

Study on the Decriminalization of the Abetment or Assistance in Suicidal Behavior

—Based on the Objective Imputation Theory

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Abstract

Preferably Objectives: Study on whether abetting or assisting suicidal behavior constitutes a crime. **Methods:** With the Objective Imputation Theory to solve the causality relationship between the death results and abetment or assistance of suicidal behavior. **Results:** This paper discusses the abetment and assistance of suicidal behavior in the system of objective imputation theory. After a comprehensive analysis and demonstration, we get the results that the abetment and assistance behavior does not meet the three constituent conditions of objective imputation theory. **Conclusions:** The abetment and assistance of suicidal behavior does not constitute the crime of intentional homicide.

Keywords

Suicide, Abetting or Assisting Suicidal Behavior, The Objective Imputation Theory, Danger, Imputation

1. Introduction

The suicidal participation behavior mentioned in this article refers to the abetting or assisting suicidal behavior. The subject does not include minors with no criminal responsibility and mental patients, as well as coerce or deceive a normal adult with criminal responsibility, nor as abetting or assisting suicidal behavior in cult organization. The abetting or assisting suicidal behavior only refers to the subject with no cognition error and normal spirit. In other words, the subjects of “suicide”, “abetting or assisting suicide” in criminal sense are definitely normal adults with full criminal responsibility and free will.

In theoretical and judicial practice of criminal law, none of the countries considers

suicide as a crime. According to the theory that abetting or assisting suicidal behavior is viewed as subordination in joint offense, since the acts involved in the implementation of suicide is not a crime, the abetting or assisting suicidal behavior does not constitute a crime either. In addition, our criminal law does not provide abetting or assisting suicide as a crime, so abetting or assisting suicidal behavior lacks the legal basis for conviction. It is also inappropriate to manage abetting or assisting suicidal behavior with indirect guilt of intentional homicide, since that a normal adult decides to give up his/her own life without misunderstanding does not exist mind-control and misconception. The abetting or assisting suicidal behavior mentioned in this article does not include abetting or assisting minors with no criminal responsibility and mental patients, as well as coerce or deceive a normal adult with criminal responsibility, nor as abetting or assisting suicidal behavior in cult organization which is provided by judicial interpretation expressly. If the above three situations emerge, the participants will undoubtedly constitute intentional homicide without controversy. The objective imputation theory provides a strong theoretical support for abetting or assisting suicidal behavior being out of crime.

2. The Introduction of Objective Imputation Theory

The objective imputation theory originated from Honig¹, Engisch², Welzel³ and others' legal imputation thoughts in the 1930s. Until the 1970s, the German criminal scholars Roxin⁴ introduced the objective imputation thought into the field of criminal law with a scientific exposition and interpretation, thus the theory of objective imputation was officially formed. With Neo Kant's Philosophy⁵ as theoretical basis and implementation the spirit of tolerance of criminal law, the theory makes the application of criminal laws stricter and more beneficial to safeguard human rights. With the development of criminal law, the objective imputation theory has been recognized by more and more scholars.

2.1. The Concept and Content of Objective Imputation Theory

Objective imputation theory distinguishes causality and imputation. Causal relationship is premised on conditioning theory. In the behavior related to the results, only when the conduct creates a banned risk, and the danger realizes in line with the results

¹Honig directly cites the objective imputation theory which is put forward by Larenz as a general theory of law, proposing objective and individual illegal theory.

²Engisch continues to develop the objective imputation theory of Honig, and clearly distinguishes the causal relationship under the conditional theory, the correspondence in the sense of general predictable possibility and the realization of the risk as additional elements.

³Welzel also develops the objective imputation theory of Honig, proposing the viewpoint of social equivalence.

⁴The objective imputation theory truly gave birth in 1970, Roxin made great contributions to the establishment and development of the theory, that the criminal law circle called the finding of the theory as "Roxin revolution". He puts forward the three criteria of the objective imputation theory and are still in use at present.

⁵Neo Kant's Philosophy holds that all philosophy should be based on experience, and it requires the philosophy to be confined to the scope of experience and to deny the possibility of outside of experience.

of component (or realization within the protection scope of component), the results can be attributable to the behavior. Therefore, the realization of objective imputation must have three conditions: Firstly, the behavior manufactures an impermissible risk. Secondly, the behavior realizes an impermissible danger. Thirdly, the result does not exceed the scope of the constitutional elements (Zhang, 2011). This is a classical representation of the concept of objective imputation theory, which can be divided into three aspects: the doer's behavior inherently is risky; dangerous behavior arises from the result prohibited by the criminal law; the result can be evaluated as a crime.

2.2. The Rationality of the Objective Imputation Theory

Objective imputation theory is based on the conditioning theory and correspondence theory of causal relationship. The theory judges the behavior illegal or not through a set of objective and meticulous criteria, not only reducing the biased judgment brought by subjective experiences, but also prevent ambiguity produced by ambiguous conditions and results. Although the objective imputation theory has some disadvantages, yet compared to other causality, it is more scientific which makes it possible to solve certain difficult problems of criminal law effectively. So generally speaking, the theory deserves discussing.

2.2.1. Objective Imputation Theory Prevails over Conditioning Theory

Conditioning theory adopts the logic mode "no previous behavior, no results" in order to judge the relationship between the act of perpetrating and the caused results. In many cases, more than one condition may lead to one result. Conditioning theory says that the result caused by multiple conditions are equivalent, there exists a causal relationship between them and the result, which may lead to enlarge the scope of causality that if there is no other rule to restrain, it may cause the proliferation of criminal responsibility (Sun, 2013). For example, John hit Jerry with non-fatal injuries. In the process of the treatment, Jerry was infected to death by virus due to the doctor's operational errors. Conditioning theory supposes that there exists a causal relationship between John and the doctor's behaviors and the death, so John should also be liable for Jerry's death. Obviously, the condition theory expands the scope of punishment. To compensate the disadvantage of the condition theory, objective imputation theory emerged therewith. Objective imputation theory is based on the conditioning theory, dividing causation and imputation separately. It supposes that not every condition leading to a result is the discussed condition in line with criminal law. Only those that cause the danger, realize the danger, and the results do not exceed the protection scope of the component are the causal conditions. So it is clear that objective imputation theory limits the condition range in the conditioning theory, and designs a more specific and clearer identification of condition. Compared to the conditioning theory, this is an undoubted improvement. Although this mode has some shortcomings, yet for the majority of cases, the objective imputation theory is identified as scientific, which is also proved by judicial practices in Germany and Japan etc.

2.2.2. Objective Imputation Theory Prevails over Correspondence Theory of Causal Relationship

The correspondence theory of causal relationship is produced on the basis of conditioning theory, which tries to solve the improper expansion of the scope of causality. It could be effective to limit the scope of condition and result in the causality, however, it lacks empiricism and certainty towards the judgment of correspondence. Concerned with the judging criteria of correspondence, the theory adopts the probability theory by the German physiologist Von Chris. Specifically, whether an action constitute a correspondence depends on the probability of result occurrence (Zhang, 2014). Thus, the causality identification of correspondence theory of causal relationship is not a total deductive reasoning process, it seems more like an induction reasoning, which forms a process of speculation and possibility determination. In addition, people's understanding towards objective things is quite limited, so it is not necessarily accurate for people to judge the causal relationship. Objective imputation theory does not judge by man's general life experience and probability theory, but by a more objective and clear mode as the standard. The contained three conditions are clearly logic, each condition leaves a tiny room for subjective speculation. More creatively, it constructs a distinguished system with causality and imputation, which is not available in the correspondence theory of causal relationship. Thus, from these two aspects, objective imputation theory is better than correspondence theory of causal relationship.

3. The Explanation and Deficiency of Domestic General Theories on the Constitution of a Crime Concerning the Abetment or Assistance of Suicidal Behavior

Our general statement believes that abetting or assisting suicide does not belong to the instigator or accessory in joint crime, however, because the actor's instigation or aiding behavior provides a reason for the dead result, namely a causal relationship, so in general abetting or assisting suicide should be taken as intentional homicide for conviction and punishment. At the same time, suicides themselves have the freedom to make decisions, thus abetting or assisting behavior creates a small social harmfulness that should be given a lighter or mitigated punishment or be exempted from punishment in accordance with the less serious intentional homicide (Gao et al., 2011). We all know that criminal law provisions specifically refer to the act of criminal acts, not including abetting or assisting behaviors. General statement on qualitative of abetment or assistance of suicidal behavior is unconvincing.

3.1. The Identification Scope of Reason or Causality Is Too Broad

Causality includes not only philosophy and natural sense of cause and effect relationship, but also the legal sense of causality, usually what we say causation in criminal law refers only to the legal causation. For example, on rainy days, the driver lost control on operation killing the passer-by, we can only say that there exists a legal causality between the driver's operations and passerby's death, but not refer that slippery road on

rainy days contributes to the death of passer-by. Because there is only a philosophic and natural sense of causal relationship between slippery road on rainy day and the death of passer-by. In all the behaviors which have conditional relationship with the result based on the objective imputation theory, only those who create a banned risk and the specific danger has been achieved, as well as the results are consistent with the constituent elements of criminal acts, we can say that there exists a causal relationship between the acts and the results. Abetting or assisting behavior, of course, has a natural causal relationship with the death. However, what degree the reasons effect can be seen as the legal causality? In addition, are suicide results consistent with the constituent elements of intentional homicide? These are all questions worth researching. The general statement only says that instigation or assistance acts have a causal relationship with suicide's death, but did not demonstrate the reasons.

3.2. It Is Unreasonable to Interpret the Abetment or Assistance of Suicidal Behavior to Perpetrating Act

Crime of intentional homicide formulated by the specific provisions of criminal laws does not refer to a particular perpetrating act, but to the typed behavior which will violate the life's legal interest. The typed behavior is not a concept of an infinite expansion, it should be interpreted narrowly however. "The person" stipulated in Article 232 of criminal law is generally considered by criminal theory to be the "others" instead of including their own. And from the concept of intentional homicide (intentional homicide means intentional deprivation of others' lives illegally) can also be seen that "murder" only refers to the killing of "others". Abetment or assistance of suicidal behavior interpreted as perpetrating act will magnify and specify the implementation of acts. The scope of implementation of act is not consistent with the people's past practice and is largely beyond the forecast range of citizens' possibilities. We should avoid regarding all the acts which have a causal relationship with the results as the narrow accomplice, resulting in excessive flooding boundaries of criminal law, and severely damaging the stability of law (He, 2004).

Moreover, the criminal law and relevant judicial interpretation does not explicitly stimulate such an explanation, therefore, such an explanation may violate the principle of a legally prescribed punishment. People will suspect that since suicidal behavior with more social severity does not constitute a crime, should abetting or assisting behavior which has a lighter and indirect effects on the death result do?

3.3. The Ultimate Decision to the Death Is the Suicide Himself/Herself

An adult in the absence of awareness of error with freedom of will and normal spirit can not only recognize the meaning of death, but also choose whether to die and how to die. From the subjective points of view of suicides, they recognize the results and determine to carry out a suicide death, hoping or letting go of their lives. Instigator or helper plays a minor role, who cannot take a decisive influence on the result of death. Some scholars believe that suicide is illegal, suicide himself/herself is both a principle

offender and a victim, abetting or assisting behavior belongs to suicide behavior. Considering committing suicide is due to their actions, their illegality may be insufficient to achieve the degree of punishment. Although suicide cannot be punished, participating in acts of suicide interferes in others' lives. Thus, it is worth developing a special standard to punish such a behavior (Zeng Gen, 2015).

Punishing abetment or assistance of suicidal behavior rather than suicide himself/herself, it violates the attribute theory of criminal law. In joint offence, the principal offender plays a major role in the process of committing the crime and the occurrence of results, which perceived as a dominance, and other criminals, however, play a submissive role in joint crime. If the principal offender (suicide) who plays a dominant role in committing intentional homicide do not be punished, then the instigator or the helper should not be punished either. Moreover, our country's judicial practice has never convicted suicides, not to mention penalties. Suicide is not illegal, regardless accomplished suicide or attempted suicide, it is the general rule that most of the countries carry out. In addition, in demonstrating whether abetting or assisting suicide can be fined, we should not identify only from the literal language as the participation behavior, and affirm it not to be punished by accomplice theory. Because the "abetting and assisting behavior" may not create the narrow sense of accomplice (Zhou, 2011). Our general theory of criminal law does not analyze abetting or assisting behavior from the accomplice level as punishable, but suppose that abetting or assisting behavior produces a causal relationship to the death result. However, even so, we cannot believe the abetment and assistance behavior with a causal relationship constitutes a crime. The general theory avoids the question that whether abetting or assisting behavior can be evaluated independently as illegal, namely whether abetting or assisting suicidal behavior itself constitutes a crime, instead, the theory affirms it to constitute a crime from the perspective of causality. Thus, such avoidance and preconceived assumptions create a logical mistake.

Therefore, the general statement concerning punishing the abetment and assistance behavior not only expands the scope of causality in criminal law, violates the legal principle of crime and punishment, but also is contrary to the accomplice theory. Yet, the nature of the error is that the logic judgment is confused.

4. Objective Imputation Theory and the Abetment or Assistance of Suicidal Behavior

Danger exists in real society; some danger is not permitted by law, while some dangerous is. For example, the actor has caused the danger which endangers public safety; such behavior is prohibited by law. But defense against unlawful infringement is permitted by law.

The banned danger which is discussed in criminal law refers to the danger within the scope of articles expressly provided in criminal law, that is to say, the danger is able to be evaluated by Criminal Law. When determining whether the actor manufactures a banned danger, the standard is also to see whether the danger caused by act itself is out

of the tolerable limits prescribed by law.

4.1. The Actor Manufactures a Banned Danger

4.1.1. When Reducing the Risky Behavior That Has Already Existed in Reality, It Cannot Be Recognized as Producing a Banned Risk, However, at This Time It Is Equivalent to Not Create a Danger

For example, Daniel saw that Jenny was going to be hit by the collapsing building on the head. Daniel pushed Jenny so that the collapsing building only hit Jenny's leg. That Jenny is going to be hit on the head by the falling building is a risky behavior that has already existed in reality. Daniel pushes Jenny so that it just hits the leg, which reduces the risk finally. Because hitting on the head is likely to lead to death, but it will not be when hitting the leg. Daniel's behavior can be seen as protecting Jenny's life at the expense of Jenny's health, which is favorable for Jenny and is allowed by law. It cannot be considered as manufacturing a dangerous act. As another example, Ann would like to suicide by jump down from upstairs, but at the moment of jumping, Ann was rescued by Michael. Although Michael saved Ann's life, the excessive force from Michael inevitably resulted in Ann's fracture in the arm. However, since Michael's behavior reduces the risk that has already existed in reality, Michael's behavior cannot be considered to manufacture a banned danger. Our legal ideas recognize to protect bigger legal interests at the expense of smaller legal interests (such as emergency action), not to encourage but not to reject as well. In conclusion, Michael's behavior is equivalent to manufacture no danger in the above two cases.

4.1.2. Objectively Speaking, If the Conduct Does Not Reduce the Risk, Nor to Add Any Extra Danger, Then the Results Cannot Be Attributed to the Behavior

For instance, in a large forest fire, the actor threw a crabstick into the fire, as we all know that a stick cannot increase the risk of fire spread, so the result cannot be attributed to the actor. Back to the abetment or assistance behavior, although the participation behavior usually cannot reduce the risk of suicide's death, it is not enough to increase the additional risk as well. For the reason that, the instigator encourages the suicide to end his/her life through preaching or lure, the instigator may more or less causes an impact on the psychology of suicide, such as strengthening the confidence of death, resulting in the determination of death, initiating the suicidal idea etc. But ultimately suicide himself/herself decides whether to end the life by his/her own thought or mental struggle. In other words, based on a correct understanding of suicide death result, suicide determines to commit suicide and wishes or disposes himself to end his/her life. It has nothing to do with others. So if you think that the instigator's behavior adds an extra risk of death, then it contradicts the general rule that the instigator does not constitute a crime when abetting someone to run in the thunder day but is struck by lightning being dead. It is the same with the situation that assisting suicide physically cannot be expected to provide an additional danger. Because even the instigator provides with a physical extra help, the suicide can also choose to die or not, the decision lies in his/her hands. Choosing death is the true meaning of suicide, which re-

flects the will of suicide, the helper only respects the autonomy of suicide however. From the point of infringement of legal interest, the establishment of infringement is on the premise that certain behavior violates the freedom of the obligee to self-govern, use and dispose of relative object (Wang, 2012). Suicide actively gives up his/her life, then can the abandoned legal interest be said as the instigator or the helper violates the suicide's right to freely dispose of his/her life? The answer is obviously "No". Thus, the instigator or the helper does not lead to an additional risk.

Of course, if the suicide decides to end his/her life based on a false motivation or a wrongful understanding of the facts, then the deceiver could constitute an indirect offender. For instance, cult member instigates others to commit suicide, which may constitute the indirect guilt of intentional homicide. Because the cult organization has a great fraudulence and a strong controllability, the spirit of its members are often in a non-free state of oppression and control, so the suicidal behavior they have implemented cannot be said to base on their true will (Qian, 2012). Similarly, coercing others to commit suicide cannot be said as that suicide is based on their true will. In addition, victims generate a wrongful awareness when the perpetrator deceives or beguiles someone to commit suicide, thus, it cannot be identified as a simple suicide.

4.1.3. The Actor Creates a Danger, But If the Danger Is Allowed by Law, It Should Exclude an Objective Liability as Well

For example, Joyce went across the closed highway at night, the driver who obeyed the traffic rules accidentally hit Joyce with a dead result, however, the result cannot be attributed to the driver. As we all know, the closed highway is not allowed for the pedestrian to go through and pedestrians will not appear on the highway under normal circumstances. So as far as the driver is concerned, he/she has no understanding of the possibility of danger to Joyce's death, thus we should exclude objective imputation. Although the abetment and assistance behavior contributes the risk of suicide, the risk may be only the risk of marginalization of mental or physical help, which creates a slight danger. Criminal law is formulated to punish the risk behavior with a severe social harmfulness, so the slight behavior is not enough to be prohibited by criminal law, otherwise it would lead to the proliferation of the use of criminal law, which should be repelled by the society with rule of law. Even though the risk of such deaths is viewed as a major danger, but because China's criminal law does not expressly provide that abetting or assisting suicidal risk is prohibited, so the absence of express provisions of law is not a crime nor impose punishment. Some scholars cite the regulation from the paper "Law's interpretation of the specific application on the organizing and use of cult organization criminal cases" by Supreme People's Court and Supreme People's Procuratorate, they believe since the cult organization's instigating or assisting others to commit suicide is prohibited by criminal law (intentional homicide), then the general suicidal participation behavior should also be repelled by law. This method of analogy by explaining that the risk of dying suicide is a dangerous practice prohibited by criminal law is firmly opposed to the author. Determining whether an act constitutes a crime, syllogism mode must be followed strictly. The point that advocates the danger of sui-

cide is prohibited by criminal law is clearly affirmed by the judge who starts on subjective judgments involved in suicidal participation behavior as a criminal wrongdoing, and then searches the excuses for his/her own judgment. Is this to convict somebody at first instead of analyzing the constituent elements of a crime?

4.2. The Banned Danger Has Been Achieved in the Objective Level

The realization of risk refers that when a result is the realization of to the manufactured risk by the actor, it can be attributed to the perpetrator; on the contrary, if the result is not the realization of to the manufactured risk by the actor, that even there exists a causal relationship between the behavior and result, it is still not attributable (Yu, 2007).

4.2.1. The Behavior Manufactures a Banned Danger, Although There Is a Relationship between the Act and the Result, Whether the Causal Process Is the Norm Should Be Examined as Well. If the Causal Process Is Abnormal Instead of Being Normal, Then the Occurrence of the Result Is Accidental. The Result Out of Accident Cannot Be Attributed to the Behavior (Lin, 2009)

For example, Jay beat Anna with nonfatal injuries, but Anna was burnt to death in the hospital since it was on fire. Damage behavior, along with the fire event was attributable to Anna's death. The causal process was abnormal instead of being normal filling with accident. Therefore, Anna's death cannot be attributed to Jay's damage. The abetment and assistance suicidal behavior may also be explained by whether the causal process is normal or not. Even though there is a virtual relationship between the abetment and assistance behavior and the occurrence of death, we cannot say that the causal process is norm. In many cases, suicide himself/herself has the determination of death before the abetting acts carried out, in other words, even the abetting act is not implemented, there will be a result of suicide as well, the abetting act does not produce any impact on the result of death. At this moment, the causal process may not be interrupted with the intervention of abetting acts, the death result is inevitable for the reason that suicide himself/herself is the director of the whole process of death from the generation of death resolutions to the appearance of death. The causal process of instigator's behavior becomes abnormal with the intervention of suicide, which means the occurrence of death is also an accident for the instigator and then should not attributable to the abetment behavior.

4.2.2. If a Behavior Obviously Upgrades the Risk, We Can Certainly Say That the Causal Process of Conduct and Result Is Normal, the Perpetrator Can Be Attributed. In Addition, If There Exists a High Correlation between Risky Behavior and the Result, the Result Should Also Be Attributed to the Dangerous Act (Lin, 2009)

For example, Jeff hurt Jack with knowing that Jack was a hemophiliac, so Jeff's behavior significantly increased the risk of Jack's death, if Jack finally died, then the causal process at this time between the behavior and the result was viewed as normal, the perpetrator Jeff can be objectively attributable. For another example, Kelly wanted to drive

to kill Levi, in the process of chasing Levi, Kelly crashed Levi into the lake and Levi was drowned. In this circumstance, Levi's death should be attributed to Kelly's behavior for the reason that even Kelly did not hit Levi with death, Levi's drowning into the lake was due to Kelly's behavior. Abetting or assisting minors with no criminal responsibility and mental patients is not the same with abetting or assisting a normal adult with criminal responsibility. The former significantly increases the risk that if the instigated object is a normal adult, then the suicide may not likely appear. On the contrary, if the suicide is a mental patient, the result of death may likely appear. Because a normal adult even with abetment or assistance suicidal behavior is fully aware of the meaning of death, the right lies in his/her own hands to decide whether to die or not, so at this moment, we cannot say the abetting behavior significantly increases the risk of death. China's criminal law punishes abetting or assisting minors with no criminal responsibility and mental patients as intentional homicide (indirect guilt), because it takes such special group being lack of knowledge or understanding of death into account, the risk of death is obviously improved by the instigator or the helper.

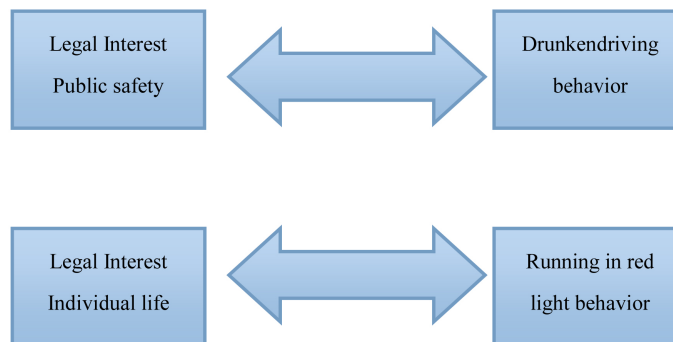
4.2.3. If the Act Does Not Achieve the Banned Danger, We Should Exclude the Objective Imputation

For instance, the doctor did not follow the provisions to take allergy test for the patient, leading to the death of the patient after injection. Facts have proved that, even if the patient was tested in accordance with the provisions, allergic reaction cannot be avoided either. Due to untested behavior cannot control the occurrence of death, the result should not be attributed to the doctor's behavior. So the untested behavior does not achieve a banned danger, we should exclude the objective imputation. Analogy to the abetment and assistance suicidal behavior, if facts prove that even if there is no abetment and assistance, the suicide can not be avoided either, then we should exclude the objective imputation. For example, suicide himself/herself made the mind to die before abetting acts have been implemented, under the circumstances, the abetting acts would not shake the determination of suicide. For another example, Leo and Kim were drug addicts for many years, they both knew the over-injection of drugs may likely to cause death. Leo borrowed a large number of drugs from Kim and injected into his body, Kim witnessed the whole process. In fact, Kim's participation behavior was quite dangerous, under such circumstances of danger, the victim's behavior did not meet the constituent elements of an offense, so the helper (the defendant) was not possible to set up a crime as well (Zhang, 2012). In this case, since Leo had an understanding of the danger of death, the result of death should not be attributable to the helper Kim.

4.2.4. When the Acts Do Not Cause the Included Results by Specific Regulations, We Should Exclude the Objective Imputation

For example, Ken was drunk driving killing a passerby who run the red light. Law of the People's Republic of China on Road Traffic Safety and other relevant laws prohibit drunk driving, for the reason that the driver's control ability over the vehicle becomes weak or vanished when someone is drunk, easily leading to the road traffic accidents and endanger the public safety. The regulations which prohibit drunk driving are de-

signed to protect public safety rather than to protect the safety for whom runs the red light. Therefore, the passerby's death results cannot be attributed to the drunk driver. The establishment of crime of intentional killing is intended to protect people's lives and safety from being violated, specific to individual, the objective of the regulation is to forbid others to infringe upon one's life and one should not violate others' lives as well. But the protection goal of the regulation does not contain violation to their own lives. So from this point of view, committing suicide should exclude objective imputation.



4.3. The Result Is Not beyond the Protection Scope of Component Elements

In some special cases, although the actor manufactures a banned danger by law and the danger has been realized, the result is out of the protection scope of legal component elements, then the results cannot be attributed to the actor.

4.3.1. Participating in Others' Deliberate Self-Harm Behavior Can Not Apply Objective Imputation

For example, a whoremaster insisted to have a sexual relationship with a prostitute with AIDS and finally he got the disease to death. Due to the whoremaster had a clear understanding of AIDS, the prostitute did not constitute the crime of intentional homicide or negligent homicide, the whoremaster just implemented the deliberate self-harm behavior. As another example, the drug buyer died resulting from drug addiction, the seller did not constitute the crime of negligent homicide.

German criminal law does not punish the abetment and assistance suicidal behavior, in theory, it does not view suicide or the abetment and assistance behavior as constituting a crime. When the suicide consciously takes advantage of the abetment and assistance behavior and allow him/her to involve in the risk, the suicide should be self-responsible, because the abetment and assistance behavior at this time cannot conform to the constitution element of injury or homicide. Thus, the instigator or the helper should not be punished for just creating a danger that others want (Chen, 2006). The abetment and assistance behavior is not isolated, such behavior along with suicide produces the final result of death, and therefore when evaluating the abetment and assistance behavior, suicidal behavior cannot be ignored undoubtedly. Obviously, suicidal behavior is the leading cause of death, and abetment or assistance lies secondary. The

instigator or the helper in the subjective level wishes or allows the result of death, suicide himself/herself finally decide whether to accept the “opinion” and “help”, if he/she accepts, then the instigator or the helper reaches a consensus with the suicide subjectively. The suicide consciously utilizes the dangers caused by the instigator or the helper, so as to involve himself/herself in the danger and achieve the purpose of his own death. Therefore, the suicide himself/herself should be self-responsible for the death result, although the suicidal behavior does not meet the constituent elements of intentional homicide. Actually, no matter being active or passive, the instigator or the helper does not constitute a crime of intentional homicide and should not be subject to criminal penalties. Thus we can see that German Criminal Law does not take the abetment or assistance suicidal behavior as the real danger in the criminal sense. Our country should learn from German criminal law theory to decriminalize the abetment and the assistance behavior, abandoning the traditional idea which fails to fully demonstrate.

4.3.2. Allowing Others to Make a Danger Cannot Be Objective Attributed

In the abetment and assistance suicidal behavior, the suicide does not deliberately create a danger, but to accept such danger after realizing that others will bring him/her danger. For example, the victim knew that his friend was drunk driving, but still decided to take a free ride to go home. Eventually, the victim died due to the driver's uncontrollable operation. German scholar Roxin believes that although the victim is aware of the danger, but in a luck psychology, he/she supposes the danger will not appear in reality, therefore the victim does not promise with any results. So through the legal idea of victim's commitment, the issue cannot be resolved. Then, would the driver constitute the crime of negligent homicide? The answer is “No”. Because in this case, the risk brought by the driver does not belong to the constitutive elements of criminal law.

In suicidal case, since the suicide realizes the danger brought by the instigator or the helper and decides to accept the risk of death, he/she actively pursues or indulges the occurrence of the death result by his/her action. So from this point of view, suicide's act is in full compliance with the effective condition of victim's commitment. In criminal law, victim's commitment belongs to the justifiable cause, so from this perspective, the instigator or the helper does not constitute a crime. People may question the scope of commitment of the suicide, that whether a suicide has a disposal authority to the infringed benefit (life). Marx believes that human has a dual property, one of the most essential and animal-similar property is natural property; the other is social property conferred by social groups which is acquired by learning. Man's animal nature and social nature are the two inseparable parts of human's attributes, the former is the physiological basis of the existence and development of human's social nature (Zhang, 1987). When the suicide decides to end his/her life, at first, he/she is endowed with the natural property as a human to decide the survival state. Followed by the social property is that whether one can enjoy a legal or mortal value to commit suicide as a member of society. The right to commit suicide is the natural right outside the law, just like the animal's suicide. The death of suicide reflects the right to self-determination, suicide himself/herself does have such freedom, moreover, they do not disturb the legal freedom of

others, so the law should not interfere with the exercise of civil liberty to commit suicide. In conclusion, we believe that suicide has authority to dispose his/her life.

4.3.3. When the Obligation of Preventing the Occurrence of the Result Belongs to Other Professionals, the Result Cannot Be Attributed to the Actor

For instance, the police hit the bridge dead due to the excessive speed in the process of arresting the suspect, under the circumstances, the result of death cannot be attributable to the suspect. Because the law does not provide that a suspect should bear the obligation to prevent the police from being dead, it does not comply with the constitutive elements of crime of negligent homicide, so the police can only be self-responsible. Similarly, when a professional firefighter was killed during the process of fighting, the result of death cannot be attributed to the firer. The instigator or the helper, however, is not in the scope of legal professionals, there is no obligation to prevent the death of suicide, so it cannot be objective attributed as well.

Among the numerous theories of causation, the objective imputation theory is most prevalent. It bases on conditioning theory, providing a scientific and specific mode for causation of condition and result in different case, besides, it avoids the drawback that the conditioning theory unlimitedly expands the scope of a causal relationship, and it prevents the subjective speculation of “correspondence” in correspondence theory of causal relationship and discrepancies in identified conclusion. Compared to other doctrines, objective imputation theory has more advantages. To determine whether the abetment and assistance behavior constitutes a crime, it is necessary to start from the constitutive elements of a crime. In the constitutive elements, the most critical and the most complex element is the objective element, of which the final judgment lies in causality. Therefore, in order to answer whether the abetment and assistance of suicidal behavior with causality in objective imputation theory, it is undoubtedly the most direct and most effective method. This paper discusses the abetment and assistance of suicidal behavior in the system of objective imputation theory, after a comprehensive analysis and demonstration, we get the conclusion that the abetment and assistance behavior does not meet the three constituent conditions of objective imputation theory, thus, the abetment and assistance of suicidal behavior does not constitute the crime of intentional homicide.

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