

Argumentation of the Rationality of Reducing the Age of Criminal Responsibility from the Purpose of Criminal Law

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Abstract: The current age of criminal responsibility has caused a series of disputes and some difficulties, the theoretical age of criminal responsibility is no longer in line with the substantive factors - the current ability of identification and control of young people, the trend of juvenile violence in practice is becoming more and more obvious, and the lack of protection system leads to substantive indulgence. Traditional theory has always held that no matter what acts are committed by persons who have not reached the age of criminal responsibility, it is impossible to convict them. However, Article 17 of the Criminal Code is not a provision of the law on the capacity of criminal responsibility, and the recognition of the capacity for criminal responsibility can be used as a reference to the “malicious lying age “Rules are grasped in substance. In order to prevent the adverse effects of the expansion of the criminal circle, detention and arrest measures shall not be applied to such groups during the investigation phase, and the Supreme People's Procuratorate shall be reported for approval before prosecuting them. In the face of the above difficulties, criminal law should be dealt with so as to give full play to the function of safeguarding society.

1. Introduction

At present, cases of violence committed by children under the age of 14 occur from time to time, causing widespread concern to the public, the handling of such cases people continue to dispute, the theoretical circle is the lower limit of criminal responsibility should be reduced or should be raised controversial, throughout the past and present, the disposal of juvenile offenders gradually to wide and develop, reduce the age of criminal responsibility and malicious lying age principle severing with the world trend, China's historical development, criminal law modesty and so on. Therefore, it is not appropriate to reduce, nor should it be improved, but we can study and explore the supporting mechanism. The establishment of a special executive body, from the perspective of procedural law, makes the treatment of juvenile offenders more in line with the spirit of the rule of law, can solve the real dilemma [1].

2. Problems Arising from the Traditional Age of Criminal Responsibility

2.1 The Question of the Rationality of Legislative Preparation

The traditional theory holds that Article 17 of the Criminal Law is a legislative draft of the criminal responsibility capacity of the perpetrator, and that if the legal age is not reached, the act of its commission cannot be established as a crime, so the legal age can be described as the age of crime. Even if the difference of 1 day or even 1 hour, it is not possible to break the provisions of the criminal law and do not allow the perpetrator to be under 14 weeks of age on the grounds that he or her person is precocious and has the capacity to take responsibility [2]. To be punished for committing a crime. First, it is uncertain at what age the perpetrator can have the possibility of improbable, i.e. what age can be equipped to commit a crime that cannot be accurately prepared through legislation. Secondly, the provisions of criminal law only provide formally the age conditions under which the perpetrator should be held criminally liable, and cannot draw a conclusion directly from the provision itself that the capacity for criminal responsibility is formulated [3].

2.2 Functional Deficiencies in Effective Evaluation

At present, the existence of the trend of juvenile delinquency is undeniable. The exposure of more and more case handling methods shows that traditional theories cannot be effectively evaluated in the face of young people who have not reached the age of criminal responsibility. In terms of evaluation, the traditional theory holds that the legal preparation does not have the capacity of criminal liability for an perpetrator who is under the age of criminal responsibility, and therefore its conduct does not constitute a crime. In judicial practice, even if the actions of the perpetrators who have not reached the age of criminal responsibility are unforgivable and socially harmful, based on the conclusions reached by traditional theories. decisions such as non-filing or prosecution can only be made. And these decisions, not only means that such groups circumvent the evaluation of criminal law, but also obviously hurt the ordinary people's legal feelings [4].

2.3 The Age of Criminal Responsibility is No Longer in Line with the Substance

The essence of the definition of the age of criminal responsibility is the ability to recognize and control, the ability to identify and control has a certain degree of complexity, one of the important factors is the behavior's knowledge level and intellectual maturity. The behaviorer's knowledge level and intellectual maturity are restricted by important factors such as life, physical and mental development, educational level and socialization development. In other words, the ability of recognition and control of human beings is not fixed, and with changes in the changing factors of living conditions, physical and mental development, educational level, and socialization, the ability of the behavior to recognize and control changes with it [5]. In summary , the gradual improvement of living conditions has brought about a trend of precocious physical and mental development , while the level of education has been continuously improved and widely developed , and the starting point of the socialization process has been advanced , and the changes in this series of important variable factors affecting the ability to identify and control have been able to reasonably draw an important conclusion--The identification and control ability of young people in our country has been obviously improved. The civil law enacted in 2017 will reduce the age limit for civil capacity from 10 to 8 years of age, on the grounds that the mental development of minors in our country has changed greatly compared with the legislative period, and the physical and mental development process is generally accelerated. The age of maturity is generally advanced, cognitive ability, adaptability and self-commitment are greatly improved, so the age standard for reducing the limits of civil capacity is basically agreed. The revision of this legislation and the legislative justifications also confirm the recognition of the trend in the legislative community for the improvement of the identification and control of adolescents [6].

2.4 The Trend of Crime in the Young Age of Violence is Becoming More and More Obvious

With the advance of the physical and mental development of young people in our country, juvenile delinquency in our country began to show the trend of aging and violence. Starting from the concrete manifestations of the young age of crime, both the age of first-time offenders and the average age of crime and the age of crime peak are facing a increasingly serious situation. From the results of national research [7].it can be judged that the initial age of criminal acts committed in Our country is gradually ahead, the peak age of crime is constantly moving forward, the average age of crime is decreasing, and the appearance of these specific characteristics is sufficient to illustrate the trend of the aging of crime in China, and more worrying is that this trend is still developing and still not effectively curbed. In summary , the fact that the trend of juvenile delinquency and crime violence has obviously increased and developed cannot be ignored ,and the continuous development of this trend is bound to bring many potential harms [8].

3. The Battle over the Age of Criminal Responsibility, the Lower Limit

Controversial views on the lower limit of the age of criminal responsibility [9].At present, China has the following views on the lower limit of the age of criminal responsibility:

3.1 The Theory of Reduction.

In view of the reality of some serious criminal offences, some scholars in our country believe that the situation of juvenile delinquency in China is becoming more and more serious - many juvenile delinquency is 2-3 years earlier, some young people under the age of 14, their physical and intellectual level reached "adults", but due to the age limit of responsibility, no criminal responsibility, Without criminal punishment, weakens the rationality and justice of criminal law, so when the criminal law was amended in 1997, some scholars suggested that the minimum age of criminal responsibility should be changed to 13 years old, believing that this would not lead to a crackdown on the blank space, so that criminals would not escape the law; The lower age limit for liability is more appropriate, and some scholars have even suggested that the minimum age of criminal responsibility should be set at 10-12 years of age [10]. The reason for this is: first, the age of the legal system is originally higher. From the world scope and china's historical development, 14 years of age is a higher legal draft in the lower limit of the age of criminal responsibility. Second, the physical and psychological development of adolescents is more mature than before. In today's society, material abundance, adequate nutrition, rapid maturity of young people, there is a considerable sub-adolescent psychological, physiological and mature trend, especially nine-year compulsory education so that more young people get more education, their physical and mental development have been mentioned before. Fifth, it is conducive to the pacification of victims and their relatives. For the victim and his relatives, the disposition of the perpetrator from both economic and criminal aspects can make him get great psychological compensatory comfort. Sixth, it is beneficial to the transformation of the perpetrator. Love is not omnivantious, the tolerance of the perpetrator can neither reform him nor contain him, investigate his criminal responsibility, reform it, is conducive to the transformation of bad young people. Seventh, it is conducive to coordination and harmonization with other legal departments. Civil law stipulates that 12 years of age is the lower limit of civil liability capacity, then, the criminal law also provides the lower limit of the capacity of criminal responsibility is conducive to the non-legal department has an inherent unity of coordination [11].

3.2 The Theory of Improvement.

Some scholars believe that the juvenile is not deeply involved in the world, his special mental state means that it is easier to teach and reform, should not be harshly blamed for punishment, should raise the lower age limit of responsibility, so as to meet the trend of the current world criminal law relief [12].

3.3 Invariant.

It is considered that the lower age limit of criminal responsibility should not be changed to maintain the status quo. At present, the mainstream thought of the criminal law circle is still: the world's punishment is becoming more and more mild, non-penalization, criminal law should reflect humanism and humanism, should not lower the minimum age of criminal responsibility. This is because, first of all, the view of lowering the lower limit of the age of criminal responsibility is contrary to the international trend of lenient and non-penalization of penalties in today's world, and is not in line with the humanitarian spirit.

3.4 Evil Means to Make Up the Age of the Original

The original originated in the common law system, that is, juvenile offenders who have not reached the age of criminal responsibility, if there is evidence that their harmful acts were committed out of malice, they can be considered to have reached the age of criminal responsibility and criminal liability can be investigated. In the 1993 case of Balja in Liverpool, two 10-year-olds who had tricked the under-3-year-old into the side of the railway to death and then put his body on the tracks in an attempt to create the illusion of death. The two were sentenced to prison until 2001. Some scholars believe that this principle can be applied to the reasons of our country: First, it has a theoretical basis. The unified coordination of the age system of criminal responsibility, the principle

of adaptation of criminal responsibility, the social security function of criminal law and the function of protection are the theoretical basis. Second, it is feasible. The physiological and psychological maturity of minors is in advance, the "bear child" incident is often reported, and the rule of law makes citizens' awareness of the rule of law constantly awakened, which causes the state of judicial practice to be embarrassed.

4. New Theory of Age of Criminal Responsibility Construction Conception

Detention, arrest shall not be applied during the investigation stage, and the judicial organs shall not apply detention or arrest to persons who have not reached the age of criminal responsibility.

According to Article 480 of the Rules of Criminal Procedure of the People's Procuratorate, "For the lesser offence, with effective guardianship conditions or social measures, without social or social risk, If the arrest of a suspect edaper who does not interfere with the normal conduct of the proceedings shall not be authorized to arrest the person suspected of minor crimes. And for minors should adhere to the law less arrest, caution, less imprisonment. We should further refine the standards of arrest, prosecution and prosecution supervision to minimize the arrest, prosecution and imprisonment rates of minors involved in crime by combining the facts, circumstances and conditions of help. The above-mentioned provisions reflect the principle of "education, correction and rescue" for minors, so more litigation system protection should be provided for those who have not reached the age of criminal responsibility.

4.1 Establishment of Relevant Criminal File Protection Procedures

In view of the special procedures for minors already in place in the Code of Criminal Procedure, the relevant safeguards should be added on this basis for those who have not reached the age of criminal responsibility. In this regard, it is proposed to add a conditional criminal record elimination system and a thorough system of criminal file storage. The conditional criminal record elimination system means that the criminal files of the young offender should be sealed after the court has pronounced the crime , and if no new crimes have been committed within a number of years , the originally sealed criminal record may be completely deleted. This system of elimination of conditional criminal records for specific vulnerable groups is not only in line with the criminal policy of providing more protection for minors, but also has a considerable legal price for correcting young offenders to become new persons.The value. A thorough system of sealing criminal files means that after a young criminal is convicted, his criminal file should be prohibited from being viewed by any organ or individual before he or she becomes , in order to reduce the negative impact of the conviction on his growth , reduce the marking effect and give him more procedural protection..

4.2 Accepting after-the-Fact Visits and Related Measures to Help the Court after the Mere Declaration of Guilt Against Such Offenders, Does Not Specifically Impose a Penalty.

This group should receive visits from community correction staff and mental health education and other measures within a fixed time. On one side, community correction workers can play a monitoring role in a certain sense through follow-up attention. If the perpetrator still has a greater possibility of recidivism or personal danger after the verdict , judicial staff should pay more attention to this in their daily lives and educate them on their thoughts through teachers , parents or other professional psychological counselors. On the other hand , in the process of its value spending transformation , we should firmly grasp the physiological characteristics of which are more likely to correct it , and correct their thoughts and behavior through through various assistance measures. The theoretical basis of the compulsory correctional system is similar to the theory of institution-care: First, criminal policy. "Education, correction and rescue" is a criminal policy against juvenile delinquency in China, and the compulsory correctional system should carry out this policy. Second, the theory of penal thought. Including the humble punishment thought, the humanitarian penalty thought and the purpose of the criminal punishment thought. This means that compulsory correction is a substitute for punishment and should be set up in the spirit of humanitarian and educational

salvation.

5. Conclusion

Those who have not reached the age of criminal responsibility do not live outside the criminal law, and any act of harm committed by anyone is subject to the evaluation of the criminal law. The conviction of a person who has not reached the age of criminal responsibility shows that the criminal law does not condone anyone's position, which plays a great role in promoting the general preventive function of criminal law. As to whether it constitutes a crime, the consistent criterion of judgment is the criminal establishment system. The composition of crime is closely related to criminal responsibility, but it is not inherently inseparable. To this end, the preservation of most of the traditional theory of the age of criminal responsibility, and the use of malicious supplement age rules, the ability to adopt a substantive judgment on the capacity of criminal responsibility, is more conducive to the realization of substantive justice and to solve the problems associated with the trend of juvenileization of crime.

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