

Hong Kong Committee on Children's Rights

CRIMINAL RESPONSIBILITY:

A PSYCHOLOGICAL VIEWPOINT

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The concept of criminal responsibility appears to indicate the capacity of the individual to be responsible for his or her criminal acts, i.e., acts which law has defined as criminal. In psychological terms, this would imply:

- That the individual is capable of perceiving that certain behaviour on his or her part constitutes a criminal act, i.e., the act in contrary to the law and, hence, punishable.
- That s/he can choose to respond differently in the situation.

What we are discussing here is an aspect of social cognition that is commonly referred to as moral reasoning or moral judgment. The development of moral reasoning in the child has been considered by a number of investigators, the most influential of which have been Piaget and Kohlberg. Piaget described stages in children's reasoning about right and wrong from moral realism (3 to 6 years of age) to moral reciprocity (emerging 9 to 11 years). The latter stage is characterized by making judgments about reciprocity, i.e., rules are accepted but can be questioned and changed by agreement. By way of verification, the general development progression from moral realism to moral reciprocity has been replicated by a number of investigators; however, current opinion indicates that more factors may need to be considered in order to understand fully the development of moral reasoning.

Kohlberg's description of moral development refines Piaget's theory and extends it into adolescence and adulthood. Virtually all recent research is based on his theory. Kohlberg outlines three main stages of moral reasoning, with two substages at each level: (see attached). At Level 1 the (Preconventional Level) moral judgment is based on the desire to avoid punishment and gain rewards. At Level 2 (the Conventional Level) the child is motivated by the desire to conform. At Level 3 (the Post conventional Level) moral judgment is rational and internalised and behaviour is controlled by internal ethical and hierarchical, i.e., that each stage follows from the one preceding and has some internal consistency. What determines the rather than the specific moral choice that is made.

For our purposes, we may direct our attention to Level 2 (Conventional Morality) and to stages 3 and 4. At stage 3 other people's expectations in the family or small group to which the child belongs become important, as does "being good" for its own sake. At

stage 4 the child is turning to larger social groups for his or her norms. There is a greater emphasis on doing one's duty, respecting authority and following rules and laws, and there is less emphasis on what is pleasing to particular people.

The results of studies by Kohlberg and others indicate considerable agreement on the order of stages and on the approximate ages at which they predominate:

- Preconventional reasoning (stages 1 and 2) is dominant in elementary school; stage 2 reasoning is also evident among many early adolescents. Stage 2 reasoning is most dominant at about age 10.
- Conventional reasoning (stages 3 and 4) emerges in middle adolescence and remains the most common form of moral reasoning in adulthood. Stage 3 reasoning is most common at about age 16.
- Post conventional reasoning is relatively rare.

The evidence indicated that the stages follow each other as Kohlberg proposed. A study by Walker et. al in 1987 (see Bec, 1992) indicated that the majority of children reach stages 1-2 in first grade (age 6), stage 2 in 4th grade (age 9), stage 2-3 in seventh grade (age 12) stage 3 in tenth grade (age 15), and stages 3-4 as adults. It has also been confirmed that subjects can understand moral arguments at their own level and at one stage higher than their own, but not above that. With regard to the universality of these phenomena, snarey (see Bec, 1992) reports that different cultures vary in the highest level of reasoning observed and that stage 5 is more commonly attained in complex urban societies (both western and non western) than in characteristically the highest. Other studies indicate that autonomous morality does not begin to develop until 12 or 13 years (see Porterfield & Stanton 199).

It has been observed that moral behaviour does not always match moral reasoning. However, there is some connection, which appears to strengthen the higher the level. Kohlberg (see Bec, 1992) found in one study that 15% of students whose reasoning was at stage 5 cheated when given the opportunity, whereas 55% did at the conventional level and 70% at the preconventional level. Other issues that effect moral behaviour include:

- Habit. We may respond to certain situations in an automatic manner.
- An action may be considered morally right without being morally necessary.
- When there is a moral conflict (e.g., there is a cost involved in doing the right thing) then there is a more consistent association between more reasoning and behaviour.
- Competing motives affect moral behaviour (e.g., peer group pressure or self-protection). In early adolescence, when the peer group influence is strong, children would be most susceptible to group decisions in relation to moral actions.

It would seem that the majority of children are reaching the stage of conventional morality in

mid-teens. It is unlikely that children below this age will be able to perceive reliably what society requires of them in the way of law-abiding behaviour. Furthermore, the link between moral reasoning and moral behaviour even at this age is likely to be inconsistent.

On the basis of the preceding discussion, it would appear that the rationale on which the present age of criminal responsibility is based does not accord with what is known about moral development in children. In light of the above, a more realistic age of criminal responsibility would be 14 years, at which age a number of children, if not the majority, would be entering the level of conventional reasoning. Poterfield & Stanton (19xx) state in this regard that by the age of 14 years physical growth and independent reasoning will have progressed to the point that the individual can be said to have begun the transition from childhood to adulthood.

Information from:

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- DPoterfield, T. & Stanton G.H. (19xx). *The Age of Majority: Article 1*, in C.P. Cohen, *Independent Commentary : United Nations Convention on the Rights of the Child*, New York: Defence for Children International.