# EXPLORING THE CHINESE GOOD SAMARITAN LAW: AN INTERDISCIPLINARY APPROACH

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**Abstract**: Volunteering emergency assistance has a very extensive connotation, involving civil law, administrative law, criminal law, and other fields. Article 184 of the Chinese Civil Code adds a systemic design of absolute exemption from liability, which breaks the delicate balance between specific laws. For example, it is inconsistent with the correctional mechanism of excessive defense and necessity, and it cannot completely exempt the rescuer from criminal liability for serious injury or death in the process of assistance. Therefore, it is necessary for a normative integration of the law to strike a new balance again. As for the civil law, the norms of management without cause, justifiable defense, necessity, and self-risk should be applied in accordance with different circumstances, and the appropriate civil liability of the rescuer should be pursued, while the burden of proof should be reversed. In the criminal law, the method of substantive interpretation should be adopted, and the function of existing rules such as defense of others should be taken into action. Emergency assistance should be regarded as a mitigating sentencing condition. To administrative counterpart, measures such as administrative assistance, administrative confirmation, administrative incentives, and compensation should be comprehensively carried out to grant rescuers the claim to being exempted from liability under public law, to protect and reward them. This multi-dimensional collaborative regulatory model can not only achieve a balance among different branches of law in regulating good Samaritan act but also enable a truly systematic reshaping of such acts and their corresponding legal liabilities.

**Keywords**: Volunteering Emergency Assistance; Good Samaritan Act; Urgent *negotiorum gestio*; Justifiable Defense; Substantive Interpretation; Administrative Assistance; Immunity

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## INTRODUCTION

The Good Samaritan law origins from the biblical parable in the Gospel of Luke,[1] where a Samaritan aids an injured traveler, establishing an ethical precedent for altruistic assistance. In Western societies, this principle has evolved into legal institution designed to encourage individuals to provide help during emergencies without fear of legal repercussions. Contemporarily, Good Samaritan laws are frequently applied within the medical field. Non-professional responders, as well as medical personnel acting outside their professional duties, are protected when providing emergency care. This legal framework is especially relevant in situations like traffic accidents or natural disasters, where immediate assistance can prevent severe injury or death.

In line with global trends and China's national conditions, Article 184 of the Civil Code of the People's Republic of China (hereinafter as the Civil Code) stipulates the top-level design of volunteering emergency assistance. The article exempts emergency rescuers from civil liability, playing a crucial role in promoting social justice. However, it also brings several drawbacks to the legal order. Within civil law, the design of absolute immunity of this Article ignores the subjective mood of the rescuer, and may condone irresponsible assistance and put the aided person in peril. This is inconsistent with the corrective mechanism of excessive defense and risk avoidance,[2] and also deviates from the principle of unifying rights and obligations. This further undermines the proper application of criminal law, as the rescuer's reckless actions may give rise to the offenses of negligent grievous bodily harm or negligent homicide. However, such acts are exempted from liability in the civil sphere, resulting in a discrepancy between civil liability and criminal liability. Some scholars have even suggested the introduction of a misunderstanding of illegality. Based on the exemption provision of Article 184 of the Civil Code, the suspect could not reasonably foresee that Good Samaritan behavior might result in criminal consequences. As a cause of decriminalization, the misunderstanding of the illegality of the exemption from liability for volunteering emergency assistance led to a joint between the civil and criminal laws.[3] However, this kind of defense is not a statutory sentencing circumstance; therefore, its application encounters obstacles. There is disorder in the area of administrative recognition and awards, too. It is not uncommon for a grossly negligent actor to be recognized as a role model or hero, and receiving compensation or reward from the Good Samaritan Fund. There are also people who fabricate and openly hype

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[1] Good Samaritan is derived from the Parable of the Good Samaritan (New Testament, Luke 10: 25-37), which refers to a selfless man who rescues another who has been harmed. Qingxiu Bu, The Good Samaritan in the Chinese Society: Morality vis-a-vis Law, (38) LIVERPOOL LAW REVIEW 135, 135 (2017).

[2] Zhang Haoliang (张浩良), Wei Jianyi Yongwei Dianding Falv Zhiji (为见义勇为奠定法律之基) [Lay Foundation of the Law for Volunteering Emergency Assistance], Zhongguo Shehui Kexuebao (中国社会科学报) [JOURNAL OF CHINESE SOCIAL SCIENCE], 2024.

[3] Chen Junxiu & Lin Yajie (陈俊秀，林雅洁), Haoren Mianze Tiaokuan De Guifan Chanshi Yu Sifa Shiyong Yi Minfadian Di 184 Tiao WeiZhongxin ("好人免责条款"的规范阐释与司法适用——以<民法典>第 184 条为中心)[The Normative Interpretation and Application of the Good Person Exemption Clause——Centered on Article 184 of Civil Code], Fuzhou Daxue Xuebao Zhexue Shehui Kexueban (福州大学学报 哲学社会科学版) [JOURNAL OF FUZHOU UNIVERSITY, PHILOSOPHY AND SOCIAL SCIENCE] , no. 3, 2022, at 116-122.

up emergency assistance in order to be acquitted of other crimes. The chaos and violation of the legal system are caused by the institutional design of exception clause.

In fact, as a branch of law, civil law is primarily concerned with compensating the rescuer for losses (Article 183) and conferring immunity exemption from civil liability (Article 184). The criminal law mainly uses the crimes of fraud and extortion to defeat false accusations, frame-ups and extorting property. The administrative law mainly provides certain protection and rewards to the rescuer through specific administrative acts such as administrative assistance, administrative guidance, administrative confirmation, administrative reward, and compensation. Put it a little further, through administrative punishment, the behavior of blackmailing rescuers is appropriately punished by coercive forces, thus the modernization of the grassroots governance system and its capacity has been realized. Administrative law, as the mediator, supports the civil law on the one side and connects the criminal law on the other. In short, above-mentioned three laws, which have distinctive characteristics and different tasks, play a role in encouraging good Samaritan actions through positive incentives (to rescuers) and negative punishments (to malicious rescuees). However, as it is mentioned above that the complete liability exemption in Article 184 is an established fact, the challenge of bridging the gaps in the legal order and achieving the integration of legal norms through interpretation has emerged as a significant theoretical and practical issue.

## I. INTEGRATING THE NORMS OF GOOD SAMARITAN IN THE CIVIL LAW

Since the clause about the exemption of liability for voluntary emergency rescue is stipulated in the General Provisions of the Civil Code, it is necessary to deal with the conflict between it and the reasons for exemption and reduction of liability such as management without cause, justifiable defense, emergency avoidance,[4] as well as the conflict between it and the reasons for exemption and reduction of liability in various parts of the specific provisions (mainly the part on tort liability) such as voluntarily carrying risk and self-help.

### A. The Good Samaritan Should be Held Liable in Accordance with the Stipulation of Urgent *negotiorum gestio*

Undoubtedly, there are significant similarities between volunteer emergency assistance and negotiorum gestio, evident in their constituent elements and legal consequences. According to Articles 184 and 121 of the Civil Code, the objective element of the former is the voluntary act of providing emergency assistance to others, while the latter involves the management of other's affairs without a statutory or contractual obligation. Although "rescue" and "management" seem like different terms, they are essentially similar, both reflecting the socialist core values of harmony and friendliness by helping others. In terms of legal consequences, in accordance with Article 183 of the Civil Code and Article 34 of Law Interpretation [2022] No. 6, a courageous rescuer may request the infringer or beneficiary to bear the liability for

[4] Wo Yun & Qiao Pengfei (沃耘, 乔鹏飞), Zhonghua Youxiu Chuantong Wenhua Zhi Jianyiyongwei De Xiandai Minfa Jinlu (中华优秀传统文化之"见义勇为"的现代民法进路) [The Traditional Chinese Excellent Culture and The Modern Civil Approach of Volunteering Emergency Assistance], Nanhai Faxue (南海法学) [THE SOUTH CHINA SEA LAW JOURNAL] , no. 3, 2024, at 22.

damages or compensation. Similarly, in accordance with first paragraph in Article 979 of the Civil Code, the manager may request appropriate compensation from the beneficiary. Both give rise to statutory rights to compensation or claims.[5]Therefore, some scholars have correctly pointed out that "volunteering emergency assistance belongs to a special form of management without obligation."[6]

However, the differences between the two institutions are also clear, mainly regarding the exemption from liability for harmful relief or management. According to Article 184 of the Civil Code, a person who voluntarily provides emergency assistance is not liable for any damage caused to the aided person. Yet, based on Article 981 of the Civil Code, the manager shall fulfill appropriate managing obligations in handling others' affairs. When the manager adopts a method that is unfavorable to the beneficiary for the management act, or interrupts the managing process without justifiable reasons, he or she shall be liable for damages. Comparing the two legal designs, the former offers absolute liability exemption. Once the constitutive elements are met, the actor is completely absolved of liability. The latter is another vision. The obligations and exemptions of the two are very different.[7] So how to reconcile the difference or even the conflict between the two? As a Western proverb goes, "there is no law in emergency". Considering its scenario, volunteering emergency assistance can be theoretically equivalent to urgent negotiorum gestio. According to Article 680 of the German Civil Code, the administrator of affairs is liable only for intent and gross negligence when managing affairs to avoid danger.[8] The Chinese Civil Code goes a step further by stipulating that volunteering emergency assistance acts are generally not liable. Although features exist in Chinese legal system, it is no doubt that it should be an urgent management without cause. Therefore, when reconciling volunteer emergency assistance and negotiorum gestio, the following principle should apply: for ordinary negotiorum gestio, the actor bears fault-based liability; for Good Samaritan acts or urgent negotiorum gestio, the actor is exempt from compensation liability.

### B. The Exemption Clause of Volunteering Emergency Assistance Shall Precede over Justifiable Defense in Application

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[5] Feng Degan (冯德淦), Jianyiyongwei Zhong Jiuzhuren Sunhai Jiuji Jieshilun Yanjiu——Jianping Minfadian Caoan Di 979 Tiao Diyikuan (见义勇为中救助人损害救济解释论研究——兼评<民法典(草案)>第 979 条第 1 款) [Research on the Interpretation of Relief for Rescuers' Damages in the Volunteering Emergency Assistance Acts, and a Review of the First Paragraph of Article 979 of the Draft Civil Code], Huadong Zhengfa Daxue Xuebao (华东政法大学学报) [JOURNAL OF THE EAST CHINA UNIVERSITY OF POLITICS & LAW], no. 2, 2020, at 130-147. Song Zongyu & Zhang Chenyuan(宋宗宇, 张晨原), Jiuzhu Taren Shoudao Sunhai Sifa Jiuji De Fazhi Gouzao——Jianping Minfadian Caoan Di 183 Tiao(救助他人受到损害私法救济的法制构造——兼评<民法典(草案)>第 183 条)[The legal Structure of Private Law Remedies for Rescuing Others Who Have Suffered Damages, a Review on Article 183 of the Draft Civil Code], Faxue Pinglun (法学评论) [LAW REVIEW], no. 3, 2020, at 147-157.

[6] HUANG WEI (黄薇), ZHONGHUA RENMIN GONGHEGUO MINFADIAN SHIYI (中华人民共和国民法典释义) (2020). FANG SHIRONG, SUN CAIHUA & WANG LILI (方世荣,孙才华, 王莉莉), JIANYI YONGWEI JIQI XINGZHENGFA GUIZHI (见义勇为及其行政法规制) (2009).

[7] Zhang Haoliang (张浩良), Jianyiyongwei Xiangdui Mianze Zhi Tichang (见义勇为相对免责之提倡) [Volunteering Emergency Assistance are Relatively Exempt From Accountability], Shenyang Gongye Daxue Xuebao Shehui Kexue Ban (沈阳工业大学学报(社会科学版)) [JOUANAL OF SHENYANG UNIVERSITY OF TECHNOLOGY, SOCIAL SCIENCE EDITION], no. 2, 2023, at 186.

[8] CHEN WEIZUO YIZHU (陈卫佐译注), DEGUO MINFADIAN DIWUBAN (德国民法典(第五版)) (2020).

Justifiable defense refers to a defensive measure taken by an actor when the personal or property rights of oneself or others are being unlawfully infringed.[9] Provided in Article 181 of the Civil Code, it is a ground for exemption or mitigation of liability. There are several elements of justifiable defense, two of which are relevant to the righteousness and urgency of volunteer emergency assistance: first, justifiable defense must be directed against an ongoing unlawful offense; Second, the perpetrator carries out an act of self-defense before he has time to request assistance from the authority (or police). This coincides with the urgency of the volunteering emergency assistance scene. More importantly, although justifiable defense generally only causes damage to the tortfeasor, it may also harm the victim (recipient). Such harm falls within the scope of Article 184 of the Civil Code. Therefore, a potential contradiction arises: some practical cases may constitute both justifiable defense and volunteer emergency assistance, especially when the actor exceeds the necessary limit and causes undue harm—including harm to the aided person. Then, according to Article 181, Paragraph 2 of the Civil Code, "if undue damage is caused, the justified defender shall bear appropriate civil liability." At least, the perpetrator bears civil liability. However, volunteer emergency assistance entails absolute liability exemption, creating a conflict between the two institutions that requires legal interpretation.

Generally speaking, in the assumption of civil liability, when there are both mitigating reasons (excessive defense) and immunity defenses (good Samaritan acts), an interpretation with less harsh responsibility for the perpetrator should be adopted. This is reflected in the ultrahazardous liability. Article 1243 of the Civil Code stipulates that entering an area of ultrahazardous activities without permission….if the manager can prove that it has taken adequate security measures and fulfilled its obligation to give adequate warnings, it's liability may be mitigated or not liable at all. This is primarily a mitigating reason. However, if the circumstances of the case are also in accordance with the victim's intent under Article 1174, for instance, the victim climbs or trespasses into a high-risk area on his own, Article 1174 shall prevail and the administrator shall be exempted from liability. In the same way, when an act satisfies both excessive defense and courageous action, the exemption from liability for volunteering emergency assistance action should be applied. This is also consistent with the rule of interpretation that the legal design less burdensome to the debtor should be chosen when determining the debt. This is also recognized in Article 1, Paragraph 3 of Law Interpretation (2023) No. 13. In short, in the event of a competition between Article 181, paragraph 2, and Article 184, the exemption clause of Article 184 shall get the dominance. This is not to say, however, that defenders should be exempted from responsibility. The possible path is that the judge also applies the provisions of Article 31, Paragraph 3 of Law Interpretation [2022] No. 6, when the person who committed the tort proves that the defensive act caused undue damage at first. If it cannot be proven, the judge will then apply Article 181 or Article 184 of the Civil Code to exempt the actor (or rescuer) from civil liability.

### C. When Contradicting to Volunteering Emergency Assistance the Defense of Necessity Should be Invoked

[9] HUANG WEI (黄薇), ZHONGHUA RENMIN GONGHEGUO MINFADIAN SHIYI (中华人民共和国民法典释义) (2020).

According to Article 32 of Legal Interpretation [2022] No. 6, necessity refers to emergency measures taken as a last resort to protect legitimate rights and interests from imminent dangers, which may cause damage to smaller interests. In a typical scenario, necessity involves a tripartite relationship: the danger causer (natural or man-made), the actor taking emergency measures, and the victim. The exception to this is a two-party relationship, such as amputation of a traffic accident to prevent death from massive bleeding in the arteries of the legs. There is only a doctor-patient relationship here. Coincidentally, volunteering emergency assistance are generally a tripartite relationship: the tortfeasor, the rescuer, and the rescuee. However, there are also bilateral relationships, such as between the helper and the recipient. When voluntary emergency assistance causes harm to the recipient, it mirrors the situation in the amputation example above. Therefore, in such a two-party structure, there is an overlap between necessity and Good Samaritan acts. When the actor rescues a person who is comatose due to gas poisoning and performs cardiopulmonary resuscitation,[10] there may be a conflict between the defense of necessity and Good Samaritan behavior. When the actor causes serious personal injury or even death to the victim due to improper operation, the people's court shall determine whether it constitutes excessive risk avoidance based on factors such as the nature of the danger, the degree of urgency, the protected rights and interests, and the resulting harm. However, in this case, the actor is clearly acting out of good faith and may be exempt from liability according to the latter part of Article 184 of the Civil Code. To conclude, the question boils down to whether the rescuer should be held liable.

In fact, the problem can be re-framed: whether the rescuer bears responsibility or not can be equal to whether the recipient's (plaintiff's) litigation claim is supported by the people's court. When claims coexist, applying the theory of claim competition reveals options such as claim aggregation and combination. The mainstream opinion gradually adopts the theory of claim competition under certain principles.[11] A rigorous study of the normative intention of Articles 182 and 184 of the Civil reveals that the legal provisions on necessity are designed to avoid the imminent danger to legitimate interests by choosing the lesser of two evils. Volunteering emergency assistance lies in doing good deeds and helping others in perils. From the perspective of the legal interests protected by the two institutions, the actor cannot conduct good Samaritan act only for his or her own interests. Intentional (or incidental) self-sacrifice seems to be more noble. Moreover, considering the legislative intent and historical context, the absolute liability exemption was established to "cultivate a good social custom of being brave and helpful",[12] the legislator has set up a law here that is absolutely exempt from liability. In terms of the level of effectiveness, Article 184 should be taken precedence.

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[10] Jia Xinran (贾欣然), 2024Nian Dier Jidu Jianyiyongwei Yongshibang Shiji (2024 年第二季度见义勇为勇士榜事迹) [The Deeds of the Volunteering Emergency Assistance Warrior List in the Second Quarter of 2024], ZHONGHUA RENMIN GONGHEGUO ZUIGAO RENMIN JIANCHAYUAN (中华人民共和国最高人民检察院) [SUPREME PEOPLE'S PROCURATORATE OF THE PEOPLE'S REPUBLIC OF CHINA]. https://www.spp.gov.cn/spp/zdgz/202407/t20240726_661518.shtml

[11] WANG ZEJIAN (王泽鉴), QIYUE ZEREN YU QINGQUAN ZEREN ZHI JINGHE (契约责任与侵权责任之竞合) [COMPETING CONTRACTUAL AND TORTIOUS LIABILITY], MINFA XUESHUO YU PANLI YANJIU(DIYICE) BEIJING DAXUE CHUBANSHE (民法学说与判例研究(第一册),北京大学出版社)) [CIVIL LAW DOCTRINE AND PRECEDENTS RESEARCH(VOLUME 1), PEKING UNIVERSITY PRESS], 2009, at 218.

[12] LI SHISHI (李适时), ZHONGHUA RENMIN GONGHEGUO MINFA ZONGZE SHIYI (中华人民共和国民法总则释义) (2017).

However, if we carefully consider the commonalities between the two laws (such as the spirit of excessive risk aversion), the answer seems to be that legislators prefer rational risk avoidance or rescue. Therefore, it can be concluded that the normative purpose of these two claims is to protect responsible rescue efforts, while reckless rescue remains liable. When seeking legal grounds, judges should apply Article 182 of the Civil Code and Articles 32 and 33 of law interpretation [2022] No. 6. Some may argue that if the provisions of emergency avoidance are always applied when there is a competition between volunteering emergency assistance and emergency avoidance, it is suspected that Article 184 of the Civil Code will be violated. However, we believe that when the subjective fault of the rescuer cannot be proved, there is still room for application of this article. Moreover, the constitutive elements of the volunteering emergency assistance barely overlap with emergency avoidance. In practice, a significant number of cases do not involve danger avoidance. Therefore, Article 184 retains its independent significance.

### D. Priority Should be Given to Particular Defenses when Overlapping with Good Samaritan Action

Generally speaking, volunteering emergency assistance have the attribute of altruism, involving actions from the rescuer to the recipient and excluding self-interested mechanisms such as assumption of risk and self-help behavior. However, there is still some overlap in the standard settings of these defenses. For example, in a football match, after A is shoveled down by B's sliding shovel, he was pushed by C, who rescued into the field, causing some injury. Player C's actions may fall under both the voluntary emergency assistance provision of Article 184 and the assumption of risk exemption under Article 184 of the Civil Code and adventure-taking exemption under Article 1176. In this case, based on the legal technique of extracting the common factor in the Civil Code, the content of the sub-provisions should be applied in priority in the order of application between the general provisions and the sub-provisions. Therefore, C should bear the civil liability for intentional or gross negligence as stipulated in the latter part of paragraph 1 of Article 1176. In the same way, self-help acts referred to Article 1177 of the Civil Code can also be intervened by a third party, such as a hot-pot restaurant waiter who accidentally injured a customer when he helped the owner of the restaurant to detain the property of the customer who dines and dash. In such a case, the waiter may be eligible for exemption from liability under both Article 184 (voluntary emergency assistance) and Article 1177 (self-help) of the Civil Code. However, according to paragraph 2 of Article 1177, self-help behavior defense is restricted, and the waiter shall bear appropriate civil liability. This differs from liability for intentional or gross negligence in the context of assumption of risk, as the private remedies stipulated in Article 1177 are supplementary to public remedies and may easily exceed the limit--for instance, *lynching*. From the perspective of individual well-being, the general provisions of Article 1165 of the Civil Code on tort liability for fault shall apply.

In summary, it can be argued that within the civil law system, the emergence of the absolute exemption clause for volunteering emergency assistance has led to the confusion of the mitigation clause. When applying the law, judges should consider the normative purpose of the provisions related to negotiorum gestio, justifiable defense, necessity, assumption of risk, and self-help, and interpret the legislative intent to reach more reasonable conclusions. In brief, granting exemption from civil liability to the

defendant in accordance with Article 184 of the Civil Code without considering different situation may ignore the exceptions for other reasons, which likely leads to criticism of mechanical justice and handling the case too simply.[13]

## II. UNIFYING THE STIPULATIONS OF GOOD SAMARITAN IN THE CRIMINAL LAW

Although the provision on the exemption from liability for volunteering emergency assistance is mainly provided in Article 184 of the Civil Code, this provision has a significant spill - over effect and influences criminal law. As a "basic law that consolidates the fundamentals, stabilizes expectations, and benefits the long-term", [14]the Civil Code plays the role of a baseline for the rule of law. By criminalize some serious perpetration, criminal law incorporates a multitude of other laws into its normative framework and fulfills the role of the law's safeguard.

### A. The Criminal Law Lacks Systematic Sentencing Circumstances

According to the general theory, the sentencing circumstances of the Criminal Law are categorized into statutory sentencing circumstances and discretionary sentencing circumstances. For example, a person who has limited capacity for responsibility commits a crime, a person who is deaf and dumb or a blind person commits a crime, and who defends himself excessively or avoids danger excessively. The latter are such as confession and restitution for property crimes. However, the application of statutory sentencing circumstances is strictly constrained, while discretionary sentencing circumstances are prone to issues of excessive judicial discretion and often result in unjust verdicts. Therefore, in recent years, some scholars have tried to activate the provision of Article 13 of the Criminal Law of the People's Republic of China (hereinafter referred to as the "Criminal Law"), establishing a position of substantive interpretation, and create space for the exculpation of minor crimes.[15] Strictly speaking, Article 13 of the Criminal Law only defines the concept of crime. Moreover, many crimes, such as theft and fraud, are defined based on specific circumstances. These plot elements mainly include amounts, means, consequences, targets, etc. The courts have also gradually explored the corresponding circumstances for the application of many crimes, and imposed appropriate penalties. Therefore, the provision of Article 13 as the cause of substantive offence may be suspected of the

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[13] Huang Hailong & Pan Weilin (黄海龙, 潘玮璘), Lun Chuantoushi Shenpan De Jiben Neihan Yu Shijian Fangfa (论"穿透式审判"的基本内涵与实践方法) [Research on the Basic Connotation and Practical Methods of Penetrating Trial], Falv Shiyong (法律适用) [LAW APPLICATION], no. 7, 2023, at 03.

[14] Huang Zhong (黄忠), Cong Minshi Jiben Falv Dao Jichuxing Falv: Minfadian Diweilun (从民事基本法律到基础性法律:《民法典》地位论) [From the Basic Civil Law to the Fundamental Law: the Civil Code Status], Faxue Yanjiu (法学研究) [LAW RESEARCH], no. 6, 2023, at 53.

[15] Qian Yeliu (钱叶六), Xingshi Weifa De Neihan Yu Panduan Luoji--Jiyu Weifa Panduanlun De Lichang (刑事违法的内涵与判断逻辑——基于违法多元论的立场) [The Connotation and Judgment Logic of Criminal Offenses--Based on the Position of Pluralistic Theory of Offense], Faxue (法学) [LAW SCIENCE], no. 7, 2024, at 62. Zheng Chao (郑超), Yizhong Shizhi De Jieshi Fangfa--Xingshi Kefaxing Lilun De Gongneng Jiupian Yu Zaizao (一种实质解释的方法——刑事可罚性理论的功能纠偏与再造) [A Substantive Explanatory Method--the Function Correction and Reconstruction of the Theory of Criminal Punishability], Dangdai Faxue (当代法学) [CONTEMPORARY LAW], no. 4, 2024, at 61.

offence of divergence from reality. However, it is also an undeniable fact that the Criminal Law has limited sentencing circumstances. In an era where the genera theory of the composition of crime is showing a tendency to flatten the four constituent elements, the theory of the composition of crime of the three levels also has certain merits. An example of this is the unlawful obstruction and the liability obstruction. After the constituent elements are satisfied, the objective illegality of the act and the reasons for the illegal obstruction are then explored, and finally the reasons for the responsibility are investigated. Typical reasons for illegal obstruction are legitimate defense, emergency avoidance, victim's commitment, etc. In contrast, it must be acknowledged that existing criminal law norms lack systematic sentencing circumstances, resulting in confusion or even arbitrary sentencing in practice. This requires us to codify the norms of the criminal law again to include more sentencing circumstances and reasons for mitigation of liability.

### B. The Existing Sentencing Circumstances Cannot Replace the Immunity for Volunteering Emergency Assistance

Upon examining the sentencing circumstances in existing criminal law, neither statutory nor discretionary sentencing circumstances include any normative provisions for voluntary emergency assistance. We believe this stems from the fact that criminal law lags behind civil law in this regard. The most similar of these is nothing more than the justifiable defense in Article 20 of the Criminal Law and the emergency avoidance in Article 21. As a legitimate defense in current hot topics, because it involves the issue of crime and non-crime, it is easy to trigger sensational public opinion and social events (such as the Yu Huan case). To address these issues, the supreme court has successively issued relevant judicial interpretations and guiding cases, such as the Guiding Opinions on the Lawfully Applicable of the Justified Defense System (Law Interpretation [2020] No. 31) and Guiding Case No. 144–Zhang Namula's Just Defense Case in the Notice on the Release of the 26th Bundle of Guiding Cases (Law Interpretation [2020] No. 352). These judicial interpretations have provisions on the conditions for the cause, time, object, intent, and even special defense. However, as previously stated, justifiable defense pertains to the confrontation between right and wrong, and the defender acts against the perpetrator. Voluntary emergency assistance is constituted only when the act of defense simultaneously harms the rights and interests of the recipient. On the contrary, acting bravely out of righteousness may also be situation the rescuer diving into the water to save people, and there is no unlawful infringement.[16] Therefore, on the whole, there is only an intersection between justifiable defense and Good Samaritan behavior, and the Article 20 of the Criminal Law cannot substitute for the institutional design of immunity for voluntary emergency assistance. To elaborate, defending others or the public interest is both justifiable defense and volunteering assistance in emergency. However, the Criminal Law does not distinguish between self - defense and defense of others, resulting in identical legal consequences. In comparative legal studies,

[16] Jia Xinran (贾欣然), 2024Nian Dier Jidu Jianyiyongwei Yongshibang Shiji (2024 年第二季度见义勇为勇士榜事迹) [The Deeds of the Volunteering Emergency Assistance Warrior List in the Second Quarter of 2024], ZHONGHUA RENMIN GONGHEGUO ZUIGAO RENMIN JIANCHAYUAN (中华人民共和国最高人民检察院) [SUPREME PEOPLE'S PROCURATORATE OF THE PEOPLE'S REPUBLIC OF CHINA]. https://www.spp.gov.cn/spp/zdgz/202407/t20240726_661518.shtml

a distinction is typically drawn between self-defense and defense of others.[17] In general, the requirements for defending others are higher, and the defender may need to provide more evidence to prove the justification and necessity of his or her actions.[18] Therefore, the application of the rule of justifiable defense is even more unfavorable to defenders than volunteering emergency assistance, concerning both constitute elements and legal effect. Similarly, Article 21 of the Criminal Law stipulates the circumstances under which an actor may be exempted from liability for necessity. The Guiding Opinions of the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security on Punishing Illegal and Criminal Acts Impeding the Safe Driving of Public Transport also have special provisions on the circumstances in which drivers driving public transport constitute the defense of necessity. However, as previously mentioned, necessity only partially overlaps with voluntary emergency assistance, and the two remain mutually irreplaceable. Therefore, the dilemma that may exist in judicial practice is that in civil law, acts that are exempted from liability due to voluntary emergency assistance may need to bear criminal liability in the field of criminal law. Such a conclusion is unacceptable in any way. Therefore, we should explore a new interpretive approach to achieve harmony and unity between the criminal and civil law systems.

### C. The Implantation of the Norm of Volunteering Emergency Assistance in Criminal Law Should Take a Method of Substantive Interpretation

There are divergent views within the academic community regarding the distinction between the formal interpretation theory and the substantive interpretation theory of criminal law. For example, Professor Ruan Qilin pointed out that "under the principle of nulla poena sine lege, the formal aspects of criminal law will occupy the primary and dominant position."[19] Professors Zhang Mingkai and Liu Yanhong insist on the view of substantive interpretation, arguing that "if the composition of the crime is only explained in form, some trivial matters will conform to the composition of the crime (and in some cases, it may also cause the opposite adverse consequences); only by substantively interpreting the constitute elements of a crime can the conduct that meets the requirements of the crime become an act that seriously endangers society.[20] However, Professor Qu Xinjiu reached a compromising position and said, "the

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[17] Jia Xinran (贾欣然), 2024Nian Dier Jidu Jianyiyongwei Yongshibang Shiji (2024 年第二季度见义勇为勇士榜事迹) [The Deeds of the Volunteering Emergency Assistance Warrior List in the Second Quarter of 2024], ZHONGHUA RENMIN GONGHEGUO ZUIGAO RENMIN JIANCHAYUAN (中华人民共和国最高人民检察院) [SUPREME PEOPLE'S PROCURATORATE OF THE PEOPLE'S REPUBLIC OF CHINA]. https://www.spp.gov.cn/spp/zdgz/202407/t20240726_661518.shtml

[18] Homicide is also justifiable when committed by any person in any of the following cases: (3) When committed in the lawful defense of such person, or of a spouse, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished. (California Code, Penal Code - 197). Others like, Texas Penal Code - 933. Defense of Third Person.

[19] Liu Shude (刘树德), Lizu Laiyuan Yujing Zhunque Lijie Xingshijieshi Yu Shizhi Jieshilun (立足来源语境准确理解形式解释与实质解释论) [Accurately Understand Formal Interpretation and Substantive Interpretation Based on the Source Context], Jiancha Ribao (检察日报) [PROCURATORIAL DAILY], 2020.

[20] Liu Shude (刘树德), Lizu Laiyuan Yujing Zhunque Lijie Xingshijieshi Yu Shizhi Jieshilun (立足来源语境准确理解形式解释与实质解释论) [Accurately Understand Formal Interpretation and Substantive Interpretation Based on the Source Context], Jiancha Ribao (检察日报) [PROCURATORIAL DAILY], 2020.

interpretation of the criminal law needs to be oriented to the essence of the problem and choose an appropriate interpretating method…depending on the situation one may use formal, substantive or compromising explanatory methods."[21] Under the principle of nulla poena sine lege, the people's courts should not only determine the conviction in accordance with the charges in the specific provisions of the Criminal Law, but should also apply the expressly provided grounds for mitigation of responsibility when sentencing. To some extent, this reflects the concept of formal interpretation. However, the arguments proposed by the proponents of the substantive interpretation theory should not be overlooked. The reason is that what we are pursuing is the punishment proportional to the crime, and some minor and trivial matters that are not harmful to society should not be punished as crimes even if they meet the requirements. This is especially true when it comes to Good Samaritan behavior. Even though the Criminal Law includes provisions for Medical Liability for Accidents (Article 335), Major Liability for Accidents (Article 134), Negligent Homicide (Article 233), and Negligent Injury (Article 235), if a person's actions, such as performing an amputation to save a critically ill patient, rescuing a worker from danger which leads to a building collapse, or moving a traffic accident victim resulting in fractures, were taken in good faith, then it would be inappropriate for the People's Court to convict the individual of a crime. We propose three possible paths to exoneration: first, within the composition of the crime, it is determined that the relevant conduct does not meet the requirements of the elements such as fault, serious consequences, and heinous circumstances, so it does not constitute a crime; the second is to refer to Article 13 of the Criminal Law, which comprehensively compares the damage caused and the loss avoided, and it can be decided that the circumstances are obviously minor and the harm is not great, and it is not a crime at all. The third is to introduce a misunderstanding of illegality, arguing that since Article 184 of the Civil Code is absolute exemption from liability for acts of volunteering emergency assistance, based on the theory of consistent evaluation, the perpetrator cannot predict that the illegal act is prohibited by the Criminal Law. And the unavoidable mistake will prevent the perpetrator from being liable. These three paths differ in their assessment of the perpetrator, with the degree of culpability increasing sequentially. In the first scenario, the perpetrator did not commit an offence and did not constitute a crime. In the second scenario, the perpetrator has committed an illegal act, which is only significantly minor, and does not constitute a crime. In the third option, the perpetrator has committed an illegal act, which constitutes a crime, but is exempted from liability based on a wrong understanding of the illegality. Therefore, the last option is particularly disadvantageous to the perpetrators. When hearing cases in which the rescuee is seriously injured or passes away due to volunteering emergency assistance, the people's courts should try to adopt the first two paths, and may at the same time cite articles 183 and 184 of the Civil Code to explain the reason for judgement. This approach adheres to the stance of substantive interpretation of criminal law and also achieves the unity of legal and social effects.

### D. It is Unadvisable to Criminalize Bystander Apathy

[21] Liu Shude (刘树德), Lizu Laiyuan Yujing Zhunque Lijie Xingshijieshi Yu Shizhi Jieshilun (立足来源语境准确理解形式解释与实质解释论) [Accurately Understand Formal Interpretation and Substantive Interpretation Based on the Source Context], Jiancha Ribao (检察日报) [PROCURATORIAL DAILY], 2020.

Whenever there is a conflict between law and morality, the nature of their relationship becomes a subject of intense debate. But there is almost a consensus that ethics is high and legal is lower--the law is the bare minimum of morality. We often say that volunteering emergency assistance are good and righteous deeds, and the public should be encouraged to act bravely. However, legislators should never impose such a duty through coercion. The criminal law may face two drawbacks in setting up the crime of failing to save when the rescuee is in danger: first, the subject of the crime is too generalized. Whenever there is breaking news, there are always a lot of onlookers. If this crime is established, the scope of accountability will be too broad. The law will not hold all walks of people accountable, and the criminal law will inevitably not be enforced. [22] Second, some technical issues may arise when pursuing criminal responsibility. Judicial authorities are holding those who fail to save others in danger accountable, for which they need to test the skills of potential suspects, such as whether they have swimming skills, first aid skills, etc. Volunteering without self-harm and not willing to work is not a simple empirical judgment.[23] This will inevitably make it more difficult to detect the perpetration. Moreover, bystanders, as rational individuals, have numerous factors to consider when deciding whether to rescue, and there are various reasons for not intervening. This further compounds the challenge of establishing guilt. Therefore, the criminal law should not introduce the crime of failing to save the person who is in danger by means of mandatory law. This viewpoint has gradually become a common theory in academia.[24] Some scholars have asserted that "providing legal protection for rescue acts is preferable to creating legal obligations."[25] Legislators may grant liability immunity in appropriate circumstances. For example, many provincial-level people's congresses and standing committees with local legislative power have now formulated regulations on pre-hospital treatment in medical institutions, which can eliminate minor negligence in diagnosis and treatment.[26] To some extent, this alleviates

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[22] Zhang Haoling (张浩良), Wei Jianyi Yongwei Dianding Falv Zhiji (为见义勇为奠定法律之基) [Lay Foundation of the Law for Volunteering Emergency Assistance], Zhongguo Shehui Kexue Bao (中国社会科学报) [JOURNAL OF CHINESE SOCIAL SCIENCE], 2024.

[23] Dong Yuting & Li Fangfang (董玉庭,李芳芳), Jushou Bulao Xing Jianweibujiu Ruxing Zhi Sibian ("举手不劳"型见危不救入刑之思辨) [Thoughts on the "Raising Hands Without Work Type of Seeing Danger and not Saving and Being Punished], Beifang Faxue (北方法学) [NORTHERN LEGAL SCIENCE], no. 3, 2023, at 69-80.

[24] Liang Wencai (梁文彩), Dui Jianweibujiu Fanzuihua De Helixing Zhiyi (对"见危不救"犯罪化的合理性质疑) [Questioning the Rationality of Criminalization in the Face of Danger Without Help), Gansu Zhengfa Xueyuan Xuebao (甘肃政法学院学报) [JOURNAL OF GANSU UNIVERSITY OF POLITICAL SCIENCE AND LAW], no. 2, 2013, at 126. Xu Jiusheng & Ma Shengkun (徐久生,马圣昆), Jianweibujiu Ruxing Zhi Fouding (见危不救入刑之否定) [The Denial of Imprisonment for not Being Rescued in Danger], Zhengfa Xuekan (政法学刊) [JOURNAL OF POLITICAL SCIENCE AND LAW], no. 5, 2020, at 96.

[25] Sang Benqian (桑本谦), Litazhuyi Jiuzhu De Falv Ganyu (利他主义救助的法律干预) [Legal Intervention in Altruistic Bailouts), Zhongguo Shehui Kexue (中国社会科学) [CHINESE SOCIAL SCIENCES], no. 10, 2012, at 123.

[26] For example, paragraph 3 of Article 20 of the *Regulations of Nanjing Municipality on Pre-hospital Medical Emergency* stipulates that "individuals with professional skills in medical emergency medical care are encouraged to provide emergency on-site care to patients in need of emergency care before the arrival of emergency personnel." The act of emergency on-site rescue is protected by law, and where damage is caused to patients due to emergency on-site rescue, legal responsibility is not borne in accordance with law. Paragraph 3 of Article 44 of the *Regulations of Tianjin Municipality on Pre-hospital Emergency Medical Services* stipulates that "if the aided person suffers damage due to the voluntary implementation of emergency rescue, the rescuer shall not bear civil liability in accordance with the law."

the concerns of rescuers and effectively encourages the public to act bravely. It is also more practical to implement compared to the stringent measure of criminalizing failure to rescue. A possible way to amend the law is to rewrite the Criminal Law to add liability immunity to some crimes, such as Medical Liability for Accidents (Article 335), Major Liability for Accidents (Article 134), Negligent Homicide (Article 233), and Negligent Injury (Article 235). A person who conducts emergency rescue in the course of their duties or professional activities shall be legally exempt from liability. This achieves legal consistency within the criminal law system and avoids the detour of invoking Article 184 of the Civil Code by leading to normative or even substantive interpretations.

In short, in order to achieve the unity of the system of volunteering emergency assistance within the criminal law and fulfill the basic legal functions of the Civil Code, the people's courts should adopt the methods of substantive interpretation when criminalizing some action, and decriminalize acts that meet the requirements of Articles 183 and 184. This is not only in line with the purpose of legislators, but also in harmony with the jurisprudence that acts of volunteering emergency assistance are handled similarly to similar legitimate incidents such as necessity and justifiable defense.

## III. INCORPORATING THE RULES OF GOOD SAMARITAN INTO THE ADMINISTRATIVE LAW

Volunteering emergency assistance is primarily a civil law concept, yet it also exhibits characteristics of administrative law. According to our research, it is the responsibility of the police to handle the emergency and save the people from danger.[27] However, the police can sometimes be late to arrive at crime scene. When the police, firefighters, and other first responders are unable to respond promptly to emergencies, citizens come forward to assist those in need, which can be regarded as a form of administrative rescue in practice. The public security department and its agency's announcement of the reward and the administrative subjects' provision of clues or the transfer of the criminal suspects constitute an administrative contract. When the situation is dangerous, they are also considered Good Samaritans under civil law. In addition, volunteering emergency assistance is an honorary title, which can also bring certain administrative rewards. When a rescuer is seriously injured or dies, he or she (or his close relatives) can apply for certain compensation from the Good Samaritan Foundation. Therefore, we should incorporate the rules of volunteering emergency assistance into administrative law in order to achieve the harmony of civil law and public law.

### A. Volunteering Emergency Assistance Is Meanwhile the Administrative Assistance

Scholars discuss the nature of rescue in emergency in the context of public law.[28] They believe that Articles 6 and 19 of People's Police Law of the People's Republic of China (hereinafter referred to as the "People's Police Law") stipulate that

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[27] Haoliang Zhang, The Balance of Interests between the Volunteering Rescuer and the Rescue in Emergency Assistance, 2 LAW SCI. 938 (2023).

[28] Fu Changqiang & Gan Qinyou (傅昌强, 甘琴友), *Jianyiyongwei De Xingzhengfa Sikao* (见义勇为的行政法思考) [*Reflections on Administrative Law for Volunteering Emergency Assistance*], Xingzheng Faxue Yanjiu (行政法学研究) [ADMINISTRATIVE LAW REVIEW], no. 2, 2002, at 33-39.

the police have the obligation to aid in distress, which shows that assistance in emergency is within the scope of public services provided by the authorities to members of society, and is not a legal obligation of other citizens. However, the world is unpredictable, and life is fraught with uncertainties. Despite their best efforts, the police may sometimes be off-duty or inadequately equipped. At this time, the act of citizens' assistance is a necessary supplement to the lack of relief by public power. The rescuer is essentially assisting the administration of the state, that is, the act of administrative assistance. Administrative assistance in the common sense only refers to the cooperation between administrative agencies. For example, Professor Ye Bifeng believes that (administrative assistance) refers to the act of using authority to assist an administrative entity that has no jurisdiction over a certain matter based on the request of the administrative entity with the right to manage it.[29] *Cross-enforcement* in civil litigation occurs when enforcement officers from a court with jurisdiction entrust an enforcement agency without jurisdiction to execute a civil case verdict, aiming to overcome local protectionism and strengthen deterrence. However, it is not unreasonable to position citizens as actors who cooperate with the administrative authorities.[30] Since Good Samaritan acts refer to situations where ordinary citizens, who are not obligated to provide assistance or go beyond general duties, help others, voluntary emergency assistance does not apply to individuals who have a duty to assist [31](such as on-duty military personnel, firefighters, licensed physicians, guardians).[32] In Japanese law, it is also recognized that when an accident occurs, the primary duty of assistance lies with the state. If ordinary people take action, this forms a public-law relationship between the state and private individuals. Anyone who incurs losses as a

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[29] YE BIFENG (叶必丰), XINGZHENG FAXUE (行政法学) (1996). Tang Zhen (唐震), Xingzheng Xiezhu Xingwei Jiben Yaosu Jiexi (行政协助行为基本要素解析) [Analysis of the basic elements of administrative assistance behavior], Zhengzhi Yu Falv (政治与法律) [POLITICS AND LAW], no. 4, 2013, at 70.

[30] In fact, many government departments are involved in the work of rewarding and guaranteeing those who have done justice and courage. For example, Article 5 of the *Regulations on Rewards and Guarantees for Volunteering Emergency Assistance Personnel in Henan Province* states that "the people's governments at or above the county level shall be responsible for rewarding and guaranteeing the personnel who are volunteering emergency assistance, and shall establish and improve the coordination mechanism for the linkage of various departments." Routine affairs are handled by the public security organs. The relevant departments of people's governments at the county level or above, such as for public security, education, civil affairs, finance, human resources and social security, housing and urban-rural construction, health, and family planning, as well as people's organizations such as trade unions, Communist Youth Leagues, women's federations, and disabled persons' federations, shall, in accordance with their respective duties, do a good job of rewarding and guaranteeing those who serve for volunteering emergency assistance. For example, Article 5 of the *Regulations of Tianjin Municipality on the Reward and Protection of Volunteering Emergency Assistance Personnel* provides that "the municipal and district people's governments shall be responsible for rewarding and protecting the volunteering emergency assistance personnel within their respective administrative areas, and shall include the required funds in the financial budget at the same level."

[31] Zhang Chenyuan & Song Zongyu (张晨原，宋宗宇), Jianyiyonwei Xingzheng Zeren De Panduan Biaozhun(见义勇为行政责任的判断标准) [The Criteria for Judging Administrative Responsibility of Volunteering Emergency Assistance], Guangdong Shehui Kexue (广东社会科学) [SOCIAL SCIENCE IN GUANGDONG], no. 2, 2020, at 235-244.

[32] Zhang Haoliang (张浩良), Jianyiyongwei Xiangdui Mianze Zhi Tichang (见义勇为相对免责之提倡) [Volunteering Emergency Assistance are Relatively Exempt From Accountability], Shenyang Gongye Daxue Xuebao Shehui Kexueban (沈阳工业大学学报(社会科学版)) [JOUANAL OF SHENYANG UNIVERSITY OF TECHNOLOGY, SOCIAL SCIENCE EDITION], no. 2, 2023, at 189.

result of a Good Samaritan act may be eligible for administrative compensation based on the principle of equal *public burden sharing*.[33]

## B. Administrative Confirmation for Volunteering Emergency Assistance Should have a Lawful Procedure of Investigation and Declaration

Since the 18th National Congress of the Communist Party of China, President Xi Jinping has repeatedly emphasized that "when the class of grassroots is strong, the country is strong, and when the common people are safe, the country is safe, and we must do a good job in the basic work of modernizing grassroots' governance".[34] As previously stated, common people's rescue affairs supplement the police's mobile ability, deserving both material and spiritual rewards, but before that, we need strict reporting and investigation procedures. After an emergency rescue incident, "the rescuer, the rescuee, and other witnesses at the scene can come forward for granting procedure."[35] When the rescuer is seriously injured and fells unconscious, his or her good deeds may be reported by a close relative. Based on the notion of administrative assistance, the entity designated for declaring volunteering emergency assistance is generally the administrative organ (or the functional department responsible for the comprehensive management of social security) that is being assisted.[36] If it is a situation such as helping to arrest bandits or rescuing people who have fallen into the water, it should be determined by the local public security organs. If the fire is extinguished and the people trapped in the flood disaster are rescued, the fire department will determine it, and so on. In the approval process, the competent authorities should broadly interpret urgency or situations involving significant personal risk, so as to include numerous good deeds within the scope of rewards, thereby achieving a demonstrative effect. If applicants are dissatisfied with the determination, they may apply for administrative reconsideration to the supervisory authority. If they are still dissatisfied with the result of the administrative reconsideration, they may file an administrative lawsuit. In cases where there is a dispute between the rescuer and the rescued regarding exemption from civil liability, the court in the jurisdiction where the incident occurred will handle the matter to determine whether it constitutes Articles 183 and 184 of the Civil Code. During the civil litigation, judges should apply the

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[33] The opinion is that the rescuers' damage should be distributed to the public. The compensation for such damage is administrative compensation. Zhang Cheng(章程), Jianyiyongwei De Minshi Zeren--Ribenfa Zhuankuang Qiji Dui Woguofa De Qishi(见义勇为的民事责任——日本法的状况及其对我国法的启示) [The Civil Liability of Volunteering Emergency Assistance--the State of Japan Law and Its Implications for our Law], Huadong Zhengfa Daxue Xuebao (华东政法大学学报) [JOURNAL OF THE EAST CHINA UNIVERSITY OF POLITICS & LAW], no. 4, 2014, at 48.

[34] Xi Jinping Zongshuji Zai Guizhousheng Guiyangshi Guanshanhuqu Jinyuanshequ Kaocha Diaoyan Shi De Jianghua (习近平总书记在贵州省贵阳市观山湖区金元社区考察调研时的讲话) [Speech by President Xi During the Investigation of Jinyuan Community, Guanshanhu District, Guiyang City, Guizhou Province] (2021).

[35] Xun Rihua (孙日华), Jianyiyongwei Rending De Fali Fansi Yu Zhidu Goujian(见义勇为认定的法理反思与制度构建) [Reflection on the Legal Principles and System Construction of the Recognition of Volunteering Emergency Assistance], Dongbei Daxue Xuebao Shehui Kexueban (东北大学学报(社会科学版)) [JOURNAL OF NORTHEASTERN UNIVERSITY(SOCIAL SCIENCE)], no. 1, 2013, at 90.

[36] For example, Article 9 of the *Sichuan Provincial Regulations on Protecting and Rewarding Acts of Volunteering Emergency Assistance* stipulates that "after being reviewed by the functional departments responsible for the comprehensive management of social security, the acts of volunteering emergency assistance shall be reported to the people's government at the same level for confirmation and announced to the public."

preponderance of evidence rule[37] and may hold hearings in local to render a credible judgment. For example, if witnesses or CCTV footage present preliminary evidence, the aided party should present rebuttal evidence.[38] In cases of fabricated acts of Good Samaritan assistance or fraudulent claims for compensation or rewards, the people's court should determine whether the behavior constitutes unjust enrichment or fraud, based on the severity of the case, and assign the appropriate civil or even criminal liability.[39] The court's rulings should link to entitlements such as work insurance benefits or martyr honors, serving as a basis for actions by social security or public security authorities. When necessary, the people's court may issue judicial recommendations to the related entities. Good Samaritans whose legitimate rights have not been promptly recognized may also apply for legal aid.

### C. The Good Samaritan Shall Enjoy Immunity from Liability under Public Law

Legislators confer liability immunity for certain acts primarily to balance interests or encourage such acts. For example, Article 1176 of the Civil Code grants a certain degree of immunity to participants in risky events, and attempts to balance interests in order to promote the high-risk, high-confrontational, and exciting charm of competitive sports. Another example is paragraph 3 of Article 20 of the Regulations on Pre-hospital Emergency Medical Care in Nanjing and paragraph 3 of Article 44 of the Regulations on Emergency Pre-hospital Medical Services in Tianjin, which are to encourage the public to voluntarily provide emergency assistance. Similarly, as mentioned above, those who act bravely in the face of risk have the nature of making up for preparedness of administrative organs, realizing the optimal integration of social resources, and have the legitimacy of liability exemption. Meanwhile, this aligns with the purpose of administrative guidance. Administrative agencies, such as public security organs, as well as administrative entities, such as schools, may encourage the public to act courageously and wisely by widely publicizing the right to be exempt from liability. For example, if a citizen rescues an injured person carelessly and causes burns to the victim, if it is confirmed volunteering emergency assistance act, the private entity shall have full immunity from liability. Since those with administrative authority generally have rescue skills, if they bear fault liability,[40] the private entity should only bear the responsibility for intentional or gross negligence. This is in line with the balance of power (or rights) between private and public legal entities. According to the

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[37] Zuigao Renmin Fayuan Guanyu Shiyong (Zhonghua Renmin Gongheguo Minshisusongfa) De Jieshi (最高人民法院关于适用<中华人民共和国民事诉讼法>的解释).

[38] An elder, after becoming drunk and falling on the road, was helped up by a young man whom he then mistakenly accused of causing the fall. Surveillance footage later proved the young man's innocence. Xiaoping Huang & Shuai Li, Teen Assisting an Elder Is Wrongfully Accused and Slapped! Jiangxi Police: 9-Day Detention, Jiangxi Release (last visited Aug. 27, 2025), https://www.zgfznews.com/news.html?aid=867830.

[39] Xun Rihua (孙日华), Jianyiyongwei Rending De Fali Fansi Yu Zhidu Goujian (见义勇为认定的法理反思与制度构建) [Reflection on the Legal Principles and System Construction of the Recognition of Volunteering Emergency Assistance], Dongbei Daxue Xuebao Shehui Kexueban(东北大学学报(社会科学版)) [JOURNAL OF NORTHEASTERN UNIVERSITY(SOCIAL SCIENCE)], no. 1, 2013, at 90.

[40] For example, paragraph 2 of article 13 of the *People's Police Law* stipulates that "public security organs need to investigate crimes..... where losses are caused, compensation shall be made. Article 50 stipulates that "where the people's police infringe upon the lawful rights and interests of citizens or organizations in the course of performing their duties, causing harm, they shall...Indemnification is granted."

social compensation theory, the losses (such as the infringement of the rescued person's personal rights) caused by voluntary emergency assistance should be covered through tax. This is also in harmony with the altruistic attribute of volunteering emergency assistance. As previously mentioned, this situation should be governed by the provisions on justifiable defense, necessity, and management without cause, without incurring good Samaritan's administrative (compensatory) liability. If the Good Samaritan is exempt from liability and the person being assisted suffers some loss, the loss should be fully or partially compensated by the Good Samaritan Fund or a social assistance fund. This approach effectively removes any concerns or worries the rescuer may have.

### D. The Good Samaritan Should be Fully Protected and Rewarded

There are a lot of benefits to rewarding rescuers. The government's practice of compensating rescuers on behalf of those being assisted is also a strategy that leverages public authority and mass media to strengthen the signaling mechanism of rescue actions. Since taxpayers ultimately bear the cost of the rewards, government rewarding implicitly function as a form of mild insurance.[41] Currently, public welfare organizations such as Good Samaritan foundations at both central and local levels are actively conducting their work. For example, the selection and recognition program for Good Samaritan heroes, hosted by the Central Political and Legal Affairs Commission and organized by the China Good Samaritan Foundation, has published seven quarterly lists of Good Samaritan heroes since September 2022, with a total of 388 heroes receiving awards.[42] The Good Samaritan Association of Puyang City, Henan Province, has included Wang Xiangnan, a driver who rescued others on the Meida Expressway, in its care and support program. On the eve of Army Day in 2024, Good Samaritan foundations at various levels in Jiangsu organized visits to honor military personnel who demonstrated acts of bravery.[43] In the future, the government should take the lead in actively raising funds from the public to strengthen the foundation's financial resources and promote the safe and effective use of funds through various means, such as providing personal accident insurance for Good Samaritans.[44] Meanwhile, all localities should strengthen legislative efforts, especially by enacting special legislation

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[41] Sang Benqian (桑本谦), Litazhuyi Jiuzhu De Falv Ganyu(利他主义救助的法律干预) [Legal Intervention in Altruistic Bailouts), Zhongguo Shehui Kexue (中国社会科学) [CHINESE SOCIAL SCIENCES], no. 10, 2012, at 138.

[42] Xiong Feng (熊丰), Zhongyang Zhengfawei Fabu 2024 Nian Dier Jidu Jianyiyongwei Yongshibang (中央政法委发布 2024 年第二季度见义勇为勇士榜) [The Central Political and Legal Commission Released the List of Volunteering Emergency Assistance Warriors in the Second Quarter of 2024], XINHUA WANG (新华网) [XINHUA NEWS],

http://www.xinhuanet.com/politics/20240726/a195e0371c504861ba38a9c83e5ae9fe/c.html.

[43] Li Yang (李旸), Xiang Junren Zhijing!Jiangsu Geji Jianyiyongwei Jijinghui Kaizhan Zoufang Weiwen Jianyiyongwei Junren Huodong (向军人致敬!江苏各级见义勇为基金会开展走访慰问见义勇为军人活动) [Salute to the Military! Volunteering Emergency Assistance Foundations at all Levels in Jiangsu have Carried out Activities to Visit and Express Condolences to Volunteering Emergency Assistance Soldiers], ZHONGGUO JIANGSUWANG (中国江苏网) [JSCHINA.COM.CN]. https://jsnews.jschina.com.cn/zt2019/jsjyyw/zhyw/202407/t20240730_3439848.shtml.

[44] FANG SHIRONG, SUN CAIHUA & WANG LILI (方世荣, 孙才华, 王莉莉), JIANYI YONGWEI JIQI XINGZHENGFA GUIZHI (见义勇为及其行政法规制) (2009).

to protect those who act bravely in the face of danger.[45] In practice, attention should also be given to the special provisions in the Martyrs' Commendation Regulations and the Work Injury Insurance Regulations. For instance, Article 15, Item 2 of the Work Injury Insurance Regulations stipulates that 'injuries sustained while participating in activities to protect national or public interests, such as disaster relief,' shall be treated as work injuries under Good Samaritan provisions. According to Article 18 of this regulation, the application materials for work injury recognition include a work injury determination application form, documentation of an employment relationship (including de facto employment), medical diagnosis, and proof from civil affairs or other relevant departments. Similarly, Article 8, Item 2 of the Martyrs' Commendation Regulations states that citizens who sacrifice their lives during disaster relief or while rescuing and protecting national, collective, or individual property shall be recognized as martyrs. Such individuals are entitled to martyrs' commendation benefits and preferential treatment for the families of martyrs. Article 34, Paragraph 2 of the People's Police Law contains similar provisions. If a person cannot be recognized as a work injury or martyr, they may still receive a certain level of social assistance, and during the recovery phase, their current salary and benefits should remain unchanged to ensure that those who do good are not left to suffer both physically and mentally.

## CONCLUSION

The legal concept of good Samaritan undoubtedly lends itself to an interdisciplinary approach. The distinctions between civil, criminal, and administrative law do not exist in all legal fields.[46] The values of righteousness and courage also carry rich ethical and moral significance, making them subjects of study in ethics, sociology, and other social sciences. In this article, an attempt was made to conduct research within the confined scope of specific law. Within the civil law framework, good Samaritan acts fall under emergency management without cause. If the rescuer acts with slight negligence, they are exempt from civil liability. However, if the rescuer acts with intent or gross negligence, they should bear appropriate civil liability, with a reversed burden of proof applied. Since justifiable defense serves as a partial exemption from liability, which is less favorable than the Good Samaritan rules, the latter should generally take precedence in application. However, considering normative legislative purposes, the provisions on necessity should prevail. Given that the Civil Code adopts an abstracting approach, specific laws in particular chapters should take precedence over general laws, so there are reasons for judges to prioritize provisions on voluntary assumption of risk or self-help actions. To uphold the foundational role of the Civil Code, it is also important to ensure consistency between criminal law and civil law. As the Criminal Code lacks a systematic framework for sentencing circumstances, and current circumstances cannot replace the functional purpose of exemption for Good Samaritan acts, the People's Court should take a substantive interpretative stance, excluding actions in accordance with Articles 183 and 184 of the Civil Code from the realm of crime. When the time is proper, provisions for Good Samaritan exemptions should be integrated into the Criminal Code when the law is revised. Law represents the minimum

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[45] Up to now, Anhui, Guangdong, Hubei, Hunan, Sichuan, Hebei, Chongqing, Zhejiang, Guizhou, Beijing and other provinces and cities have issued regulations on rewarding and guaranteeing those who serve righteously and bravely.

[46] Sang Benqian(桑本谦), Litazhuyi Jiuzhu De Falv Ganyu (利他主义救助的法律干预) [Legal Intervention in Altruistic Bailouts), Zhongguo Shehui Kexue (中国社会科学) [CHINESE SOCIAL SCIENCES], no. 10, 2012, at 136.

standard of morality; therefore, the Criminal Code should not impose a legal duty to rescue in emergencies, as this would excessively interfere with citizens' freedom of action. However, acts of assault, retaliation, or false accusations against Good Samaritans should be subject to administrative sanctions by public security organs, and, if constituting a crime, should be prosecuted by procuratorates. To support grassroots governance systems and modernization of governance capabilities, the reach of administrative power should be appropriately extended. Citizens should be encouraged to render administrative assistance when the police or first-aid agencies are unable to respond promptly. Although Good Samaritan acts are benevolent, and sometimes anonymous, it is essential to establish certain reporting, investigation, and verification procedures within the framework of rule of law. To alleviate the concerns of emergency responders, we should also consider providing public-law liability immunity, like the provisions in the People's Police Law, to give civilians a degree of preferential protection. Finally, legislators should weave a comprehensive legal framework to protect and reward Good Samaritans, thereby fostering a culture of mutual assistance, public support, and reinforcing the ethical values of goodwill and solidarity within our communities.