We Should Lower the Minimum Age of Criminal Responsibility to 12 in China

Recently, a case of juvenile delinquency has caused heated discussion. A 13-year-old boy killed a 10-year-old girl and casted her corpse. Gao Wei (2017) indicates that social concern for juvenile delinquency is rising. Juvenile delinquency is developing towards lower age, crueler and more intelligent criminal means. Criminal responsibility age is closely related to juvenile delinquency. The minimum age of criminal responsibility is 14 in China. We should lower the minimum age of criminal responsibility to 12 in China because of four reasons. First, juveniles aged 12 and over have criminal ability. Second, the average age of juvenile delinquency continues to decrease. Third, lowering the age of criminal responsibility meets the requirements of criminal justice. Fourth, lowering criminal responsibility age conforms to the development of the times and global trends.

Juveniles aged 12 and over have criminal ability. Li Lifeng (2005) suggests that the age of mental development of juveniles in China has advanced. Juvenile delinquency has reflected this tendency. With the development of education, Chinese juveniles’ recognition capability has improved. *Chinese Journal of Clinical Psychology* shows that the cognitive level of 12-year-old juveniles in 2007 was comparable to that of 14.5-year-olds in 1987. According to *Acta Psychologica Sinica*, China's 12 to 15-year-old juveniles are in the second stage of cognitive level: the system stage. Juveniles between 12 and 15 years old don’t have significant differences in recognition ability. They can identify criminal behaviors such as murder, fire prevention and explosion. And they can recognize whether their behaviors are criminal or not. Juveniles aged 12 and over already have recognition capability for delinquency.

Vicki Anderson, et al (2001) states that executive functioning (EF) skill has substantial

development during adolescence. EF skill includes controlling, coordinating thoughts and behaviors. When people act, they can use EF skill to think about the consequences and control behaviors. The improvement of EF skill of adolescence is associated with dramatic changes in the prefrontal cortex (~~Sarah‐Jayne~~ Blakemore, and ~~Suparna~~ Choudhury, 2006). According to Laurence Steinberg, et al (2009), “from age eight upwards, young people become increasingly able to plan ahead and factor future consequences into their decision making” (p28-44). Juveniles aged 10 and 11 are not competent to plan and control delinquency (Rod Morgan and Elly Farmer, 2011). Juveniles aged 12 and over already have planning and control abilities in crime.

Juveniles aged 12 and over have recognition, planning and control abilities in crime. They already have enough criminal ability. The statement that juveniles under 14 are not capable for criminal responsibility is dubious.

The average age of juvenile delinquency continues to decrease. Zhang Yuanhuang and Yao Bing (2010) suggests that among juvenile delinquency, those who commit crimes under 14-year-old accounts for 16.6%. The peak age of juvenile delinquency is early. The age of the first offence gets lower. “Age of the first offence” refers to the age at which juveniles first commit the crime. The proportion of criminals whose “age of the first offence” are 7-13-year-old is 9.8%. Many juveniles commit the crime before reaching criminal responsibility age. Current minimum age of criminal responsibility doesn’t reflect the situation of juvenile delinquency in China.

According to Gu Xiaorong and Guo Xiang (2004), “the general age at which juveniles start to commit severe offences is twelve or thirteen” (p213-229). The age of twelve and

thirteen is a transition period for a juvenile. Youths at this age are ~~prone to be~~ influenced by outside circumstances. These juvenile delinquents need restraint. In 2018, decisions about not to arrest juvenile criminals increased by 6.9 percent compared with the previous year. Decisions about not to prosecute juvenile criminals increased by 13.8 percent compared with the previous year (Sixth Tone, 2019). Legislators propose that 12 and 13-year-old juvenile delinquents should bear criminal responsibility for severe crimes. Lowering criminal responsibility age coincides with current situation of juvenile delinquency in China.

Lowering the age of criminal responsibility meets the requirements of criminal justice. Joshua Dressler, Frank Strong and Moritz Michael (2001) states that criminal law produces justice. After raping a girl, 13-year-old boy Zhao killed the girl ’s mother within a week. He even threatened the girl, “Although I killed your mother, the law will protect me.” For juveniles who already have criminal consciousness and capability, we should not release them just because they are young. It violates the justice of criminal law. Lowering criminal responsibility age fills in the gap in the inability to blame juvenile criminals. Juveniles with corresponding criminal ability must bear criminal responsibility and conviction. It helps to realize the justice of criminal law.

Lowering criminal responsibility age conforms to the development of the times and global trends. *Convention on the Rights of the Child* set 12 as the minimum age of criminal responsibility in 2008 (~~Ido~~ Weijers and ~~Thomas~~ Grisso, 2009). According to Sudheer Balla, et al (2019), “due to rising and brutality of juvenile delinquency, few countries have lowered the minimum age of criminal responsibility. And many countries are considering doing the same” (p108-112). In Western Europe, England has the lowest minimum age of criminal

responsibility, ten. The minimum age of criminal responsibility in Mexico is nine. In India, Canada, Greece, Holland, Denmark, Germany and Hungary it is twelve (Gu Xiaorong and Guo Xiang, 2004). Georgia and Panama have recently lowered the age of criminal responsibility. Others including Argentina, Brazil, France, Hungary, Korea, Peru, the Russian Federation, and Spain are considering lowering the age (Lash. J, 2012). From global perspective, there is an increasing sense of using legal channels to warn juvenile delinquents. Lowering the minimum age of criminal responsibility in China is timely.

Some people argue that we should use morality to influence juveniles. For juvenile delinquents, we should concentrate on moral education and use criminal law as supplement. Juveniles have not formed complete sense of values. Criminal responsibility is too strict for them. And it violates the morality of protecting juveniles. But Tony Honoré (1993) suggests that, “law is necessary to a viable morality, it helps morality by spelling out moral requirements in detail. Morality depends on law” (p1-17). We should use law to maintain morality for the whole society. Lowering the minimum age of criminal responsibility helps preserve morality from the legal level.

Some people worry that undertaking criminal responsibility has adverse influences on juvenile’s future. Juveniles who have the criminal history are likely to be prejudiced and discriminated. It is unfair for them. However, Michael Klarman (1991) suggests that all citizens equally enjoy the protection rights. Not punishing juvenile delinquents is unjust to victims. And it may have negative effects on social atmosphere. Some juveniles may commit crimes because knowing that they will not be punished.

It remains controversial whether to lower the minimum age of criminal responsibility

or not. We need more research and discussion. Based on four reasons above, we should lower the minimum age of criminal responsibility to 12 in China. The first is that 12-year-old juveniles are capable in crimes. The second is that there are more low-aged juveniles commit crimes. The third is that lowering criminal responsibility age protects criminal justice. The fourth is that there is a tendency to lower criminal responsibility age around the world. With the development of society, the discussion about lowering criminal responsibility age becomes important. Evidence shows that lower the minimum age of criminal responsibility is necessary. The criminal responsibility age should advance with the times.

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