

A Study on the Localization of the Doctrine of Malicious Age Completion

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Abstract: In recent years, juvenile delinquency in China has shown a trend of "younger age" and "increasingly serious nature". The current "one-size-fits-all" criminal responsibility age system faces difficulties in balancing the protection of minors and social interests. Although the Criminal Law Amendment (XI) has lowered the lower limit of criminal responsibility for some serious crimes to 12 years old, simply lowering the age standard is difficult to solve the problem. Against this background, this paper proposes to introduce the "malice completion of age system", aiming to reconcile the conflict between the rigid age standard and individual justice through flexible rules. The paper first analyzes the two major dilemmas of the criminal responsibility age system for minors in China: one is the "malicious age completion" that ignores individual cognitive differences, and the other is the imbalance of social justice caused by the tilt of interest protection. Then, it reviews the institutional practices abroad and extracts value inspirations such as flexible determination, diversified treatment, and the synergy of social forces. Finally, it determines the local application methods of the "malice completion of age system" through the determination of the scope of application, the determination of "malice", the burden of proof, and the combination with the correction mechanism.

Keywords: Malicious age Completion; Age of Criminal Responsibility; Age-centrism; Benefit Protection; Indigenization; Malignity

1. Introduction

In recent years, juvenile delinquency in China has shown a significant trend of "younger age" and "malignancy", with meticulous planning and cruel methods that far exceed public expectations. In 2023, three junior high school students in Handan transferred money from their

classmates and brutally killed them, attempting to hide their bodies; In 2020, a 13-year-old boy from Anhui cruelly killed his mother and sister and continued to wander around as if nothing had happened. However, these cases were not held accountable or reduced due to the perpetrator not reaching the legal age of criminal responsibility, which has sparked strong public questioning of judicial fairness.

Although in response to this trend, the Eleventh Amendment to the Criminal Law has adjusted the minimum age for prosecution of some charges to 12 years old, many scholars still believe that simply lowering the age of criminal responsibility is a temporary solution rather than a fundamental one. As Professor Yao Jianlong pointed out, there is currently no complete intervention and corrective measures for juvenile delinquents, and they can only be raised and killed. [1] In this context, this article proposes to introduce the "malicious age completion" and use case analysis, literature research, normative analysis, and comparative analysis to construct flexible rules to balance the conflict between rigid age standards and individual justice. The aim is to systematically explore the localization path of this system, combine international experience and technological empowerment, promote the combination of punishment and corrective governance, and provide theoretical support and practical solutions for improving China's juvenile justice system.

2. The Current Status and Challenges of the Age of Criminal Responsibility System for Minors in China

2.1 One Size Fits All 'Age-centrism' Environments

Article 17 of the Criminal Law of the People's Republic of China (hereinafter referred to as the "Criminal Law") clearly divides the age of criminal responsibility of natural persons into four categories, among which the age of 12 and above, and the age of 16 and below are

theoretically referred to as the relative age of criminal responsibility stage. Minors in this stage will only be held criminally responsible for committing legally serious criminal acts, and minors under the age of 12 are not required to bear criminal responsibility for any harmful acts. Undoubtedly, this "one size fits all" recognition model has advantages such as clear boundaries, simplicity, high cost-effectiveness, and strong practicality. However, its disadvantages are also obvious, namely, it focuses unilaterally on physiological age, universality of application, formulated criminal responsibility capacity, as well as rigidity and efficiency, while relatively ignoring the importance of psychological age, individual judgment, substantive criminal responsibility capacity, flexibility, and fairness. [2] With the increase of physiological age, human cognitive ability is a gradually changing process, influenced by multiple factors such as family environment, education level, and social experience. It is a process from quantitative change to qualitative change, and there is no clear critical point. However, the law has formulated a "legal age of maturity", which believes that minors have the corresponding ability to recognize and control when they reach a specific age, and vice versa. In addition, the Criminal Law cannot arbitrarily lower the age of criminal responsibility, and rashly amending the Criminal Law just because of more malignant cases violates the stability of the law.

Therefore, the "malicious age completion" as a flexible age system greatly compensates for the rigid provisions of "age-centrism" by evaluating the substantive behavioral abilities of different actors. Secondly, the "malicious age completion" as a supplementary system has not broken through the original provisions of the Criminal Law, and therefore has not completely allowed its flexibility. As long as the judge's discretion is reasonably limited and the standard of proof is clearly defined, both judicial efficiency and substantive justice can be achieved simultaneously.

2.2 Tilted Interest Protection

The Beijing Rules, adopted at the 40th session of the United Nations General Assembly in 1985, explicitly state that when dealing with juvenile delinquency cases, a balance should be struck between the protection of the interests of minors and the interests of society, known as the principle of two-way protection. The core of this

is to seek a relative balance between social interests and the rights of minors, which is also a major goal of China's introduction of the rule of supplementing the age of minors with malicious intent in the criminal accountability system for minors. [3] In recent years, China's economy has grown rapidly, and the depth and breadth of information sources received by minors are incomparable compared to previous years. The speed of mental maturity has also greatly increased. In 1979, the old Criminal Law of China had already set 14 years old as the minimum age of criminal responsibility. 36 years later, only lowering the age of criminal responsibility for intentional homicide, intentional injury causing serious injury, and other acts to 12 years old is obviously not in line with the actual situation of minors' mental development at present. Maintaining a higher minimum age of criminal responsibility can certainly help protect minors, but it neglects the protection of social interests and violates the principle of mutual protection.

Currently, juvenile delinquency is gradually showing a trend of "younger age" and "malignancy". Many cases are committed by perpetrators who know the harmful consequences of their actions and are aware that they have not yet reached the age of criminal responsibility and do not need to bear criminal responsibility. According to Feuerbach's theory of psychological coercion, illegal and criminal acts are often accompanied by certain interests or temptations that attract the perpetrator. Rational actors will weigh the benefits and costs of the crime, and the purpose of legal punishment is to make the perpetrator realize that the cost of committing illegal acts is generally higher than the benefits they obtain, and then make them give up the idea of committing illegal acts. [4] In this situation, without using punishment to reform the relevant perpetrators, it is impossible to make them truly realize their mistakes, prevent them from committing crimes again, meet the demands of victims and their families, and even fail to meet the public's expectations for judicial justice.

China has always adhered to the policy of "balancing leniency and strictness" and "education as the main focus, punishment as a supplement" for juvenile delinquency. Therefore, we not only need to be lenient, but also need to grasp the strictness; To grasp 'education', we must also grasp 'punishment'. The introduction

of the "malicious age completion" has the following advantages in my opinion: firstly, it can provide better rehabilitation for juvenile criminals who have a high degree of subjective malice and a high risk of recidivism. Through the special educational effect of punishment, they can return to society as soon as possible and become human again; Secondly, it can deter potential minors who want to commit crimes and prevent them from engaging in criminal activities due to fear of punishment; Thirdly, concepts such as "killing for life" and "repaying debts for money" are deeply rooted in the minds of the general public. The introduction of the "malicious age completion" requires the use of punishment for extremely malicious minors to conform to the public's simple concept of justice, while also providing comfort to the victims.

3. The International Mirror of Malicious Age Completion

The so-called "malicious age completion" refers to the situation where the prosecution has sufficient evidence to prove that the perpetrator, who is a minor under the corresponding criminal responsibility age, has a high degree of subjective malice and has the corresponding ability to identify and control the harmful behavior, that is, has the corresponding criminal responsibility ability. This can break through the legal presumption that the perpetrator does not have the corresponding criminal responsibility ability due to not reaching the corresponding criminal responsibility age. As the renowned British jurist Blake Stone believed, the criminal responsibility of underage offenders is related to their own understanding and judgment, rather than their actual age, because an 11 year old child's thinking level is not necessarily worse than that of a 14-year-old teenager. [5]

3.1 Application of Rules of Representative Countries

The origin of "malicious age completion" can be traced back to the Anglo Saxon era in the British Isles in the 5th century AD. At that time, church law stipulated that 14 years old was the starting age for criminal responsibility of minors, and the judgment of cognitive ability, control ability, and recognition ability of minors between the ages of 12 and 14 was based on their own behavior after a specific case occurred. [6] In 1338, the Children and Young Persons Act established by the British Parliament stipulated

that minors over the age of 7 were generally persons without criminal responsibility, but this provision could be overturned by the prosecution by proving that the perpetrator had "malice". Just as there was a case in the UK where two ten year old children killed their own companions and buried their bodies, the judge believed that although they did not reach the age of criminal responsibility, their behavior of evading punishment through various means was sufficient to prove their "cunning and extremely malicious" existence. In the end, the perpetrator was sentenced to 15 years in prison. Later, with the continuous adjustment of the age of criminal responsibility, the applicable age range of this system was gradually determined to be 10-14 years old. In 2009, the British House of Lords set the minimum age of criminal responsibility in the UK at 10 years old, and in the case of *R v. JTB*, the "malicious age completion" was officially terminated in the UK due to the small age range. [7]

Before the 20th century, as a colony of Britain, the United States transplanted the vast majority of British laws and systems, including the "malicious age completion", and gradually established juvenile courts in various states. But in the late 19th and early 20th centuries, the concept of "state parental authority" gradually emerged, which believed that minors had a kind heart and strong removability. Therefore, for minors, reform education should be the main focus, supplemented by criminal punishment. However, the "malicious age completion" was clearly contrary to this concept and was gradually abandoned by various states. But soon, people found that the concept of parental authority "did not receive the various litigation rights protection that adults have, nor did it receive the expected care and restorative measures from juvenile courts" [5], but instead led to a significant increase in the originally low crime rate and remained high. This phenomenon has sparked thinking among the public and academia, and people are gradually realizing that current juvenile courts not only fail to protect minors, but also tend to encourage juvenile delinquency. So, states gradually began calling for the restoration of the "malicious age completion," and the US Supreme Court also passed three cases (*Kent v. United States*, 383 U.S. 541 (1966); *In re Gault*, 387 U. S. 1 (1967); *In re Winship*, 397 U. S. 358(1970)) The system has been improved, such as defining what

constitutes "malice" and the standard of proof for prosecution and defense, gradually abolishing the concept of parental authority in order to curb juvenile delinquency.

In addition to typical Anglo American legal countries, many civil law countries have also transplanted this system, represented by Northern Europe and Japan. Among them, as a typical welfare state, the Nordic system for dealing with juvenile delinquents can be summarized as a dual track parallel system of "juvenile justice and juvenile welfare". Its Child Welfare Boards only deal with cases of minors under the age of 15 who have violated the law, based on the principle of maximizing the interests of minors and through a series of non criminal measures such as welfare measures.[8] At the same time, Nordic countries have juvenile courts or juvenile courts, and Criminal Courts are responsible for handling criminal cases involving minors over the age of 15, usually applying the same punishment system as adults. At the same time, Nordic countries have introduced a series of welfare measures for minors, such as an open care system, which means that child welfare bureaus should provide corresponding corrective or preventive measures for minors with growth problems or development risks. The guardianship transfer system transfers the guardianship rights of minors to relevant host families or institutions. Thirdly, the institutional care system refers to entrusting relevant minors to other families or institutions for care without transferring guardianship rights.

The measures for dealing with juvenile offenders in Japan's Child Welfare Law mainly include the following aspects: firstly, admonishing them or requiring them to provide a guarantee letter; the second is to request guidance from the Department of Child Welfare, the Children's Committee, or child family support centers established by relevant cities, provinces, prefectures, or counties, or to entrust child family support centers established by people outside of relevant cities, provinces, prefectures, or counties to provide guidance; the third is to entrust it to the care of relatives or protection entrustors, or implement measures such as child care facilities, facilities for mentally weak children, and self support facilities for children. [9]

3.2 The Value Implications of the

Development of Extraterritorial Institutions

Looking at the countries where the "malicious age completion" originated, most of them have gone through the process of establishing the system, doubting it, and re recognizing and establishing it, which is vividly demonstrated in the United States. It is through the analysis of its own national conditions that the United States has recognized the advantages of "maliciously supplementing the age system". Although the UK has abolished this system at present, the reason is not because there are problems with the system itself, but because the UK has lowered the minimum age of criminal responsibility to 10 years old, resulting in a lack of applicable targets for the system. Although lowering the minimum age of criminal responsibility is difficult, it does not mean that the UK cannot pick up this system again in the future. With the development of society, there is still a lot of room for the application of the "malicious age completion". Therefore, when considering whether China should introduce this system, we should fully consider the actual situation of our judiciary, the development of minors, and the value orientation of the entire society.

When we turn our attention to civil law countries, it is not difficult to find that Northern Europe and Japan have also created systems rooted in their own actual situations. Its specific characteristics can be summarized as follows: firstly, the handling methods are diverse, and there is not only one punishment method for juvenile delinquents, but also corresponding welfare measures are formulated according to the different situations of the case; secondly, it emphasizes the significance of utilizing the guardianship system, which will promptly reform minors who may engage in deviant behavior by changing guardianship agencies or guardians; thirdly, it emphasizes the joint participation of social forces. Countries that adopt the above two models actively advocate the participation of social forces in the education and correction of young people in conflict with the law, emphasizing the unity of educational assistance and behavior correction, and requiring education and correction to be carried out as much as possible in the community or family environment where the young people live, in order to reduce the impact on their life and learning. [10] Therefore, when introducing the "malicious age completion", China can also learn from its diverse handling methods and

better reform minors by combining a series of non criminal law methods.

4. Localization Exploration of "Malicious Age Completion"

4.1 Feasibility Analysis of Localizing the "Malicious Age Completion"

The malicious age completion has shown great institutional advantages abroad and also has strong applicability feasibility in China.

Firstly, the historical foundation. The reason why some scholars oppose the introduction of the "malicious age completion" is that it deviates from the idea of "caring for the young" and does not meet the needs of today's society [11]. However, Article 30 of the "Commentary on the Tang Code" stipulates that "for those aged 70 and above, 15 and below, as well as those who are disabled or sick, and those who have committed the crime of exile but below, redemption shall be made. For those aged 80 and above, 10 and below, as well as those who are severely ill, and those who have committed rebellion, rebellion or murder but have died, redemption shall be made upon request; for those who have stolen or injured others, redemption shall also be made. For those aged 90 and above, and under 7, although there is a death penalty, no additional punishment shall be imposed. [12] At the same time, the Song Dynasty basically followed the legal provisions of the Tang Dynasty. From this, we can conclude that in ancient China, there was already a custom of setting a lower minimum age of criminal responsibility (7 years old), and for some crimes with serious social harm, it was necessary to "request". It is not difficult to see from these systems that ancient times placed great emphasis on maintaining social order while protecting young children. Therefore, "malicious age completion" will not conflict with China's traditional legal culture, but rather have a similar effect.

Secondly, the policy foundation. In the "Several Opinions on Implementing the Criminal Justice Policy of Balancing Leniency and Strictness in Procuratorial Work" issued by the Supreme People's Procuratorate (hereinafter referred to as the "Opinions"), it is clearly stated that judicial organs should adhere to the policy of balancing leniency and strictness in the process of handling cases. Moreover, the policy of balancing leniency and strictness not only refers to the

need for leniency and strictness in dealing with crimes, but also requires a certain balance between the two to form a mutually connected and mutually beneficial interaction. [13] Compared to adults, juvenile criminal cases have relatively lower subjective malice and social harm, and are more easily reformed. Therefore, punishment has never been the mainstream method for dealing with juvenile delinquents. Therefore, in response to minors, China has proposed a policy of "education as the main focus, punishment as a supplement" based on the principle of "balancing leniency and strictness". However, this policy does not deny the role of punishment. If we blindly adopt the function of education and sensitivity in the current situation of escalating juvenile delinquency, it will not produce the expected effect, but instead ignore the preventive role of punishment and violate the criminal policy of balancing leniency and strictness. The malicious age completion can precisely fill the gap of strictness, which is in line with China's criminal policy towards minors. Thirdly, the legal foundation. Article 5 of China's Criminal Law stipulates that "the severity of punishment should be commensurate with the crime committed and the criminal responsibility borne by the offender". This is the famous principle of "proportionality between crime and punishment", which means that the severity of punishment should be consistent with the offender's social harm, subjective malice, and likelihood of recidivism. For minors who have not yet reached the age of criminal responsibility and have strong subjective malice and have corresponding identification and control abilities, the introduction of the "malicious age completion" can truly achieve a balance between criminal responsibility and punishment. Meanwhile, the principle of "unity of subjectivity and objectivity" is widely recognized in the field of criminal law and is crucial in determining guilt and sentencing. For juvenile delinquents, the judicial authorities need to specifically confirm the psychological attitude of the perpetrator when committing harmful behavior, whether they have sufficient understanding of the behavior and its consequences, and comprehensively judge the punishment that needs to be given based on the social harm of the behavior they have committed. However, currently, even if minors subjectively meet the conditions for criminalization, they still do not need to bear criminal responsibility due to

the reasons for the exclusion of criminal responsibility age. Introducing the "malicious age completion" is conducive to breaking this bottleneck and in line with the principle of "consistency between subjective and objective factors".

Fourthly, practical foundation. The malicious age completion places great emphasis on considering the subjective aspects of the perpetrator. In the existing criminal justice system in China, the application of procedures such as the necessity review of detention, conditional non prosecution, and relative non prosecution is closely related to the subjective malicious behavior of the perpetrator. [7] Article 11 of the Opinion specifies that handling criminal cases involving minors should be based on specific analysis such as their "personality traits, family situation, social interactions, and upbringing experiences". Those who meet the criteria for non prosecution will not be prosecuted, but those with significant subjective malice should be dealt with strictly. At the same time, the Provisions of the People's Procuratorates on Handling Juvenile Criminal Cases (hereinafter referred to as the Provisions) clearly stipulates that "the people's procuratorates can, according to the circumstances, investigate the growth experience, criminal reasons, guardianship and education of juvenile suspect, and prepare social investigation reports as a reference for handling cases and education." Although these series of juvenile criminal policies are scattered, they all indicate that China's judicial practice has taken into account the differences between juvenile individuals, laying the foundation for the introduction of the "malicious age completion".

4.2 The Localization Construction of the "Malicious Age Completion"

Throughout the regulations of various countries on the "malicious age completion", different applicable age ranges, charges, and interpretations of "malice" have been established based on their unique national conditions. Therefore, it is very important to establish a set of "malicious age completion" with Chinese characteristics.

4.2.1 Applicable age range

The Anglo American legal system usually sets a lower age range, with 10 years old in the UK and 7-14 years old in the US, although different states. The current regulations on the age of

criminal responsibility in China are difficult to cope with the frequent occurrence of juvenile malignant cases. However, if we blindly set a lower minimum age of criminal responsibility, it will not only violate the juvenile criminal policy of "education first, punishment as a supplement", but also have the potential to backfire and bring other negative effects. Due to the rapid development of the current social economy, the sources of information received by minors are more diverse but uneven, resulting in 12.2 years old becoming the average age for juvenile delinquency in China [14].

Article 17 of the Criminal Law of China divides the age of criminal responsibility into four categories, among which those aged 12 and above but under 14 years old are the "stage of particularly serious crime accountability", and those aged 14 and above but under 16 years old are the "stage of relative criminal responsibility". The current system adopts a rigid rule of "absolute no responsibility" for minors under the age of 12, which is difficult to deal with the problem of juvenile delinquency. The author suggests setting the applicable age range for the "malicious age completion" to 10-14 years old, for the following reasons:

Firstly, the coherence with the current criminal law system. This range covers the age group of 10-12 years old who have no criminal responsibility at all, and connects with the age group of 12-14 years old who have committed particularly serious crimes, forming a "hierarchical accountability" system. For minors aged 10-12, age exemption must be exceeded through "malicious supplementation"; For minors aged 12-14, the current Criminal Law has stipulated that they are responsible for crimes such as intentional homicide and intentional injury, but "malicious compensation" can be used as a supplementary standard to determine their subjective malice, avoiding relying solely on age as the sole criterion for judgment.

Secondly, psychological basis and international experience reference. Research in developmental psychology shows that during this stage, the cognitive initiative of minors gradually increases, and their cognition leaps from the Concrete Operations Stage to the Formal Operations Stage. In criminal behavior, it is manifested as a transition from simple revenge behavior to complex illegal behavior. Adopting this standard can better cover the impact of psychological

changes in minors [15]. The early systems in the UK and the US both used the age of 14 as the upper limit for the presumption of criminal responsibility, while Nordic countries also used the age of 15 as the boundary between juvenile justice and adult justice. Combining with the 11th Amendment to the Criminal Law of China, which sets the age of 12 as the starting point for accountability for particularly serious crimes, the age range of 10-14 not only conforms to the cognitive development laws of minors, but also forms a gradient connection with existing legislation.

Thirdly, to solve the judicial dilemma of "age one size fits all". For minors aged 10-12 who commit serious violent crimes, if their behavior shows clear antisocial personality, such as premeditated murder or fabricating the scene afterwards, the existing system cannot hold them accountable due to age exemption, leading to the phenomenon of "maliciously exploiting age loopholes". By "maliciously supplementing" to include this group in the scope of responsibility determination, it can not only avoid excessively lowering the age of criminal responsibility, but also achieve individual justice.

4.2.2 Scope of applicable crimes

As the last line of defense for maintaining society, criminal law requires minors to bear criminal responsibility for all criminal charges, which violates the modesty of criminal law. The perpetrator also does not understand the meaning of their actions and the responsibilities they need to bear, and has no social value. The reason why some malignant cases involving minors have attracted national attention is that the public has recognized that minors have the ability to identify and control certain crimes. According to the current Criminal Law, minors between the ages of 12 and 14 are required to bear criminal responsibility for intentional homicide and specific intentional injury cases, while minors between the ages of 14 and 16 are required to bear criminal responsibility for specific 8 crimes. From this, it can be seen that most of the above crimes have become socially recognized as high incidence cases among minors, especially crimes such as intentional homicide, intentional injury, rape, etc. Minors have a clear understanding of life and sexuality from the elementary school stage, knowing what is right and what is wrong. However, a teenager cannot have a correct and clear understanding of drugs, cannot comprehend the harm of drug crimes, and most

underage drug trafficking should be attributed to the instigation or improper guidance of adults. [16] Therefore, the author believes that the crime of drug trafficking should not be included in the scope of application of the "malicious age completion". At the same time, in order to maintain the relative stability of the law, it is not advisable to make significant changes to the "malicious age completion" when introducing it, and the seven crimes already include two types of crimes in the previous age group. Therefore, the author believes that the scope of application of the charge of "maliciously supplementing the age system" should also be limited to these seven crimes, which not only conforms to the modesty of criminal law, but also achieves the criminal law goal of fighting against criminal behavior.

4.2.3 Identification of 'malice'

In the "malicious age completion", determining whether the perpetrator has "malice" will be the core of this system. It is generally believed in common law countries in the Anglo American legal system that if minors within a specific age range are aware of the nature of their actions and can recognize the immorality and illegality of their behavior, then "malice" can be recognized. [17] However, unlike the common law system in England and America, there is a case law in our country. If judges rely on their own experience to judge whether the perpetrator has "malice" in each case, it will result in an unlimited expansion of discretionary power, leading to different judgments in the same case. Therefore, a set of flexible "malice" recognition norms based on the tradition of our country's statutory law, such as the Criminal Procedure Law and other normative legal documents, should be formulated.

To determine whether a minor has "malice" is a subjective element, so exploring the cognitive ability of the perpetrator would be a good breakthrough, that is, to investigate whether the perpetrator can recognize the nature, condemnability, and social harm of their behavior. In psychological science, cognitive ability includes "basic cognitive ability," "general cognitive ability," and "complex cognitive ability." [18] When judging whether a minor has "malice," it is only necessary to determine whether they have reached "general cognitive ability," that is, whether they know their behavior is wrong, immoral, and violates criminal law.

Of course, cognitive ability is a subjective concept that requires certain objective facts to support it, such as minors going to the crime site in advance for investigation, developing a criminal plan, and later colluding and sealing up confessions. For example, in the Handan murder case, several minors dug a pit for burying their bodies in advance. If they did not know the impropriety of their actions, they would not have engaged in the above-mentioned behaviors. It was their free will that chose the criminal act.

Subjectively, human psychological states can be divided into three types: direct intent, indirect intent, and negligence. Some scholars believe that when determining whether subjective malice exists, the psychological state should be strictly limited to direct intent, and indirect intent and negligence cannot be included. [19] But the author believes that both direct and indirect intent should be included in the scope of "malice". The reasons are as follows:

Firstly, the essence of "malice" in criminal law theory is the subjective malice of "knowingly committing the crime". Article 14 of the Criminal Law of China stipulates that "knowing that one's actions will result in harmful consequences to society and hoping or allowing such consequences to occur" is an intentional crime. Although there are differences in the factor of will between direct intention (hoping for the outcome to occur) and indirect intention (allowing the outcome to occur), they are completely consistent in the cognitive factor of "knowing the harmfulness of the behavior". The core of the "malicious age completion" is to break through the "age presumption of irresponsibility", and the key lies in whether the perpetrator has the "ability to identify and control". As long as it is proven that minors are aware of the illegality and harmfulness of their behavior, whether they hold a "hopeful" or "laissez faire" attitude towards the outcome, it indicates that they subjectively possess the same level of condemnability as adults.

Secondly, the typical manifestations of indirect intent in judicial practice meet the criteria for determining "malice". For example, if a minor knowingly throws dangerous goods into a crowd that may result in death and allows the outcome to occur, their behavior reflects a disregard for the right to life of others, and there is no essential difference between subjective malice and direct intent. In the UK case of *R v. JTB*, the court recognized that "indulgence in harmful

outcomes" constituted "malice". [7] The "Guidelines for Criminal Prosecution of Minors in China (Trial)" (hereinafter referred to as the "Guidelines") emphasize the "subjective malice judgment based on comprehensive behavioral motivation and post event attitude", and the psychological state of the perpetrator in indirect intentional crimes who "knowingly commits the crime" is highly consistent with the "active deviation from legal norms" required by "malice".

Thirdly, the key to distinguishing between intention and negligence lies in whether to exclude harmful consequences. In negligent crimes, the perpetrator holds a negative attitude towards the outcome, which is a mistake of "carelessness" or "overconfidence", with low subjective malice, and is in line with the "education oriented" juvenile justice policy. However, in indirect intent, although the perpetrator does not actively pursue the outcome, they actively choose to tolerate the occurrence of harm. Subjectively, they have formed a "criminal determination" and should be included in the scope of "malice" evaluation on an equal footing with direct intent.

However, in negligent crimes, because the perpetrator holds a negative attitude towards the occurrence of harmful consequences, the subjective malice and personal danger are not significant. If minors of the corresponding age group are required to bear criminal responsibility for negligent crimes, it violates the criminal policy of "education first, punishment as a supplement". Therefore, "negligence" should not be included in the scope of "malice".

According to the existing judicial system and practical measures in China, we can use social investigation and psychological assessment to identify the malicious intent of juvenile suspect, which is not only clear in the existing system in our country, but also plays an important role in judicial practice. [20]

In the "Regulations", it is clearly stipulated that investigation reports can be prepared for handling juvenile criminal cases. Article 28 of the "Guidelines" stipulates that "when handling juvenile criminal cases, the People's Procuratorate shall carefully review the social investigation reports and related materials provided by the public security organs or defense counsel, and use them as important references for reviewing arrests, prosecution, sentencing recommendations, and assistance."

Therefore, preparing a social investigation report is a method that is in line with China's national conditions. By investigating the personal situation, family situation, education situation, social activity situation, etc. of minors, a comprehensive investigation report that can be used by judges shall be ultimately formed. Similarly, psychological assessment is also important. The quantitative evaluation of criminal psychology assessment in China was achieved as early as 2006, using the "Chinese Criminal Psychological Assessment Personality Scale" as a reference for criminal psychology, and has achieved good results in practice. [20]

However, due to the relatively scarce judicial resources in China and the shortage of grassroots judicial personnel, many judges have been overloaded in order to cope with the cases at hand. If relying solely on judicial authorities, it will lead to a significant reduction in the quality of social investigation reports and psychological assessments. Therefore, the author suggests that a new third-party investigation agency should be established, which should include experts in criminology, psychology, and juvenile education.

4.2.4 Proof criteria for "malice"

The essence of the standard of proof lies in whether the strength of the evidence is sufficient to convince the judge of the factual claims made. [21] In common law countries, there is no unified standard for proving "malice", and the strictness can be mainly divided into three types from high to low: "excluding reasonable doubt", "clear and credible", and "advantageous evidence". In accordance with Article 55 of the Criminal Procedure Law of China, evidence should be "proven by the facts of conviction and sentencing; the evidence used to determine the case has been verified through legal procedures; comprehensive evidence of the entire case has eliminated reasonable doubts about the facts determined." To avoid wrongful convictions, it is necessary to carefully consider and strictly consider all evidence and related facts. When there is doubt about whether the accused is guilty or not, it is better to let them escape than to harm the innocent. Based on the special protection of minors, the national investigative capabilities of the prosecution and the defendant are in a relatively weak position. Therefore, when providing evidence to prove that a minor has "malice", the prosecution should meet the standard of "excluding reasonable suspicion". When proving that the defense and the defendant

do not have "malice", they only need to meet the "dominant evidence", which is slightly better than the prosecution's evidence.

4.2.5 Connection with the current audit mechanism

In response to Article 17 (3) of the Criminal Law, which stipulates that "persons who have reached the age of 12 but not yet reached the age of 14 shall seek approval from the Supreme People's Procuratorate to pursue criminal responsibility", the author believes that a graded review mechanism should be established for the "malicious age completion" to ensure judicial unity:

Firstly, cases of applying the "malicious age completion" to individuals between the ages of 10 and 12 must be submitted to the Supreme People's Procuratorate for approval. This age group belongs to the "completely irresponsible age" in the current system, and breaking through the age exemption requires strict proof standards. The author suggests following the approval process for cases between the ages of 12 and 14, with grassroots public security organs proposing "malicious identification" opinions and reporting them to the Supreme People's Procuratorate for approval, to avoid abuse of discretionary power by local judicial organs.

Secondly, in cases where the perpetrator is over 12 years old but under 14 years old, there should be coordination between "malicious compensation" and "legal accountability". For crimes such as intentional homicide and intentional injury that have been included in the scope of criminal law for this age group, the "malicious age completion" can be used as sentencing circumstances for the above two behaviors rather than a prerequisite for conviction. For example, if the perpetrator committed intentional homicide with indirect intent and demonstrated mature cognitive ability through social investigation, strict consideration can be given in sentencing. For the crimes investigated under the "malicious age completion", the approval requirements for the previous age group can be referred to.

Thirdly, the specification of proof standards and audit materials. In addition to submitting objective evidence of behavior (such as premeditated planning and post evasion behavior), the prosecution must also attach social investigation reports and psychological assessment reports to prove that the perpetrator "knew the illegality of the behavior". When

conducting the highest review, the focus is on whether the "malicious identification" conforms to the principle of unity of subjectivity and objectivity, in order to avoid breaking the age limit solely due to the severity of the results.

4.3 Improving the Correction Plan: Building an Integrated System of "Correction Education Return"

The particularity of juvenile delinquency lies in its combination of "malicious behavior" and "removability". The application of the "malicious age completion" should not be limited to the determination of criminal responsibility, but also requires a scientific correction plan to achieve the transformation from "punishment deterrence" to "restorative justice". The author believes that a correction system covering the entire process of criminal justice can be built with "precise correction, hierarchical treatment, and social integration" as the core, to solve the dilemma of "one punishment" or "regulatory vacuum".

4.3.1 Reshaping the concept of correction: from "punishment and retribution" to "re socialization support"

The traditional punishment mainly focuses on the function of "punishment" for minors, but now it should give way to "education and reform", especially for minors who apply the "malicious age completion". Although their subjective malice is strong, their cognitive ability and values have not yet been formed, and they need to be corrected to block the path of criminal solidification. The following principles can be followed specifically:

Firstly, the principle of individualized treatment, based on social investigation reports and psychological assessment results, develops personalized correction plans for the perpetrator's criminal motive, growth background, and cognitive level. For example, for minors with antisocial personality caused by domestic abuse, emphasis is placed on psychological intervention; Strengthen the reconstruction of social circles for gang criminals influenced by negative peers.

Secondly, the principle of non imprisonment priority, according to the Beijing Rules, minors should be avoided from being detained in prison unless absolutely necessary. The author believes that we can learn from the Nordic "open care system" and prioritize non institutionalized measures such as community correction and

family foster care to reduce the negative impact of "labeling" minors.

Thirdly, the principle of re socialization orientation. The goal of correction is not only to "stop committing crimes", but also to help minors restore their social functions. For example, by providing vocational skills training to enable them to make a living, bridging academic gaps through cultural education, and eliminating the root causes of crime.

4.3.2 Construction of a diversified correction system: layered intervention and dynamic connection

Based on China's judicial practice, the author believes that a three-level correction system of "judicial intervention institutional correction community return" can be constructed to achieve seamless integration of different treatment measures.

Firstly, in the stage of judicial intervention, risk assessment and diversion should be prioritized. During the trial stage of the case, based on the social investigation report required by the Regulations, a "recidivism risk assessment" is conducted in conjunction with experts in psychology and education. For example, by using an evaluation scale to classify risk levels, low-risk individuals are eligible for conditional non prosecution and community correction; High to medium risk individuals should enter specialized correctional institutions to avoid "one size fits all" supervision. At the same time, for minors identified as "malicious" and held criminally responsible, if they meet the "serious misconduct" requirements stipulated in the Prevention of Juvenile Delinquency Law, the "specialized school education" or "specialized correctional institution" detention procedure will be initiated. For example, referring to the experience of Jiangsu, Shanghai and other places, the court judgment clearly specifies the "corrective education period" and connects it with the enrollment procedures of specialized schools in the "Law on the Protection of Minors". Secondly, in the stage of institutional correction, different correction institutions can be set up for minors with different levels of harm. I divide it into two categories. One of them is the correctional institution for minor offenses: for minors aged 10-14 with moderate subjective malice, it implements a "semi open management" approach, retains regular contact with their families and schools, and focuses on legal education, such as simulated court and

crime consequence visualization courses, supplemented by emotional management training, such as anger control groups and mindfulness therapy. The second is a serious crime correctional institution: for minors who commit serious violent crimes such as intentional homicide and rape, a "closed supervision" is adopted, equipped with criminal psychology experts and social workers, and "cognitive behavioral therapy" (CBT) is introduced to correct their "rationalization of crime" thinking by guiding reflection on the victim's pain, writing regret diaries, etc.

At the same time, the teaching content of correctional institutions also needs to be improved accordingly. For minors who are still in the basic education stage, they should be enrolled in the compulsory education system, and teachers should be arranged by the government to teach in institutions to ensure the completion of the nine-year education; Provide one-on-one tutoring for minors with learning disabilities. For minors in the middle and higher education stages, joint enterprises can offer courses such as handicrafts, computer basics, and catering services. Those who obtain vocational qualification certificates will be given priority for employment after release from prison.

Finally, in the community return stage, a linkage mechanism can be established with the community correction system. Establish a tripartite linkage mechanism between correctional institutions, community justice centers, and families: correctional institutions issue a "Return to Society Plan" to clarify employment guidance, psychological follow-up, and other matters; Community justice centers are equipped with "one-on-one" mentoring social workers who regularly evaluate behavioral performance; Families are required to sign a "Guardianship Commitment Letter" to prohibit corporal punishment or neglect.

5. Conclusion

The Eleventh Amendment to the Criminal Law of China has lowered the minimum age of criminal responsibility to twelve years old, responding to the call of the people to govern juvenile criminal cases. However, recent practice has not been satisfactory, so the "malicious age completion" that existed more than 700 years ago can still play its huge value today. Although there are many foundations for introducing this

system in our country, it is still an extraterritorial system. Whether or how to introduce it must be carefully considered based on the actual situation in our country and pilot studies can be conducted before determining. But in my opinion, the effectiveness of ten prisons is not as good as one school. In response to the frequent occurrence of juvenile delinquency, punishment alone cannot cure the root cause. Only by educating and transforming the psychology of minors through family, school, and other means can crime be curbed from the source.

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