

Regulation on Criminal Law of Neutral Helping Behaviors

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Abstract: Neutral helping behaviors are quite commonly seen. If all of these behaviors are liable in the regulation of criminal law, people's daily life will inevitably be influenced to a certain extent. As for the criminal regulation on neutral helping behaviors, the subjective theory is not proper for its emphasis on the subjectivity issues which are more applicable in measuring penalty instead of conviction. The objective theory should not be a priority as well for its vague criteria for judging a neutral act. The neutralization theory in criminology is preferred for criminal regulation since it not only incorporates the actor's understanding of certain behavior from a subjective perspective, but also considers physical and mental causation from an objective perspective, so as to regulate neutral aids in criminal law.

Keywords: neutral helping behavior; the range of punishment; joint offense; accomplice.

1. Background of the Problems: Neutral Helping Behaviors Shall Be Regulated in the Criminal Law

1.1 Problems in Actual Cases

Case 1: A killed B and fled to the residence of C. A told C truthfully that he had killed B and was now short of money to flee, thus asking C for the 20,000 yuan he owed. Therefore, C returned the 20,000 yuan he had borrowed from A. A fled with the 20,000 yuan. In this case, it is C's obligation to pay back the money, so is C an accomplice to the crime of intentional homicide?

Case 2: A cab driver picks up a passenger with a murder weapon on the road, and the passenger informs the driver of his intention to commit a crime and asks the driver to take him to the place where the crime is to be committed. Should the driver's behavior be regarded as the conduct of aid?

Case 3: The servant knows that the master is about to go out and commit a crime and that the master will not go out unless the servant polishes his shoes. However, the servant still polishes his shoes and the master goes out and completes the crime. In this case, is the servant an accomplice?

1.2 Analysis

Due to the high degree of neutrality, neutral aids are hard to be identified as liable acts. In the first case, the questions are whether C's conduct constitutes the crime of concealment, and whether C should be identified as an accomplice. Views on this case diverge greatly. Some believe that admittedly the behavior of A constitutes a criminal act, but the debt relationship between A and C still exists. The return of the money owed to A is only a civil obligation that C should fulfill, so the behavior of C does not constitute a crime. Others believe that C has clearly known the fact of A's crime and the intention to flee. However, he still returns the money to A and helps A to flee, so C commits the crime of concealment. The controversy of case 1 lies in whether C should be punished for fulfilling a civil obligation when he has already known that A has committed a crime and is preparing to flee. In case 2, whether the driver's behavior constitutes a crime should be further discussed. Some argue that although the driver clearly has been aware of the passenger's intention to kill, the driver's duty is to deliver the passenger safely to the designated place, and the driver is not obliged to prevent the crime from happening. Moreover, he can even defend himself by asserting that if not him, other drivers may also take the passenger. Others hold a different view, stating that the driver has not only failed to prevent the impending crime but also provides transportation facilities to the perpetrator, so he should be accused of aiding others to commit a crime. In case 3, opinions also vary. Opponents of identifying the servant's behavior as a crime believe that although the servant

contributes to the commission of the crime, he only fulfills the work he has to do. Moreover, the neutral aid occurs before the crime, so he should not be regarded as an accomplice. However, advocates refute that if the servant had not polished the master's shoes, the master would not have committed the crime, and therefore he should be liable for the crime.

1.3 The Necessity of Regulating Neutral Aids in Criminal Law

1.3.1 Difference between Neutral Helping Behaviors and Joint Offenses

The aforementioned three cases are all related to a term called neutral aid in the judicial system, which refers to the acts of the subjects fulfilling their responsibility and the subjects do not express a direct desire to commit a crime and not explicitly help the perpetrator to commit a crime. These acts are not crimes per se, but contribute to the occurrence of crimes in specific situations. Therefore, it can be concluded from the cases that these conducts are intermediate between the daily conducts and the conducts of aid, which are different from the conducts of joint crime. Although the conduct of aid is not clearly defined in the Criminal Law of the People's Republic of China, its features can be recognized through certain articles especially Article 310[1] and Article 287(II)[2]. More elaborately, according to the Criminal Law of China, there are both subjective and objective prerequisites to identify the conducts of joint offend. Subjectively, it requires awareness of the perpetrator's criminal conduct and a state of mind of hope or indulgence in the harmful results, i.e., intentional or indirect intent. Objectively, it requires that the perpetrator assisted the prime offender's behavior and promoted the crime. In the three cases, the subjects have already realized the criminal act of the prime criminal. Even though they do not expect the result, they hold a permissive attitude to them, so their behaviors meet the description of indirect intention. Objectively speaking, although they do not directly help the perpetrators, they all contribute to the criminal act of the prime culprit.

Compared with joint offense, neutral helping behaviors also contain subjective and objective elements, but its characteristics of being seen in our daily life, substitution, and repetition [3] distinguish it from joint offenses. Neutral helping behaviors often come around with civil obligations and civil acts, penetrating into various aspects of daily life, from professions to obligations. These characteristics are explained as follows.

i. Characteristic of Being Seen in Daily Life

This feature emphasizes that although the neutral helping behavior facilitates the execution of the criminal act, it is highly "hidden" and cloaked in the "vener" of daily activity. For example, a doctor sells sleeping pills to A when he knows that A has the intention to kill, and finally A kills B with the sleeping pills. The doctor's act of prescribing medication to the patient is an everyday act, but in the context of a neutral act of helping, it is clearly harmful.

ii. Substitution

Substitution refers that such neutral helping behaviors can also be replaced by other acts that are not harmful. For example, if a cab driver takes a prisoner to the crime scene, the prisoner can likewise take another cab or bus or walk to the crime scene if the driver refuses the ride.

iii. Repetition

This property denotes that the acts may happen again multiple times. For example, the daily work behavior such as a driver's ride or a cook's preparation for a meal happens multiple times in our daily life. However, the joint offense such as serving as a guard to ensure the progressing of crime will not be done repeatedly.

1.3.2 Differences in the Acts of Neutral Helping Behaviors and Joint Offenses

Compared with the behavior of daily activities, most of the neutral helping behaviors, while occurring frequently in daily life, might be taken advantage of to commit a crime. On this occasion, with a certain degree of social harm, these behaviors promote the occurrence of harmful results, thus constituting the subjective and objective elements of joint offenses. Therefore, neutral helping behavior has the characteristics of social harm, subjective malice, and helpfulness in contrast to the behavior of daily activities.

i. social harm

It refers to the negative results caused by neutral helping behaviors, especially those harming the society. For example, selling a kitchen knife to a murderer, which is an act of sale in daily life, is socially harmful to the possibility of murdering others.

ii. subjective malice

This term indicates that the helper hopes or holds a permissive attitude towards the results, showing a direct and indirect intention respectively. For example, if a house is knowingly rented to a prostitution organization, although in everyday life this would be a normal rental practice, the rental is now to an illegal organization and the owner continues to rent the house to them with subjective malice.

iii. helpfulness

Helpfulness refers to the fact that neutral helping behavior, compared with the behavior of everyday activities, provides assistance to the offender, consequently fostering the criminal behavior of the prime offender. For example, the cab driver takes the offender to the spot of the crime. It is the duty of the driver to transport customers in everyday life, but in such a situation, the driver's helpful behavior clearly facilitates the offender's criminal behavior.

1.3.3 Necessity of Regulating the Neutral Helping Behavior in the Criminal Law

Based on the abovementioned properties, the regulation of neutral helping behaviors in criminal law is also relatively vague. If all the neutral helping behaviors are included in the regulation of criminal law, then the provisions of criminal law will certainly become cumbersome and complicated. Moreover, most of the neutral helping behaviors are our daily life behaviors, so if they are all included in the regulation will relatively affect the existing social order. However, if they are not included in the criminal law at all, some criminals may go unpunished and even commit new types of crimes in the society. In this regard, neutral helping behavior must have an objective standard which distinguishes everyday behavior, neutral helping behavior, and joint offenses, so as to determine the scope of punishment for neutral helping behavior.

2. Theoretical Basis on the Neutral Helping Behavior

In Germany and Japan, the main body of research on neutral helping behaviors can be divided into the comprehensive punishment theory and restricted punishment theory. On how to adopt penal codes to regulate punishment, the theories applied can be roughly divided into subjective one, objective one, and eclectic one [4].

2.1 Comprehensive Punishment Theory

The comprehensive punishment theory holds that as long as the perpetrator of neutral help has the subjective and objective conditions for being the helper, whether with direct intent or indirect intent, he should be punished. The objective requirement is that the act of neutral helping promotes the occurrence of harmful results. The comprehensive punishment theory has certain appropriateness in our judicial procedures to punish the helper. If the neutral helping behavior is not included in the regulation of criminal law at all, then it may lead to the neutral helping behavior which is difficult to be tolerated by law.

However, this theory is more questionable instead of being favored by most of the people. In some people's eyes, comprehensive penalties are said to be too harsh, because everyday sales practices and service behaviors will inevitably result in harmful outcomes. If this theory were applied, it would lead to an overly broad range of penalties, thus making the provisions of criminal law redundant. People need to be aware of the possibility that their daily activities may be exploited by criminals, and such a regulation will undoubtedly have a huge negative impact on people's daily lives. Because of these drawbacks, it is reasonable to conclude that in general, the comprehensive punishment doctrine is not in line with our national conditions.

2.2 Restricted Punishment Theory

2.2.1 Subjectivity

The focus of the subjective theory is on whether the helper has subjective malice in performing the act, which is also the limitation of whether neutral helping behavior should be included in the criminal law. According to the different focus of subjective malice, the subjective theory can be divided into two types: whether it is determined and whether it succeeds in helping the prime culprit.

i. Classification of the Subjectivity Theory

The argument over the intention emphasizes the starting point of helping behavior. In other words, it is necessary to identify whether the helper does so intentionally. In terms of the intentional behavior, take the case of two people fighting in a knife store for example. If the owner of the store sells the knife to the brawler and another person is killed, the owner's act makes him an accomplice. For the unintentional behavior, it can be illustrated with the case like this: if a suspicious person comes to the store and buys a knife, the owner sells a knife to him, and then the customer used it to kill others. Although the customer has committed a crime, the normal sales behavior of the owner cannot be evaluated as an act of helping, since the owner does not know the criminal purpose. The principle of reliance protection should be applied here. The neutral helping behavior of the owner should not constitute an act of helping, because the seller has no obligation to confirm whether the customer has a criminal motive before selling the goods.

As for whether the act succeeds in helping the criminal to conduct a crime, the focal point should be the intention and the results. For example, if the owner of the knife store knows in advance that his friend is going to commit a crime in front of his store, but he chooses to let it go, this does not constitute aiding and abetting. However, if a friend comes here to buy a kitchen knife when he commits a crime, the owner sells it to him and the friend commits a crime with the knife. In this case, the owner should be identified as an accomplice.

ii. Evaluation on Subjectivity

The subjective theory puts a series of restrictions on the criminal regulation of neutral helping behavior, taking into account both the criteria for incrimination and the criteria for criminalization, such as whether the above-mentioned intention is determined and whether the crime is promoted. However, the subjective theory is also challenged: first, it may be one-sided to consider only from the subjective point of view, because it does not take into account a variety of external objective factors such as occupation, psychology, social relations, and so on. For example, it is hard to judge whether a helper intentionally provides assistance for the perpetrator, and it is hard to define the acts promoting the occurrence of crime. Should all the factors that contribute to the result be identified as helping behaviors? Case 3 mentioned above clearly verifies that the criminal law regulation of neutral helping behavior also needs to consider objective factors, not just subjective factors. Secondly, it is difficult to understand the perpetrator's real thoughts only from the subjective point of view. Neutral helping behavior is the same as the daily behavior. If it is judged from the subjective point of view alone, most of the suspects will say in their confessions that their subjective thoughts are not malicious, which may lead to a large number of punishable neutral helping behaviors being exempted from punishment.

2.2.2 Objectivity

The objective theory, as opposed to the subjective theory, focuses on the objective constitutive elements of the helper to limit the scope of punishment for neutral helper behavior. Specifically, the objective theory can be further divided into three types as follows.

i. Social Correspondence Theory

This theory suggests that neutral helping behavior, although contributing to the commission of a crime, is still within the scope of everyday behavior. Even though it produces harmful results, it should not be punished as aiding and abetting. With regard to the scope of social correspondence, German scholars Wessels and Beulke argue that it does not go beyond the framework of the act of daily activity, and especially not beyond the framework of the purely professional act [5]. For example, selling bread to someone who decides to kill others. Such acts are socially correspondent

and should be excluded from the act of helping. In contrast, when a customs officer, taking advantage of his rights, helps a criminal gang to smuggle, his behavior goes beyond the framework of professional conduct. Therefore, social correspondence theory requires that the conducts at work should be socially appropriate.

Although the conclusion reached by applying the social correspondence theory is correct, it does not provide a clear explanation of what the criteria for exceeding social correspondence are. The concept of social correspondence itself is so ambiguous that it is obviously impossible to define the scope of punishment for neutral assistance based on such an unclear concept.

ii. Occupation Correspondence Theory

In order to further develop the theory of social correspondence, the German scholar Hassemer proposed the position correspondence theory, arguing that when defining the scope of punishable neutral assistance conduct, whether the conduct matches in its professional field should also be taken into account. He pointed out that such professional behaviors as neutral, socially permissible, rule-abiding business conducts are only to achieve the tasks recognized by the state and society. The norms of conduct are publicized. These norms do not contradict the rules of criminal law. To be more specific, they are the complementary and extended embodiments of the rules of criminal law. Even if such conducts meet the constitutive elements of the crime and infringe the legal interests, they are not of concern to the criminal law and should not be identified as an accomplice [6].

This theory also has flaws. First, occupational norms cannot be on the same status as the law. For example, a knife dealer providing a knife to a person who intends to kill others should not be punished because his behavior corresponds to the professional requirement. But if a neighbor provides a knife for someone with the intent to kill, it constitutes an act of aiding and abetting. This obviously unjust behavior is inconsistent with the principle of equality in China's law. In this situation, professional correspondence is used by some people as a get-out-of-jail-free charm for aiding criminal behavior. Second, the concept of occupation correspondence is also as unclear as social correspondence. Hassemer explains that "usual and widely accepted behavior" corresponds to their job, but the range of this term is still not clear.

iii. Violation of Obligation

Theory of violation of obligation believes that the neutral helping behavior should be recognized in the context of "increasing risk not permitted by law". In this case, the views of Ransiek from Germany can be divided into two parts. First, if the helper is ignorant and uncertain about the crime committed by the perpetrator, there is no breach of duty. Second, neutral helping behavior is not causally related to the act of the perpetrator and so the behavior of the helper does not constitute aiding and abetting.

Most of the conclusions reached based on the theory of violation of obligation are correct and widely accepted by the public. However, it is still challenged in terms of the following aspects. Firstly, the existence of neutral helping behavior gives rise to questions about not considering the helpers as accomplices who do not contribute to the crime fully without the intention of committing a crime: What if the harm the perpetrator brings is much greater than the other aspects of the helper's actions? Secondly, there is no precise criterion to judge the helpers' irrelevance to the criminal act of the perpetrator. For example, if a person who gambles is given housing, the room is considered the foundation of life, but this behavior constitutes the crime of harboring a criminal.

2.2.3 Eclecticism

Represented by the German scholar Roxin, scholars believe that the problem can only be solved by combining the subjective and the objective theory on the criminal law regulation of neutral helping behavior [7]. The eclecticism proposed by Roxin points out that there are two contexts where the neutral helping behavior can be regarded as joint offense.

Firstly, the subjective view is that a neutral helping behavior conductor who has already known the intention of the offender and still assists him, shall be punished and his behavior is regarded as joint offense. According to Roxin, to determine whether neutral assistance is criminally relevant in the context of helper knowing the perpetrator's decision to commit a crime, it is necessary to analyze

two situations. One is that if the neutral help act is conducted with the mere intention of helping the criminal, there is a criminal relevance. The other aspect is that if the helper provides assistance to the criminal out of multiple reasons for both assisting him and others. The former behavior should be identified as punishable and the latter should be seen as neutral acts.

Secondly, when the neutral helping actor has knowledge of the possibility of another person to commit a crime, i.e., indeterminate intent or indirect intent, the principle of reliance should be applied and he or she should not be recognized as an accomplice unless the person being helped shows very clear intent to commit a crime.

Roxin's claim, although supported by a number of scholars, remains widely questionable. Firstly, Roxin fails to give an objective criterion for determining criminal relevance, while proposing that neutral helping behavior is criminally relevant when the provider is already aware of the criminal plan of the offender. Second, the existence of criminal relevance is determined by whether the assisting act has a meaning other than crime, but this is difficult to prove with objective evidence. When an operational act that tends to promote crime is informed of its lack of criminal decision, such an easily exploited act is harmless. On the contrary, although the daily act appears to be harmless, it becomes an act of joint offense when it is informed of a criminal plan, which is clearly unreasonable.

3. The Localization Approach of Making Neutral Helping Behaviors Liable

The Four Elements of China's Criminal Law theory stated that the composition of the criminal act includes the subjective aspects of the crime, the objective aspects of the crime, the subject, and the object, of which the subjective aspects of the crime and the objective aspects of the crime are two significant elements of the conviction. The punishment of neutral helping behavior should also be considered from both the subjective and objective aspects instead of merely focusing on the subjective aspects of whether to promote the harmful results of the direct intention and the objective range of punishment.

3.1 Identification of Intent Only Reveals the Degree of Knowing the Criminal Intent

According to Article 14 of the Criminal Law [8], to judge whether a person commits a crime with intent or not, cognition and awareness are the two key factors. The cognitive factor of intentional crime refers to the subjective mental state of knowing that one's behavior will occur as a result of harming society and still do so. The awareness factor refers to the subjective mental attitude of hoping or letting the harmful results happen, that is, whether the intention is determined, and whether the crime is intentionally committed reveals the degree of awareness of the neutral helper for the criminal intent of the offender. This paper believes that in the neutral helping behavior, the actor's knowledge of the criminal plan can constitute joint offense, and there is no need to further discuss the degree of the actor's knowledge of the criminal intent. Therefore, the subjective theory of intentional determination is not necessary. For example, an old man readily lends his bank card to his son, and the son commits fraud with this card. According to the subjectivity theory, the old man does not clearly know his son's criminal intent and his behavior does not constitute an act of assistance, but the bank card lending to others first violates the People's Bank of China's regulations on the management of bank cards, and by default, the helper already has some knowledge of the criminal intent of the positive offender. If the offender takes this card and carries out criminal activity, the helper is jointly and severally liable. Therefore, neutral helping behavior can be convicted as long as the knowledge of the criminal act is reached.

3.2 The Act Shall Have an Objective Physical and Psychological Causation Before Being Convicted

Whether the neutral helping behavior is enough to accuse the helper of aiding and abetting depends on the infringement of legal interest in an objective sense. In other words, the physical-psychological causation should be identified. In the process of convicting a criminal, it is essential to consider the

causal relationship between the main body and the result of the harm. In the case of neutral helping behaviors, the causal relationship among the neutral help, the helper and the result of the harm should be considered. It is obviously more objective to adopt causality as a criterion to determine whether neutral assistance is punishable than to list out various special circumstances one by one according to the objective theory.

In China's criminal law, causation is generally applied to describe the connection between the perpetrator and the harmful results, while ignoring the special case of aiding and abetting. What kind of causality is required to convict the helping behaviors? This paper argues that in order to get helping behavior convicted, the helping act should have a certain causal relationship with both the act of the perpetrator and the harmful result. This is because neutral helping behaviors facilitate the perpetrator to commit a crime while the act is seemingly harmless. If it is needed to identify the neutral helping behavior as joint offense, the causal relationship between the neutral helping behavior and the prime perpetrator should be figured out. In this process, Physical causality and psychological causality should be taken into account. [9]

Physical causation means that the helper physically aids the offender in the commission of the crime such as selling a knife to a murderer. Psychological causation refers to the helper psychologically assisting the offender in the commission of the crime. An example is a cab driver who, after dropping off the offender at a designated location, cheers the offender up before he gets out of the car. All it takes is one of these causalities to be judged as aiding and abetting.

3.2.1 Identification of Physical Causation

In determining whether physical causation exists, the following three aspects should be focused on.

When the helper provides help for the offender, is the criminal act of the perpetrator urgent? In other words, if the helper recognizes the criminal intent of the perpetrator, and the act of the perpetrator is committed immediately, there is a physical causation. Otherwise, the helper is considered not to have recognized the criminal intent [10]. For example, if two people are fighting on the street and one person buys a knife and immediately kills the other, the owner of the knife store constitutes an accomplice. However, if the person does not kill the other after buying the knife but kills him the next day, then there is no urgency and the owner does not constitute an accomplice.

- i. Has the risk posed has reached a certain level that cannot be tolerated? Only beyond the necessary limits can physical causation matter. For example, if a fast-food restaurant owner delivers food to a casino every day, although he assists the offender, the delivery of food is still a legally tolerable act. The reason is that even if the offender is arrested and sent to prison, he has the right to eat on time every day in prison. However, if the casino is supplied with jettons every day, this is more than what can be tolerated by the law, and the owner should constitute an accomplice.
- ii. Is the neutral helping behavior an act that generally does not lead to crime and is it a highly substitutable act? For instance, if the owner of a kiosk has recognized the customer's intent to kill, but believes that the sale of a bottle of mineral water would not cause a harmful result, so he does so. However, the customer poisoned the bottle of water and killed others. The sale of mineral water generally does not lead to homicide, and the sale of mineral water also has a high degree of substitutability, so the owner of the kiosk should not be considered to have a physical causal relationship between the act of selling water and the act of killing.

3.2.2 Identification of Psychological Causation

To identify psychological causation, it is necessary to recognize the difference between general joint offense and neutral helping behavior. Neutral helping behaviors are not technical instructions, such as teaching the offender how to pick locks or opening safes or informing the offender of the fastest escape route, which makes it easier for the offender to commit a crime. These acts clearly constitute joint offense. Neutral helping behaviors, on the other hand, are acts that are outwardly harmless.

Apart from that, objectively speaking, the facilitation of neutral helping behavior should be known by the offender. For example, the owner of the kiosk has recognized the customer's intention to kill, and sold him a bottle of mineral water. This behavior is an ordinary act of sale which should not constitute aiding and abetting. However, if the owner proposes that he can offer help to kill someone before the customer leaves, which is successfully known by the offender, the owner's encouragement behavior and the offender's implementation behavior have a psychological causal relationship. If the owner's encouragement is not heard or not understood, then it does not constitute a psychological causal relationship.

3.2.3 Explaining the Criminal Regulations of Neutral Aids with the Eclecticism Theory

To summarize, for the seemingly harmless and legitimate daily behavior, the helpers should not be punished for they have recognized that this behavior may be used by the offenders, just like the above-mentioned "selling mineral water" case, which excessively expands the scope of the helpers. It is not beneficial to the management of social order, so the subjective view is obviously not in line with our national conditions. However, if the neutral helping behavior exceeds the legally tolerable scope, the helper should be convicted. For example, although it is a normal business behavior, there is a strong causality between the neutral helping behavior and the actual commission, and the helping behavior is necessary to be considered as aiding and abetting, so the objective view is obviously flawed in its application in our country as well. Even so, not all cases of neutral helping behaviors in daily life should constitute joint offense as long as there is a causal relationship with the commission of the act. It is also necessary to consider the subjective aspect of whether the helper recognizes the criminal intent. Moreover, his behavior is not bound to be punished if he recognizes the criminal intent of the perpetrator. Rather, it is also necessary to consider objective aspects such as the causal relationship between its intermediate act and the act of performance.

Based on the above analysis, eclecticism is better for the regulation of criminal law on neutral helping behavior in China. The theories in eclecticism can well match the four elements of the criminal law of China, and are reasonable for conviction. Subjectively speaking, the measurement of conviction is stricter than that in the subjectivity theory, which reflects China's intolerance to intentional crimes with subjective malice. Objectively speaking, the criteria for incrimination based on eclecticism are more justified than the objective theory. To determine the perpetrator of the crime by causation is also in line with the current principles of criminal law in China. Besides, some of the circumstances of decriminalization are summarized. reflects the humane characteristics of China's laws. Therefore, with reflecting the humane characteristics of China's laws, eclecticism is undoubtedly the one most in line with China's national conditions.

4. A Typology Study on Neutral Helping Behaviors

Since neutral helping behaviors are daily and occupation-related in nature, they are often performed on a daily basis or in the course of duties. Therefore, a typology study of neutral helping behaviors in daily life is carried out in this paper to examine whether the viewpoints in the paper are consistent with each type of neutral helping behavior.

4.1 Neutral Aids in Merchandising

The sale of goods is a very common act in daily life, and some commodities are dangerous to a certain extent. However, merchants do not have the obligation of "prior examination", so the sale of goods in daily life is often utilized by criminals, resulting in neutral help behaviors of the merchants in the sale of goods. Here the sale of daily goods should also be divided into two types, i.e., dangerous goods and non-dangerous goods.

4.1.1 The Sale of Dangerous Daily Goods

Although such items like knives, hammers, and axes are dangerous, they also have their own use in daily life, so the sale of such goods is not harmful. Yet, if the sale of such goods is made when the

seller is aware of the intention of the perpetrator, resulting in the commission of a crime, does the sale constitute an act of aiding and abetting?

For example, if the owner of the knife store sells the knife to the purchaser and knows that he is about to commit a crime, then there should be a causal relationship, and the owner should be considered as an accomplice. As a citizen, he should assume the obligation of prior examination in such urgent situations. If he only estimates that the purchaser may commit a crime in the future and is not clear how the knife will be used, there is no urgency, and the obligation of prior examination should not be required. In this sense, there is no causal relationship and it should not be considered a crime.

4.1.2 The Sale of Ordinary Daily Goods

In daily sales, most of the supplies sold are not dangerous, such as towels, water, and bread, and such goods are not harmful in themselves. However, when a person is aware of the intention of the perpetrator, he still chooses to sell the harmful goods, thus leading to the crime. Does the act of sale constitute an act of aiding and abetting?

For example, a murderer buys a bottle of mineral water from a store owner, who knows his intention to kill but still sells him the water, and the murderer kills the victim by poisoning the water. The act of selling mineral water is substitutable and water is a non-dangerous daily necessity, so citizens should not assume the obligation of prior examination of such non-dangerous daily necessities as water, and therefore should not be considered as an accomplice.

4.2 Neutral Helping Behaviors in Services

The service industry is now becoming more and more common as the tertiary industry in China. The service industry is supposed to make people's lives more convenient and is usually not dangerous, let alone harmful. However, the duty of service personnel is to do their own work, not to assume the obligation to detect and prevent crime, so the service behavior is easy to be exploited by the wrongdoers, and the neutral help behavior in the service industry is thus generated.

4.2.1 In Catering Services

Neutral helping behaviors in catering service sectors can be much related to the food and drink service. These acts may promote the criminal behavior of the offender and cause social harm. There are two main types of acts: the first is the provision of food to the offender; the second is the provision of service to the offender. Does the provision of services when one is aware of the criminal intent of the other constitute aiding and abetting?

The first type can be exemplified by a case of an owner of a restaurant providing food to a casino. The owner of a fast-food restaurant provides daily meal delivery service to the casino. The food and water provided every day maintain the operation of the casino. The behavior of the fast-food restaurant owner is normal in the service sector. Although it promotes the operation of the casino, its behavior is still within the tolerable scope of the law. Even if a prisoner on death row has the right to eat on time. Therefore, he should not be recognized as an accomplice.

The second type can be illustrated by an incident between a waiter and customers as an example. The waiter at the restaurant has seen the customers at a table fighting with murderous intentions, and he still serves a sharp steak knife to their table, causing one customer to kill another customer with the knife. In this case, the situation of the fight is in imminent danger, and the sharp steak knife is a dangerous object. The waiter's actions actually infringe the impermissible legal interest and the waiter should be considered as an accomplice. If the steak knife was delivered before the fight between the two, the situation was not urgent, so the behavior should not be considered as aiding and abetting; if the waiter served two cups of water to calm them down during the fight, and one customer threw the glass at him smashed the other with the cup, the cup was an everyday item that was not dangerous, although the situation was urgent, the delivery of water did not cause the impermissible danger in the legal interest. Therefore, the waiter should not be found to be an accomplice. If the steak knife is sent before the two customers fight, the situation is not urgent, so it should not be considered as aiding and abetting.

4.2.2 In Transportation Services

Due to the nature of work in the transportation and delivery service sector, offenders often commit a crime by taking advantage of the business in transporting goods and passengers. Case 2 of Chapter I is an example. For another example, a terrorist puts a bomb in a parcel, and the delivery man discovers that it is a bomb and continues to transport it. Does either of these cases constitute aiding and abetting?

As for the first example, although the driver knows the offender's intention and his service is exploited, transporting customers is his work with its own independent social significance, and the transportation occurs before the offender commits the crime, so he does not participate in the crime in essence. The case is not urgent, either. Therefore, the driver should not be considered as an accomplice. However, if at this time the criminal is chasing the victim, happens to stop this cab, and asks the driver to catch up with the victim, the situation at this time is urgent. If the driver helps the criminal catch up with the victim, the possibility of the victim being killed will increase as a consequence, so the driver's behavior increases the danger that is not allowed by law. This should not be seen as a neutral act which constitutes aiding and abetting.

For the second case, although the delivery staff should deliver the parcel to the designated location, they also shoulder the duty to verify the security of the parcel and refuse to transport prohibited dangerous goods. The delivery man in the case fails to perform his duty, thus constituting an accomplice.

4.3 Neutral Helping Behaviors in Daily Life

Many acts of everyday life are not dangerous, such as cooking or providing food, and it is because such acts are frequent in everyday life that they can easily be made use of by the offenders. Or, the main bodies of these acts will disguise his or her helping behavior as the daily acts, and neutral helping behavior in everyday life is thus created.

For instance, there are two scenarios: (1) Case 3 in Chapter 1. (2) When a police officer is arresting a bank robber, a passerby offers bread to the robber exhausted from confronting the police with a gun.

For the first scenario, this paper believes that the behavior of servant does not constitute a crime. Cooking and polishing shoes are acts that satisfy the basic needs of human life, and a servant cannot be expected to resign instead of cooking and polishing shoes for the master who committed the crime, so the servant does not participate in the crime in essence. For the second, while the passerby's providing food and drink is an act to meet the basic needs of human life, his conduct occurs when a criminal is being arrested. If the criminal regains his strength, it will be more difficult for the police's apprehension. This act is far beyond the tolerated limits, and has constituted both physical causation and psychological causation. The food may increase the offender's resistance.

Therefore, the main criterion for defining whether a neutral act in daily life constitutes joint offense is whether the act leads to the commission, or, whether it is of an urgent nature. A neutral helping act that occurs before the crime is committed is not urgent and should not constitute aiding and abetting. The first case mentioned above is an example. The servant does not participate in the crime in essence and does not cause an infringement on legal interest. Yet with the crime being committed, the legal interest is infringed and the causation relationship exists, so the joint offense arises, just as the second case above shows. Handing bread to a physically exhausted criminal occurs in the course of committing a crime, and therefore constitutes aiding and abetting [11].

5. Conclusion

The subjective aspect of an actor's intention cannot be taken as a criterion for conviction. Criteria proposed by theories of objectivity are too vague to be taken into account as a prior solution. In other words, the scope of punishment for neutral helping behavior can be regulated only from the causal relationship between the neutral helping behavior and the perpetrating behavior of the offender. As

long as one of the physical and psychological causality is reached, the acts constitute aiding and abetting.

In case 1 of Chapter 1, C returned the 20,000 yuan he owed to the fleeing criminal A. The money is A's discretionary fortune so C's act is the fulfillment of a civil obligation, thus complying with the relevant provisions of civil law. Therefore, C's behavior can be tolerated and does not constitute a crime. In case 2, the driver sends the passenger who was about to commit a crime to the place where the crime is to be committed, and the act occurs before the crime, so his behavior is not urgent and he should not be seen as an accomplice. In Case 3, as explained in Chapter 4, the behavior does not constitute a crime. To sum up, the paper put forward certain criteria for the scope of punishment of neutral helping behavior: from the subjective sense, the main body needs to recognize the criminal behavior of the offender; from the objective sense, the neutral helping behavior should have a physical or psychological causal relationship with the criminal act of the perpetrator.

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- [1] Article 310 of the Criminal Law of China: Whoever knowingly provides a hiding place, money or property to a criminal, or helps the criminal escape or gives false testimony to protect the criminal shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years. Conspirators to a crime mentioned in the preceding paragraph shall be regarded as joint offenders and punished as such.
- [2] Article 287(II) of the Criminal Law of China: Whoever, while obviously aware that any other person is committing a crime by using an information network, provides Internet access, server custody, network storage, communication transmission or any other technical support, or provides advertising, payment settlement or any other assistance for the crime shall, if the circumstances are serious, be sentenced to imprisonment of not more than three years or limited incarceration in addition to a fine or be sentenced to a fine only.
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- [8] Article 14 of the Criminal Law of People's Republic of China: An intentional crime is a crime constituted as a result of clear knowledge that one's own act will cause socially dangerous consequences, and of hope for or indifference to the occurrence of those consequences.
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