

Reflections on Lowering the Minimum Age of Criminal Responsibility: Commenting on Article I of Amendment (XI) to the Criminal Law of the People's Republic of China

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Abstract: In recent years, the number of cases of malicious crimes committed by minors has increased. Based on the premise that minors have the ability to recognize and control, and the lessons of the overseas Malicious Complement Age System, the age of criminal responsibility has been lowered to 12 years old with conditions. This is in line with the theoretical presumption of criminal responsibility and responds to the objective reality, reflecting the prevention and punishment of crimes committed by minors and the protection of their rights and interests. In the meanwhile, a socialized support system should be constructed and improved, focusing on early educational intervention and community functions, etc., to advance the fundamental management of the problem of underage delinquency.

Keywords: Juvenile delinquency; age of criminal responsibility; malicious complementary age; socialized support system

1. Statement of the Problem

In 2004, Zhao, a 13-year-old boy from Tonghe County, Heilongjiang Province, raped a 14-year-old girl from the same village. Due to the fact that Zhao had not reached the legal age of criminal responsibility when he committed the crime, the public security authorities did not pursue criminal responsibility according to law. Therefore, Zhao was released according to law. After that, Zhao broke into the victim's house at night and stabbed the victim's mother to death in front of that girl. This is not a single case. In 2019, Cai, a 13-year-old boy in Dalian, Liaoning Province, intended to rape a 10-year-old girl in the same neighborhood. He brutally killed the girl when she resisted, and dumped her body in a bush. Similarly, due to the fact that Cai had not reached the legal age of criminal responsibility at the time of the crime, the public security authorities were not held criminally responsible in accordance with the law. As a consequence, Cai was placed in a three-year sheltered correctional facility.

In recent years, such cases of malicious crimes committed by juveniles have been in the press and have aroused widespread concern. Some minors commit violent crimes with cruel and socially harmful means. While the victims are not at fault, the perpetrators are exempted from criminal punishment because they have not reached the age of criminal responsibility, making it difficult for the public's simple view of justice to accept. Although such cases are still in the minority, the rapid spread of information and public opinion disguises their social harm and impact. Many people worry that minor offenders may commit serious and vicious crimes again if they are not severely punished and effectively supervised.

In response to public concerns, the 24th meeting of the Standing Committee of the 13th National People's Congress adopted the Amendment (XI) to the Criminal Law of the People's Republic of China (hereinafter referred to as "Amendment (XI) to the Criminal Law") on December 26th, 2020, which maintained the original age of criminal responsibility for most minors and added a new provision: "Where a person who has attained the age of 12 but under the age of 14 commits a crime of intentional homicide or intentional infliction of bodily harm, which has resulted in the death of another person or the serious disability of another person for the serious injury inflicted by especially cruel means, and the circumstances are execrable, the person shall assume criminal liability with the Supreme People's Procuratorate's affirmation of prosecution." The application of this provision is

required to meet the strict restrictions on the age stage of the subject of the crime, the conditions of the quality of the crime, the consequences of harm, the circumstances of the crime, and other aspects of the procedure must also be approved by the Supreme People's Procuratorate, while stating that minors who have reached the age of 12 years old but not 14 years old are still presumed to be criminally incompetent under normal circumstances.

2. Overview of the Age of Criminal Responsibility

The age of criminal responsibility is at the center of the conflict between the protection of the rights and interests of minors, and the expectation of justice enhancement in today's society. In addition, the relevant issues, such as how to understand the conditions of application of the minimum age of criminal responsibility in the Amendment to the Criminal Law (XI) and how to improve the protection system for minors after the individual downward adjustment of the age of criminal responsibility, are all relevant issues to be discussed and clarified.

In determining whether the act of the perpetrator constitutes a crime, China's criminal law takes into account not only the social harm of the act, but also the subjective evil and personal danger of the perpetrator, and presumes the criminal responsibility of the perpetrator according to his physical and mental maturity, his ability to recognize and control his own behavior, and delineates a reasonable range of criminal responsibility in order to achieve the unity of punishing crime and protecting rights. In practice, in order to ensure judicial consistency and fair and just application of criminal law, countries basically adopt the age of criminal responsibility for minors to determine the criminal responsibility capacity of the perpetrator, providing specific and clear operable standards and bases for the administration of justice. This is mainly due to the fact that human behavior is based on human free will, and criminal behavior is usually governed by human consciousness. People at different ages receive different levels of education, accumulate different social experiences, have different degrees of free will, and thus produce different degrees of recognition and control. The criminal law presumes that minors who have not reached the age of criminal responsibility are not criminally responsible because their immature free will cannot produce sufficient recognition and control to govern their behavior, and when they are charged with a criminal offense, they are not capable of understanding and participating in the criminal proceedings. At the same time, as minors are different from adults in terms of physical and mental development and educational needs, more caution and differential treatment is necessary at the level of application of penalties. In addition, varying degrees of family and social educational deficiencies can usually be seen in minors who have committed crimes. For the purpose of protecting minors, the state is obliged to provide protective correction and compulsory rehabilitation to make up for the deficiencies in family and social education and prevent them from committing crimes again. Therefore, the age of criminal responsibility should not only take into account the prevention and punishment of crime and the maintenance of social justice, but also reflect the protection of the rights and interests of minors who are still growing and malleable. Based on various considerations, the minimum age of criminal responsibility was set at 14 years of age in the Criminal Law, and this provision continued until the adoption of the Criminal Law Amendment (XI). For juvenile delinquency, China also advocates the principle of "education as the mainstay, punishment as a supplement" and the policy of "education, probation and rescue".

Although the age of criminal responsibility clearly defines the boundary of the ability to be criminally responsible, which is of high practical value and helps to improve the efficiency of judicial practice, it should be noted that the age of criminal responsibility is actually only a legislative presumption, an average rigid standard that cannot represent the physical and mental development of each minor, nor can it accommodate his or her evolving abilities. The ability to recognize and control the sphere of human consciousness cannot have a distinct absolute boundary like age, which has been the painful and difficult point in the delineation of the age of criminal responsibility. The proposed age is too low to protect the legitimate interests of the victim, and too high to condone the crimes of minors.

In the context of social transformation, the relevant provisions of the Amendment to the Criminal Law (XI) respond to certain special problems arising from social governance in a timely manner and are justifiable to a certain extent. Based on the requirements of protecting the rights and interests of minors and the objective need of social defense, there is still much room for discussion on whether it is feasible to lower the age of criminal responsibility, how to lower it, and how to better implement the relevant provisions in judicial practice and improve the age of criminal responsibility system in China.

3. The Extraterritorial Investigation of the Age of Criminal Responsibility

At present, the age of criminal responsibility varies from country to country, showing distinct localities, complexity and diversity, but they all presuppose the ability of criminal responsibility, i.e., the ability to recognize and control. Generally speaking, the starting age of criminal responsibility is relatively high in civil law countries and lower in common law countries.

3.1 The Age of Criminal Responsibility in Civil Law Countries

3.1.1 Germany

The minimum age of criminal responsibility in Germany is 14 years old, and minors under 14 years old are presumed to be completely incapable of criminal responsibility. They are subject to family law measures if they are delinquent or have violated the law and are placed in a correctional institution for adoption. Minors between 14 and 18 years old are subject to a special juvenile criminal law and a three-tier criminal punishment system, namely, education and rehabilitation, disciplinary punishment and juvenile punishment. The German Juvenile Court Act also provides for an overall personality assessment system, whereby minors between the ages of 14 and 18 in conflict with the law are required to undergo a maturity examination to prove their ability to recognize judgment and behavior; and minors who are proven to meet the maturity responsibility criteria are held criminally responsible for their socially dangerous behavior. In general, the strict application of juvenile criminal law in Germany also emphasizes the education and correction of minors in conflict with the law and the implementation of disciplinary measures that match their ability to be responsible.

3.1.2 Japan

Japan sets the minimum age of criminal responsibility at 14 years of age. The Juvenile Law was enacted with the aim of protecting and nurturing juveniles with a sound personality, and seeks to rehabilitate delinquent or law-breaking juveniles and prevent recidivism through education, guidance, protective observation or transfer to a correctional institution. Juveniles in conflict with the law who have reached the age of 14 are generally referred to the Family Court for investigation, juvenile trial, and decision on punishment. There are two main types of punishment: institutional and community-based. Institutional punishment and correction are the main means of solitary confinement, while community-based punishment is mainly for education and protection, with non-custodial counseling and treatment. Community-based sanctions are mostly applied to juveniles who are generally in conflict with the law to avoid their premature exposure to the prison system. However, juveniles who commit particularly serious atrocities, such as robbery and murder, are referred back by the Family Court to the Public Prosecutor's Office for investigation by the police and the Public Prosecutor's Office for criminal trial. Juveniles under the age of 14 who have misbehaved or broken the law and to whom the Child Welfare Law applies are referred to the Child Counseling Center. If a juvenile trial is deemed necessary, they will be referred to the Family Court for a decision on punishment. All in all, Japan emphasizes the differentiation of treatment for juveniles of different ages and behaviors, and avoids the use of imprisonment and harsh penalties for juveniles as much as possible.

3.2 The Age of Criminal Responsibility in Common Law Countries

Most common law countries, like Japan and Germany, also divide the age of criminal responsibility into three stages: the age of full non-criminal responsibility, the age of relative criminal responsibility, and the age of full criminal responsibility. The main difference lies in the relative age of criminal responsibility, the use of the “Malicious Complement Age” system. In other words, the legislation presumes that minors within the relative age of criminal responsibility do not have the capacity for criminal responsibility, but in practice, it is up to the judicial authorities to make a case-by-case determination. If a minor can prove that he or she was aware of the wrongfulness of the act when committing a serious violation, he or she may be considered to have “malice” and be held criminally responsible for the serious violation he or she committed. In judicial practice, minors are often judged by investigating their upbringing, knowledge level, family background, etc. to determine their ability to identify and control whether they are sufficiently aware of the harm of their actions and hope or allow the results to happen, and by investigating their pre-crime and post-crime actions such as false accusations, hiding after killing, destroying bodies, etc. to determine their malice level. The typical countries that currently retain a “Malicious Complement Age” system are the United States and Australia. Rules are different in different states. Some states retain the “Malicious Complement Age” system, such as Oklahoma, where it applies to ages 7-14; Washington, where it applies to ages 8-12; and Nevada, where it applies to ages 8-14. Some states have set a minimum age of criminal responsibility and no longer retain the Malicious Complement Age system, and juvenile criminal law applies when the age of criminal responsibility is reached, such as North Carolina, where the minimum age of criminal responsibility is 6, and New York, where it is 7. In 1998, the UK abolished the Malicious Complement Age system and now sets the minimum age of criminal responsibility at 10 years old, so that children and adolescents between the ages of 10 and 14 are no longer exempt from liability by proving the absence of malice.

4. Theoretical Controversy of the Minimum Age of Criminal Responsibility

Regarding the controversy of the age of criminal responsibility, there are three different views in the academic field, namely, the theory of lowering the minimum age of criminal responsibility, the theory of maintaining the minimum age of criminal responsibility and the theory of flexibility.

4.1 The Theory of Lowering the Minimum Age of Criminal Responsibility

4.1.1 The Main Reasons for the Theory of Lowering the Minimum Age of Criminal Responsibility

First, the physical and mental development of minors is advanced, and their cognitive and control abilities are subsequently improved. With the improvement of nutritional structure, students’ physiological development has advanced compared with their peers more than 40 years ago [1]. On the other hand, with the rapid development of information technology nowadays, minors can easily access rich knowledge through the Internet and other means, but they are also more likely to be exposed to pornographic violence and other undesirable information, and their psychological development appears premature. In addition, at this stage of compulsory education, emphasis is placed on legal education for students, and more and more juveniles already have basic legal knowledge; in reality, there are even cases of minors committing serious crimes knowing that they are not criminally liable for committing them. Therefore, the recognition and control ability of today’s minors should be improved, and the age of criminal responsibility is still set at 14 years old, which is not appropriate.

Second, the cases of vicious crimes committed by minors that have emerged in recent years have greatly harmed the interests of the victims, and are socially harmful and have had a bad impact. From the perspective of discipline and prevention of crime and defense of social and public interests, crimes committed by minors have seriously endangered society and deserve to be punished severely as necessary within the principles of the rule of law. In addition, appropriate penalties can help punish

vicious crimes committed by minors, strengthen the warning and education of minors, and bring into play the preventive function of criminal law. Mobile minors account for more than half of the crimes committed by minors [2]. With a large number of left-behind and migrant children in China, the lack of family guardianship and an inadequate state guardianship system, it is both urgent and important now to discipline and educate the minors who commit vicious crimes. The emphasis on education and probation, without a significant degree of punishment, may not help the rehabilitation of juvenile offenders. It may also make them more reckless and give other peers the impression that they are not responsible for crimes, which can lead them to the path of crime and cause greater negative impact on society.

4.1.2 Reflections on the Theory of Lowering the Minimum Age of Criminal Responsibility

With the development of society and the advancement of physical and mental development of minors, it is biased to presume whether minors have the ability to recognize and control according to their developmental status in the 1970s, and it is necessary to re-examine the ability of minors to recognize and control their behavior in the new era. Moreover, if some acts with great social harm are exempted simply because of their age, it will not be able to appease and compensate the victims, nor will it reflect the fairness and justice of the punishment. Punishing underage minors who have committed serious crimes can help bring into play the positive preventive function and warning effect of criminal law, prevent perpetrators from committing crimes again, and curb the fluke mentality of other minors who have transgressive thoughts.

However, there are some unreasonable points in the theory of lowering the age of criminal responsibility. First of all, although the physical development of minors has accelerated in general compared to the last century, due to the differences in the level of economic development in different regions of China, the environment in which minors grow up, their physical and mental development and knowledge level are still significantly different and cannot be generalized. Also, if the minimum age of criminal responsibility is too low, it will expand the fight against juvenile crime and thus may harm the interests of some minors and is not in line with the principle of children's rights protection. In addition, allowing underage minor offenders to receive criminal punishment may prevent them from receiving care and support from their families and society at the important starting stage of their lives, and from receiving education normally, etc., which brings irreversible negative effects to their physical and mental development and is not conducive to their smooth return to society. Secondly, the uneven amount of information on the Internet can easily make minors lost, affect their correct worldview, outlook on life and values, and hinder their psychological development and maturity, which cannot be blamed entirely on minors themselves. The causes of juvenile delinquency are related to family, school and society, such as the lack of family education and guardianship of minors, the experience of school violence, the existence of various undesirable temptations in society, the lack of relevant protection and guarantee measures, etc. These problems cannot be solved in a short time, nor can they be solved by lowering the age of criminal responsibility.

4.2 The Theory of Maintaining the Minimum Age of Criminal Responsibility

4.2.1 The Main Reasons for the Theory of Maintaining the Minimum Age of Criminal Responsibility

First of all, the psychological maturity and recognition and control ability of minors are not necessarily higher than those of their peers in the last century. The early physical development of today's minors does not mean that emotional control and behavioral control develop simultaneously early. Just because the developed Internet provides minors with more information and knowledge does not mean that they will be more psychologically mature as a result. The fact that minors are influenced by pornographic and violent information on the Internet and commit crimes proves that in the face of mixed information, today's minors still lack sufficient judgment ability, immature psychological development, and the ability to recognize and control their behavior.

Secondly, the main reason for some minors' crimes is the lack of necessary strong social ties, which should be mainly attributed to the family and society rather than the minors themselves. Scholars represented by Lin Qinghong start from the theory of social control, pointing out that when the bonds of social connection are strong enough, individuals will not easily violate the rules; when the bonds of social connection are weak, individuals are in an unrestrained state, and undesirable and transgressive behaviors are prone to occur [3]. Left-behind and mobile minors under the age of 14 commit crimes more often because of the lack of social ties and still commit serious crimes even with relevant legal awareness. Therefore, lowering the age of criminal responsibility is a way to blame minors entirely for crimes and shirk family and social responsibilities. Moreover, penal punishment may have a negative impact on a minor's future development in life. The easy use of penalties such as imprisonment can interrupt minors' school and social learning, which may have serious and irreversible negative effects on their brain development and personality formation, as well as cause "cross-infection" among minors in prison, leading them to commit crimes again.

Finally, criminal law cannot be changed overnight in response to public opinion. Public opinion is mostly on the side of the victim, while criminal law should take into account the interests of both the victim and the perpetrator, and should not simply respond to the public's simple psychology of revenge, and adjusting the age of criminal responsibility downward due to extreme cases will lead to the instability of the criminal responsibility system, which is contrary to the consistent principle and position of the protection of minors.

4.2.2 Reflection on the Theory of Maintaining the Minimum Age of Criminal Responsibility

It can be seen that the theory of maintaining the minimum age of criminal responsibility is mainly based on the position of family and social responsibility and the malleability of minors, and insists on "education as the mainstay, punishment as a supplement". China is in a period of rapid social transformation, and social conflicts are frequent and prominent, causing some psychological problems in minors that were not common in the past. These psychological problems are also one of the causes that induce minors to commit crimes. The lack of contact with family and society and psychological problems of minors cannot be solved by strict laws and expanding the scope of criminal responsibility, and may even aggravate the dissatisfaction and resentment of minor offenders toward society and commit more serious and vicious crimes in the future to retaliate against society. For minors with problems should pay attention to psychological guidance and education and probation, the key is to strengthen early prevention and correction, improve the corresponding educational measures, and prevent their crimes by strengthening their ties with society. At the same time, the criminal law should not generalize extreme cases, and should remain rational in cases that trigger huge public opinion, and should not adjust the age of criminal responsibility downward as soon as similar cases arise, which cannot eliminate crimes committed by children and adolescents below the age of criminal responsibility and is not conducive to the criminal law's adherence to its modesty, stability and uniformity.

It is true that the education of minors is very important, but education alone cannot cure everything. It is reasonable to insist on education for the majority of minors, but it still cannot effectively solve the serious problem of crime among younger minors in front of us. In essence, the maintenance argument does not address the issue of criminal responsibility and the standardization of the age of criminal responsibility, but rather considers the treatment of minors outside of the criminal justice system. Educational crime prevention is a moderate and long term tool, and the improvement of educational and correctional measures involves the coordination of all sectors of society and entails a certain social cost. However, in extreme cases of emergency response, it is difficult to reassure victims and protect their interests through education alone. In the case of juvenile delinquency that can be solved through education or probation, the use of criminal punishment should be avoided, but in the case of juvenile delinquents with extreme violence, the key is how to manage and indoctrinate them to prevent them from continuing to commit crimes, and therefore the need for criminal punishment needs to be considered. As an independent and self-aware individual, although minors commit crimes for external reasons, they should not ignore their own internal reasons, and a blanket

exemption may make minors unaware of their own problems and unable to reflect deeply and reform themselves.

4.3 The Theory of Flexibility

4.3.1 The Main Reasons for the Theory of Flexibility

In addition to the previous two theories, some scholars put forward a compromise theory of flexibility. The main reason is that human's ability to recognize and control cannot be divided as clearly as age. Therefore, age cannot be an absolute criterion for the classification of criminal responsibility capacity, and the absolute decrease or maintenance of the age of criminal responsibility ignores the differences between individuals. The "one-size-fits-all" rigid legislative model on the age of criminal responsibility in China, where the legislation draws up an age standard for criminal responsibility capacity and does not take into account the specific circumstances of each case, may lead to deviations between the presumed criminal responsibility capacity and the actual criminal responsibility capacity. In practice, it is easy to fail to deal with the problem of juvenile delinquency. The problem may be solved by drawing on the maliciousness age system in common law countries, where the legislation establishes a presumptive age of criminal responsibility, and the judicial authorities will prove whether the perpetrator has "maliciousness" or "malice" within this age range according to the specific circumstances of each case. This can, to a certain extent, avoid the shortcomings of rigid legislation, which absolutely adjusts downward or maintains a certain age of criminal responsibility, and is in line with the reality of the complexity and diversity of minors' ability to recognize and control.

4.3.2 Reflection on the theory of flexibility

In contrast, the flexibility theory focuses on the thinking behind the legislation on the age of criminal responsibility regarding the ability of criminal responsibility. The rigid legislative model can provide a uniform standard for the judiciary to determine the age of criminal responsibility, simplify the determination procedure, and improve judicial efficiency. However, the differences in growth and development, personality traits, knowledge level and many other aspects of minors inevitably lead to deviations between the legislative presumption age and the factual age, i.e., the deviation of whether or not they are substantially capable of criminal responsibility. To reduce the deviation, it is necessary to examine the status of the actor's ability to recognize and control in a specific case.

The core of the flexible theory is the determination of "malice", which requires the judiciary to use its discretion and analyze each case on its own merits. Judges in common law countries, which are based on case law, have long-standing judicial training and practice, and have the ability to judge accordingly, and have a basic consensus on the criteria for determining "bad faith". However, the national situation is different, and the judicial situation is also very different, our judiciary still lacks experience in the determination of the relevant liability capacity, and copying it will easily cause the cost of judicial practice to rise. Giving excessive discretion to the judiciary may cause inconsistency and arbitrariness in our judicial practice, and even the phenomenon of favoritism. In addition, under the premise that other institutional safeguards for juvenile delinquency remain unchanged, underage offenders who are "maliciously made up to age" will also face penalties and may still be affected by the negative labeling of penalties or fail to receive normal education and have difficulty returning to social life in the future.

5. Discussions and Prospects of lowering the minimum age of criminal responsibility

5.1 Rationales of lowering the minimum age of criminal responsibility

5.1.1 Consistent with the theoretical presumption of criminal responsibility capacity

Lowering the minimum age of criminal responsibility at this stage is theoretically justified, and is in line with the definition of the criminal responsibility ability of the perpetrator, i.e., the ability to recognize and control, behind the age of criminal responsibility system. First of all, according to Piaget's theory of cognitive development stages, after the age of 11 or 12, children's cognition enters the stage of formal operations, their thinking development tends to be mature, they are able to solve abstract problems, they are able to carry out hypothetical-deductive reasoning, i.e., they first put forward various hypotheses and possibilities, then carry out deduction, systematically judge and evaluate the correct answer, and their level of abstract logic is close to that of adults. Therefore, children at the age of 12 years are theoretically capable of cognitive and rational problem-solving logical thinking. Correspondingly, Piaget believed that there existed a moral development stage parallel to the cognitive development stage. After the age of 11 or 12, children's moral development enters the stage of justice, and compared with the previous stage of other-regulated and self-regulated morality, they possess more mature standards of self-moral judgment, not only no longer obeying authority unconditionally, but also recognizing that rules can be changed according to specific situations. They not only stop obeying authority and recognize that rules can be changed according to specific situations, but also think from an altruistic point of view, and tend to administer justice and equality, and appreciate that justice and equality should be tailored to the particular situation of each person. Therefore, whether at the level of thinking intellectually or at the level of moral judgment, minors aged 12 and above should have their own independent rational judgment on how to solve the basic issues of right and wrong, and should have their own ability to recognize and control the serious violence that undermines social justice and endangers the lives of others. In addition, in recent years, combined with the data published by China's Health and Health Commission, Ministry of Education, etc. and real-life experience, it can be seen that the growth and development level of adolescents has continued to improve [4], minors show a trend of precocious development of the heart and mind, and their ability to control their own behavior increases, with a corresponding level of criminal responsibility increases. Considering the above reasons, it is theoretically justified to lower the minimum age of criminal responsibility to 12 years old.

In contrast, the theory of maintaining the minimum age of criminal responsibility is mostly based on the position of maximizing the rights and interests of children, and emphasizes the education and correction of minors from the criminal policy of leniency and severity, while ignoring the fundamental influence on the definition of the age of criminal responsibility, i.e., the objective substantive criterion of the actor's ability to recognize and control. It is precisely irresponsible to ignore this substantive factor and simply consider the criminal policy and principles of criminal policy for minors with vague concepts and unclear boundaries, thus exonerating and excusing underage juvenile offenders. Also, in practice, it is easy to cause the "release" of underage juvenile offenders and ineffective control, which is on the one hand not conducive to the real protection of minors, and on the other hand, sows hidden dangers for social governance. Therefore, it is theoretically justified to lower the minimum age of criminal responsibility according to the current level of minors' ability to recognize and control [5].

5.1.2 Review the situation and respond to the objective reality

The lowering of the age of criminal responsibility is justified in response to the objective reality. First of all, there are some cases of vicious crimes committed by minors under the age of criminal responsibility as listed at the beginning of this article, and the perpetrators have not been punished to a degree comparable to the social harm of their behavior. According to the data released by the Supreme Prosecutor, the number of crimes committed by minors declined from 2016 to 2020, yet the

proportion of crimes committed by minors of lower age has picked up, especially in the last two years, reaching 9.57% in 2020; the proportion of minors under review and prosecution for eight serious violent crimes, including intentional homicide, intentional injury causing serious injury or death and rape, still exceeds 31% on average of all crimes committed. The phenomenon of violence of crime by minors cannot be ignored. Second, from the perspective of social governance, it is necessary to consider the real contradictions and changes in the development of minors in the context of social transformation in China. If the relevant provisions of the last century are mechanically followed, the function of criminal law in social governance cannot be well played, which is not conducive to promoting the further transformation and development of society. The law should not only adapt to the changing external social environment, but also moderately look to the future, according to the increasingly evolving socio-political and economic situation and new changes in crime, new features of the necessary adjustments and amendments to the criminal law, in the stability of the law and the timely reform and abolition to find a balance, in order to give full play to the role of the criminal law, to achieve the intended purpose of our criminal law, reflecting the criminal legislation to review the situation principle. Therefore, the lowering of the age of criminal responsibility is a more appropriate choice in response to objective reality, and is also a choice for prevention and long-term goals, not an overnight change due to extreme cases.

5.1.3 Preventing and punishing crimes committed at a younger age and protecting minors

The lowering of the age of criminal responsibility and the imposition of appropriate penalties are conducive to the prevention and punishment of underage crimes and the protection of minors. Although the number of cases of vicious crimes committed by underage minors is small, they are not only harmful to society, but also affect the psychological and healthy growth of minors. In the face of the grim crime facts and the plasticity of minors, it is necessary to think about how external forces can better intervene to find a balance between human rights protection, personality cultivation and combating and curbing crime. There is also a dark part of juvenile human nature that must be regulated and restrained through rules. In the face of vicious crime cases, a blanket exemption for them because of their age may make minor offenders unaware of their own problems and unable to reflect and repent deeply, and may weaken the normative consciousness of other minors and affect the formation of minors' moral and rule of law concepts and personality formation. Therefore, in order to protect and positively guide minors and maintain social harmony and stability, it is necessary to adjust the age of criminal responsibility downward.

The theory of maintaining the minimum age of criminal responsibility is that the application of criminal law to minors at an early age means the imposition of severe penalties, which is contrary to the principle of protection of minors. However, the lowering of the age of criminal responsibility does not mean that penalties are easily applied to minors, let alone heavy penalties, but still adheres to the basic principle of "education as the mainstay and punishment as a supplement" and the protection of minors. The principle of "education as the mainstay and punishment as a supplement" can be understood in two ways: first, in terms of quantity, it is required to educate the majority of minors and punish the key minority, which does not mean no punishment. The second is to consider the special nature of the protection of minors, the prudent imposition of penal punishment, the subjective malice is not large, the circumstances of the crime is relatively minor minors, adhere to less arrest and prudent prosecution less imprisonment, giving priority to education and correctional measures; suspected of serious crimes, socially dangerous minor offenders punished according to law, play a warning and education. Moderate disciplinary penalties are also an important way to educate and save. Besides, by lowering the age of criminal responsibility, the application of criminal law to minors is not a "one-size-fits-all" punishment, but rather a multifaceted measure to minimise the negative impact of punishment on minors, to turn punishment into an effective protection, to give more play to the function of crime prevention and rehabilitation rather than simple retribution for crime, and to mitigate the trend towards violence at a younger age.

In addition, the theory of maintaining the minimum age of criminal responsibility "treats the symptoms but not the root issue", and it believes that minors commit crimes more because the family

and society are not well responsible, so the solution to the problem of underage and violent crime should start from the family and society, and should strengthen the education and correction of minors. Admittedly, the causes of juvenile delinquency are multifaceted, but imposing penal punishment does not conflict with finding the underlying causes and providing a targeted response. Indeed, the problem of juvenile delinquency cannot be solved by either education or criminal law alone, but it is precisely because criminal law is a deterrent to crime, backed up by punishment, that educational correctional measures can better serve their intended purpose. And compared to penal means, educational means of crime prevention are long-term and moderate, and even less effective in solving the immediate and serious problem of crime among underage minors.

Therefore, under the premise of meeting the substantive factors, i.e., the improvement of recognition and control, the appropriate downward adjustment of the age of criminal responsibility, the inclusion of offenders who previously did not reach the age of criminal responsibility into the scope of criminal law regulation, and the imposition of appropriate disciplinary measures, reflecting the non-infliction of wrongdoing on minors, help prevent and punish crime, and effectively protect minors.

5.1.4 Consistent with society's pursuit of fairness and justice

The timely lowering the minimum age of criminal responsibility is a requirement for the realization of social justice. From the perspective of protecting the interests of victims and out of respect for and protection of the right to life, it is necessary for the criminal law to make underage minors who have committed extreme atrocities bear the due criminal responsibility and receive punishment. This is because these heinous crimes, which are usually not restorable in legal terms, seriously damage the integrity of another person's bodily functions and even deprive another person of his or her life. As people's awareness of the rule of law continues to advance and their expectations of fairness and justice rise, crimes of outstanding misconduct and illegality, such as intentional homicide and rape, cannot be tolerated, regardless of whether the perpetrator is a minor or an adult. The maintenance theory focuses on safeguarding the rights and interests of minor offenders and ignores the rights and interests of victims, which violates the principle of rights relief and is unfair and unjust. In cases of vicious crimes committed by underage minors, the victims are usually minors as well, even without fault. Exempting the perpetrator because of his age not only fails to comfort the victim and his family, but may even cause secondary harm to the victim and his family and increase social instability. Criminal law needs to have stability and unity, but this stability is not absolute, but also based on people's pursuit of justice and aspirations, according to the reality of the situation to adjust and keep pace with the times.

5.2 Lowering the individual's minimum age of criminal responsibility according to the Malicious Complement Age System

From the above, it can be seen that the current theory of lowering the minimum age of criminal responsibility in China is reasonable, but in order to effectively function, it is necessary to discuss the specific measures rationally. At present, it is feasible for China to lower the minimum age of criminal responsibility individually with conditions. A large and general downward adjustment of the age of criminal responsibility, which imposes severe penalties on all underage minors who commit crimes without corresponding safeguards and remedies, is not in line with the principle of protection of minors, and is not conducive to minors' confession of guilt and obedience to the law, and may breed their hatred of the law and society, and retaliate against society, bringing negative effects to minors and society as a whole. Therefore, the Amendment to the Criminal Law (XI) of lowering the minimum age of criminal responsibility imposes strict restrictions on the substantive conditions and procedures, pursues the criminal responsibility of underage offenders in extreme cases, and maintains the original criminal policy for most minors, reflecting the legislature's prudent and adequate consideration of the real situation and the obligation to protect minors and the stability and unity, modesty and protection of criminal law.

The Amendment to the Criminal Law (XI) incorporates the reasonableness of the doctrine of flexibility while lowering the minimum age of criminal responsibility. It is clear from the foregoing that the greatest shortcoming of the presumption of the age of criminal responsibility is that modern science is still unable to accurately determine a person's ability to recognize and control, and the absolute age of criminal responsibility formulated in the legislation ignores the differences of individuals. If, according to the theory of flexibility, the Malicious Complement Age System of the common law system is directly introduced, it is not feasible in China, and it gives the judiciary too much discretionary power, risking favoritism and corruption, and is not conducive to the stability and unity of the criminal justice system. However, the average level of recognition and control of human beings derived from a large number of empirical studies and practical experience is also scientific, and minors over 12 years old generally have the basic ability to judge right and wrong for serious violence such as murder, rape and robbery. The formulation of the age of criminal responsibility on this basis, supplemented by corresponding measures and the adoption of a relatively flexible legislative model, can guarantee fundamental fairness and justice, and is also more in line with China's national conditions and judicial reality. Therefore, the Amendment to the Criminal Law (XI) lowers the minimum age of criminal responsibility to 12 years of age individually with strict substantive conditions, adds a special procedural specification approved by the Supreme Prosecutor, and appropriately gives the judicial organs the right to make specific judgments according to the circumstances of each case, which helps to reduce the objective deviation between the age figure and the capacity for criminal responsibility, and follows the principles of legalization of crime and punishment and compatibility of crime and punishment. In addition, the individual downward adjustment to 12 years of age to punish serious and vicious crimes does not contradict the recommendation of the UN Committee on the Rights of the Child in 2007 in General Comment No. 10 of the Convention on the Rights of the Child to set 12 years of age as the minimum age of criminal responsibility.

The Amendment to the Criminal Law (XI), on the one hand, responds to the objective reality of serious crimes committed by minors at an early age and considers the necessity and appropriateness of criminal punishment to combat violent crimes committed by minors at an early age, and on the other hand, takes into full consideration the physical and mental development of minors and the differences in their ability to recognize and control, and draws on the Malicious Complement Age System to maintain the integrity of the existing age of criminal responsibility system as much as possible, which helps bring into play the positive preventive function of criminal law and truly and effectively protect minors.

5.3 The construction and improvement of socialized support system

5.3.1 Reasons for constructing a socialized support system

In dealing with the problem of juvenile delinquency, it is more important to reflect on the causes of underage delinquency and how to actually stop it. Lowering of the minimum age of criminal responsibility cannot eliminate crimes committed by minors below the age of criminal responsibility. To fundamentally solve the problem of underage and violent crime, people cannot rely on penalties alone, but must also rely on the joint participation and support of all sectors of society outside of criminal law. Some minors, under the dual influence of poor living environment and immature physical and mental conditions, lack a clear understanding of some social norms and social responsibilities, lack a sense of morality and guilt, and are prone to commit crimes unknowingly. According to social control theory, the closer minors are to their families, schools, peers and other social ties, the stronger their identification with mainstream values and morals, the less likely they are to commit crimes. Therefore, the solution to the problem of underage delinquency cannot be achieved without strengthening the connection between juveniles and society and creating a positive and healthy social environment for the growth of juveniles at the stage of vigorous physical and mental development. To build a social support system is essentially to improve the growth environment of juveniles and to avoid the continued influence of a bad environment.

5.3.2 Specific measures to build a socialized support system

To build a socialized support system, people should follow the value orientation that is most conducive to juvenile protection, with the fundamental goal of promoting the smooth reintegration of juveniles in conflict with the law into society. People should actively use various social resources, integrate the strengths of all parties, and rely on the collaborative governance of families, schools and communities to better prevent and punish juvenile delinquency. There is much to learn from overseas in this regard. For example, Japan has a more mature juvenile law and has established a corresponding socialization support system, which emphasizes the educational role of family, school and community for minors with delinquent behavior, forming a more complete treatment mechanism from prevention to post-education. The juvenile law in Japan places more emphasis on treating the delinquent behavior of minors as a warning sign, reminding the state and society to provide them with the necessary support and protection in a timely manner, to find out the reasons for the delinquent behavior of juveniles as early as possible and take appropriate measures, such as the intervention of social welfare organizations or relevant departments to investigate whether there is domestic violence in the family, etc., and to provide social welfare resources and placement by welfare institutions if necessary, so as to prevent minors from going into crime.

Therefore, based on the cost-effectiveness and the malleability of minors, China can improve the level of judicial protection for minors by taking into account the national situation and the development of the times and drawing on the advanced experience of Japan. Specifically, China can start from “early detection and early solution of the problem” in terms of time and the role of the community in terms of space.

On the one hand, intervening in the problematic behaviors of minors as early as possible is needed to prevent them from developing into crimes. First, people should pay more attention to the mental health of minors at an early stage, and let professionals provide guidance to help them establish a correct outlook on the world, life and values, so as to ensure that minors can receive the education and social services they need to grow up soundly. Second, without affecting the normal life of minors, professional social organizations should conduct detailed social surveys to detect possible problems in minors or their surroundings as early as possible and intervene in a targeted manner. At the same time, government can strengthen communication with guardians, provide help and guidance when necessary, consider together with guardians what kind of environment and actions are needed for the minor's rehabilitation, and work to build a good family environment, etc., so as to reduce the emergence of delinquent behavior of minors due to the failure of guardians.

On the other hand, the community should be fully explored and utilized to create a good community atmosphere. The community is the place where minors have the most contact with other than family and school, and it also has an important direct influence on their growth. Firstly, government can start from the community to establish and strengthen the ties between minors and the society outside of family and school, such as playing the role of community police, social workers and volunteers, and gradually strengthen the ties between minors and the society through their care, protection and education for minors. Second, the community can also become an important place for minors to receive moral and rule of law education and labor education, etc. At present, there is still more room for the development of community education in China. Specifically, the ways of publicity and education can be enriched, such as using community bulletin boards, establishing public WeChat numbers or WeChat groups, etc., to publicize more about the concepts of civilization and harmony, mutual help and love in the community and to guide minors' cognitive positive development; promoting judges to conduct lectures and other activities in the community to convey new laws and regulations in a timely manner, disseminate legal knowledge and enhance minors' awareness of compliance with the law; organizing minors who are guilty of wrongdoing to conduct community. In addition, we can organize community labor for minors in conflict with the law, teach them certain skills and knowledge, and cultivate the concept of self-reliance and the habit of loving labor. In addition, more public welfare organizations and social forces can be involved in the community correction of delinquent minors. Relying on community resources, minors can be educated and

corrected in a natural environment as much as possible to avoid their long-term isolation from society, minimize the impact on their study and life, and ensure their smooth return to society.

In conclusion, the evolving capacities of minors dictate that we cannot simply compare the punishment model to that of adults and deprive them of the right to develop their capacities. The construction and improvement of a socialized support system should be based on the premise of respecting and guaranteeing minors' due process rights and their right to development with the right to education as the core, etc., so that multiple stakeholders such as families, schools and communities can take up the corresponding responsibilities and participate in the governance of juvenile delinquency, so that minors can grow up healthily in a loving environment. This is not only about the development of minors themselves, but also about the stability of society and the future of the country.

6. Conclusion

With the continuous development of society, people's awareness and understanding of the protection of minors' rights and interests have been deepened, and new and higher requirements have been put forward for the judicial protection of minors. This study reckons that, taking into account the objective physical and mental development of minors, the serious reality of underage crime and people's expectation for social justice, it is no longer appropriate to emphasize leniency and neglect the necessary discipline for underage crime, and the authorities should draw from the Malicious Complementary Age System and follow strict substantive conditions and procedural norms. The age of criminal responsibility should be lowered individually, and a social support system should be built and improved to protect the rights and interests of minors and prevent crimes. The Amendment to the Criminal Law (XI), with the protection of the rights of minors at its core and the conditional individual lowering of the age of criminal responsibility, is theoretically and practically justified, in line with the development of minors' capacity for recognition and control today. It is also a response to the reality of the violentisation of crime at a younger age, and the realization of China's criminal policy of leniency and severity and the principle of "education as the mainstay, punishment as a supplement", helping to initiate the preventive and punitive functions of criminal law and protecting the rights and interests of minors; it reflects the modernity and modesty of criminal law, responds to the concerns of the public in a prudent manner, and implements the people-centred development ideology. In the future, in order to continue to implement the age of criminal responsibility system and the principle of protection for minors, and to give full play to the underpinning protection role of criminal law, it is also necessary to improve correctional and intervention measures other than penalties, to build a socialized support system, to actively promote all social entities to assume joint responsibility for the protection of minors, and to strive to find the best balance between punishment and protection for minor offenders; to actively promote source management and primary and secondary treatment, and to address the root cause of the problem of underage violence in crime.

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