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An examination of the theory of crimes in common partly establishment standard of joint crime under the factual crime system

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Abstract

The established standard of joint crime constitutes the essential issue of joint crime and, in turn, reflects the complexity of joint crime. Studying the established standard of joint crime is not only valuable in terms of the development of legal theories, but is also of considerable importance in guiding best judicial practice. At present, it has caused a heated debate between the theory of crimes in common partly and the theory of objective behavior in common. Under the present system of understanding facts relating to a criminal case, efforts should be made to make a factual judgment about the constitution of a crime, attempt to unify the factual standards determining different types of joint crime, and retain a systematic approach to the science of criminal law on the theoretical basis of “the theory of crimes in common partly.” These efforts should then eventually unify the standards relating to joint crime and overcome the difficulty of the “Chapter of Despair”.

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1. Introduction

Joint crime has always been one of the most complicated and abstruse elements within the science of criminal law, in terms of both theory and practice; for this reason, in the Chinese context it has often been described as “the gloomiest and most confused chapter of despair in the science of criminal law.”¹ It is seen as complex because a conviction can be declared according to both integrated subjective and objective factual standards.² Considering the larger number of subjects of crime in this case in comparison to independent crime, conviction and sentencing may also be decided based on the significance of each defendant's respective role.³ In addition, in the perpetration of a crime there is frequently a combination of subjects of different statuses, making it possible to decide the conviction and sentencing based on different statuses.⁴ Finally, the subjective psychology and objective behaviors of the perpetrators also tend to complicate the issues involved in joint crime.

When dealing with the issue of joint crime, the officials involved can often feel confused about the different aforementioned standards, and consider how best to choose the optimum route to resolving the case. One of the reasons behind this confusion is that judgment about the nature of joint crime is non-systematic, or is not based on facts or fixed values. Rather, it is as if two people were speaking different languages and thus cannot communicate fluently with one other. The theory of crimes in common partly adopts the consistent and overlapped part of objective and subjective standards of various perpetrators as its standards,⁵ thus making it a

¹Qian Yeliu, 2014, *The Basis and Extension of Accomplice Theory*, Beijing: China University of Political Science and Law Press, p. 1.

²The principle of the unification of subjectivity and objectivity is a basic principle in China's theories of criminal law. This principle states that, when prosecuting for the criminal liability of a criminal suspect or defendant, both subjective and objective conditions must have been met. For more information, please see: http://baike.baidu.com/link?url=2-asfR2xU_IJn_gEtP_fT1sc4QKQf4ooZBu7yu1rA7WBF1M2WMcR6glffJm5B0Jd_LtS7tOBAUfAeDF0i-xBq (last visited Oct. 2, 2015).

³According to the provisions of the judicial interpretation in *Answers to Several Questions Regarding the Specific Applications of Laws in the Current Phase When Dealing with Economic Crime Cases (Trial Implementation)*, published in 1985 by the China Supreme People's Court and the Supreme People's Procuratorate, “those who have committed the joint crime of corruption or theft through collaboration of internal and external stakeholders (including general joint crimes and organized crimes) shall be convicted according to the basic features of the joint crime. The basic features of joint crime are generally determined by the basic features of the crime committed by the principal perpetrator.” According to the provisions of Article 3 of the *Interpretation of the Supreme People's Court of Several Questions Regarding the Identification of Joint Crime in Trying Cases of Corruption or Duty Encroachment*, published in 2000 by the Supreme People's Court, “in cases in which a non-civil servant and a civil servant in a company, an enterprise or other units have acted in collusion and taken advantage of their positions to illegally appropriate the property of their units jointly, the nature of the crime committed by the principal perpetrator shall determine the nature of the entire joint crime.”

⁴According to the provisions of Article 1 of the *Interpretation of the Supreme People's Court of Several Questions Regarding the Identification of Joint Crime in Trying Cases of Corruption or Duty Encroachment*, published in 2000 by the Supreme People's Court, “in cases in which a person has acted in collusion with a civil servant and taken advantage of the position of the civil servant to jointly misappropriate, steal, swindle or illegally occupy public property by other means, the person shall be convicted and punished as a joint offender in the crime of corruption.” According to the provisions of Article 2 of the judicial interpretation, “in cases in which a perpetrator has acted in collusion with the staff of a company, an enterprise or other units and taken advantage of the position of the staff to illegally occupy the property of the unit jointly in a relatively large sum, the person shall be convicted and punished as a joint offender in the crime of duty encroachment.”

⁵Otsuka Hito: *General Introduction to Criminal Law (Pandect)*, Japan: Yuhikaku Publishing, 1992, p. 244, quoted in Zhang Mingkai: *Advocacy of the Theory of Crimes in Common Partly*, *Journal of Tsinghua University (Philosophy and Social Sciences)*, Vol. 16, Issue 1 of 2001.

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