



Causality Judgment of Intervening Victim Factors from the Normative Perspective

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Abstract. The judgment of causality in criminal law should be normative judgment rather than simple factual judgment. Correspondence theory of causal relationship relies too much on the judgment of “correspond”, while the judgment of interventional causality generally determines whether the behavior is abnormal from the general point of view. The normative evaluation system embodied in the theory of objective imputation is more in line with the criminal policy requirements of multi-cause and one-effect complex causality judgment involving the factors of the victim. The risks that are not allowed by the antecedent behavior and the risks created by the antecedent behavior cover the risks of intervention, and the actual harmful results should be attributed to the victim’s behavior of intervention. If the intervening victim’s behavior creates a new risk or expands the risk of the antecedent behavior, the antecedent behavior can decisively affect the victim’s choice of intervening behavior, and the causal relationship between the antecedent behavior and the result of criminal law should be affirmed. On the basis of the antecedent behavior, the victim’s intervention behavior has a better choice, which should be attributed to the victim’s own behavior.

Keywords: Causal Relationship · Intervention Victim Factor · Normative Judgment · Theory of Objective Imputation

1 Introduction

In the criminal law system, the causal relationship between behavior and result is the premise to determine the criminal responsibility of behavior. It involves two major issues, conviction and sentencing, which is the basic judgment in the practice of criminal justice. In cases with intervention factors, there has been many disputes about whether there is a causal relationship between multiple behaviors and results and which behavior should be blamed for the results. Although the theoretical development of causality theory has made a lot achievements, which provides a rich reference for the judgment of causality with intervening factors, the differences and deficiencies between various theories make it difficult to form a unified judgment standard in practice, especially the case handling of intervening victim factors, which has not reached a consensus in the academic and judicial circles. Therefore, on the basis of judgment principles of existing theories, combining with the traditional logic of judicial practice and the development trend of causality theory, it is necessary to build a clearer and more reasonable reference standard for the judgment of complex causality under the influence of victim factors [1].

2 Current Situation of Causality Theory and Its Application in Cases Involving Victim Factors

The theory of causality has achieved fruitful results in the development of academic theory. For the cases involving the factors of victims, whether it is the theory of necessary and accidental causality relationship, or the condition theory, the equivalent causality theory and the objective imputation theory, they adopt different angles and positions to put forward different understandings on the judgment of causality. In order to form a systematic and referential imputation standard in judicial practice, it is necessary to summarize and analyze the positions and methods of various theories to deal with the judgment of causality of involved victim factors, as well as avoid and correct the deficiencies of the corresponding theories.

2.1 Theory of Necessary and Accidental Causality Relationship

In the traditional causality theory, there has always been a great controversy about the solution of the case involving the victim factor in the theory of necessary and accidental causality. The theory of necessary causality holds that when the behavior contains the basis for the result and causes a certain result to occur regularly, the relationship between the behavior and the result is necessary causality. Only the existence of this necessary causality can satisfy the causality in criminal law, and then the result can be attributed to the behavior. Compared with necessary causality, accidental causality further defines the complex situation of judgment of intervention factors. When behavior has no basis for producing results, but other factors are involved in the process of behavior development, and other factors involved can cause results regularly, behavior and results are accidental causality, while intervention factors and results are necessary causality [2].

In the theory of necessary and accidental causality relationship in the imputation judgment of multiple-causes and one-result, although the normative imputation content is involved in the accidental causality, the essence of the theory is the judgment of specific facts from the perspective of attribution. Similarly, for the intervention of multiple causes and one effect, the judgment of complex causality of victim factors needs to be based on the attribution at the factual level, and the normative attribution needs to be included so as to better eliminate other unnecessary reasons. The specific criteria for judging “accidentals” and the scope of “accidentals” are not clearly defined in the theory. This will lead to the improper expansion of the scope of punishment in judicial practice. In the actual judicature, the judgment of inevitable and accidental causality still has the problems of randomness and lack of objective standards, which makes the judicial judgment easy to be affected by people’s subjective will [3].

2.2 Conditional Theory

The condition theory adopts the way of “but for test”, which belongs to necessary causality relationship. The attribution of responsibility at the subjective level seems to have shown that there is a causal relationship between behavior and result in criminal law, and then take the responsibility of intentional and negligent judgment. When making

the imputation judgment at the objective level, it is considered that there is no causal relationship between a certain behavior and the result in the criminal law according to the normative standards, so there is no need to follow up the investigation of intention and negligence, so as to achieve the effect of directly excluding the unimportant causal relationship at the objective level of the constituent elements. Conditional theory itself is not inappropriate in exploring causal attribution. On the contrary, the establishment of conditional relationship by conditional theory lays the foundation for behavior imputation judgment. However, in order to make a causal relationship in the sense of criminal law among many reasons, the condition theory limited to the fact level can't solve the corresponding problems, and the standard evaluation needs to be further established [4].

2.3 Correspondence Theory of Causal Relationship

In order to limit the endless extension of conditional attribution, correspondence theory of causal relationship was proposed as the mainstream theory of judging causality in Japan [2]. Although the theory is no longer limited to the causal judgment at the factual level and involves the imputation judgment of "who is actually responsible", in essence, the theory of considerable causality doesn't make a clear hierarchical distinction between attribution and imputation. The correspondence theory of causality advocates that it is considered common for a certain behavior to produce a certain result according to the life experience of ordinary people in society, so it is considered that there is causality between behavior and result. In essence, on the basis of the factual judgment of the condition theory, it eliminates the unreasonable causes of the abnormality in the conditional causality through the determination of equivalence, so as to make a normative imputation judgment, and then narrow the scope of the causes that should bear responsibility. Although this theory covers normative judgment, it lacks a clear standard for the judgment of equivalence [5]. Nowadays, the academic and practical circles of Japanese criminal law have also realized the defects caused by rejecting normative judgment, and gradually formed a method of incorporating normative judgment on the basis of adhering to the considerable causality of the native country [6]. The correspondence theory of causality needs to incorporate similar normative thinking at the level of imputation, so that it can judge more efficiently, rigorously and fairly in the administration of justice.

2.4 Theory of Objective Imputation

Compared with the defects of correspondence causality, a large number of scholars in China advocate adopting the normative thinking contained in the objective imputation theory to make up for the deficiency of factual attribution in judicial practice. They believe that objective imputation theory can clearly and hierarchically distinguish attribution and imputation when judging causality. Compared with other theories, the strictness of objective imputation theory in structure and the logical hierarchy of judgment steps show that its fundamental purpose is to build a set of clear standards for judging causality [7]. Therefore, on the basis of affirming the relationship between conditions, the objective imputation theory provides a relatively clear theoretical standard for clarifying the aspects of criminal imputation in the theory of criminal law through the progressive judgment rules of whether the imputation necessary behavior creates the

dangers prohibited by law, whether the risks are transformed into reality, and whether the results are within the scope of normative protection. The subordinate rules of objective imputation theory also include empirical and equivalent judgment, but compared with the correspondence theory of causality, the rich normative evaluation provided by objective imputation theory is more conducive to draw a unified causal conclusion in the process of criminal justice [8].

3 The Reason for Intervening in the Victim Is Based on the Specific Standard of Normative Judgment of Causality

Both the correspondence theory of causal relationship and the theory of objective imputation affirm the positive role of conditional attribution in fact. Therefore, the judgment of causality involving the victim factor should also follow the logic of attribution at the factual level before attribution at the normative point of view. Generally, in the cases of intervening in the victim's own cause, as long as it can be proved that the antecedent behavior and the post intervening factors can play a role in the result at the factual level, and there is a conditional causality between the antecedent behavior and the intervening victim's behavior at the factual level, all the conditional causality related with the results should be regarded as equivalent conditions. Relying on factual attribution can't solve whether the result should be attributed to the antecedent behavior or the victim's behavior after intervention. At this time, we need to learn from the normative thinking provided by objective attribution [9].

3.1 The First Rule: Judgment of the Risk Created by the Antecedent Behavior

The first normative judgment rule constructed in the imputation judgment involving the factors of the victim is the "risk not allowed by law" based on the objective imputation theory. If the actual harmful results are attributed to the antecedent behavior, the behavior must conform to the fact that the actual harmful results in the causal process, which the law does not allow to develop, are made by the antecedent behavior. If the occurrence of the result exceeds the scope of the possible consequences of the danger created by the behavior, or the antecedent behavior itself does not create a risk that is not allowed by the law, it can be determined that there is no causal relationship between the antecedent behavior and the result in the criminal law and it mustn't be attributed. To judge this point, it's necessary to clarify what kind of danger the behavior produces and the range of consequences it contains [10].

3.2 The Second Rule: Research on the Range of the Risk Resulting by Antecedent Behavior and Intervention Behavior

When the antecedent behavior creates general risks in social life, or the occurrence of the result has exceeded the possible consequence scope of the danger created by the behavior, the first normative rule can certainly deny the causal relationship in criminal law between the antecedent behavior and the result, and directly attribute the responsibility to the victim's own behavior involved in the case. However, if the risk created by the

antecedent behavior is indeed the risk not allowed by the law, it needs to be integrated into the intervention victim factor for comprehensive judgment, which is also the uniqueness of the causal attribution judgment of the intervention victim factor. In judicial practice, it is necessary to analyze the causal connection between the antecedent act and the result and the causal connection between the intervening factors and the result, then clarify whether the intervening factors interrupt the causal relationship between the antecedent behavior and the result so as to draw the final conclusion of causal judgment [11].

When both the antecedent behavior and the intervention of the victim's own behavior create risks that are not allowed by law, it is necessary to refer to the objective imputation theory of "transforming dangerous reality into actual results", and further take "whether the risk develops into reality and achieve the results" as the standard to impute the results. When both the intervention of the victim factor and the antecedent behavior contain risks that are not allowed by law, it is necessary to judge the range of the original risk so as to determine which risk is the result of the realization. This judgment can be further divided into two circumstances. If the original risk range created by the antecedent behavior covers the risk created by the intervention in the victim's own behavior, it means that the antecedent behavior is able to lead to the occurrence of actual harmful results without the intervention in the victim's behavior. If the new risk created by the involved victim's own behavior is completely independent of the risk range of the antecedent behavior, or the risk created by the antecedent behavior is expanded, it is necessary to discuss whether the involved victim's behavior is the victim's own choice based on the antecedent behavior that has occurred, and the freedom degree of this choice [12].

3.3 The Third Rule: Probe into the Rationality of Intervention Behavior and Explore the Freedom Degree of Intervention

It is known that the victim's intervention behavior is a choice made on the basis of the antecedent behavior. Not only the impact of the antecedent behavior on the intervention behavior should be considered, but also whether the victim's choice is a reasonable choice should be considered. The influence of illegal detention on the victim and the final result of death can be divided into two aspects. The first aspect is the coercion, beatings, insults and other circumstances accompanying the illegal detention, or the continuous detention of the victim, which forms a kind of mental torture to the victim [13]. The second aspect is due to the victim's own weak will, diseases and so on, which leads to the victim's voluntary termination of life. If the antecedent behavior doesn't completely dominate the behavior of the victim, the victim will make the choice of intervening in his own behavior under his own will. When judging whether the victim's intervention can be a reasonable choice, we need to consider whether there is a better choice for the victim's intervention at that time from the perspective of a rational person. If there is a better choice for the victim to intervene on the basis of the occurrence of the antecedent act, the criminal causality between the antecedent behavior and the actual harmful result should be denied in principle, and the victim's own behavior should be blamed. If the victim doesn't take the original intervention behavior at the time of acting, but takes other choices that will face greater risks, the causality in criminal law between the victim's behavior and the actual harmful result should be denied in principle, and it should be attributed to the antecedent behavior [14].

4 Conclusion

At present, China's criminal justice mainly adopts the judgment of factual attribution in the judgment of causality, which is relatively lack of normative attribution thinking, especially in the judgment of causality in the field of involving the cause of the victim, and the normative attribution standard is still relatively vague. Therefore, it can be effectively used in the construction of theoretical guidance of criminal law. Among them, the normative evaluation system provided by the objective imputation theory is more in line with the criminal policy requirements of multi-cause and one-effect causality judgment involving the victim factors.

The objective imputation theory is used to guide the construction of normative imputation standards in methodology. First of all, if the antecedent behavior doesn't create the risk that is not allowed by the law and the antecedent behavior covers the risk of the intervention behavior, the actual harmful result should be attributed to the victim behavior of the intervention. If the victim's behavior of intervention creates a new risk or expands the risk of antecedent behavior, and the antecedent behavior decisively affects the choice of intervention behavior made by the victim, the causality between antecedent behavior and result should be affirmed in criminal law. On the basis of antecedent behavior, the victim's intervention behavior has a better choice, which should be attributed to the victim's own behavior.

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