IMPUTED CRIMINAL LIABILITY

归咎的刑事责任

[美] 保罗·H. 罗宾逊 著
王志远 陈琦 译

本书检视了一系列的归咎责任事由，并对归咎事由的适当性、归咎原则的设定等进行了探讨，力图在传统的“犯罪-辩护事由”这一二元概念体系中构建一个独立的理论范畴，使刑法架构、功能更为完整全面……

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作者简介

保罗·H. 罗宾逊 (Paul H.Robinson)

美国著名常青藤盟校宾夕法尼亚大学法学院教授。罗宾逊教授的作品被翻译成13种语言广泛传播，享有崇高的世界性学术声誉。同时，其在刑事法律实践中的影响也非常巨大：1985年由美国总统任命为美国量刑委员会专员；曾担任希腊刑法编撰建议委员会顾问；联合国发展项目赞助的马尔代夫刑事司法改革计划的指导者；白俄罗斯刑法典起草委员会顾问。

译者简介

王志远

1977年3月生，山东昌邑人，吉林大学法学院教授、博士研究生导师、法学博士，主要研究方向为中国刑法学、比较刑法学。

陈琦

1988年8月生，广东廉江人，吉林大学刑法学硕士，现为广东广强律师事务所律师实训基地研究员、金牙大状律师网核心成员，主要研究方向为中国刑法学、比较刑法学。

代序:《归咎的刑事责任》概要

保罗·H. 罗宾逊

在1984年《归咎的刑事责任》一文发表之前,美国刑法教义学体系仅仅专注于犯罪和辩护事由。犯罪定义包含了成立犯罪所需要的要素:行为、附随情状(circumstances)、结果等客观要素以及伴随的主观心态要求(culpability requirements);刑事责任的施加需要这些要素被有效证明。一般辩护事由(General defenses)设定了满足上述条件的被告人避开刑事责任的条件,可以是他的行为被正当化(如自卫和依法令行为);可以是犯罪时的客观情境和被告人责任能力使得我们难以苛责他(如精神病和被胁迫);也可以是为了保护其他重要利益而排除被告人罪责(如特殊诉讼时效或外交豁免)。

这个时期的刑法典是对这种概念框架的反映。1962年的美国模范刑法典——20世纪70年代到80年代,它被作为美国四分之三的州刑法法典化和法典重构的蓝本,也是围绕这种"犯罪—辩护事由"二元概念体

系型构的。所有关于犯罪的定义都被列于法典第二部分，即具体犯罪的定义(Definition of Specific Crimes)。犯罪定义的解释和适用规则被置于第二章，题为“刑事责任的一般原则”(General Principles of Liability)。正当化辩护事由包含在名为“正当化的一般原则”(General Principles of Justification)的第三章。可得宽恕(excuse)辩护事由则被集于题为“责任”(Responsibility)的第四章和题为“刑事责任的一般原则”的第二章。

然而，正如《归咎的刑事责任》一文澄清的那样，“犯罪—辩护事由”二元概念体系所呈现的是在刑法的功能性架构意义上具有显著不完整性的图景。诚然，“犯罪”和“辩护事由”是刑法教义学结构的两个关键组成部分；然而，对于完整的功能性刑法知识图景而言，一个与一般辩护事由具有同等功能性重要意义的“第三元”必不可少。

一般辩护事由阻却行为人刑事责任，尽管被告人符合犯罪定义要求的所有要素；(在责任范型之例外意义上)与此类似，归咎责任，一个由多个归咎事由组成的理论集合，则是在行为人未满足定罪所需要的所有的要素时，仍对其施加刑事责任。

本文检视了一系列的归咎责任事由。其中一些事由将缺少的行为要素归咎于被告人，比如共犯规则，将由实行犯(perpetrator)实施的违法行为归咎于共犯者(accomplices)。还有一些归咎事由将缺失的可责性罪过要素归咎于被告人，比如自愿醉态规则，根据这一规则，尽管被告人的自愿醉酒行为使其实际上无法意识到危险，但如果保持清醒状态他能够对此有所认识，那么对危险的认识(轻率)就被归咎于他。其他的归咎事由则同时归咎客观的犯罪要素和主观的犯罪要素。

然而,尽管归咎责任事由及其相对于犯罪和辩护事由的特殊性非常重要,现代的美国刑法并没有将归咎责任事由确认为一个独立的理论范畴,也没有把它与犯罪和辩护事由相分离。大部分归咎责任事由都被混杂规定于"刑事责任的一般原则"这样一个章节之下。

将归咎责任事由确认为具有独特功能指向(本质上与一般辩护事由相反)的独立理论范畴非常重要,因为这可以带来概念和实践上的清晰化效果。另外,这样做的价值还在于其有利于适当评判归咎责任的原则或规则。

将缺失犯罪要素归咎于被告人是无可争议的,至少它不应受到比辩护事由更多的异议,实际上,辩护事由是在被告人满足了所有犯罪成立条件时阻却其刑事责任。将缺少犯罪要素予以归咎之所以是适当和公正的,是因为归咎刑事责任的条件要求通常提供了将被告人视为满足了事实上缺失之要素的道德和实用正当性。比如,共犯者实际上并没有实施抢劫罪所要求的行为,但由于他在实行犯实施此种违法行为时提供了帮助,因此将其视为实施了实行行为那样对待是公平的。在醉酒状态下,被告人事实上并不具备轻率杀人所要求的危险认识,但是如果不是其自愿招致醉态,他就可以认识到危险,因此将其视为具有危险认识也是公平的。

将归咎责任原则整合为一个独立的理论范畴,使我们能认清这些规则的支撑性理据之间的相似性:任何特定归咎原则的条件设定通常都为将被告人作为满足了事实上缺失之犯罪要素来对待提供了合理性。

从这个角度去审视归咎责任是非常重要的,因为它让我们更好地衡量归咎理据的充分性。我们可以,也应当对每个归咎

事由提出这样的问题:归咎事由的形式要件是否完全支持所要进行的刑事责任归咎?

正如文章中所澄清的那样,这样的探索对不同的归咎事由会导致不同的结论。一些刑事责任归咎事由是完全正当的,而其他的则存在可质疑之处,或者是因为归咎条件的合理性支撑力很弱,或者仅对发生刑事责任归咎的部分情形具有完全的合理性支撑。以自愿醉酒规则为例,这个规则在许多情况下被证明是完全合理的,但在有些情况下归咎过度,有些情况下则归咎不足。

不管对特定归咎事由的适当性得出何种结论,都不可否认,就刑法的功能性架构而言,它们理应被确认为与犯罪和辩护事由同样重要的独立理论范畴。

Introduction to Imputed Criminal Liability

Paul H. Robinson

Before Imputed Criminal Liability was published in 1984, the standard American conceptualization of criminal law doctrine focused exclusively on offenses and defenses. Offense definitions listed the elements that would constitute a crime: the conduct, circumstances, and results, as well as the attendant culpability requirements, that had to be proven to establish criminal liability. General defenses defined the conditions under which a defendant might have committed an offense but nonetheless would escape liability perhaps because his conduct was justified (as with self-defense or law enforcement authority), because his conditions and capacities at the time of the offense made it difficult to blame him for it (as with insanity or duress), or because giving him a defense despite his offense advanced some other important

societal interest (as with special limitations or diplomatic immunity).

The criminal codes of the era reflected this conceptual framework. The Model Penal Code of 1962, which served as the basis for the codification or re-codification of criminal law in three-quarters of the states during the 1970s and 80s, was organized around this offense-defense distinction. All of the offense definitions were contained in Part II of the Code, titled Definition of Specific Crimes. Rules governing the interpretation and application of the offenses were contained in Article 2, titled General Principles of Liability. Justification defenses were collected in Article 3, titled General Principles of Justification. Excuse defenses were collected in Article 4, titled Responsibility, and in Article 2, titled General Principles of Liability.

But, as the Imputed Criminal Liability article makes clear, the offense-defense distinction presents an importantly incomplete picture of the functional organization of criminal law. Certainly offenses and defenses are two key components of the doctrinal structure. However, a third component is essential for the complete picture-a component as functionally important as general defenses.

Just as general defenses bar liability for an actor, even though he satisfies all of the elements of the offense definition, so too do a collection of doctrines-doctrines of imputation-provide liability for an actor, even though he does not satisfy all of the elements of the offense definition.

The article surveys the wide variety of doctrines of imputation.

Some doctrines impute to a defendant a missing conduct element of the offense definition, as with the doctrine of complicity, which imputes to accomplices the prohibited conduct performed by the perpetrator. Other doctrines of imputation impute a missing offense culpability requirement, such as the doctrine of voluntary intoxication, which imputes to the defendant an awareness of risk (recklessness) that he would have been aware of if he had been sober, even though his voluntary intoxication rendered him actually unaware of the risk. Other doctrines can impute both offense objective elements and offense culpability requirements.

Yet, despite the importance of this group of doctrines and their conceptual distinctiveness from offenses and defenses, modern American criminal codes fail to recognize doctrines of imputation as a distinct group and to segregate them from offenses and defenses. Most of them are mixed into article 2, General Principles of Liability.

Doctrines of imputation are important to recognize as a distinct group with a unique function-essentially the reverse of general defenses because such recognition brings conceptual and practical clarity. But their recognition as a distinct group is also important because it reveals the proper form of critique of such doctrines.

There is nothing objectionable about imputing to a defendant a missing offense element. It is no more objectionable than what general defenses do: bar liability for an offender even though he satisfies all of the elements of the offense definition. The

imputation of a missing element is appropriate and fair because the conditions required for imputation are typically such that they provide a moral and practical justification for treating the defendant as if he in fact satisfied the missing element. The accomplice did not in fact perform the conduct required by the robbery offense, but it is fair to treat him as if he did because he assisted the perpetrator in the prohibited conduct. The intoxicated offender was not in fact aware of the risk required by the reckless homicide offense, but is fair to treat him as if he had been aware of the risk because he would have been aware of it were not for his decision to voluntarily intoxicate himself.

Segregating doctrines of imputation into their own distinct group allows us to see the similarity of rationale behind these doctrines: the conditions of any given doctrine of imputation are typically such as to provide the rationale for treating the defendant as if he had an offense element that he did not in fact satisfied.

This perspective is important because it allows us to better evaluate the sufficiency of the claimed rationale for imputation. We can, and should, ask as to each doctrine of imputation: do the formal requirements of the doctrine in fact fully support the imputation that is provided?

As the article makes clear, this form of inquiry comes to different conclusions regarding different doctrines of imputation. Some imputations are fully justified. Others are more problematic, either because the conditions authorizing imputation only weakly support the imputation, or fully support only some of the instances

in which imputation occurs. The doctrine of voluntary intoxication, for example, is one that is fully justified in many cases, but in other cases imputes too much, and still others imputes too little.

Whatever conclusion one comes to about the propriety of any given doctrine of imputation, it is hard to deny that these doctrines deserve recognition as a distinct conceptual group as important to the functional framework of criminal law as are offenses and defenses.

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