment is an alternative measure of punishment, and specialized corrective education is one of them. In December, 2020, the Ministry of Education promulgated the Disciplinary Rules for Primary and Secondary Education (Trial implementation) (hereinafter referred to as the Disciplinary Rules for Education), which established the method of reverse protection (disciplinary). According to the relevant provisions of the Disciplinary Rules for Education, ordinary primary and secondary schools, secondary vocational schools and their teachers enjoy the power of active discipline and educational punishment. The active and rational use of educational disciplinary measures will help to correct students' wrong words and deeds in time, cultivate students' awareness of rules and responsibilities, and thus play a role in preventing illegal crimes. However, the application of disciplinary measures needs to further clarify the supervision right of parents and promote the openness and legalization of educational punishment.

4.2.2 Construct a system for the protective punishment of minors

Judicial practice also needs to solve the problem of dealing with minors. The purpose of protective punishment is not to punish minors for illegal crimes, but to protect and educate minors. By adjusting their growth environment and correcting their personality, they can return to society and adapt to normal social life. First, the idea of graded intervention can be carried out, the principle of individualization of juvenile justice treatment can be implemented, the beneficial experience of foreign treatment can be learnt, and a juvenile justice system integrating admonition, discipline, supervision and correction, special education, special correction education and other protective measures can be established. For example, a "minor education management school" can be set up through unified training institutions, integration of reception and re-education schools and work-study schools, etc., under the unified management of the department of public safety, and the local education department is responsible for specific educational matters, including but not limited to compulsory education, vocational education and unpaid labor.

Second, we can consider developing professional social forces. The problem of juvenile delinquency involves many disciplines such as education, psychology, medicine and sociology. Only professional help can prescribe the right measures, which requires more professional personnel to join. Social workers can not only provide basic situation investigation and universal services, but also link with other institutions. Third, realize effective education in protective punishment. Supporting

measures should focus on the social support ability of minors and the construction of social support network. First of all, attach importance to improving family-of-origin's educational ability, and carry out compulsory parenting education when necessary. The core of school education should be vocational education, and students' awareness of rules should be strengthened in the full-time compulsory education stage. We should continue to reform work-study education and further strengthen professional training.

4.2.3 Improve the juvenile crime prevention system

For a long time, China has always adhered to the principle of "education first, punishment second" and implemented the policy of "education, help change by persuasion and salvation". Therefore, it is very important to establish and improve a systematic juvenile crime prevention system. This paper puts forward the following two suggestions: first, improve the system of eliminating criminal record. People who have been subjected to criminal compulsory measures in China are despised and rejected in social life because of their criminal record, and the handling of cases after criminal punishment or educational disciplinary measures for juvenile offenders should be treated specially. In order to eliminate the influence of crime labels, and really let juvenile offenders return to society and achieve the due correction effect, a system of eliminating criminal record of security measures should be set up. For example, all minors who have received education and punishment in corrective management schools, except those who have been sentenced to more than five years in prison, should be exempted from the obligation to report, and their records of crimes and punishments should be deleted from the files.

Second, strengthen community responsibility, improve the community correction system, and intervene juvenile delinquency through the community. Take the United States as an example, in the mid-1980s, many cities launched crime prevention plans and promulgated a series of laws and regulations, such as "increasing the police force in urban communities and establishing a 24-hour patrol system", "provisions on the safety protection of juvenile schools" and "provisions on the prevention of juvenile delinquency in communities". It also covers regulations such as sending excellent teachers to troubled teenagers in community, controlling the excessive spread of violent information by the media, and restricting the use of guns. At the same time, many residents actively participate in it, and through the establishment of neighborhood police joint defense teams, street security teams and other organizations, the purpose of preventing juvenile delinquency is achieved. At present, China's community corrective institutions are still in the development stage. There is no correction system for different criminals, and there is a lack of special corrective institutions and methods. Therefore, in the future, it is necessary to further improve the community correction system and vigorously promote minors to better return to normal study and life.

5. Conclusion

Under the background of the increasingly serious juvenile delinquency, the current legislation fails to provide a better solution to appease the emotions of the victims' families and prevent the occurrence of vicious (violent) incidents among minors, which ultimately leads to the failure to effectively uphold fairness and justice, thus causing widespread controversy. Considering that teenagers have a certain ability to identify and control at present, this paper believes that it is necessary to get out of the misunderstanding that applying criminal law to minors is a heavy blow and face up to the discussion on the minimum age of criminal responsibility. As for the setting of the minimum age of criminal responsibility in Article 1 of Amendment to the Criminal Law (XI), we can consider lowering the starting point of the age of criminal responsibility to 12 years old, and benchmark the "eight major criminal acts" standard of 14 years old. Finally, it is suggested to prevent and control juvenile delinquency from three aspects: fully implementing special correction education, building a juvenile protection and punishment system and improving the juvenile crime prevention system.

References

- [1] Xu Jiusheng, Xu Juanying. On the Negation of Lowering the Age of Criminal Responsibility [J]. Contemporary Youth Studies, 2020(02):112-120.
- [2] Xue Liming. Analysis on the Rationality of Lowering the Age of Criminal Responsibility [J]. Learning Theory, 2021(05):49-51.
- [3] Liu Junjie. On the Infeasibility of Lowering the Age of Criminal Responsibility [J]. Law Journal, 2020, 41 (07):121-131.
- [4] Li Meng. Theoretical Analysis of the Rule of Malice Compensating Age in Common Law System and its Enlightenment to China [J]. Journal of Hunan University of Science and Technology (Social Science Edition), 2021, 24 (04):128-138.
- [5] Deng Juntao. Age and Cognition: Thinking Caused by "Lowering the Age of Criminal Responsibility" [J]. Journal of China University of Political Science and Law, 2020(04):33-44+206-207.
- [6] Peng Wenhua, Fu Liang. On the provisions of the Amendment of the Criminal Law (11th) on the Age of Criminal Responsibility [J]. Juvenile delinquency, 2021 (01):20-32.
- [7] Zhang Wenxiu. Research on the Issue of the Lower Age of Criminal Responsibility: Also on Bringing "Compulsory Education" into the Special Procedure of Criminal Procedure Law [J]. Social Science Forum, 2016 (05):207-217.
- [8] Zhang Tuo. Advocating the Flexibility of the Minimum Age of Criminal Responsibility [J]. Juvenile Delinquency, 2017(02):52-58.
- [9] Cai Qixuan. The setting of the minimum age of criminal responsibility for minors in China [J]. Law Journal, 2018, 39 (11):56-63.
- [10] Li Chunlei, Zhang Hongwei: Introduction to Foreign Criminal Law, Peking University Publishing House, 2011.
- [11] Zhou Songqing. Comparative Study on the Legal Regulation of School Violence between China and the United States [J]. China Youth Studies, 2016(01):16-22+30.
- [12] Jiang Min. Study on the Minimum Age of Criminal Responsibility in UN Member States [J]. Legal Science (Journal of Northwest University of Politics and Law), 2022,40(02):89-100.
- [13] Zhu Lin (trans). The Latest French Criminal Code, Law Press, 2016.
- [14] Yu Yang, Zhou Lining. Comparative Study on Criminal Law Regulation of the Age of Criminal Responsibility [J]. Police Studies, 2021(02):79-94.
- [15] Qu Shuyang. Coping with the Younger Age of Crime: From the Perspective of Lowering the Age of Criminal Responsibility [J]. Journal of University of Science and Technology Beijing (Social Science Edition), 2021, 37 (03):282-289.
- [16] Sun Qian. The Construction Path of Juvenile Justice System in China [J]. Politics and Law, 2021(06):2-14.
- [17] Song Jian. The Sorrow of Lowering the Age of Criminal Responsibility: Rethinking the Prevention and Punishment of Juvenile Delinquency [J]. Journal of Hubei University of Science and Technology, 2021, 41 (02):45-50.