

Restrictive Punishment for Neutral Help Behavior

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Abstract. Neutral help behavior refers to the behavior that is ostensibly similar to harmless daily behavior, but objectively promotes others to commit crimes. Compared with the common practice of restrictive punishment in Germany and Japan, China's criminal law takes the position of comprehensive punishment. The academia generally supports the restrictive punishment, and there are subjective theory, objective theory and compromise theory in the restrictive path. But all these theories show shortcomings and defects. This paper proposes that we should take the comprehensive restriction path based on the objective imputation theory. First, we can objectively impute neutral help behavior, and then consider the subjective aspects to jointly examine whether this behavior constitutes an accomplice.

Keywords: Neutral help behavior; Accomplice; Daily behavior; Restrictive punishment; Objective imputation.

1. The Current Issue

In China's criminal legislation and judicial interpretation, a large number of daily life behaviors that are usually harmless but actually promote others to commit crimes are punished as accomplices or principal offenders. As long as the behavior objectively helps others to commit a crime, and the perpetrator subjectively knows it, it constitutes an accomplice. For example, Amendment IX of Criminal Law, defines the crime of aiding information network criminal activities and makes the helping behavior a principal offender. The aiding behavior of the perpetrator is no longer treated as an accomplice but is punished as a principal offender as a separate act. Judicial interpretation stipulates that if one knows or should know that others commit the crime of producing and selling fake and inferior commodities and provides assistance to them, an accomplice will be established. This provision does not even require the perpetrator to know that negligent help is also included in the category of aiding crime, which makes the threshold of neutral help behavior whose punishability is controversial actually lower than that of ordinary helping behavior.

In fact, the above provisions are the embodiment of China's adherence to the theory of causal accomplice and the theory of result worthless and consider the causal relationship between the accomplice behavior and the result of the infringement of legal interests caused by the principal offender as the constitutive requirements for the establishment of accomplice liability. Usually, this limitation of causality can reasonably exclude excessive accomplice subordination. However, because the causal relationship between neutral help behavior and the result of the principal offender is often difficult to deny, the application of causal accomplice theory means that all neutral help behaviors should be included in the scope of investigating accomplice responsibility. In other words, China has adopted a comprehensive punishment position for neutral assistance.

Under the influence of this position, there are some cases in judicial practice, such as the perpetrator using video playing software to spread obscene videos while the software publisher constitutes the crime of spreading obscene articles for profit (hereinafter as fast broadcast case). Lin Xiaoqing's practice of providing legal services to evil criminal groups is accused of fraud and extortion (hereinafter referred to as the Lin Xiaoqing case). These situations are similar ostensibly to those in daily life, but different from those in which ordinary accomplices deliberately promote others to create illegal facts. However, they are still included in the scope of criminal law regulation, causing disputes about whether court decisions are contrary to common sense and how to limit the scope of punishment.

Compared with China, German and Japanese criminal law theorists have been discussing the definition of the scope of punishment for neutral assistance for decades. Although there are differences in the specific restriction paths of various theories, restrictive punishment for neutral assistance has become the mainstream view (the specific theories will be detailed later).

The completely unpunished help behavior will create a huge loophole in the protection of legal interests, which will prompt criminals to use specific activities to commit crimes. However, comprehensive punishment will inevitably impose an unreasonable duty of care on all goods or goods suppliers before trading, which will lead to the consequences of excessive shrinkage of national freedom and difficulty in maintaining normal social order. The responsibility of the state to investigate and deal with crimes cannot be arbitrarily transferred to individual citizens. However, limiting the scope of incrimination is conducive to guiding the follow-up criminal legislation to limit the establishment of neutral help behavior and the legalization of neutral aiding behavior, effectively exerting the general preventive effect of punishment, and guiding citizens to consciously abide by the legal order.

2. The Characteristics of Neutral Help Behavior

The so-called neutral help behavior refers to the behavior that objectively does not have the appearance of criminal illegality, subjectively does not actively pursue illegal purposes, but in fact, plays a role in promoting others to commit crimes.

The neutral help behavior is similar to the daily behavior ostensibly, and there are opinions in practice and theory that it is applicable to the general theory of aiding criminals. However, its distinctive features are enough to distinguish it from the helping behavior and daily behavior of the accomplice.

2.1 Neutrality

Objectively, neutral help behavior is beneficial and harmful at the same time. Behavior itself is a daily behavior based on trading rules or social-communicative rules, which is of beneficial social significance. However, this behavior was involved in criminal activities, which made a realistic causal contribution to the criminal results of others and was harmful to society. The emergence of two opposite attributes in the same behavior makes the neutral help behavior wander between legality and illegality, and it is difficult to determine its nature.

Subjectively, the feason usually acts as a neutral role based on his or her own role or status, without criminal intention. The accomplice intentionally promotes the principal offender to create illegal facts, which is the pursuit of harmful results.

2.2 Helpfulness

The neutral help behavior actually promotes the occurrence of criminal results. This kind of help can be reflected in the fact that the feason provides objective material assistance to the principal offender, and it can also be reflected in the support of the principal offender's behavior or spirit.

The help objects of neutral help behavior include criminal acts such as murder and illegal acts such as drug abuse. And the help object of daily behavior is legal behavior. At the same time, the main body of daily behavior has no cognition and will, while the neutral help feason knows the principal offender's behavior, and takes an indifferent attitude towards the crime.

2.3 One-sidedness

The existence of neutral help behavior is one-sided, and there is no intentional contact or conspiracy between the feason and the principal offender, otherwise, this helping behavior will lose its neutrality and belong to the category of joint crime.

The neutral help behavior is not based on the existence of the principal offender. When the principal offender's behavior does not reach the level of crime, but the neutral help behavior is more

aggressive, there is the reality that the principal offender is legal but the accomplice is illegal. In the fast broadcast case, the users who uploaded a small number of obscene videos did not meet the conviction standard of the crime of spreading obscene articles. However, the technical support provided by the fast broadcast company made obscene videos gather and spread quickly, causing great social harm, thus being regulated by the criminal law.

2.4 Repetition

The neutral help behavior usually takes place in the form of market transactions or civil legal activities. It is accidental for the feason to continue to implement it for a certain period of time based on his or her own role and social responsibility, and repeatedly to realize the corresponding interests and promote the crime. For example, the baker's selling bread is a continuous behavior, which is repeated. Only when a customer buys bread and poisons his wife with it, the selling behavior promotes the occurrence of criminal results. However, the helping behavior of the accomplice tends to be disposable, and even if the accomplice helps the principal offender to commit a crime many times, it is unlikely to reach the degree of repetition as the former.

2.5 Uncertainty

The object of helping neutral behavior is often the unspecified majority. In the increasing number of net-neutral help behaviors, a certain help behavior can be used by a large number of potential criminals on the information network that breaks through the time and space limitation. These criminals escape the law because of the concealment of the network, and even the victims are not specific. For example, the principal offender uses Baidu Netdisk to store and share obscene videos for profit, so as to develop downstream crimes, and the ultimate victim is hard to estimate. However, for the common accomplice, the help objects are usually specific.

2.6 Substitutability

The principal offender does not have to acquire specific help from a specific person to commit a crime, and market transactions are generally substitutable. If the taxi driver refuses to carry the perpetrator, the perpetrator can reach his destination by other taxis, buses, and other ways. The neutral help behavior of the driver is not irreplaceable. In contrast, the ordinary accomplice is more irreplaceable.

2.7 Harmfulness

Although neutral assistance to the perpetrator has no criminal intention, its behavior does have a causal relationship with the harmful result caused by the principal offender. The behavior itself creates the risk of infringement of legal interests, or the risk of infringement of legal interests is obviously enhanced by the behavior. For instance, the owner of a hardware store provides a sales claw hammer for the perpetrator who is fighting with others, and the perpetrator uses the claw hammer to seriously injure the other party (hereinafter referred to as the case of buying and hurting people). However, the daily behavior generally does not result in the infringement of the third party, and the perpetrator does not know the infringement of the third party by the principal offender, such as the boss's daily sales behavior.

3. The Types of Restrictions on Punishment

At present, there are three theories about how to limit the scope of punishment: subjective theory, objective theory, and compromise theory.

3.1 The Subjective Theory

The subjective theory once occupied a dominant position in German theoretical academia, and now it belongs as a minority theory in Germany and Japan. This theory holds that the scope of

punishment should be limited according to the subjective aspects of the feason. Subjective theory can be divided into definite intention theory and promotion intention theory. The former holds that only when the perpetrator has a definite intention can it be punished, while the latter advocates that the perpetrator should not only have the intention to help the offender, but also have the intention to promote the principal offender to commit the crime through his or her own behavior.

Subjective theory limits the scope of punishment to a certain extent, but its defects are obvious. First of all, it is unreasonable to exclude the objective aspects and only consider the subjective aspects. Crime is the product of the unity of subjective aspects and objective aspects, and the judgment rank of the rightness is first objective and then subjective. Premature attention to subjective aspects will lead to preconceived judgment of behavior and fall into the mire of criminal law. Subjectivity itself must be manifested objectively in order to be known by others. Secondly, both direct intention and indirect intention belong to the category of intention. For any crime constituted by intention, the German Criminal Code and Chinese Criminal Code do not exclude indirect intention, and their application should be unified. Therefore, there is no basis in law for the view that the neutral help behavior only carried out directly and intentionally is punishable.

3.2 The Objective Theory

The objective theory overcomes the shortcomings of the subjective theory, and when judging whether it constitutes an accomplice, it insists on judging from the due point of view of the constitutive requirements of neutral aiding behavior. Within the objective theory, several representative theories, such as equivalence theory, interest measurement theory, retroactive prohibition theory, and objective imputation theory, have been formed from different angles.

3.2.1 The Equivalence Theory

Social equivalence was first put forward by German scholar Welzel, who advocated that help behaviors within the daily life order should not be established as an accomplice, that is, behaviors within the community life order gradually formed in the social history recognized by ordinary people should not be punished. This theory is based on the opposite relationship between social appropriateness and constitutive requirements, and to some extent, it responds to the general cognition of the people, but the concept of social equivalence lacks clarity. With respect to what kind of behavior is socially equivalent, whether a certain behavior is socially equivalent or not, everyone will have their own value judgment. It is difficult to form a truly effective standard and a strict operational benchmark, which is of little guiding significance to judicial practice.

In view of the lack of clarity on social equivalence, the theory of occupational equivalence has been developed. German scholar Hassemer proposed that neutral help behavior can be punished when it violates the specific norms in the professional field. That is to say, the feason with professional status cannot be punished for his or her daily help, which is widely accepted by society and abides by professional rules, but the behavior that fails to abide by professional rules and pursues illegal purposes belongs to the scope of punishment. For example, a lawyer's behavior of helping a client file a lawsuit within the norms of the lawyer's practice industry cannot be punished. But if a lawyer knows that a client is committing a criminal act endangering national security, and gives advice for it without reporting it, then he or she should be punished. However, there are some problems with this theory. For instance, criminal law has its own independent status, and professional rules cannot completely replace the value judgment of criminal law. Taking the professional rules as the reason for exemption from punishment is suspected of connivance in crimes. When a feason with professional status and a feason without professional status commit crimes together, as long as the former conducts professional behavior, he or she can escape legal sanctions. The result of this treatment is obviously unfair.

3.2.2 The Interest Measurement Theory

The representative figure of the theory of interest measurement is the German scholar Hefendale. According to this theory, when defining the penalty boundary of neutral help behavior, we should

seek the balance between the protection of legal interests and the guarantee of freedom. By weighing the legal interests infringed by criminal acts and the freedom of action of the perpetrator, we can judge whether the helping act itself conforms to the constitutive requirements of objective illegality, thus limiting the scope of punishment. Professor Chen Hongbing in China also put forward the objective theory based on interest measurement.

The rationality of this theory lies in whether neutral assistance should be punished or not, and the principle of proportionality should indeed be used to measure the benefits. However, the protection of legal interests and the protection of freedom belong to two different interests, and it is difficult to judge the superior one. In practice, there is also a lack of recognized and unified standards, and there may be disputes in the settlement of specific cases.

3.2.3 The Retroactive Prohibition Theory

Jacobs, a German scholar, put neutral help behavior in the objective social background, emphasizing its social significance of being independent of the positive offender's behavior. Even if the act is used by the principal offender to commit a crime, the harmlessness of the act itself prohibits the crime committed by the principal offender from being traced back to the original neutral assistance act. Therefore, the owner of the bakery knew the poisoning purpose of the customer's bread purchase, but still sold bread to him, so this did is not constitute an accomplice. Only when the principal offender's behavior and neutral help behavior objectively constitute integration can they be punished. For example, the owner of a bakery specializes in making and selling toxic bread according to customers' requirements.

This theory also has defects: it tends to narrow the scope of punishment excessively. Everyday behavior basically has its own independent social significance, but not all behaviors with social significance are unpunished. For example, the daily selling of kitchen knives by shopkeepers has social significance in promoting market transactions and facilitating people's lives. However, when the shopkeeper sold the kitchen knife to the principal offender who is fighting with the other party, this daily trading behavior loses its neutrality, which obviously increased the risk of infringement of legal interests. At this time, the effect of selling the knife is actually equivalent to that of helping the accomplice to deliver the knife to the principal offender. Under the same effect, it is unreasonable to treat the principal offenders differently only because of their different ways to get help.

3.2.4 The Objective Imputation Theory

The objective imputation theory, which originated in Germany takes the causal relationship between neutral help behavior and harmful results as the starting point. When the feason creates a danger that is not allowed by the law and realizes a danger that is not allowed by law, and the danger falls within the scope protected by relevant constitutive requirements, he or she should be held criminally liable.

The doctrine of judging whether an act can be punished for an objective act is worthy of recognition, but the act discussed in the criminal law must be the product of the integration of subjectivity and objectivity, and it is not advisable to discuss the conditions of conviction completely from the subjective aspect. For example, whether or not the perpetrator knows the urgency and significance of the infringement of legal interests by the committed act will also affect the criteria for the incrimination and exoneration of neutral assistance.

3.3 The Compromise Theory

The compromise theory examines the subjective and objective aspects of neutral help behavior at the same time. The representative figure is German scholar Roxin. The compromise holds that definite intention and unnecessary intention are the criteria of whether an act can be punished. In the definite intention, if the perpetrator knows exactly that the principal offender commits a crime and provides assistance to him or her, the accomplice will be established, unless the helping act has social significance other than promoting the crime. In not necessarily intentional acts, if the perpetrator only realizes that his or her own behavior may be helpful for the principal offender to commit a crime, he

or she will not be an accessory offender. If the perpetrator realizes the high probability of the principal offender committing the crime and still provides help when the principal offender has an obvious criminal tendency, it will be punishable. Japanese scholar Qu Tiantong advocated impression theory, and his views and conclusions are basically consistent with Roxin's theory.

It is advisable to compromise the subjective and objective aspects to limit the scope of punishment, and the argumentation system is more rigorous and complete. However, the compromise theory is to investigate from the subjective level first, then consider the objective level; discuss responsibility first, and then think about lawlessness. As a whole, it is more dependent on the identification of the subjective intention of the feason, and it is hard to escape the trap of subjective imputation. In addition, whether the perpetrator has a definite intention or equivocal intention basically depends on the perpetrator's subjective cognition of the intention of committing a crime, lacking objective judgment standards, and largely depends on the subjective judgment of the judge in practice.

4. Restrictive Punishment Path of Neutral Help Behavior

4.1 The Position of this Article

The comprehensive limitation path based on the objective imputation theory is the best scheme to restrict the scope of punishment. This restrictive path takes the objective attribute of neutral help behavior as the center, and when the behavior is objectively imputable, then we can consider the subjective content, so as to achieve the purpose of limiting the scope of punishment.

4.2 Value Certification

In the above theories, the subjective theory is easy to lead to subjective imputation, while in objective theory, the standard of social equivalence theory is vague, and the professional equivalence theory is suspected of indulging crime, so it should not be applied in practice.

The objective imputation theory has its own advantages of strong feasibility. Compared with the interest measurement theory, which measures the interests of two different types, the three judgment steps of objective imputation theory are more efficient, feasible, and less controversial. Compared with the retrospective prohibition theory, which emphasizes the harmlessness of the behavior itself and the integration of the punishable help behavior and the principal offender's behavior, the objective imputation theory not only puts forward a clearer judgment standard for harmlessness and integration but also avoids the discrimination errors caused by different ways for the principal offender to get help.

In addition, the objective imputation theory accords with the punishment basis of an accomplice. China's criminal legislation follows the theory of causal accomplice inherited from Germany and Japan. At present, the theory of causal accomplice is still the mainstream theory of accomplice punishment basis theory in Germany and Japan, and there are three internal viewpoints: pure provocation, modified provocation, and mixed provocation. Pure provocation theory advocates the independent illegality of accomplices, which is the embodiment of worthless behavior. This theory overemphasizes the conformity of the constitutive requirements of the accomplice itself, neglects the accessory of the accomplice, and easily slides to the extreme of the accomplice without the principal offender. The modified provocation theory holds that the illegality of the accomplice and the principal offender is identical. In fact, it denies the possible situation of no principal offender but accomplice and the situation of no accomplice but the principal offender, which is the basis for the punishment of the accomplice that traces back to the prohibition theory. The former two theories cannot accurately cover the neutral help behavior, but the objective imputation theory can be in line with the mixed provocation theory. The theory of mixed provocation emphasizes that the punishment of an accomplice is based on its infringement of the legal interests protected by the constitutive elements, and the illegality of the accomplice is subordinate to or partially independent of the illegality of the perpetrator. This theory, which opposes both the absolute independence of accomplice and the

absolute subordination of accomplice and principal offender, contains the special case of neutral assistance.

However, the objective imputation theory cannot be effectively connected with the basic principle of China's criminal law -- the principle of the unity of subjective and objective contents. To investigate the criminal responsibility of criminal suspects and defendants, both subjective and objective conditions must be satisfied. However, the objective imputation theory only examines the objective level of behavior, and the lack of subjective judgment standards makes it not perfect. It is necessary to use other theories to make up for this loophole.

The advantage of the compromise theory lies in the comprehensive investigation of the subjective and objective aspects. However, this theory relies too much on subjective identification, giving up the emphasis on the objective aspects, and needs to be adjusted.

In order to combine the advantages of the two theories and make up for their respective defects, the comprehensive restriction path based on the objective imputation theory is to regard the objective attribute of the behavior itself as the decisive factor in whether the behavior can be established as an accomplice. At the same time, the inner state of the perpetrator should be investigated, from illegality to responsibility, and the nature of neutral assistance behavior should be comprehensively and accurately judged in the principle of the unity of subjectivity and objectivity so that the restriction path is more in line with the crime constitution theory of China.

4.3 Specific Regulations

4.3.1 The Objective Imputation

To judge whether the neutral help behavior is an accomplice, we should first take the objective imputation theory as the basis, and take whether the behavior has a causal relationship with the principal offender's criminal behavior and harmful results as the standard. The punishability means that the final harm caused by criminal activities comes from the role of the principal offender and the accomplice. How to make objective imputation can be divided into the following four steps:

(1) The behavior creates risks that are not allowed by the law.

The reason why a certain risk is allowed by the law is that legislation excludes it from the scope of regulation. What the law forbids is only the risks that are not allowed, and whether a certain risk can be allowed by the law depends on whether the actor has fulfilled a certain duty of care, that is, whether he has acted negligently. If the feason has fulfilled a certain duty of care, then even if the risk does occur, it cannot be attributed to the feason. On the contrary, it should be imputed. Neutral help behavior is common in the preparation stage of crime. Comparing the case of killing people when buying with the case of killing people after buying first, the former is that the owner sells the claw hammer to the customers who are fighting with each other at the entrance of the shop, while the latter is that the owner sells the claw hammer to the customers who plan to kill people in a few days. In the case of killing people after buying first, there is still a strong uncertainty about whether they will kill people in a few days. The selling behavior belongs to daily trading activities, so the infringement of legal interests is not obviously enhanced, and the owner has done his duty of care. However, in the case of buying and hurting people, the owner knew that the principal offender bought the claw hammer for the purpose of hurting others, and the selling behavior was equivalent to handing over the criminal tools in time for the principal offender who was committing the crime, which greatly helped the criminal behavior and obviously created risks that were not allowed by the law.

If the neutral help behavior actually reduces the damage degree of the harmful result, it is not punishable. Taking the case of Lin Xiaoqing as an example, when the loan relationship between the two parties really exists, and the point of the dispute lies only in the amount of repayment and interest, Lin Xiaoqing's use of legal channels to resolve disputes is obviously more conducive to both parties' fair and reasonable settlement of disputes, which reduces the risk of infringement of legal interests and does not constitute the crime of extortion.

In addition, when the feason does not create risks, the neutral help behavior cannot be punished. For example, the behavior of a suspect's wife delivering meals to her husband is in line with the

mutual assistance obligation and basic living needs between husband and wife, which is not enough to provide physical or spiritual help to the suspect's troublemaking behavior, and should not be treated as an accomplice.

(2) The behavior has realized the risks that are not allowed by the law.

According to the axiology of the result, the premise of objective imputation of neutral assistance behavior is that the risks created by the law are not allowed in the criminal result. This means that the risk created by the feason can be realized to a considerable extent in the harmful result. Generally, it is necessary to consider whether the relationship between the behavior and the result is normalized, and the accidental relationship does not meet the imputation conditions. When the neutral help behavior really increases the existing risk, it exerts a force on the harmful result, which belongs to the cause of incrimination, while the unrealized risk of behavior and the unrealized risk not allowed by law belong to the basis of exoneration.

The situation that the neutral help behavior fails to realize the risks that are not allowed by the law is more common in civil legal acts such as leasing and lending. The lessor completes the duty of care after checking the identity of the renter and concluding the contract. If the lessor does not know about the subsequent illegal and criminal activities of the renter when concluding the contract, the harmful result will be unpredictable. The accidental connection between the rental behavior and the harmful result does not belong to the liability of the lessor.

The neutral helping act did not realize the risk, that is, the act did create the risk, but the final result of the infringement of legal interests was only caused by the action of the principal offender. For example, the owner of the hardware store initially made a sales behavior, then felt remorse, returned the payment to the principal offender, and retrieved the claw hammer, but in the end the principal offender still seriously injured others. In this situation, the owner's behavior of selling a claw hammer creates risks that are not allowed by law, but his behavior of retrieving a claw hammer leads to the sales behavior failing to achieve harmful results, so the owner cannot be blamed for the serious injuries of others.

(3) The result occurs within the scope of validity of the constituent elements.

It is the task of criminal law to impute the result of the infringement of legal interests, and the imputation depends on whether the actor violates the norms. If the infringement result occurs outside the scope of validity of the constitutive elements, the result does not belong to the category of criminal law regulation. When the harmfulness of the behavior does not reach the degree of harmfulness stipulated in the criminal law, it is often unnecessary to evaluate the criminal law, and it can be dealt with according to the pre-existing laws and regulations.

Whether the result belongs to the scope of validity of the constitutive elements can be judged by referring to the protection purpose of the norm itself. For example, the perpetrator knows that the other party likes drunk driving, but deliberately lends his car to the other party, hoping that the other party will be punished by law. After the other party was drunk driving on the road, he was seized by the traffic police. The feason's behavior of borrowing a car really promotes the drunk driving of the other party, but the normative protection of the crime of dangerous driving aims at prohibiting drivers from driving when their ability to control motor vehicles declines, thus causing danger to the public safety. The simple act of borrowing a car does not belong to the scope of validity of the constitutive requirements of the crime, so the perpetrator is naturally not punishable.

(4) The behavior has crossed the boundary of maximum freedom.

The above three conditions are still abstract to some extent, and a clearer standard of incrimination and exoneration is needed. Therefore, the objective standard of the comprehensive restriction path adds the requirement that the behavior exceeds the maximum freedom boundary, including three factors:

First is the maximum range of helping behavior. Combined with the standard purpose of neutral help behavior, we can analyze whether the behavior exceeds its maximum range. For example, the standard purpose of shopkeepers selling kitchen knives is to facilitate the lives of others, and the daily selling of kitchen knives is in line with this purpose. However, when the owner sells the kitchen knife

to the principal offender who is fighting in front of the store, the principal offender's purpose is to hurt others, and it is basically impossible to use the kitchen knife for standard purposes, so the sales behavior is beyond the maximum range.

Second is the urgency of legal interest infringement and the importance of legal interest protection. When the legal interest to be protected is very important, and the neutral help behavior causes the infringement of this legal interest to be very urgent, the behavior will exceed the maximum freedom boundary. For example, when a taxi driver finds that a passenger is stealing a wallet and pretends not to know, there is no need to punish the driver because the final infringement of legal interests is not significant. When the driver discovers that the passengers are going to deliver drugs in a few days, there are too many substantial factors in the later period and the urgency is not strong, so the driver has no reason to refuse the passengers, and he does not have to take responsibility for the uncertain behavior of the principal offender. However, when the driver found that the passenger raped the underage girl in the car and ignored it, or even took a detour to delay the time, he created and realized the risk that was not allowed by the law, and met the urgency of legal interest infringement and the important requirements of legal interest protection, and established the accomplice of the rapist.

Third is the industry standards in the field of neutral help behavior. If there are binding norms in the industry standards, which require people in the industry to take certain measures to avoid illegal and criminal activities, the feason can deny the illegality of his or her own behavior only when he or she abides by the norms and fulfills his or her obligations. For example, the Anti-Money Laundering Law explicitly requires financial institutions to fulfill their anti-money laundering obligations. After the promulgation of this binding norm, the behavior of providing financial services to other people's property without taking preventive and monitoring measures should be treated as an accomplice.

4.3.2 The Subjective Criteria

Subjective criteria cannot be regarded as an independent cause of incrimination, but it should be considered after the objective imputation standard, but it is essential in the comprehensive limitation path. The subjective aspect of human behavior is the unity of cognitive factors and will factors.

(1) Cognitive factors

As a kind of joint crime, helping crime belongs to intentional crime, so we should have a clear understanding of the occurrence of criminal acts. Therefore, only when the neutral helper knows that the perpetrator is about to commit or is committing illegal and criminal activities, and provides assistance to him, can he be convicted. If a person's criminal intention or plan is uncertain, and it is subjective speculation, he cannot be convicted. Because there are differences among individuals, if the perpetrator has a subjective guess, he can be convicted, and the observant and responsive perpetrator is bound to be more likely to set up an accomplice, which is not appropriate. At the same time, ordinary citizens have no police duty, and it is the duty of judiciary authorities to speculate whether others commit crimes.

In judicial practice, the court's cognizance of the perpetrator's knowledge should also be judged according to whether the principal offender's behavior has obvious criminal attributes, whether the neutral help behavior is highly correlated with the principal offender's behavior, and the rule of experience and the specific circumstances of the case. But this presumption can also be overturned by relevant evidence.

(2) Will factors

All accomplices are intentional crimes, and the essence of intention lies in the fact that the perpetrator has the meaning of realizing the content of the knowledge on the premise of knowing the facts of the crime and turning this knowledge into his or her own will. Helping neutral feasons to set up an accomplice should include the direct intention of actively pursuing the criminal acts or harmful results of the principal offender, as well as the indirect intention of being indifferent to the principal offender and letting him or her go. If the perpetrator already knows that the harmful result is bound to happen, it is beyond the dimension of indifference and laissez-faire, and it belongs to direct intention. Definitely, the feason subjectively belongs to direct or indirect intention, which only affects

the sentencing, but does not hinder the conviction. The specific situation of subjective judgment is shown in Table 1.

Table 1. The Specific Situation of Subjective Judgment

| | Being fully aware | Speculating |
|--------------------|-------------------|-------------|
| Direct intention | Yes | No |
| Indirect intention | Yes | No |

At the same time, the possibility of the perpetrator's lack of awareness of illegality and the possibility of expectation belongs to the reasons for liability rejection. For example, in an emergency, it may be difficult for the perpetrator to make a rational judgment, continue to practice his professional behavior under the inertia of his daily professional behavior, or he may be afraid to stop helping criminal activities for fear of incurring disputes with the principal offender. Under these circumstances, the possibility of the perpetrator committing a crime is not ruled out. However, it still needs to be analyzed according to the comprehensive restriction path based on the objective imputation theory, combined with the specific analysis of the case. The comprehensive restrictive path was summarized in Table 2.

Table 2. The Comprehensive Restrictive Path

| | | |
|------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Comprehensive restrictive path based on objective imputation theory: Making objective imputation first, and then examining subjective aspects. | Step 1: the objective aspect | 1. The behavior creates risks that are not allowed by the law. |
| | | 2. The behavior has realized the risks not allowed by the law. |
| | | 3. The result occurs within the scope of validity of the constituent elements. |
| | | 4. Behavior has crossed the boundary of maximum freedom. 1)The maximum range of neutral help behavior. 2)The urgency of infringement of legal interests and the importance of protection of legal interests. 3)The industry standards in the field of neutral help behavior. |
| | Step 2: Subjective aspect. | 1. Cognitive factors: knowing |
| | | 2. Will factors: direct intention or indirect intention |

5. Conclusion.

On the premise of maintaining the dynamic balance between the protection of criminal law's legal interests and the protection of human rights, limiting the scope of punishment for neutral help is conducive to maintaining the stability of daily order and the sustainable development of the economy. As a result, how to limit the scope of punishment has become a classic hot topic, giving birth to subjective theory, objective theory, and compromise theory. The objective imputation theory lays a feasible foundation for the restrictive path of neutral help behavior, and the compromise theory provides guidance for systematic thinking based on the comprehensive investigation of objective and subjective aspects, which leads to the comprehensive restrictive path based on the objective imputation theory. When the behavior meets the four steps of objective imputation and the two requirements of subjective level, the accomplice is constituted. This restrictive path can reasonably regulate neutral help behavior to the greatest extent, and effectively combat and prevent crimes while reflecting the modesty of criminal law. In addition, the clear path of restricting punishment can help judicial staff to judge more scientifically whether an act constitutes a crime, how to make the verdicts, so that criminal legislation and judicial interpretation could reasonably limit the scope of punishment.

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