The Theory of Relative Invariance of the Age of Criminal Responsibility

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DOI: 10.37420/j.mlr.2022.007

Abstract: *The problem of juvenile delinquency is caused by various factors such as minors themselves, families, society and the state, and is characterized by complexity. Amendment XI to the Criminal Law lowered the age of criminal responsibility to 12-14 years old, but it still cannot effectively solve the problem of juvenile delinquency. Compared with the "unchanging" and "lowering" theories in the academic field, the relative unchanging theory is more in line with the original characteristics of the age of criminal responsibility. The relative immutability theory is a theoretical proposition between the two aforementioned theories, based on philosophy, jurisprudence and criminal policy, which means that at the present stage, the age of criminal responsibility of minors should be kept stable, but not absolutely and steadily, but relatively, cautiously and conditionally adjusted.*
Keywords: *age of criminal responsibility of minors;relative invariance theory;"system-data" feedback model*

1 Introduction

In China, the Criminal Law originally provides that persons under 14 years of age are not criminally responsible for crimes, but in recent years, the number of malicious cases of minors has been frequent, and the academic community is in a state of disagreement as to whether the minimum age of criminal responsibility should be adjusted. In response to the expectations of society and the realistic needs of juvenile crime management, the Amendment to the Criminal Law (XI) stipulates that a person who has reached the age of twelve but is under the age of fourteen shall be criminally responsible for committing intentional homicide or intentional injury that causes death or serious injury causing serious disability by particularly cruel means, and the circumstances are so bad that the Supreme People's Procuratorate approves the prosecution. This provision marks a major adjustment in the age of criminal responsibility. Under this provision, underage minors between the ages of 12 and 14 are subject to criminal liability if they meet the requirements of the crime and circumstances and are approved by the Supreme People's Procuratorate. However, is the lowering of criminal liability necessarily justified and reasonable? The author believes that it is necessary to reflect on the age of criminal responsibility in China, and then propose an ideal paradigm for adjusting the age of criminal responsibility, the theory of relative invariance of criminal responsibility of minors.

2 Theoretical Controversy of the Age of Criminal Responsibility

The specific reasons of scholars who hold the lowering theory are as follows: First, minors today are both physically and psychologically mature at an earlier age. Most of the scholars who hold the lowering view

suggest that the minimum age of criminal responsibility should be lowered to 10-12 years old in order to adapt to the real situation. Secondly, since crimes committed by minors are frequent, lowering the age of criminal responsibility can better punish crimes. Lowering the age of criminal responsibility can effectively punish crime and better implement the principle of proportionality between crime and punishment, and can also better quell public anger in cases with greater social impact. Third, with the international rules of convergence. China's current criminal law provides for the age of criminal responsibility is high compared to other international countries, China's criminal law provides for the minimum age of criminal responsibility is 14 years old, but many countries provide for lower than China, the lowest is only 7 years old, there are examples of lowering the age of criminal responsibility[1].

Scholars who hold the unchanging theory of the main reasons: First, the determination of the age of criminal responsibility, to take into account all factors. Juvenile delinquency is the result of a combination of factors. The improvement of the current situation of juvenile delinquency requires the efforts of all parties, and lowering the age of criminal responsibility is not a perfect cure for this "social malady" or a great victory, and the effective solution of this problem cannot be achieved without the construction of a corresponding system and the introduction of supporting measures. Secondly, the main purpose of punishment is to prevent crime, and lowering the age of criminal responsibility cannot directly and effectively achieve the effect of crime prevention. Third, the development trend of criminal law in the world today is to lighten the trend, China should also follow the international trend, it is not appropriate to lower the age of criminal responsibility[2].

The relative unchanging theory of criminal age proposed in this paper refers to the idea that considering the many disadvantages of rigid regulations, it is necessary to get rid of the "one-size-fits-all" model to find an intermediate state to better fight crime and protect human rights, so as to better adapt to the criminal policy of leniency and severity. It is a doctrine based on eclecticism, which unites the present maintenance and future-oriented changes in one place. Compared with the "lowering theory," it is based on the present, and the treatment of juvenile crime in China should be based on the construction of a juvenile crime prevention system and the improvement of the juvenile crime education system, and on the premise of the construction of a juvenile crime prevention and treatment system, then to discuss the issue of whether to lower the age of criminal responsibility, that is, at least for the time being The age of criminal responsibility cannot be simply adjusted. In contrast to the "unchanging theory", it is based on the future, and after the construction of the juvenile crime prevention and treatment system is completed, a certain period of time is used as the observation period for the effect of juvenile crime treatment, and the observation data (juvenile crime rate, juvenile recidivism rate, and juvenile malignant crime rate) is used as one of the bases for system changes. That is, the age of criminal responsibility can be adjusted when certain conditions are met. However, this does not mean that minors who commit extremely harmful crimes and have the ability to distinguish and control their own behavior are protected from legal accountability. Therefore, the system of prevention and control of juvenile crimes is built at both macro and micro levels, and the data evaluation mechanism is established to provide real-time feedback on juvenile crime data so that the basic task of criminal law to combat crime and protect human rights can be more effectively achieved. The system will be more effective in achieving the basic mission of criminal law to combat crime and protect human rights.

3 The justification basis of the theory of relative change

1.First of all, in terms of the core law of unity of opposites, it enlightens us: to know things is to know the contradiction of things. To know things is not only to grasp the phenomenon, but also to analyze its internal contradictory relationship, and to analyze the relationship and the role of the opposing factors within the contradiction of things; to analyze specific problems specifically means that the analysis of the contradiction of things should go deeper into the analysis of the relationship between the commonality and the individuality of the contradiction. In terms of the downward adjustment of the age of criminal responsibility for minors, the internal contradiction between the protection of human rights of minors and the strict punishment of crime is fundamental, so it is not a simple matter of downward adjustment of the legal system itself, but the secondary crisis and chain reaction that may be caused by its adjustment need to be examined and alerted. The current advocacy of lowering the minimum age of criminal responsibility is a typical representative of strict punishment for crime, while the emphasis on maintaining rationality, i.e., criminal responsibility cannot be changed from case to case, is a reflection of the concept of protecting human rights. The theory of relative invariance is the combination of the first two in the spatial dimension, which is the embodiment of the idea that punishment of crime and protection of human rights are both important.Secondly, the law of mutual change of quality enlightens us that we should pay attention to the accumulation of quantity. The development of anything must first start from quantitative changes, but the development of things is ultimately realized through qualitative changes, and there is no development without qualitative changes. Therefore, when the quantitative change has reached a certain level, only when the original nature of things can be changed to move forward, we should decisively break through its scope and limits without losing time, and actively contribute to the qualitative change to achieve the leap and development of things. For the issue of the age of criminal responsibility of minors[3], I think the construction of the system of prevention and management of juvenile delinquency is the process of accumulation of quantitative changes, while the adjustment of the age of criminal responsibility is a qualitative change. In contrast to the unchanging theory, the unchanging theory is to emphasize that under the premise that the juvenile delinquency prevention and governance system has not yet been completely constructed, it should not be rushed, i.e., the quantitative change has not reached the degree of qualitative change. But at the same time, compared to the one-sided and stagnant "invariant theory", the relative invariant also emphasizes the change, when the system has been constructed and the data that meet the author's expectation appear, the change of the age of criminal responsibility can be made, and finally the qualitative change is completed. Finally, the negation of negation reveals the characteristics of contradictory movement, which tells people that contradictory movement is the expression of vitality, characterized by self-denial and transformation to the opposite side. First, the first negation is both reasonable and one-sided. The relative invariance of the age of criminal responsibility is the first negation of the "lowering theory", which negates the logic, law, criminal policy and criminal law defects of the proposed lowering of the age of criminal responsibility; secondly, the second negation is the negation of the negation. Secondly, the second negation is the negation of the negation. It discards the one-sidedness and inherits the rationality. The second negation, that is, the negation of the negation, discards the one-sidedness and inherits the reasonableness. The negation of the "invariant theory" is the second negation of the theory of relative change, which, on the basis of the first negation, discarded the absolute invariance of the age of criminal responsibility, but inherited the rationality of the "lowering theory", and for "It is the second negation of the theory of relative change. Thirdly, development is the unity of the opposites of progressiveness and tortuousness. This law enlightens us to

overcome the absolutism and linearity of the method of thought. Therefore, for the adjustment of the age of criminal responsibility of minors, we need to recognize the complexity and contradictions in the expiration, and should understand that a decision or system is sometimes not the "best choice", but "only so", which is the complexity of social things This is the result of the complexity of social things and the helplessness of decision makers. Similarly, the theory of relative invariance proposed in this paper is not a perfect theory (or there is no perfect theory at all), so the author expects that later generations will develop and discard the theoretical achievements of our predecessors, and eventually feed society for the benefit of mankind.

2. The jurisprudential basis of the theory of relative change. There is an intellectually insoluble problem of duality of the rule of law in the country. In a society where social disorder is serious to a certain extent, the greater the demand for the law as a conflict resolution tool, the less effective the law is in practice. The lowering theory advocates a lowering of the criminal age, but I cannot help but ask: can a lowering really solve the real problem? Does the age of criminal responsibility need to be adjusted downward again when there is a high incidence of crime at a younger age? Through these questions, we can clearly detect the loopholes in the thinking faced by the "lowering theory". In the context of contemporary social governance, the rule of law is a means of social governance rather than the whole, especially for the problem of juvenile delinquency.

3. The basis of criminal policy of the theory of relative invariance. Criminal policy emphasizes the interaction of the individual sports state, the process of re-socialization of people, not the mechanical launch of penal power, and this fits with the essence of the theory of relative change. When faced with social problems, as in this case of juvenile delinquency (whether or not the age of criminal responsibility is lowered), the state must not focus its attention solely on the fight against the law, especially criminal law. The interaction between the individual and the state is inevitably weakened if the emphasis is on the activation of state power; moreover, crime management needs to return to this framework of state and individual, where the development of the state, on the one hand, enables it to better focus on the individual[4]. The core of criminal policy is that the state should pay particular attention to respecting individuals, analyzing them, educating them, and mobilizing them, so as to promote the improvement of the state organization and the manifestation of individuality, which is also the institutional concept of the relativism of the age of criminal responsibility.

The design of the age of criminal responsibility system should also be a passive indoctrination process that allows minors to experience justice in a "visible way" by enhancing public participation and policy advocacy in the governance of the state. In other words, against the background of the limited governance system and capacity of the state, there is no room for the criminal law to retreat from the rule of law, but if the state can go beyond the penal code to seek a holistic and systemic integration of social policies, we may be able to achieve a "brighter future" in crime management. This is especially true for juvenile delinquency. The core of criminal policy is that the state should pay special attention to respecting individuals, analyzing them, educating them, and mobilizing them, so as to promote the improvement of the state organization and the manifestation of their individuality, which is also the institutional concept of the relativity of the age of criminal responsibility.

4.The criminal law basis of the theory of relative immutability. The age of criminal responsibility for minors in the substantive criminal law reflects the paternalism of the law, and this kind of tolerance, equality and le-

niency is the inevitable requirement of the criminal law to manage all citizens within its scope of application, and likewise one of the aspects of the theory of relative immutability emphasizes the need to look at minors from a "parental" perspective. The same aspect of relative immutability also emphasizes the need to look at juvenile delinquency from a "parental" perspective, i.e., "prevention is the mainstay and punishment (criminal) is secondary"; penalties should not be applied to all offences, but only as a last resort. Modesty is an important feature of criminal law, which is intended to demonstrate the stability and majesty of criminal law as a law of high rank, as opposed to the "lowering theory" that is attached to the "rabble" that has lost its individual judgment and advocates lowering the age of criminal responsibility. The relative immutability of the penalties imposed on minors is an important expression of the modesty of criminal law; the function of criminal law in the new era - the co-emphasis of punishment for crime and protection of human rights - implies the importance of human rights, and the theory of relative immutability reflects, to a certain extent, the importance of human rights. The new era of criminal law - the co-emphasis of punishment for crime and protection of human rights - implies the importance of human rights, and the doctrine of relative invariance reflects, to a certain extent, the protection of minors who are not yet fully formed mentally.

Legal paternalism, as the name implies, means that the law treats those within its scope of application like a parent treats his or her children, and the relative immutability of the age of criminal responsibility is a "rewarding and punishing" parent. Criminal law provides special protection for minors under the age of 14 who lack the cognitive capacity to commit crimes under criminal law. The criminal law is obliged to act as a parent to all citizens within its scope of application, and the non-criminalization of minors under the age of 14 is a manifestation of legal paternalism with respect to minors. Thus, it is necessary for the criminal law to reduce or even exempt minors under the age of 14 who have committed acts that meet the constituent elements, but who may not be able to understand the meaning of the act due to their limited cognitive ability or other reasons. This is like parents forgiving their children after they have made a mistake, whether intentional or unintentional.

Modesty is one of the most important principles of modern criminal law, and the doctrine of relative immutability is an expression of respect for the modesty of criminal law. Because of its severity and finality, criminal law must be applied with care and modesty. The substantive side of modesty is the existence of a hierarchical relationship with other branches of law, which means that the application of the law on the hierarchy and the law between the incompatibility and incompatibility of change. And the modesty of the criminal law also indicates that the criminal law needs to have a relatively independent or stable characteristics, should not "change overnight" so that the people lose expectations, not to mention the public opinion by the hostage and kidnapped.

4 Relative Invariant Theory of "System - Data" Feedback Model

In China's substantive criminal law, there are three mainstream doctrines of "two-tier", "three-tier" and "four-elements" criminal composition systems, which are progressively stratified and coupled elements. This progressive hierarchy and coupled elements is a successful model of the typology of criminal law theory in China, and the typology of theory has become an important path to study and solve a problem. Based on this, the author proposes the "system-data" feedback model of the relative invariance of the age of criminal re-

sponsibility, which is based on the "principle-exception" model. This model is based on the "principle-exception" model, and on the basis of affirming the principle of unchanging criminal responsibility, an "exception mechanism" is established to deal with the complicated social life.

4.1 System level: building a crime prevention and governance system

Accelerate the improvement of the law on the prevention of juvenile delinquency and its interconnection with related laws. From the perspective of the dialectical relationship between the top-level design and the social reality, the modification of the law as a superstructure will have far-reaching repercussions on the social practice. Therefore, the author believes that the Law on the Prevention of Juvenile Delinquency needs to be further revised by the state, and the relationship between the Law and related laws (such as the Criminal Law and the Law on Public Security Management Punishment) should be clarified systematically. First, from the perspective of systemic thinking. Due to a number of factors, China's criminal legislation for minors is in a scattered pattern, and because the legislative framework of China's criminal law is also codified and gradually specialized, it is difficult to build a special "criminal law for minors" and "juvenile criminal law" under the current framework[5]. It is difficult to achieve. However, it is feasible to set up a special chapter for minors in the two parts of criminal responsibility and criminal punishment measures, so as to give minors a basis for crime management in the system and thus contribute to the improvement of China's criminal law legislation for minors, and help promote the improvement of criminal legislation for minors and their crime management. Second, clarify the boundary and scope of criminal legislation for minors and the protection of the rights and interests of minors. China has already responded to the crime and rights protection of minors, but compared with the legislation on minors in Europe and the United States, China lacks child welfare and judicial legislation for minors, which emphasize the supervision of minors by the state and advocate the innovation of the judicial system for minors. However, in China's current situation, the construction of a legal system for minors is still a long way off. In any case, it is urgent that the legislation for minors should be fully considered and explored in its place and space in the existing criminal justice system, while its coordination with other laws on the protection of minors' rights must not be neglected. Thirdly, when formulating universal policies and legislation, the judicial environment and regional characteristics of rural minority areas should be taken into full consideration, and the crimes committed by minors here can be dealt with by referring to national customary law. Ethnic customary law is part of the customary law framework in China, which refers to the code of conduct established by people in their lives according to facts and experiences, according to some social authority and organization, with mandatory and common beliefs, and with a specific ethnic group as the carrier. Although there is a conflict between national customary law and national law, customary law is an effective supplement to national law under certain circumstances. Therefore, while managing the crime problem of rural minors, we can refer to the local customary law in the judicial practice department to fix the points and stop the disputes.

4.1.1Improve the existing system related to minors

First, integrate the management institutions to unify the education and management of minors. China's existing legislation on security discipline is mostly decentralized, with unclear subordination and standards among the management agencies. For minors who have committed crimes, there are different management agencies,

which is a waste of resources. Even though the degree of delinquency differs among minors, the purpose is to reform and educate them, and under the wave of decentralization and governmental reform, it is practical to integrate and unify the juvenile management agencies to manage them in response to the national reform situation. At the same time, the management agency should clearly manage the main body and reflect the purpose of education. Specifically, the management agency should be unified by the public security department, and the local education department should be responsible for specific educational matters. Mainly including: first, the content of compulsory education, mainly for minors who have not completed the compulsory education stage of study; second, should provide for the elimination of previous convictions system for minor offenders. The elimination of previous convictions is a criminal system in which the state erases the criminal record of a person who has been convicted of a crime or convicted of a crime by a court, when the legal conditions are met, so that the normative state of disinterest disappears and the normal legal status is restored. The system of elimination of previous convictions meets the requirements of humanitarianism, is conducive to the prevention of recidivism of convicted persons and their genuine return to society, and is also in line with the world trend of criminal legislation. China can appropriately learn from foreign practices and provide for a system of elimination of prior convictions for minor offenders in order to protect the rights and interests of minors. In particular, in the case of applying protective punishment, since the severity of security punishment is less than that of criminal punishment, minors who receive education and discipline in the sheltered education schools and have decent character may apply for the elimination of previous convictions through their guardians, legal representatives and prosecutors. Third, the duration and manner of the minor's rehabilitation are properly adjusted according to the degree of the minor offender's crime and the effect of rehabilitation. Radbruch has this statement in the chapter on criminal law of the Introduction to Jurisprudence: the penalty gives warning to the offender of opportunity, correction to the offender of the situation capable of rehabilitation[6], and the offender of the situation that is not correctable ceases to do harm. We also agree that the educational measures taken in the rehabilitation of juvenile offenders so that they are educated, and the rehabilitation and harm removal taken in the case of offenders with limited capacity for responsibility. those who, despite the absence of mental illness, are mentally weak, must be carried out together with psychotherapeutic measures so that they are cured or placed. This is a typical crime governance type and differential governance ideas, and this idea is actually reflected in one of the principles of our criminal law, the principle of compatibility between crime and punishment. Therefore, the author believes that in the process of education-based juvenile crime governance, it should also be consciously differentiated management to "prescribe the right medicine". Specifically, the duration of education can be determined by decreasing the legal sentence by one grade in accordance with the degree of their behavior. Minors who commit felonies under the age of 18 during the education and rehabilitation period, with good rehabilitation results, should be released after the expiration of the original period. However, no repentance and bad circumstances may extend the education cycle to 18 years of age as appropriate. Minors education period across 18 years of age, good performance should be released; if unrepentant, the circumstances are bad can be transferred to the local community correction agencies for management and education.

4.2 Data layer: constructing a data assessment mechanism for juvenile delinquency

Empirical data is an important foundation to support the reform and development of the system, and the con-

struction of a data assessment mechanism for juvenile delinquency has practical significance. As far as the claim of lowering the age of criminal responsibility is concerned, it often lacks empirical data to support it. To date, there are no systematic statistics and studies on the situation of harmful acts committed by minors under 14 years old, and there is no unified statistical system for reporting incidents of school violence, so one cannot simply generalize from the extreme vicious incidents exposed by the media and conclude that the number of crimes committed by minors under 14 years old has increased dramatically. It is against the spirit of scientific and rigorous legislation to use this as an empirical basis to amend universal laws and lower the age of criminal responsibility.

After searching a large amount of data, the author also only found that China's National Bureau of Statistics and the China Judicial Big Data Institute officially released the "Judicial Big Data Special Report - Juvenile Crime Chapter" and the "White Paper on Comprehensive Trial of Juvenile Cases (2009.6-2017.6)" released by the Comprehensive Trial Division of Beijing No. 1 Central Court for Juvenile Cases in June 2017 for juvenile crime data, etc. First, the data are not comprehensive enough, and the data released focus on a certain area; second, the data are not specific enough, and although they focus on a certain area of juvenile crime for statistics, they are only superficial; third, the statistical subjects are numerous and unsystematic, and the credibility is uneven. Therefore, the author suggests building a complete statistical system of juvenile crime data. First of all, the statistical system of crime data must have a certain management system as the basis. The National Bureau of Statistics should be the first level of the data system responsible for the final aggregation of data and the management of data statistics[7], under the National Bureau of Statistics are the Supreme People's Court, the Supreme People's Procuratorate, and the Ministry of Public Security, and each body collects information from local organs at all levels within their respective jurisdictions, ultimately forming a grassroots - national crime data statistics management network. Second, the content of crime data statistics needs to be determined. The court organs mainly conduct statistics from the trial of juvenile crime cases and the situation of juvenile crime cases, such as the completion rate of juvenile crimes, the construction of juvenile courts and the types of juvenile cases, focusing on the trial process; the judicial organs mainly focus on the review and prosecution process from the prosecution and non-prosecution rates of juvenile cases, the sources of juvenile cases and the degree of badness of the cases. The public security organs mainly conduct data statistics in terms of case distribution areas, family composition of case subjects, and age of case subjects, focusing on information that can be grasped during the investigation stage of filing[8]. Finally, the juvenile crime data system should be established on certain publicity platforms, such as WeChat public number, microblog account, bilibili account, etc. By relying on modern media means, the juvenile crime data can be updated and publicized timely, accurately and effectively, so as to achieve the purpose of laying the foundation for a specific claim and providing data support for juvenile crime governance.

After the construction of the juvenile crime system, the evaluation of the juvenile crime prevention and management system is one of its core tasks, and the public security department should analyze the juvenile crime rate, juvenile recidivism rate, and juvenile delinquency rate to reflect the effectiveness of juvenile crime prevention and management. Within a certain period of time (I suggest 10 years), we should evaluate the development of legislation for minors at the macro level and the improvement of the work-study school system at the micro level[9], based on the results of education and rehabilitation. First, the data of minors who have gone through the first stage of social integration will be evaluated to test the effectiveness. Second, the

number of total crimes committed by minors during the observation period and their proportion of the total number of cases are observed to assess the situation of juvenile crime in a general social sense. Finally, the number of cases of juvenile delinquency and its proportion to the total number of juvenile delinquency cases are observed to reflect the degree of danger of juvenile delinquency in a one-way manner. The author believes that when the above three data have an increasing trend within a certain period of time, and there is a single data exists obviously abnormal high proportion state, combined with the social voice and judicial practice can be adjusted to the age of criminal responsibility of minors, of course, specific problems need to be analyzed, for what proportion when to make changes, the quantitative indicators of each ratio and a series of issues the author in I can't respond on the basis of the lack of data and materials. However, in my view, based on the observation time, the need for system construction time, and the confidence in China's increasingly strong governance capacity, I predict and advocate that the current age of criminal responsibility for minors will be maintained for a long time under the "system-data" observation feedback model mentioned in this paper. Therefore, "no change" is the principle of the theory of relative invariance of criminal responsibility, while "change" is the exception of the theory of relative change of criminal responsibility.

5 Conclusion

As the Japanese jurist Takeshi Kawashima said, any legal proposition is a social existence, and people create a certain legal proposition because the reality of social life demands it, and if such a demand does not exist in reality, it is impossible to propose a legal proposition to ensure its realization. The controversy over the age of criminal responsibility of minors is also a true reflection of social existence, which deserves our legal attention[10]. The relative invariance theory proposed in this paper is also a product of the demand of social life, and the solution of social problems from the perspective of social science jurisprudence is also an important paradigm of modern legal research. Any human behavior, including crime, is the product of two factors: character and situation, or personality and environment[11]. This is the enlightenment brought to us by our predecessors, and juvenile delinquency is a typical representative of this product. The lowering or not of the age of criminal responsibility of minors is not simply a matter of legislation, but involves various aspects of crime governance and human rights protection. This paper proposes the theory of relative invariance of criminal responsibility, which is supported by jurisprudence, criminal policy, criminal law and philosophical theories, in order to adequately respond to and necessarily solve such problems, based on the proposed "system-data" feedback model It is not the "best choice", but the author's "only so" proposition, which is achieved by trying to balance the conflicting interests of legislation, administration and justice decorated with various doctrines, out of a concrete and real public mind, to find out the potential future demands of all parties and even those who are not present. "It is a young but tense proposition that needs to be tested by history.

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